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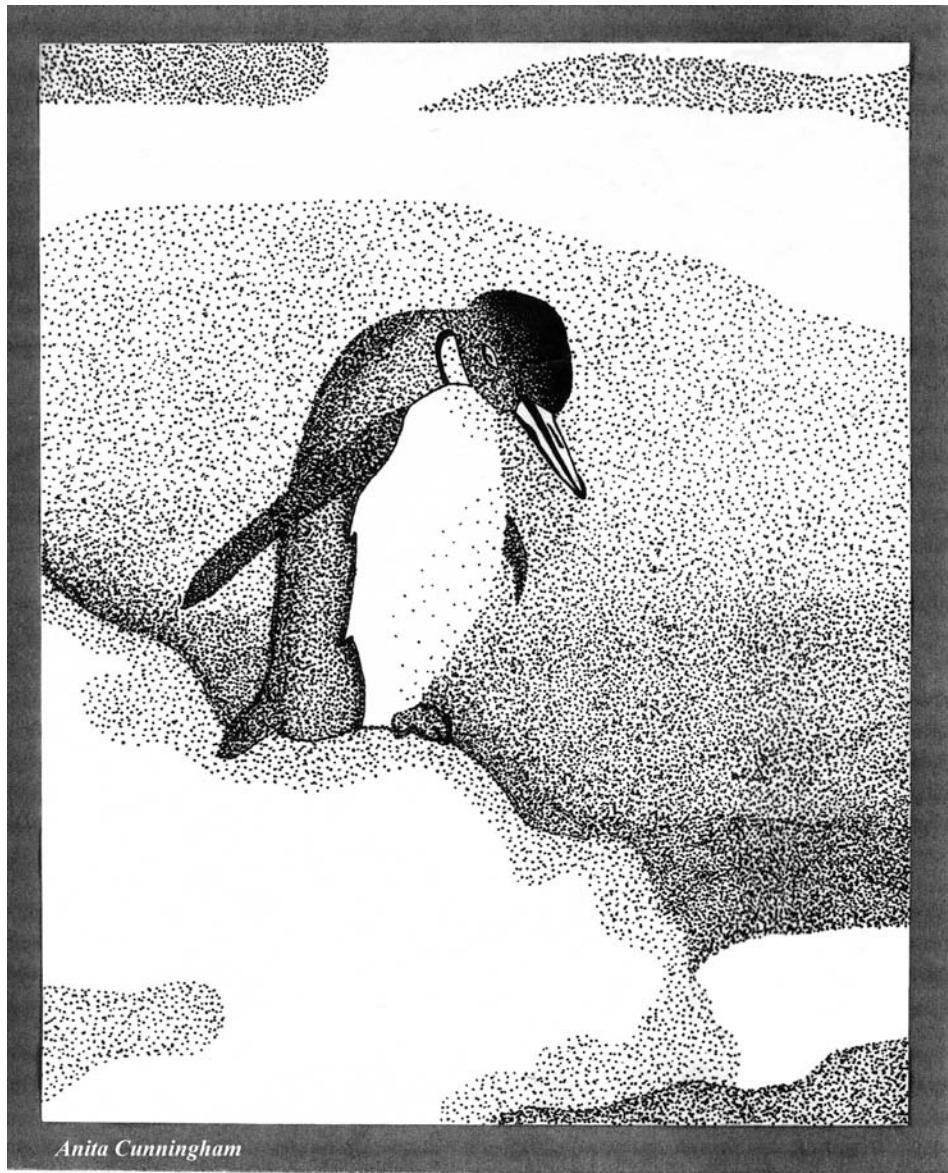
# TEXAS REGISTER

*Volume 38 Number 12*

*March 22, 2013*

*Pages 1931 - 2060*

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*Anita Cunningham*

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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P.O. Box 13824  
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(512) 463-5561  
FAX (512) 463-5569

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

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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://www.oag.state.tx.us/open/index.shtml>

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

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

...

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

# THE GOVERNOR

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

## Appointments

### Appointments for February 20, 2013

Pursuant to SB 315, 82nd Legislature, Regular Session, appointed to the Texas Violent Gang Task Force for a term at the pleasure of the Governor, Albert Bonner, Jr. of Plainview.

Pursuant to SB 315, 82nd Legislature, Regular Session, appointed to the Texas Violent Gang Task Force for a term at the pleasure of the Governor, Timoteo C. "Tim" Flores of Harlingen.

Pursuant to SB 315, 82nd Legislature, Regular Session, appointed to the Texas Violent Gang Task Force for a term at the pleasure of the Governor, Patrick G. Natividad of El Paso.

Pursuant to SB 315, 82nd Legislature, Regular Session, appointed to the Texas Violent Gang Task Force for a term at the pleasure of the Governor, Riley N. Shaw of Fort Worth.

Designating Jon Hodde as presiding officer of the Texas Board of Professional Land Surveying for a term at the pleasure of the Governor. Mr. Hodde is replacing David Smyth, Sr. of Uvalde as presiding officer.

### Appointments for February 28, 2013

Designating Paul A. Braden as presiding officer of the State Pension Review Board for a term at the pleasure of the Governor. Mr. Braden is replacing Richard McElreath of Amarillo as presiding officer.

Appointed to the Texas Emissions Reduction Plan Advisory Board for a term to expire February 1, 2017, L. Elizabeth Gunter of Austin (Ms. Gunter is being reappointed).

Appointed to the Texas Emissions Reduction Plan Advisory Board for a term to expire February 1, 2017, Mark L. Rhea of Fort Worth (Mr. Rhea is being reappointed).

Appointed to the Texas Emissions Reduction Plan Advisory Board for a term to expire February 1, 2017, Russell C. Tharp of Tomball (replacing Scott Boxer of Frisco whose term expired).

Rick Perry, Governor

TRD-201301106



## Proclamation 41-3316

TO ALL TO WHOM THESE PRESENTS SHALL COME

I, RICK PERRY, Governor of the State of Texas, issued an Emergency Disaster Proclamation on July 5, 2011, certifying that exceptional drought conditions posed a threat of imminent disaster in specified counties in Texas.

WHEREAS, record high temperatures, preceded by significantly low rainfall, have resulted in declining reservoir and aquifer levels, threatening water supplies and delivery systems in many parts of the state; and

WHEREAS, prolonged dry conditions continue to increase the threat of wildfire across many portions of the state; and

WHEREAS, these drought conditions have reached historic levels and continue to pose an imminent threat to public health, property and the economy; and

WHEREAS, this state of disaster includes the counties of Archer, Armstrong, Austin, Bailey, Bandera, Baylor, Bee, Bell, Blanco, Borden, Bosque, Bowie, Briscoe, Brooks, Brown, Burnet, Caldwell, Callahan, Cameron, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Comal, Comanche, Cooke, Coryell, Cottle, Crockett, Crosby, Culberson, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, Dewitt, Dickens, Dimmit, Donley, Duval, Eastland, Edwards, Ellis, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Gaines, Garza, Gillespie, Glasscock, Goliad, Gray, Grayson, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Harris, Hartley, Haskell, Hays, Hemphill, Hidalgo, Hill, Hockley, Hood, Hopkins, Howard, Hudspeth, Hunt, Hutchinson, Jack, Jeff Davis, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lipscomb, Live Oak, Llano, Lubbock, Lynn, Mason, Maverick, McLennan, McMullen, Medina, Menard, Milam, Mills, Mitchell, Montague, Moore, Motley, Nolan, Nueces, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Potter, Presidio, Rains, Randall, Real, Red River, Refugio, Roberts, Runnels, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terry, Throckmorton, Travis, Uvalde, Val Verde, Van Zandt, Washington, Webb, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wise, Yoakum, Young, Zapata and Zavala.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation and direct that all necessary measures, both public and private as authorized under Section 418.017 of the code, be implemented to meet that threat.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 21st day of February, 2013.

Rick Perry, Governor

TRD-201301107



# 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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Opinions

**Opinion No. GA-0992**

The Honorable Mike Anderson

Harris County District Attorney

Criminal Justice Center

1201 Franklin, Suite 600

Houston, Texas 77002

Re: Authority of certain persons to direct the disposition of blood seized during the investigation of an intoxication-related offense (RQ-1082-GA)

**SUMMARY**

A district or inferior court likely does not have authority to order the destruction of blood collected during the investigation of an intoxication-related misdemeanor offense after the underlying case has been finally resolved.

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-201301108

Katherine Cary

General Counsel

Office of the Attorney General

Filed: March 13, 2013





# TEXAS ETHICS COMMISSION

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

## Advisory Opinion Requests

**AOR-578.** The Texas Ethics Commission has been asked to consider whether a person who was elected to the position of justice of the peace of a particular precinct and who was subsequently appointed to the position of justice of the peace of a different precinct holds the office to which he was appointed for purposes of §255.006 of the Election Code.

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

36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

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

TRD-201301103  
Natalia Luna Ashley  
Special Counsel  
Texas Ethics Commission  
Filed: March 13, 2013



# 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 3. OFFICE OF THE ATTORNEY GENERAL

#### CHAPTER 55. CHILD SUPPORT ENFORCEMENT

##### SUBCHAPTER D. FORMS FOR CHILD SUPPORT ENFORCEMENT

###### 1 TAC §55.121

The Office of the Attorney General, Child Support Division, proposes new §55.121 regarding the promulgation of the Record of Support form pursuant to Texas Family Code §105.008. New §55.121 concerns Record of Support and will be included in Subchapter D, Forms for Child Support Enforcement. This new form is completed by the clerk of the court to provide a record of a support order for the state case registry when an order has been entered and the clerk has not provided the information on the Attorney General Child Support Web Portal.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Key has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is an accurate and complete state case registry. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Written comments on the proposed section should be submitted to John O'Connell, Deputy Director, Legal Counsel Division, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017. Comments on this proposed section must be submitted no later than 30 days from the date of this publication.

The proposed section is authorized under Texas Family Code §105.008, which provides the Office of the Attorney General with the authority to develop a form for the clerk of court to provide the state case registry with a record of court orders for child support.

The proposed new section implements Chapter 105 of the Texas Family Code.

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

§55.121. Record of Support.

The prescribed form for the Record of Support (Form 1828) for the state case registry can be obtained from the Texas Attorney General's Child Support Division webpage [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) under Child Support, Forms. The clerk of the court may provide the state case registry with a record of a court order for child support by either completing this form or providing the information on the Attorney General Child Support Web Portal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 4, 2013.

TRD-201300959

Katherine Cary

General Counsel

Office of the Attorney General

Earliest possible date of adoption: April 21, 2013

For further information, please call: (512) 936-1180



##### SUBCHAPTER H. LICENSE SUSPENSION

###### 1 TAC §55.203

The Office of the Attorney General, Child Support Division, proposes amendments to Subchapter H, License Suspension, §55.203, Forms, regarding the forms for license suspension pursuant to Texas Family Code §232.005. The proposed amendments amend the forms for "Petition to Suspend License," "Request for Hearing," "Notification to Licensing Authority of Order Suspending License," "Notification to Licensing Authority of Order Vacating or Staying Order Suspending License" and "Suggested model forms for use by the Courts". Texas Family Code §232.005 only requires the petitioner to allege the name of the licensing authority that issued a license the individual is believed to hold. Further, pursuant to Texas Family Code §232.011(i), although the contents of the petition may identify a single type of license issued by a licensing authority, the effect of a final order is the suspension of any type of license issued by the licensing authority that may be available to the delinquent obligor.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Ms. Key has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the amended section will be that licensing authorities listed in the petition and subject to an order suspend-

ing the license of a delinquent obligor will suspend any and all licenses of that obligor. There will not be an effect on small businesses. There is no anticipated economic cost to petitioners and obligees. There is an anticipated economic cost to the delinquent obligor who has one or more licenses suspended according to the requirement under Texas Family Code Chapter 232.

Written comments on the proposed amendments should be submitted to John O'Connell, Deputy Director, Legal Counsel Division, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017. Comments on the proposed amendments must be submitted no later than 30 days from the date of this publication.

The proposed amendments are authorized under Texas Family Code §231.003, which provides the Office of the Attorney General with the authority to prescribe forms and procedures for the implementation of Chapter 231.

The proposed amendments implement the Texas Family Code, Chapter 232.

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

§55.203. *Forms.*

(a) The prescribed form for Administrative Notice of Filing of Petition to Suspend License (Form 1832) can be obtained from the Texas Attorney General's Child Support Division webpage [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) under Child Support, Forms. [Notice of Filing of Petition to Suspend License. The notice shall take the form as follows:]

[Figure: † TAC §55.203(a)]

(b) The prescribed form for Administrative Petition to Suspend License (Form 1831) can be obtained from the Texas Attorney General's Child Support Division webpage [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) under Child Support, Forms. [Petition to Suspend License. The petition shall take the form as follows:]

[Figure: † TAC §55.203(b)]

(c) The prescribed form for Request for Hearing (Form 1830) can be obtained from the Texas Attorney General's Child Support Division webpage [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) under Child Support, Forms. [Request for Hearing. The request shall take the form as follows:]

[Figure: † TAC §55.203(c)]

(d) The prescribed form for Notification to Licensing Authority of Order Suspending License (Form 1829) can be obtained from the Texas Attorney General's Child Support Division webpage [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) under Child Support, Forms. [Notification to Licensing Authority of Order Suspending License.]

[Figure: † TAC §55.203(d)]

(e) The prescribed form for Notification to Licensing Authority of Order Vacating or Staying Order Suspending License (Form 1833) can be obtained from the Texas Attorney General's Child Support Division webpage [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) under Child Support, Forms. [Notification of Licensing Authority of Order Vacating or Staying Order Suspending License.]

[Figure: † TAC §55.203(e)]

(f) The prescribed suggested model forms for use by the Courts (Form 1834 and Form 1835) can be obtained from the Texas Attorney General's Child Support Division webpage [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) under Child Support, Forms. [Suggested model forms for use by the Courts.]

[Figure: † TAC §55.203(f)(1)]

[Figure: † TAC §55.203(f)(2)]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 4, 2013.

TRD-201300960

Katherine Cary

General Counsel

Office of the Attorney General

Earliest possible date of adoption: April 21, 2013

For further information, please call: (512) 936-1180



## 1 TAC §55.205

The Office of the Attorney General, Child Support Division, proposes amendments to Subchapter H, License Suspension, §55.205, Initiating a Proceeding, regarding the license suspension pursuant to Texas Family Code §232.006. The proposed amendments are revised to reflect the current process.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Ms. Key has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the amended section is to clarify and update the current process for initiating the proceeding. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Written comments on the proposed amendments should be submitted to John O'Connell, Deputy Director, Legal Counsel Division, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017. Comments on the proposed amendments must be submitted no later than 30 days from the date of this publication.

The proposed amendments are authorized under Texas Family Code §232.004, which provides the Office of the Attorney General with the authority to serve the obligor with a notice of the petition filed to suspend a license.

The proposed amendments implement the Texas Family Code §232.006.

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

§55.205. *Initiating a Proceeding.*

(a) - (c) (No change.)

(d) Service. The coordinator [petitioner] is responsible for obtaining service of the notice on the obligor as in civil cases generally. See Texas Rule of Civil Procedure 106.

(e) Evidence of Service. Upon obtaining service on the obligor, the coordinator [petitioner] must file evidence [with the coordinator] that service has been obtained. A copy of the return of service, [or] a copy of the return receipt on certified mail, or an affidavit of service issued by the coordinator is evidence that service has been obtained.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 4, 2013.

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Katherine Cary

General Counsel

Office of the Attorney General

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For further information, please call: (512) 936-1180



## SUBCHAPTER J. VOLUNTARY PATERNITY ACKNOWLEDGMENT PROCESS

### 1 TAC §55.404, §55.406

The Office of the Attorney General, Child Support Division, proposes amendments to Subchapter J, Voluntary Paternity Acknowledgment Process, §55.404, Voluntarily Acknowledging Paternity, and §55.406, Entities Providing Paternity Establishment Services, regarding the voluntary paternity acknowledgment pursuant to Texas Family Code §160.314. The proposed amendments clarify and improve the voluntary acknowledgment process for incarcerated persons and persons residing outside Texas.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections.

Ms. Key has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the amended sections will be an improved voluntary paternity acknowledgment process. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments should be submitted to John O'Connell, Deputy Director, Legal Counsel Division, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017. Comments on the proposed amendments must be submitted no later than 30 days from the date of this publication.

The proposed amendments are authorized under Texas Family Code §160.314, which provides the Office of the Attorney General with the authority to clarify and improve the voluntary acknowledgment process for incarcerated persons and persons residing outside Texas.

The proposed amendments implement the Texas Family Code Chapter 160.

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

#### §55.404. *Voluntarily Acknowledging Paternity.*

(a) A man claiming to be the biological father and the mother may establish paternity before or after the birth of their child by voluntarily acknowledging paternity through a certified entity providing such services. The mother and father must read the Acknowledgment of Paternity form. In addition, both must listen to or view a video presen-

tation of the rights and responsibilities of a parent, and alternatives to and legal consequences of acknowledging or denying paternity. Both the mother and father, separately or together, must then complete an Acknowledgment of Paternity form with the assistance of the certified entity.[:]

~~{(1) complete an Acknowledgment of Paternity form;}~~

~~{(2) return the form to a certified entity.}~~

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

(d) The Office of the Attorney General shall designate staff who are certified entities to assist any party who is outside the state of Texas or is incarcerated in Texas and is unable to complete an acknowledgment of paternity in person with a certified entity. Certified entities should seek the assistance of the Office of the Attorney General for completion of such acknowledgments of paternity.

#### §55.406. *Entities Providing Paternity Establishment Services.*

(a) (No change.)

(b) The following entities may provide voluntary paternity establishment services at their option, but only after being certified by the Office of the Attorney General:

(1) - (10) (No change.)

(11) private attorneys; ~~[and]~~

(12) any public or private health, welfare or social services organization; ~~and[-].~~

(13) an individual with a role in birthing, birth records, healthcare services, social services or legal services who can demonstrate to the satisfaction of the Office of the Attorney General that they have specialized training, relevant experience or other factors appropriate to become a certified entity.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 4, 2013.

TRD-201300962

Katherine Cary

General Counsel

Office of the Attorney General

Earliest possible date of adoption: April 21, 2013

For further information, please call: (512) 936-1180



## PART 8. TEXAS JUDICIAL COUNCIL

### CHAPTER 171. REPORTING REQUIREMENTS

#### 1 TAC §171.7

The Texas Judicial Council (Council) proposes to amend 1 TAC §171.7 concerning the Council's monthly justice court activity report. The proposed amendment conforms the civil case type categories in the monthly justice court activity report to the civil case type categories proposed by the Supreme Court of Texas in its proposed rules drafted pursuant to House Bill 79, 82nd Legislature, Regular Session, 2011.

The proposed amendment deletes from the monthly justice court activity reporting form the following civil case type categories: (1) forcible entry and detainer (evictions), and (2) other civil suits;

and adds the following civil case type categories: (1) debt claim, and (2) landlord/tenant.

Glenna Bowman, chief financial officer of the Office of Court Administration (OCA), has determined that for the first five-year period the amendment is in effect there will be no significant fiscal implications for state government. Because the proposed reporting change is minimal, OCA does not anticipate that the fiscal implication for local governments will be significant. The actual cost will depend on: (1) the existence and terms of any contract with a case management system vendor concerning implementation of changes in reporting case activity information to OCA; (2) the ability of a local government's IT division to perform the necessary work; and (3) the level of sophistication of the local government's current case management system.

Mary Cowherd, deputy director and director of research and court services of OCA, has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the change to this rule will be: (1) justice court activity report civil case type categories that conform to the categories established by the Supreme Court; and (2) collection of accurate information regarding justice court civil case activity that is useful to state and local officials and other interested parties for judicial administration, policy making, and fiscal planning.

There will be no cost to small business or individuals as a result of the amendment.

Comments on the proposal may be submitted in writing to Mary Cowherd at [mary.cowherd@txcourts.gov](mailto:mary.cowherd@txcourts.gov), at P.O. Box 12066, Austin, TX 78711-2066, or at fax number (512) 463-1648.

The amendment is proposed under §71.019 of the Texas Government Code, which authorizes the Council to adopt rules expedient for the administration of its functions, and §71.035 of the Texas Government Code, which authorizes the Council to require a state justice, judge, clerk, or other court official, as an official duty, to comply with reasonable requirements for supplying statistics pertaining to the amount and character of the civil and criminal business transacted by the court or other information on the conduct, operation, or business of the court or the office of the clerk of the court.

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

§171.7. *Justice Court Reports.*

(a) Method. Each justice of the peace shall submit a justice court activity report of the criminal and civil cases in the judge's court. Unless OCA grants a waiver for good cause, the justice of the peace shall submit the reports by electronic means approved by OCA. The maximum duration of a waiver is one year, but OCA may approve successive waivers.

(b) Reporting Categories.

(1) Criminal case type categories. The monthly report contains the following categories of criminal case types: traffic misdemeanors - subdivided into non-parking, parking, and county ordinance offenses; and non-traffic misdemeanors - subdivided into Penal Code violations, other state law violations, and county ordinance violations.

(2) Civil case type categories. The monthly report contains the following categories of civil case types: debt claim, landlord/tenant, and small claims suits[-; foreible entry and detainer (evictions)], and other civil suits].

(3) Juvenile/minor activity. The monthly report contains a section for reporting court activity related to juveniles and minors.

(4) Additional activity. The monthly report contains a section for reporting additional court activity such as magistrate activities and information on fines, court costs and fees collected or otherwise satisfied.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2013.

TRD-201301046

Mena Ramon

General Counsel

Texas Judicial Council

Earliest possible date of adoption: April 21, 2013

For further information, please call: (512) 463-6321



## TITLE 13. CULTURAL RESOURCES

### PART 5. TEXAS STATE CEMETERY COMMITTEE

#### CHAPTER 71. TEXAS STATE CEMETERY

##### 13 TAC §§71.11, 71.13 - 71.15, 71.21

###### Introduction and Background.

The Texas State Cemetery Committee ("Committee") proposes amendments to Chapter 71, §§71.11, 71.13 - 71.15, and 71.21. The Committee has determined that the agency rulemaking authority remains in effect and the business necessity for Chapter 71 also continues to exist. Revisions to these rules, however, are necessary to clarify current business practices. Accordingly, the Committee proposes amendment of Texas Administrative Code, Title 13, Part 5, Chapter 71. The revised rules are proposed pursuant to the Committee's rulemaking authority found in Texas Government Code, §2165.256(i) (Vernon 2008) and §2165.2561(m) (Vernon Supp. 2012).

###### Section by Section Summary.

The Committee proposes amendments to §§71.11, 71.13 - 71.15, and 71.21 as these rules were promulgated to direct Committee administration of the Texas State Cemetery and regulation of monuments on the grounds of the Texas State Cemetery under Texas Government Code, §2165.256 and §2165.2561, including monuments, vaults and graveliners, cenotaphs, landscaping, and burial reservations.

###### Fiscal Note.

Mr. Harry Bradley, Cemetery Superintendent, has determined that for each year of the first five-year period the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

###### Public Benefit/Cost Note.

Mr. Bradley has also determined that for each year of the first five-year period the proposed rules are in effect the public benefit will be further clarification of current business practices, as

well as adding language that provides additional guidance or direction than that reflected in the governing statutes.

Mr. Bradley has further determined that there will be no effect on individuals or large, small, and micro-businesses as a result of the proposed rules. Consequently, an Economic Impact Statement and Regulatory Flexibility Analysis, pursuant to Texas Government Code, §2006.002 (Vernon 2008), are not required.

In addition, Mr. Bradley has determined that for each year of the first five-year period the proposed rules are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act, Texas Government Code, §2001.022 (Vernon 2008).

Request for Comments.

Interested persons may submit written comments on the proposed rules to General Counsel, Legal Services Division, Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via email to [rulescomments@tfc.state.tx.us](mailto:rulescomments@tfc.state.tx.us). For comments submitted electronically, please include "Proposed Texas State Cemetery Rules" in the subject line. Comments must be received no later than thirty (30) days from the date of publication of the proposed rules in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed rules. Questions concerning the proposed rules may be directed to Ms. Kay Molina, General Counsel, at (512) 475-2400.

Statutory Authority.

The amended rules are proposed under Texas Government Code, §2165.256(i) (Vernon 2008) and §2165.2561(m) (Vernon Supp. 2012).

Cross Reference to Statute.

The statutory provisions affected by the proposed rules are those set forth in §2165.256 and §2165.2561 of the Texas Government Code.

§71.11. *Monuments.*

(a) Monuments and inscriptions are subject to the approval and regulation of the Committee.

(b) All monument designs shall be submitted to the Cemetery ~~superintendent~~ Superintendent for review and compliance with the requirements set forth by the Committee. Incomplete submissions will be returned.

(c) The Committee specifically reserves the right to reject any monument design, if, in the opinion of the Committee, the quality or craftsmanship of the monument design is not suitable, blocks the view of surrounding monuments, is not in keeping with the dignity and respect of the Cemetery, or does not comply with the following guidelines:

(1) Only selected natural stone from established quarries, or bronze meeting the specifications of the United States Bureau of Standards should be used for monuments. In all cases, craftsmanship should be of superior quality.

(2) Curbs, fences, borders, benches, plantings or enclosures around any burial spaces must be approved by the Committee.

(3) Monuments and inscriptions on any monument shall be accurate and in keeping with the respect and dignity for the interred and for the Cemetery as a place of honor and to memorialize noteworthy Texans.

(4) Photographs or electronic devices on any monument shall be prohibited.

(5) [(4)] Temporary markers of wood or concrete are prohibited. Temporary metal markers provided by funeral homes are permitted until replaced by a permanent monument. Permanent monuments, including gravesite markers, must be placed at future burial sites no later than two (2) years following the date of interment or, in the case of an existing burial site, no later than one (1) year following the effective date of this rule. Permanent gravesite markers are solely the responsibility of the decedent's estate or family. Appeals for a time extension may be considered by the Committee.

(6) [(5)] Monuments shall be constructed within the following dimensional specifications:

(A) Maximum height: 6 [7] feet or 72 inches.<sup>[5]</sup>

(B) Maximum width: 7 feet or 84 inches. [The footprint of the monument shall not cover more than 20% of the surface of the lot being 7 feet in depth and 6.66 feet (80 inches) in width;]

(C) Maximum depth: 20 inches. [If the width to height ratio of the monument exceeds a 2 to 1 ratio, the Committee will review the design. The design, size, and location of the monument will be considered by the Committee in making a decision; and]

(D) A flush installed ledger stone shall not exceed 7 feet in depth and 3.5 [6.66] feet in width.

(E) All monuments including any obelisk or nonstandard monuments are subject to the approval of the Committee based on location, size, and quality of craftsmanship.

(F) Single plot monuments shall be reviewed by the Committee on a case-by-case basis and will be subject to approval based on location, size, and quality of craftsmanship.

(7) [(6)] The Committee may also evaluate any proposal for a new monument to ensure that the proposed design does not detract or otherwise impact the prominence of the Medal of Honor monument.

(8) Commemorative monuments dedicated to the military or specific historical or cultural events may be exempt from the dimensional specifications of this section.

(d) Aboveground vaults, crypts and mausoleums are prohibited, except for interment in the Columbarium Wall.

(e) Monuments are the property of the State of Texas.

§71.13. *Vaults and Graveliners.*

The use of metal, asphalt, concrete, and other types of below ground burial vaults or graveliners purchased at private expense in the Cemetery is required. Neither the superintendent nor any Cemetery employee shall be involved in making these arrangements. Cremains are not subject to this regulation; however, the urn must be of quality craftsmanship. The spreading of ashes shall be approved by the superintendent.

§71.14. *Cenotaphs.*

(a) Cenotaphs are subject to the approval and regulations of the Committee.

(b) Cenotaph designs shall be submitted to the Cemetery superintendent for review and compliance with the regulations set forth by the Committee.

(c) The Committee specifically reserves the right to reject and prohibit the erection of a cenotaph, if, in the opinion of the Committee

the cenotaph is of inferior quality or craftsmanship, or if it does not comply with the dimensions or material specifications established by the Committee.

(d) Cenotaphs shall be in compliance with other monument regulations [no taller than three (3) feet, five (5) inches,] unless the Committee determines that an exception is in the best interest of the State of Texas.

(e) Cenotaphs are the property of the State of Texas.

§71.15. *Landscaping.*

(a) A tree, shrub, plant or flower may not be removed, relocated or planted in the Cemetery without the permission of the superintendent.

(b) The superintendent shall oversee the removal, relocation or planting of trees, shrubs, plants and flowers within the Cemetery grounds. The Committee may authorize the superintendent to carry out landscape programs at his discretion and report to the Committee in a timely manner.

(c) Fresh cut flowers may be placed on the graves throughout the year. Floral items, fresh and artificial, will be removed from graves as soon as they become faded and unsightly. All artificial flowers or items removed from graves will be disposed of immediately.

(d) Floral items and other types of decorations or commemorative items are not to be secured or affixed by any means (wire, tape, string or adhesives) to the monuments.

(e) Any artificial decoration on monuments or gravesites including photographs, images, silk flowers, balloons, pinwheels, statues, or candles are prohibited.

(f) [(e)] Planting of trees or shrubs is not permitted on or near the graves at any time, unless approved by the superintendent.

(g) [(f)] Christmas wreaths, arrangements or floral grave blankets are permitted on graves during the season, beginning December 1st and will be removed no later than January 1st or at the discretion of the superintendent. Grave floral blankets may not be larger in size than two (2) feet by three (3) feet. Christmas trees are not permitted. Christmas decorations are not permitted on any living tree in the Cemetery, at the Plaza, or on any statue.

(h) [(g)] The Cemetery is not responsible for any items left on the graves. Permanent in-ground flower containers are authorized for placement with approval from the superintendent. Existing containers may remain on graves until they become unserviceable.

(i) The superintendent shall ensure all monuments, headstones, and gravesites are in compliance with the rules and regulations of the Committee.

§71.21. *Burial Reservations.*

(a) The Committee may [shall] actively pursue burial reservations from eligible persons.

(b) The Committee shall delegate to the superintendent or a designated representative, the authority to research persons eligible for burial at the Cemetery.

(c) Biographical information, documentation, photos, newspaper articles and other supporting material shall be collected for review by the Committee.

(d) The Committee shall review and consider those persons recommended by the superintendent for eligibility for burial spaces during an open meeting.

(e) The Committee may [shall] encourage members of the legislature to advise constituents who are eligible for burial in the Cemetery. The Committee may elect to advise members of the legislature by formal written communication.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2013.

TRD-201301042

Kay Molina

General Counsel

Texas State Cemetery Committee

Earliest possible date of adoption: April 21, 2013

For further information, please call: (512) 463-4257



## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 1. AGENCY ADMINISTRATION

##### SUBCHAPTER E. STUDENT COMPLAINT

##### PROCEDURE

##### 19 TAC §1.115

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §1.115, concerning Student Complaint Procedure. Specifically, this section requires that the Coordinating Board refer student complaints it receives pertaining to a component institution in The University of Texas System, Texas A&M University System, the University of Houston System, the University of North Texas System, the Texas Tech University System, or the Texas State University System to the appropriate university system for investigation and resolution. Student complainants have raised concerns that such mandatory referrals may lead, in certain cases, to potential conflicts in the complaint being fairly resolved. The proposed amendment would provide the Coordinating Board with discretion in making these referrals.

Mr. Bill Franz, General Counsel, has determined that for each year of the first five years this section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Franz has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be to establish clear procedures for the administration of all student complaints filed with the Coordinating Board. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Bill Franz, P.O. Box 12788, Austin, Texas 78711, [william.franz@thecb.state.tx.us](mailto:william.franz@thecb.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code §61.031, which provides the Coordinating Board with the authority to establish policies and procedures relating to complaint investigation and resolution; §61.028, which provides that the Board can delegate these responsibilities to the Commissioner; and §61.027, which provides the Coordinating Board with the authority to adopt and publish rules and regulations to effectuate the provisions of Texas Education Code, Chapter 61.

The amended rule affects Texas Education Code, §61.031.

§1.115. *Referral of Certain Complaints to Other Agencies or Entities.* Once the Agency receives a student complaint form, the Agency may refer the complaint to another agency or entity as follows:

(1) (No change.)

(2) Complaints pertaining to an institution in The [the] University of Texas System, Texas A&M University System, University of Houston System, University of North Texas System, Texas Tech University System, or Texas State University System may [shall] be referred to the appropriate university system for investigation and resolution.

(3) - (4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2013.

TRD-201301047

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 25, 2013

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



## **TITLE 31. NATURAL RESOURCES AND CONSERVATION**

### **PART 1. GENERAL LAND OFFICE**

#### **CHAPTER 15. COASTAL AREA PLANNING**

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

###### **31 TAC §15.27**

The General Land Office (GLO) proposes an amendment to 31 TAC §15.27, concerning Certification Status of Matagorda County Dune Protection and Beach Access Plan (Plan).

The intent of this rulemaking is to certify an amendment to Matagorda County's (Matagorda) Plan to incorporate its Erosion Response Plan (ERP).

Copies of Matagorda's ERP can be obtained by contacting Sally Davenport of Coastal Technology Corporation at (512) 236-8194 or s.davenport@texastechcorp.com.

###### **BACKGROUND AND ANALYSIS OF PROPOSED AMENDMENTS**

The amendment to §15.27 adopts the Matagorda ERP. In the ERP, Matagorda proposes establishing a building setback line (BSL) of 1,000 feet from mean high tide for all coastal areas.

Exceptions include the area from the Colorado River Channel east to the Matagorda Dunes Homesites Subdivision, which is located at the southern property boundary line of the subdivision, or 550 feet from mean high tide, and Sargent Beach, which is located at the landward boundary line of the United States Army Corps of Engineers (USACE) right-of-way. The BSL will reduce future storm damage to public and private properties, establish construction requirements for properties and structures located seaward of the Dune Protection Line (DPL), and establish and define exemptions from those construction requirements.

###### **FISCAL AND EMPLOYMENT IMPACTS**

Helen Young, Deputy Commissioner for the GLO's Coastal Resources Program Area, has determined that for each year of the first five years the amended section as proposed is in effect there will be no additional cost to state government as a result of enforcing or administering the amended section.

Ms. Young has determined that there may be fiscal implications to local governments or additional costs of compliance for large and small businesses or individuals resulting from implementation of the amendment to the Plan to include Matagorda's ERP. However, these fiscal impacts cannot be estimated with certainty at this time, since impacts of the plan are determined on a case-by-case basis depending on the characteristics of the property and type of construction. In addition, it is the opinion of the GLO that the costs to local governments of implementation of the provisions for construction in the ERP will be offset by a reduction in public expenditures for erosion and storm damage losses to private and public property.

Likewise, the costs of compliance for businesses or individuals will be offset by the reduction in losses due to storm damage. Implementation of the ERP will preserve beach dunes and delay erosion by reducing the intensity of storm surge. Additionally, the enhanced dune restoration and construction standards will result in increased protection for structures which are located landward of the DPL. Structures will also be protected by improvements in storm protection through upgrades to access points and the dune system. In addition, the presumption of compliance with the dune mitigation sequence requirements for avoidance and minimization of impacts to dunes and dune vegetation will simplify and reduce the cost to developers for crafting mitigation plans for construction seaward of the DPL.

The GLO has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

###### **PUBLIC BENEFIT**

Ms. Young has determined that for the first five years the public will benefit from the proposed amendment to the Plan because the GLO will be able to administer the coastal public land program more efficiently, providing the public more certainty and clarity in the process. The public will benefit from the ERP because coastal public land and therefore the permanent school fund will be protected with the certification of the amendment to Matagorda's Plan by reducing the possibility of structures becoming located on state-owned submerged lands, which increases expenditure of public funds for removal of the unauthorized structures.

In addition, the public will benefit from Matagorda's adoption of the ERP because of reduced public expenditures associated with loss of structures and public infrastructure due to storm damage and erosion, disaster response costs, and loss of life.



Matagorda proposes to adopt the ERP as part of its Dune Protection and Beach Access Plan.

In adopting the ERP, Matagorda is proposing to establish a DPL and BSL of 1,000 feet from mean high tide for all coastal areas. Exceptions include the area from the Colorado River Channel east to the Matagorda Dunes Homesites Subdivision, which is located at the southern property boundary line of the subdivision or 550 feet from mean high tide and Sargent Beach, which is located at the landward boundary line of the USACE right-of-way and establishes construction requirements for properties and structures located seaward of the DPL and BSL. All structures must, to the maximum extent practicable, be constructed landward of the DPL and BSL. Exemptions for construction seaward of the BSL are provided for construction where no practicable alternative exists, construction approved prior to the adoption of the ERP, and modifications to existing structures that do not increase the footprint of the structure, unless more than 50% of the existing structure has been damaged, in which case, the construction will be subject to the requirements of the ERP. Among other things, the construction standards specify that construction seaward of the BSL must be certified by a registered professional engineer as being compliant with the ERP requirements and provide evidence that the structure meets minimum requirements, which include elevation requirements, enclosure limitations, the requirement that the structure be feasible to relocate, and designed to minimize impacts on natural hydrology.

The ERP finds that storm surge and erosion improvements to access points are not required at this time because Matagorda's three access points are designed to avoid dune complexes and reduce storm surge or are protected by erosion response structures. Section 3, Part IV of the Matagorda Beach Access Plan requires construction of access points away from dune complexes and identifies design specifications for new access points that would limit storm surge.

The ERP also includes enhanced dune protections and identifies priority restoration areas. Dune protections are important because natural dune processes are allowed to continue with minimal disturbance and the risk to life and property from storm damage and public expenses for disaster relief will be reduced by maintaining a natural buffer against normal storm tides. Identifying areas where restoration is needed will assist the local government in focusing mitigation and restoration in areas that may be vulnerable to storm inundation and are potential avenues for flood waters that may cause damage to public infrastructure and private properties. Additionally, existing structures and properties will be protected by local government implementation of plans to improve foredune ridges and beach access points to protect against storm surge. Scientific and engineering studies considered by the GLO noted that during Hurricane Alicia in 1983, vegetation line retreat and landward extent of storm washover deposits were greater for developed areas than for natural areas (Bureau of Economic Geology Circular 85-5). This difference is attributed in part to the fact that naturally occurring vegetated dunes in underdeveloped areas are stronger than reconstructed dunes that do not meet minimum height, width, and material requirements (Circular 85-5).

#### ENVIRONMENTAL REGULATORY ANALYSIS

GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major

environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment to §15.27 is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code §§33.101 - 33.136 relating to the board's ability to grant rights in coastal public land and Texas Natural Resources Code §§61.061 - 61.082 relating to the right of local governments to charge beach access or parking fees with respect to public beaches.

#### TAKINGS IMPACT ASSESSMENT

GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. GLO has determined that the proposed rulemaking to certify Matagorda's Plan, as amended by the ERP, as consistent with state law does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §17 and §19 of the Texas Constitution. GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. Furthermore, GLO has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendment. The ERP establishes guidelines which provide exemptions for property for which the owner has demonstrated that no practicable alternative to construction seaward of the DPL exists. The definition of the term "practicable" in 31 TAC §15.2(55) of the Beach/Dune Rules allows a local government to consider the cost of implementing a technique such as the setback provisions in determining whether it is "practicable" in a particular application for development. In applying its regulation, Matagorda will determine on a case-by-case basis whether to permit construction of habitable structures in the area seaward of the building setback line if certain construction conditions are met, thereby avoiding severe and unavoidable economic impacts and thus an unconstitutional taking. In addition, building setback lines adopted by local governments under that section would not constitute a statutory taking under the Private Real Property Rights Preservation Act inasmuch as Texas Natural Resources Code §33.607(h) as added by House Bill 2819 provides that Chapter 2007, Texas Government Code, does not apply to a rule or local government order or ordinance authorized by Texas Natural Resources Code §33.607.

#### CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is subject to the Coastal Management Program (CMP), 31 TAC §505.11(a)(1)(E) - (I) and (c) (relating to the Actions and Rules Subject to the Coastal Management Program). GLO has reviewed these proposed actions for consistency with the CMP's goals and policies. The applicable goals

and policies are found at 31 TAC §501.12 (relating to Goals) and §501.26 (relating to Policies for Construction in the Beach/Dune System). Because all requests for the use of coastal public land must continue to meet the same criteria for GLO approval, GLO has determined that the proposed actions are consistent with applicable CMP goals and policies. The proposed amendment will be distributed to the Commissioner in order to provide him an opportunity to provide comment on the consistency of the proposed amendment during the comment period.

The amended rule provides certification that Matagorda's adoption of the ERP as part of its plan is consistent with the CMP goals outlined in 31 TAC §501.12(1) - (3) and (6). These goals seek protection of Coastal Natural Resource Areas (CNRAs), compatible economic development and multiple uses of the coastal zone, minimization of the loss of human life and property due to the impairment and loss of CNRA functions, and coordination of GLO and local government decision-making through the establishment of clear, effective policies for the management of CNRAs. The ERP is tailored to the unique natural features, degree of development, storm, and erosion exposure potential for Matagorda. The ERP is also consistent with the CMP policies outlined in 31 TAC §501.26(a)(1) and (2) that prohibit construction within a critical dune area that results in the material weakening of dunes and dune vegetation or adverse effects on the sediment budget. The ERP will provide reduced impacts to critical dunes and dune vegetation by establishing requirements for construction in the DPL, reduce dune area habitat and biodiversity loss, and reduce structure encroachment on the beach which leads to interruption of the natural sediment cycle.

#### PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Walter Talley, Texas Register Liaison, General Land Office, P.O. Box 12873, Austin, Texas 78711; facsimile number (512) 463-6311; or email [walter.talley@glo.texas.gov](mailto:walter.talley@glo.texas.gov). Written comments must be received no later than 5:00 p.m., 30 days from the date of publication of this proposal.

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Natural Resources Code §33.607, relating to GLO's authority to adopt rules for the preparation and implementation by a local government of a plan for reducing public expenditures for erosion and storm damage losses to public and private property.

Texas Natural Resources Code §§33.601 - 33.613 are affected by the proposed amendment.

*§15.27. Certification Status of Matagorda County Dune Protection and Beach Access Plan.*

(a) Matagorda County has submitted to the General Land Office a dune protection and beach access plan which is certified as consistent with state law. The county's plan was adopted on February 13, 1995. The General Land Office certifies that the beach users fees section of the Matagorda County plan adopted by the Matagorda County Commissioners Court on March 15, 1999, is consistent with state law. The General Land Office certifies that the pedestrian beach at Matagorda Beach as established by amendments to the county's plan adopted by the Matagorda County Commissioners Court on October 20, 2003, is consistent with state law. The General Land Office certifies that the beach user fees as established by amendments to the county's plan adopted by the Matagorda County Commissioners Court on February 8, 2010, is consistent with state law.

(b) The General Land Office certifies as consistent with state law Matagorda County's Dune Protection and Beach Access Plan as amended to incorporate the county's Erosion Response Plan. The Erosion Response Plan was adopted by Matagorda County on January 28, 2013 by Commission Order.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2013.

TRD-201301029

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Earliest possible date of adoption: April 21, 2013

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



## PART 4. SCHOOL LAND BOARD

### CHAPTER 155. LAND RESOURCES

#### SUBCHAPTER A. COASTAL PUBLIC LANDS

##### 31 TAC §155.15

The School Land Board (Board) proposes amendments to 31 TAC §155.15, relating to Fees. The rulemaking is to correct an error in the fee table for 31 TAC §155.15(b)(1)(C)(iii), relating to rents and fees for Category III residential use coastal easements. In addition, the rulemaking is to clarify an item in the fee table in 31 TAC §155.15(b)(1)(C)(v), relating to rents and fees for cabin permits.

Section 155.15(b)(1)(C)(iii) adds an item to the fee table clarifying that the fee for covered second levels, which currently may be applied to Category I residential use easements, may also be applied to Category III residential use coastal easements. Adding this item to the fee table for Category III residential use coastal easements will accurately reflect current Board policy regarding fees for second covered levels.

Section 155.15(b)(1)(C)(v) deletes the fourth footnote in the fee table, which is an incorrect reference to an additional item of rent for cabin permits. The additional item of rent in this footnote is not part of current Board policy. Deleting the footnote will ensure that the fee table for cabin permits accurately reflects current Board policy and informs the public of the correct rents and fees for such permits.

Rene Truan, Deputy Commissioner for the General Land Office's Professional Services Program Area, has determined that for each year of the first five years the amended section as proposed is in effect there will be no additional cost to state or local government as a result of enforcing or administering the amended section.

Mr. Truan has determined that for each year of the first five years the amendments as proposed are in effect the public will benefit from the proposed amendments because the General Land Office will be able to administer the coastal public land program more efficiently, providing the public more certainty and clarity in the process. Mr. Truan has also determined that it is unlikely that there will be an identifiable increase in economic costs to persons and business required to comply, as the amendments are consistent with current Board policy.

The Board has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022 and that the rulemaking does not meet the definition of a "major environmental rule" as defined in §2001.0225. The Board has also considered the amendments in light of Chapter 2007 of the Texas Government Code and has determined that there will not be a taking of private real property as a result of the proposed rulemaking. Finally, the Board has considered the proposed rulemaking's consistency with Coastal Management Program (CMP), including the CMP goals and policies located at 31 TAC §501.12 (relating to Goals), §501.24 (relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands), and §501.25 (relating to Policies for Dredging and Dredged Material and Placement). Because all requests for the use of coastal public land must continue to meet the same criteria for Board approval, the Board has determined that the proposed actions are consistent with applicable CMP goals and policies. The proposed amendments will be distributed to the Commissioner so that he may comment on the consistency of the proposed amendments during the public comment period.

#### PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Walter Talley, Texas Register Liaison, General Land Office, P.O. Box 12873, Austin, Texas 78711; facsimile number (512) 463-6311; or email [walter.talley@glo.texas.gov](mailto:walter.talley@glo.texas.gov). Written comments must be received no later than 5:00 p.m., 30 days from the date of publication of this proposal.

#### STATUTORY AUTHORITY

The amendments are proposed under the Texas Natural Resources Code §§33.101 - 33.136, relating to the Board's ability to grant rights in coastal public land, and Texas Natural Resources Code §33.064, providing that the Board may adopt procedural and substantive rules which it considers necessary to administer, implement and enforce Chapter 33, Texas Natural Resources Code.

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

#### §155.15. Fees.

(a) (No change.)

(b) Board fees and charges. The board is authorized and required under the Texas Natural Resources Code, Chapter 33, to collect the fees and charges set forth in this subsection where applicable. The board will charge the following coastal lease and coastal easement fees for use of coastal public land, and will charge the following structure registration and permit fees. The board charge will be based on either the fixed fee schedule or the alternate commercial, industrial, residential, and public formulas as delineated in paragraph (1)(C) of this subsection. The greater of the fixed fee or formula rate will be charged except in the calculation of fees for residential use, Category II and residential use, Category III, where only the fixed rate method will be used. The board may adopt an escalation schedule that will allow for escalation of annual fees based on the term of a coastal lease or coastal easement.

(1) Rental and Fees.

(A) - (B) (No change.)

(C) The following tables list the rental fees for easements and permits on coastal public land.

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

(iii) Residential Use, Category III.

Figure: 31 TAC §155.15(b)(1)(C)(iii)

(iv) (No change.)

(v) Structure (Cabin) Permits.

Figure: 31 TAC §155.15(b)(1)(C)(v)

(2) - (7) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2013.

TRD-201301025

Larry L. Laine

Chief Clerk, Deputy Land Commissioner, General Land Office  
School Land Board

Earliest possible date of adoption: April 21, 2013

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

## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER G. CIGARETTE TAX

##### 34 TAC §3.102

The Comptroller of Public Accounts proposes an amendment to §3.102, concerning applications, definitions, permits, and reports. The amendment is adding statute conforming language to the definition of a distributor in subsection (a)(8). Minor changes are made to subsection (a)(5) and (6) to improve the readability.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule to current statutory provisions and improving the rule's clarity. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This amendment is proposed 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.

This amendment implements Tax Code, §154.001(7)(C).

§3.102. *Applications, Definitions, Permits, and Reports.*

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

(1) Agency--The Comptroller of Public Accounts of the State of Texas or the comptroller's duly authorized agents and employees.

(2) Bonded agent--A person in this state who is an agent of a person outside this state and who receives cigarettes in interstate commerce and stores the cigarettes for distribution or delivery to distributors under orders from the person outside this state.

(3) Cigarette--A roll for smoking that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco. A cigarette is not a cigar.

(4) Cigarette weight--The weight of an individual cigarette shall consist of the combined weight of tobacco, nontobacco ingredients, wrapper, filter tip, mouthpiece, and any other attachments thereto that make up the total product in the form available for sale to the consumer. The weight of a cigarette does not include a carton, box, label, or other packaging materials.

(5) Commercial business location--For purposes of this section, a commercial business location means the entire premises occupied by a permit applicant or a person required to hold a permit under [the] Tax Code, Chapter 154. The premises where cigarettes are stored or kept cannot be a residence or a unit in a public storage facility.

(6) Common carrier--A motor carrier registered under [the] Transportation Code, Chapter 643, or a motor carrier operating under a certificate issued by the Interstate Commerce Commission or a successor agency to the Interstate Commerce Commission.

(7) Consumer--A person who possesses cigarettes for personal consumption.

(8) Distributor--A person who is authorized to purchase for the purpose of making a first sale in this state cigarettes in unstamped packages from manufacturers; ~~a~~ A person who is authorized to stamp cigarette packages; ~~a~~ A person who ships, transports, or imports cigarettes into this state; a person who acquires, possesses, and makes a first sale of cigarettes in this state; or a person who manufactures or produces cigarettes.

(9) Export warehouse--A place where cigarettes from manufacturers in unstamped packages are stored for the purpose of making sales to authorized persons for resale, use, or consumption outside the United States.

(10) First sale--Except as otherwise provided, first sale means the first transfer of possession in connection with a purchase, sale, or any exchange for value of cigarettes in intrastate commerce; the first use or consumption of cigarettes in this state; or the loss of cigarettes in this state whether through negligence, theft, or other unaccountable loss. First sales also includes giving away cigarettes as promotional items.

(11) Importer or import broker--A person who ships, transports, or imports into this state cigarettes manufactured or produced outside the United States for the purpose of making a first sale in this state.

(12) Licensing--The agency process concerning the issuance, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license or permit.

(13) Manufacturer--A person who manufactures and sells cigarettes to a distributor.

(14) Manufacturer's representative--A person employed by a manufacturer to sell or distribute the manufacturer's stamped cigarette packages.

(15) Permit--Any agency license, certificate, approval, registration, or similar form of permission required by law to buy, sell, stamp, store, transport, or distribute cigarettes.

(16) Permit holder--A person who has been issued a bonded agent, distributor, importer, manufacturer, wholesaler, or retailer permit under Tax Code, §154.101.

(17) Place of business--A commercial business location where cigarettes are sold; a commercial business location where cigarettes are kept for sale or consumption or otherwise stored; or a vehicle from which cigarettes are sold.

(18) Retailer--A person who engages in the practice of selling cigarettes to consumers. The owner of a coin-operated cigarette vending machine is a retailer.

(19) Stamp--A stamp includes only a stamp that is printed, manufactured, or made by authority of the comptroller; shows payment of the tax imposed by Tax Code, §154.021; and is consecutively numbered and uniquely identifiable as a Texas cigarette tax stamp.

(20) Wholesaler--A person, including a manufacturer's representative, who sells or distributes cigarettes in this state for resale. A wholesaler is not a distributor.

(b) Permits required.

(1) To engage in business as a distributor, importer, manufacturer, wholesaler, bonded agent, or retailer, a person must apply for and receive the applicable permit from the comptroller. The permits are not transferable. A new application is required if a change in ownership occurs (sole ownership to partnership, sole ownership to corporation, partnership to limited liability company, etc.). Each legal entity must apply for its own permit(s). All permits issued to a legal entity will have the same taxpayer number. Tax Code, §154.501(a)(2), provides that a person who engages in the business of a bonded agent, distributor, importer, manufacturer, wholesaler, or retailer without a valid permit is subject to a penalty of not more than \$2,000 for each violation. Tax Code, §154.501(c), provides that a separate offense is committed each day on which a violation occurs.

(2) Each distributor, importer, manufacturer, wholesaler, bonded agent, or retailer shall obtain a permit for each place of business owned or operated by the distributor, importer, manufacturer, wholesaler, bonded agent, or retailer. A new permit shall be required for each physical change in the location of the place of business. Correction or change of street listing by a city, state, or U.S. Post Office shall not require a new permit so long as the physical location remains unchanged.

(3) Permits are valid for one place of business at the location shown on the permit. If the location houses more than one place of business under common ownership, an additional permit is required for each separate place of business. For example, each retailer who operates a cigarette vending machine shall place a retailer's permit on the machine.

(4) A vehicle from which cigarettes are sold is considered to be a place of business and requires a permit. A motor vehicle permit is issued to a bonded agent, distributor, or wholesaler holding a current permit. Vehicle permits are issued bearing a specific motor vehicle identification number and are valid only when physically carried in the vehicle having the corresponding motor vehicle identification number.

Vehicle permits may not be moved from one vehicle to another. No cigarette permit is required for a vehicle used only to deliver invoiced cigarettes.

(5) The comptroller may issue a combination permit for cigarettes, tobacco products, or cigarettes and tobacco products to a person who is a distributor, importer, manufacturer, wholesaler, bonded agent, or retailer as defined by Tax Code, Chapter 154 and Chapter 155. A person who receives a combination permit pays only the higher of the two permit fees.

(c) Permit period.

(1) Bonded agent, distributor, importer, manufacturer, wholesaler, and motor vehicle permits expire on the last day of February of each year.

(2) Retailer permits expire on the last day of May of each even-numbered year.

(d) Permit fees. An application for a bonded agent, distributor, importer, manufacturer, wholesaler, motor vehicle, or retailer permit must be accompanied by the appropriate fee.

(1) The permit fee for a bonded agent is \$300.

(2) The permit fee for a distributor is \$300.

(3) The permit fee for a manufacturer with representation in Texas is \$300.

(4) The permit fee for a wholesaler is \$200.

(5) The permit fee for a motor vehicle is \$15.

(6) The permit fee for a retailer permit issued or renewed on or after September 1, 1999, is \$180.

(7) A \$50 fee is assessed in addition to the regular permit fee for failure to obtain a permit in a timely manner.

(8) No permit fee is required to obtain an importer permit or to register a manufacturer if the manufacturer is located out of state with no representation in Texas.

(9) The comptroller prorates the permit fee for new permits according to the number of months remaining in the permit period. If a permit will expire within three months of the date of issuance, the comptroller may collect the prorated permit fee for the current permit period and the total permit fee for the next permit period.

(10) An unexpired permit may be returned to the comptroller for credit on the unexpired portion only upon the purchase of a permit of a higher classification.

(e) Permit issuance, denial, suspension, or revocation.

(1) The comptroller shall issue a permit to a distributor, importer, manufacturer, wholesaler, bonded agent, or retailer if the comptroller receives an application and any applicable fee, believes that the applicant has complied with Tax Code, §154.101, and determines that issuing the permit will not jeopardize the administration and enforcement of Tax Code, Chapter 154.

(2) If the comptroller determines that an existing permit should be suspended or revoked or a permit should be denied because of the applicant's prior conviction of a crime and the relationship of the crime to the license, the comptroller will notify the applicant or permittee in writing by personal service or by mail of the reasons for the denial, suspension, revocation, or disqualification, the review procedure provided by Occupations Code, §53.052, and the earliest date that the permit holder or applicant may appeal the denial, suspension, revocation, or disqualification.

(f) Reports.

(1) With the exception of reports of sales to retailers required by the comptroller under Tax Code, §154.212, all cigarette distributor and manufacturer reports and payments must be filed on or before the last day of each month following the month in which the transactions take place.

(2) All wholesaler and distributor reports of sales to retailers required by the comptroller under Tax Code, §154.212, shall be filed in accordance with §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2013.

TRD-201301039

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: April 21, 2013

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

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**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES**

**CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES**

**SUBCHAPTER E. APPEALS AND HEARING PROCEDURES**

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes to amend §101.943, concerning Motion for Reconsideration, and to repeal §101.1109, concerning Motion for Reconsideration.

**BACKGROUND AND PURPOSE**

DARS proposes the repeal and amendment to comply with guidance received by DARS from the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS), Office of Special Education Programs (OSEP), concerning the Individuals with Disabilities Education Act (IDEA), Part C, State Application and Assurances.

**SECTION-BY-SECTION ANALYSIS**

DARS proposes to amend §101.943 to include language that excludes the ability of parties to file a motion for reconsideration under Division 3, Early Childhood Intervention (ECI); and to repeal §101.1109 to remove a motion for reconsideration as an option under Division 3, ECI. The time limit associated with the appeals process and complaint procedures is federally mandated and it is not sufficient for a motion for reconsideration to take place. Furthermore, a motion for reconsideration is not a federal requirement. Amending the sections as proposed will provide clarity in the rules on this matter.

## FISCAL NOTE

Mary Wright, DARS Chief Financial Officer, has determined that for each year of the first five years that the proposal will be in effect, there are no foreseeable fiscal implications to either costs or revenues of state or local governments as a result of enforcing or administering the proposal.

## PUBLIC BENEFIT

Ms. Wright also has determined that the public benefit anticipated as a result of administering and enforcing the proposal will be to assure the public that the necessary rules are in place to provide a clear and concise understanding of the services provided by ECI. Ms. Wright has also determined that there is no probable economic cost to persons who are required to comply with the proposal.

## SMALL AND MICRO-BUSINESS ANALYSIS AND ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

Further, in accordance with Texas Government Code, §2001.022, Ms. Wright has determined that the proposal will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Ms. Wright has determined that the proposal will have no adverse economic effect on small businesses or micro-businesses.

## REGULATORY ANALYSIS

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

## TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

Written comments on the proposal may be submitted within 30 days of publication of this proposal in the *Texas Register* to the Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 200, Austin, Texas 78756 or electronically to [DARSRules@dars.state.tx.us](mailto:DARSRules@dars.state.tx.us).

## DIVISION 1. GENERAL RULES

### 40 TAC §101.943

#### STATUTORY AUTHORITY

The amendment is authorized by the Texas Human Resources Code, Chapters 73 and 117; and the IDEA, as amended, 20 USC §1400 et seq. and its implementing regulations, 34 CFR Part 303, as amended. These amendments are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules

for the operation and provision of health and human services by health and human services agencies.

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

§101.943. *Motion for Reconsideration.*

(a) Any party to a hearing, except as provided in Division 3 of this chapter (relating to Division for Early Childhood Intervention Services), may file a motion for reconsideration within 20 days after the party is notified of the issuance of the decision of the impartial hearing officer. The motion shall be filed with the hearings coordinator, DARS Legal Services.

(b) The motion for reconsideration must specify the matters in the decision of the impartial hearing officer that the party considers to be erroneous. Any response to the motion for reconsideration must be filed no later than 30 days after a party, or a party's attorney or representative, is notified of the impartial hearing officer's issuance of the decision.

(c) The impartial hearing officer shall rule on the motion for reconsideration no later than 15 days after receipt of the motion, or after receipt of the response to the motion for reconsideration, whichever comes later. If the motion is granted, the IHO issues a decision upon reconsideration within an additional 15 days. If the impartial hearing officer fails to rule on the motion for reconsideration within 15 days, the motion is denied as a matter of law.

(d) Service. Service of the impartial hearing officer's decision or of a motion or response under this section shall be made by any of the following means to a party, a party's attorney, or representative:

- (1) hand-delivery;
- (2) courier-receipted delivery;
- (3) regular first-class mail, certified, or registered mail;
- (4) email or facsimile transmission before 5:00 p.m. on a business day to the recipient's current email address or telecopier number; or
- (5) such other means as the impartial hearing officer may direct.

(e) Date of service. The date of service is the date of hand-delivery, of delivery by courier, of mailing, of emailing, or of facsimile transmission, unless otherwise required by law. Unless the contrary is shown, a decision, motion, or response that is sent by regular first-class mail is presumed to have been received within three days of the date of postmarking, if enclosed in a wrapper addressed to the recipient's last known address with return address to the sender, stamped with the appropriate first-class postage, and deposited with the U.S. Postal Service on the date postmarked.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 5, 2013.

TRD-201300974

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: April 21, 2013

For further information, please call: (512) 424-4050

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## DIVISION 3. DIVISION FOR EARLY CHILDHOOD INTERVENTION SERVICES

### 40 TAC §101.1109

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

#### STATUTORY AUTHORITY

The repeal is authorized by the Texas Human Resources Code, Chapters 73 and 117; and the IDEA, as amended, 20 USC §1400 et seq. and its implementing regulations, 34 CFR Part 303, as amended. These amendments are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

#### §101.1109. Motion for Reconsideration.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 5, 2013.

TRD-201300975

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



## CHAPTER 106. DIVISION FOR BLIND SERVICES

### SUBCHAPTER B. VOCATIONAL REHABILITATION PROGRAM

#### DIVISION 7. CERTIFICATE OF BLINDNESS FOR TUITION WAIVER

### 40 TAC §§106.801, 106.803, 106.805, 106.807, 106.809

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes new Subchapter B, Vocational Rehabilitation Program, Division 7, Certificate of Blindness for Tuition Waiver, §106.801, Purpose; §106.803, Legal Authority; §106.805, Definitions; §106.807, Eligibility; and §106.809, Certificate of Blindness for Tuition Waiver.

#### BACKGROUND AND PURPOSE

The Education Code, Chapter 54, §54.364, provides residents of Texas who are deaf or blind (and who meet certain other criteria) an exemption from the payment of tuition fees at institutions for higher learning that utilize public funds. Section 54.364 authorizes DARS and the Texas Higher Education Coordinating Board to develop rules and procedures for the efficient implementation of the tuition waiver. DARS' proposed new rules serve to reflect

current practice within DARS Division for Blind Services (DBS) and to provide information for DARS consumers, agency staff and members of the public.

#### SECTION-BY-SECTION SUMMARY

Section 106.801 establishes the purpose for the rules, which is to define the administration and procedures of the Certificate of Blindness for Tuition Waiver; §106.803 references the legal authority for the division; §106.805 includes definitions for terms used in the division; §106.807 outlines the eligibility requirements that must be met to receive a Certificate of Blindness for Tuition Waiver and explains that such eligibility is determined by DBS; and §106.809 states that DBS is responsible for the Certificate in regard to design and content, and the recipient's name and that of a DARS representative must appear on the document.

#### FISCAL NOTE

Mary Wright, DARS Chief Financial Officer, has determined that for each year of the first five years that the proposed new rules will be in effect, there is no fiscal impact expected on state or local government because of enforcing or administering the new rules.

#### PUBLIC BENEFIT

Ms. Wright also has determined that for each year of the first five years the proposed new rules will be in effect, the public benefit anticipated as a result of enforcing the proposal will be assurances to the public that the necessary rules are in place to provide a clear and concise understanding of the Certificate of Blindness for Tuition Waiver. Ms. Wright has also determined that there will be no probable economic cost to persons who are required to comply with this proposal.

#### SMALL AND MICRO-BUSINESS ANALYSIS AND ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

Further, in accordance with Texas Government Code §2001.022, Ms. Wright has determined that the proposed new rules will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Ms. Wright has determined that the new rules will have no adverse economic effect on small businesses or micro-businesses.

#### REGULATORY ANALYSIS

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposed new rules may be submitted within 30 days of publication of this proposal in the *Texas Register* to Rules Coordinator, Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 200, Austin, Texas 78756 or electronically to [DARSRules@dars.state.tx.us](mailto:DARSRules@dars.state.tx.us).

#### STATUTORY AUTHORITY

The new rules are authorized by: Texas Government Code §2001.01 et seq., Texas Human Resources Code, Chapters 91 and 117, and Texas Education Code, Chapter 54, §54.364. The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

#### §106.801. Purpose.

The purpose of this division is to set out the administration and general procedures governing the Certificate of Blindness for Tuition Waiver. DARS DBS provides a certificate of blindness to a person who applies for tuition waiver at a state-supported postsecondary school in Texas.

#### §106.803. Legal Authority.

The Certificate of Blindness for Tuition Waiver is created under authority of the Education Code, Chapter 54, §54.364.

#### §106.805. Definitions.

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

(1) Applicant--A person applying to DARS DBS for a Certificate of Blindness for Tuition Waiver.

(2) Blind--As defined in Human Resources Code §91.002(2) means a person having not more than 20/200 visual acuity in the better eye with correcting lenses or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(3) Certificate of Blindness for Tuition Waiver--The certificate issued by DARS DBS to certify that the applicant is a blind person as defined by Education Code, §54.364(a)(2). The applicant may use the certificate to apply for a tuition waiver at any Texas state institution of higher education using public funds, as set forth in Education Code, §54.364(a)(5) and §1.003.

(4) Consumer--An individual with a disability who has applied for, or who is receiving vocational rehabilitation services.

#### §106.807. Eligibility.

(a) For a DARS DBS consumer to obtain a certificate, the individual must make a request with his or her vocational rehabilitation counselor.

(b) For a person who is not a DARS DBS consumer to obtain a certificate, the individual must submit a request in person or by mail to any DARS DBS office, and present visual diagnostic information confirming the person is blind as defined in §106.805(2) of this division (relating to Definitions).

(c) Visual diagnostic information must include eye exams from an optometrist, ophthalmologist or low-vision specialist.

(d) DARS DBS does not pay for a diagnostic exam for the sole purpose of obtaining this record.

(e) Eligibility for a Certificate of Blindness for Tuition Waiver is determined by DARS DBS, and the determination is final.

(f) The Certificate of Blindness for Tuition Waiver issued by DARS DBS is not a determination that an applicant satisfies the residency requirement, or any other requirement set forth under Education Code, §54.364, for tuition waiver at any eligible institution.

#### §106.809. Certificate of Blindness for Tuition Waiver.

(a) DARS DBS is responsible for the design and content of the Certificate of Blindness for Tuition Waiver.

(b) The Certificate of Blindness for Tuition Waiver documents the name of the person to whom it is issued and contains the signature of an authorized DARS DBS representative.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 5, 2013.

TRD-201300976

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: April 21, 2013

For further information, please call: (512) 424-4050



## SUBCHAPTER I. BLIND CHILDREN'S VOCATIONAL DISCOVERY AND DEVELOPMENT PROGRAM

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes the repeal and new rules under Subchapter I, Blind Children's Vocational Discovery and Development Program (BCVDD Program). DARS proposes the repeal of §§106.1401, 106.1403, 106.1407, 106.1409, 106.1411, 106.1413, 106.1421, 106.1423, 106.1425, 106.1427, 106.1429, 106.1431, 106.1433, 106.1445, 106.1447, 106.1449, 106.1451, 106.1453, 106.1455, 106.1457, 106.1461, 106.1463, 106.1475, 106.1485, 106.1487, 106.1489, 106.1501, 106.1503, 106.1505, 106.1507, 106.1531, 106.1533, 106.1535, 106.1537, 106.1539, 106.1541, 106.1543, 106.1545, 106.1547, 106.1549, and 106.1551. DARS also proposes, as replacement of the repealed rules and/or the subject matter of the rules, new Division 1, General Rules, §§106.1401, 106.1403, 106.1405, 106.1407, 106.1409, 106.1411, 106.1413, and 106.1415; Division 2, Eligibility and Assessment, §§106.1421, 106.1423, 106.1425, 106.1427, 106.1429, 106.1431, and 106.1433; Division 3, Services, §§106.1441, 106.1443, 106.1445, 106.1447, 106.1449, 106.1451, 106.1453, 106.1455, 106.1457, 106.1459, 106.1461, and 106.1463; Division 4, Economic Resources and Consumer Participation, §106.1471; Division 5, Methods of Administration of BCVDD Program, §106.1481 and §106.1483; and Division 6, Complaint Resolution Process, §106.1491.

### BACKGROUND AND PURPOSE

The repeals and new rules are being proposed as the result of the review that DARS conducted in accordance with Texas Government Code §2001.039, which requires rule review every four years. The adopted rule review of Chapter 106 was published in the July 27, 2012, issue of the *Texas Register* (37 TexReg 5641).



As a result of the four-year rule review, DARS determined that the reasons for originally adopting the rules continue to exist. However, DARS determined that Chapter 106, Subchapter I needed language revisions and reorganization, including extensive renumbering and revision to be consistent with DARS' rules style and format, to align rules with statutes and current operations, and to delete rules that are no longer necessary. New rules concerning case management services are proposed to reflect existing program practice. No substantive changes will occur in the program as a result of the rule changes.

#### SECTION-BY-SECTION SUMMARY

In Subchapter I, Division 1, General Rules, the repeal and reorganization of these rules allowed DARS to designate purpose, legal authority and definitions in three sections to follow DARS' rule format.

In Subchapter I, Division 2, Eligibility and Assessment, DARS reorganized assessment and eligibility-related rules under one division title.

In Subchapter I, Division 3, Services, DARS proposes new rules concerning Case Management Services, Eligibility for BCVDD Program Case Management Services and Due Process to reflect existing program practice. In addition, DARS moved its existing rule concerning Case Management Reimbursement Charges to Division 3, where all case management rules now reside.

Subchapter I, Division 4, Economic Resources and Consumer Participation underwent minor revisions to update language.

Subchapter I, Division 5, Methods of Administration of BCVDD Program, was revised to update language and streamline order of selection rules in keeping with the rest of Chapter 106.

Subchapter I, Division 6, Complaint Resolution Process, similarly updated language and streamlined rules in keeping with the overall rule review of Chapter 106, Division for Blind Services.

#### FISCAL NOTE

Mary Wright, DARS Chief Financial Officer, has determined that for each year of the first five years that the repeals and new rules will be in effect, there are no foreseeable fiscal implications to either cost of revenues of state or local governments because of enforcing or administering the rules.

#### SMALL AND MICRO-BUSINESS ANALYSIS AND ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

Further, in accordance with Texas Government Code §2001.022, Ms. Wright has determined that the proposal will have no effect on local economy, and, therefore, no local employment impact statement is required. Finally, Ms. Wright has determined that the proposal will have no adverse economic effect on small businesses or micro-businesses.

#### PUBLIC BENEFIT

Ms. Wright also has determined that the public benefit anticipated as a result of administering and enforcing the repeals and new rules will be to assure the public that the necessary rules are in place to provide a clear and concise understanding of the services provided by the Division for Blind Services. Ms. Wright has also determined that there is no probable economic cost to persons who are required to comply with the proposal.

#### REGULATORY ANALYSIS

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted within 30 days of publication of this proposal in the *Texas Register* to Rules Coordinator, Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 150A-2, Austin, Texas 78756 or electronically to [DARSRules@dars.state.tx.us](mailto:DARSRules@dars.state.tx.us).

#### DIVISION 1. GENERAL INFORMATION

##### **40 TAC §§106.1401, 106.1403, 106.1407, 106.1409, 106.1411, 106.1413**

*(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 Department of Assistive and Rehabilitative Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

#### STATUTORY AUTHORITY

The repeals are proposed under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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

§106.1401. *Purpose and Legal Authority.*

§106.1403. *Public Access to Information, Forms and Documents.*

§106.1407. *Definitions.*

§106.1409. *Comparable Services and Benefits.*

§106.1411. *Confidentiality of Records.*

§106.1413. *Service Delivery.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 5, 2013.

TRD-201300977

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050

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## DIVISION 2. BASIC PROGRAM REQUIREMENTS

**40 TAC §§106.1421, 106.1423, 106.1425, 106.1427, 106.1429, 106.1431, 106.1433**

*(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 Department of Assistive and Rehabilitative Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

### STATUTORY AUTHORITY

The repeals are proposed under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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

§106.1421. *Referral and Application.*

§106.1423. *Eligibility.*

§106.1425. *Prior Authorization of Services.*

§106.1427. *Family Service Plan.*

§106.1429. *Case Closures.*

§106.1431. *Reopening Closed Cases.*

§106.1433. *Reports of Suspected Neglect or Abuse.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050

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## DIVISION 3. SERVICES

**40 TAC §§106.1445, 106.1447, 106.1449, 106.1451, 106.1453, 106.1455, 106.1457, 106.1461, 106.1463**

*(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 Department of Assistive and Rehabilitative Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

### STATUTORY AUTHORITY

The repeals are proposed under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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

§106.1445. *Assessment Services.*

§106.1447. *Physical Examinations and Other Medical Specialty Examinations.*

§106.1449. *Other Diagnostic Evaluations.*

§106.1451. *Restoration Services.*

§106.1453. *Travel Services.*

§106.1455. *Habilitation Services.*

§106.1457. *Counseling, Guidance, and Follow-up Services.*

§106.1461. *Child Care Services.*

§106.1463. *Services Provided by Schools.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050

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## DIVISION 4. ECONOMIC RESOURCES

**40 TAC §106.1475**

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

### STATUTORY AUTHORITY

The repeal is proposed under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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

§106.1475. *Determination.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050

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## DIVISION 5. ORDER OF SELECTION FOR PAYMENT OF SERVICES

**40 TAC §§106.1485, 106.1487, 106.1489**

*(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 Department of Assistive and Rehabilitative Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

**STATUTORY AUTHORITY**

The repeals are proposed under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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

- §106.1485. *Defined Purpose.*
- §106.1487. *Application of Order of Selection.*
- §106.1489. *Order of Selection Expenditure Categories.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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 Sylvia F. Hardman  
 General Counsel  
 Department of Assistive and Rehabilitative Services  
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**DIVISION 6. CASE MANAGEMENT REIMBURSEMENT CHARGES**

**40 TAC §§106.1501, 106.1503, 106.1505, 106.1507**

*(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 Department of Assistive and Rehabilitative Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

**STATUTORY AUTHORITY**

The repeals are proposed under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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

- §106.1501. *Legal Basis and Policy.*
- §106.1503. *Scope of Subchapter.*
- §106.1505. *Definitions.*
- §106.1507. *Billing for Case Management Services.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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 Sylvia F. Hardman  
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 Department of Assistive and Rehabilitative Services  
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**DIVISION 7. COMPLAINT RESOLUTION PROCESS**

**40 TAC §§106.1531, 106.1533, 106.1535, 106.1537, 106.1539, 106.1541, 106.1543, 106.1545, 106.1547, 106.1549, 106.1551**

*(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 Department of Assistive and Rehabilitative Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

**STATUTORY AUTHORITY**

The repeals are proposed under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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

- §106.1531. *Authority.*
- §106.1533. *Definitions.*
- §106.1535. *BCVDD Complaint Resolution Process.*
- §106.1537. *Requesting an Informal Review by the Field Director.*
- §106.1539. *Before the Informal Review.*
- §106.1541. *During the Informal Review.*
- §106.1543. *After the Informal Review.*
- §106.1545. *Resolution of the Informal Review Process.*
- §106.1547. *Requesting a Review by the Assistant Commissioner.*
- §106.1549. *Resolution by the Assistant Commissioner.*
- §106.1551. *Contacting the Consumer Assistance Line.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 5, 2013.

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 Sylvia F. Hardman  
 General Counsel  
 Department of Assistive and Rehabilitative Services  
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 For further information, please call: (512) 424-4050



**DIVISION 1. GENERAL RULES**

**40 TAC §§106.1401, 106.1403, 106.1405, 106.1407,  
106.1409, 106.1411, 106.1413, 106.1415**

**STATUTORY AUTHORITY**

The new rules are proposed under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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

§106.1401. Purpose.

The Blind Children's Vocational Discovery and Development Program (BCVDD Program) is administered by the Department of Assistive and Rehabilitative Services (DARS), Division for Blind Services (DBS). The purpose of the BCVDD Program is to supplement services provided by other state agencies to children who are blind and visually impaired.

§106.1403. Legal Authority.

The following statutes and regulations authorize or require the rules in this subchapter:

- (1) Texas Human Resources Code, §91.028; and
- (2) Texas Human Resources Code, §117.073.

§106.1405. Definitions.

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

(1) Allowable costs--Expenses relating to case management services that are reasonable and necessary in the normal conduct of operations.

(2) Blind--A visual loss that results in the best corrected visual acuity of 20/200 or less in the better eye, or a visual loss that results in a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees, which means a field of view no greater than 20 degrees in the better eye.

(3) Case management--Assisting an eligible child under this subchapter in gaining access to medical, social, educational, vocational, and other appropriate services to help the child reach or maintain an optimal level of functioning in a community-based setting.

(4) Case management bundled monthly rate--A prospective rate based on the average monthly cost of providing case management services for an eligible child under this subchapter.

(5) Case note--A record of significant interactions in the provision of services. Case notes should document:

- (A) the place of service;
- (B) who was present when the service was provided;
- (C) the BCVDD Program Specialist's participation in the provision of services;
- (D) the relationship of the services provided to the child's plan of care/identified needs;
- (E) a summary of the child's response to services provided and observations of skills assessed;
- (F) impact of the identified need on the consumer; and
- (G) the plan for services to meet the identified needs or account of follow-up on services delivered.

(6) Comparable services and benefits--Any service, benefit, or resource available to a child from another public or private source that provides in whole or in part the services that the child would otherwise receive from DARS DBS.

(7) Comprehensive Assessment--An assessment, completed by the BCVDD Program specialist, for each consumer, in order to identify and describe the consumer's and family's needs.

(8) Consumer--A child and/or family of a child with a visual impairment who has applied for, or who is receiving BCVDD Program services.

(9) Contact--An action taken by a BCVDD Program specialist on behalf of an eligible child under this subchapter to locate, coordinate, and monitor necessary and appropriate services with a specific person or organization. A contact may be face-to-face or by telephone.

(10) Core Service Areas--Service areas that all consumers need to master in order to successfully achieve personal and vocational goals, including: Adjustment to Blindness, Independent Living skills, Travel skills, Communication skills, Support Services, and Vocational Discovery and Development.

(11) Deafblind--A combined loss of vision and hearing that significantly affects access to communication, learning, socialization, activities of daily living, and mobility.

(12) Developmental services--Services that increase the capabilities and functional abilities of a child in a noneducational setting.

(13) Educational support services--Services that help a child gain the maximum benefit from educational services provided by others.

(14) Family service plan--A formal plan that is responsive to the child's needs; is developed and approved by the BCVDD Program specialist, family, and/or child; and contains a description of the child's planned services, agreements between the parent and DARS DBS, and other information necessary to administer the provisions of this subchapter.

(15) Federal poverty guidelines--The poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. §9902(2).

(16) Habilitation services--Services that develop a severely visually impaired child's skills for independent living and potential employment.

(17) Nonsevere visual loss--A visual acuity in which one eye meets the definition of blind or severe visual loss and the acuity in the other eye with best correction is better than 20/70, or the visual acuity in both eyes with best correction is better than 20/70.

(18) Parent--The child's natural or adoptive parent; or the spouse of the child's natural or adoptive parent; or the child's guardian or surrogate parent; or the spouse of the guardian or surrogate parent; or a person or spouse of the person who is acting as the child's parent. The person who is authorized to sign the application and plan, and who is authorized to make decisions regarding the child's services.

(19) Permanent severely visually impaired child--A child with a visual impairment that has resulted in a permanent condition of blindness or severe visual loss; or a child who has been certified as blind or severely visually impaired by a local education agency; or a child who has been determined to be functioning as a person who is blind or who has a severe visual loss.

(20) Referral--A child who has been referred to the BCVDD Program for services but for whom an application has not been completed.

(21) Restoration services--Services to eliminate or reduce limitations imposed by a visual impairment on the functioning of a child and cosmetic services necessary to improve the physical appearance of the child's eyes when the eyes are abnormal to the extent that they negatively affect the child's social and emotional well-being.

(22) Severe visual loss--A loss of vision in which the best corrected visual acuity is between 20/70 and 20/200 in the better eye; or a visual loss in which the visual field is 30 degrees or less but greater than 20 degrees with best correction.

(23) Technology services--Services to provide a child access to an item, piece of equipment, or product system that maintains or improves the child's communication, independent living, social skills, or prevocational skills.

(24) Visual impairment--An injury, disease, or other disorder that reduces, or if not treated will probably result in reducing, visual functioning; or a visual condition requiring cosmetic treatment, psychological assistance, counseling, or other assistance that DARS DBS can render.

§106.1407. Public Access to Information, Forms, and Documents.

(a) All forms and documents used in the administration of the BCVDD Program are available at any DARS DBS office, including the Central Office at 4800 North Lamar, Austin, Texas, between 8:00 a.m. and 5:00 p.m. on workdays.

(b) DARS DBS rules are published on the DARS website at [www.dars.state.tx.us](http://www.dars.state.tx.us).

§106.1409. Comparable Services and Benefits.

(a) DARS DBS must consider comparable services and benefits before expending funds for all BCVDD Program services.

(b) The child's parent must apply for assistance from any resource identified by DARS DBS that may be a resource for comparable services and benefits.

(c) The child's parent must provide acceptable evidence of eligibility or ineligibility for comparable services and benefits to DARS DBS within 90 days from application, or additional expenditures may be suspended.

(d) Whenever possible and practical, the child's parent's choice of health care professionals and other appropriate health care providers is honored, as long as the professionals and other appropriate health care providers are willing to accept reimbursement in accordance with §102.213 of this title (relating to Alternative Purchasing Methods - Rates for Medical Services).

(e) DARS DBS must verify a child's eligibility for Medicaid at the time of application if the parent's income falls at or below 185 percent of the federal poverty guidelines as determined under the provisions of Division 4 of this subchapter (relating to Economic Resources and Consumer Participation).

§106.1411. Services Provided by Schools.

DARS DBS does not pay for any service that is the school's responsibility under the Individuals with Disabilities Education Act (IDEA) or any federal or state rules and regulations adopted under IDEA.

§106.1413. Confidentiality of Records.

All personal information furnished to and gathered by DARS DBS in the administration of this chapter, including names, addresses, records of agency evaluations, reports of medical examinations and treatments,

financial information, and photographs, are confidential under Texas Human Resources Code §91.028(f) - (g).

§106.1415. Service Delivery.

(a) BCVDD Program services must be initiated timely and delivered according to the family service plan.

(b) Service delivery staff members are given written guidelines and training on:

(1) developing comprehensive assessments and family service plans;

(2) measuring and documenting consumer progress toward an expected outcome; and

(3) authorizing services timely.

(c) Specified time frames serve as benchmarks to service delivery staff members and monitoring staff members in evaluating a consumer's progress towards the expected outcome in the service plan.

(d) Service delivery is monitored by supervisory or program specialist staff members through the use of onsite visits and a standard case review checklist. The checklist must contain sufficient information to evaluate case documentation, timely service delivery, and child progress toward goals.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



## DIVISION 2. ELIGIBILITY AND ASSESSMENT

**40 TAC §§106.1421, 106.1423, 106.1425, 106.1427, 106.1429, 106.1431, 106.1433**

### STATUTORY AUTHORITY

The new rules are proposed under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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

§106.1421. Referral and Application.

(a) A child may be referred to the BCVDD Program by providing a name and address to any DARS DBS office by letter, telephone, direct contact, or another means.

(b) BCVDD Program may refer a child to another DARS program if necessary to better meet the child's needs.

(c) A child is considered an applicant for BCVDD Program services on the day DARS DBS receives a completed and signed application.

§106.1423. Eligibility.

(a) To be eligible to receive services under this subchapter, an applicant must:

- (1) have a visual impairment;
- (2) reside in Texas; and
- (3) be 18 years of age or younger.

(b) A person at least 18 years of age but under age 22 who meets the criteria in subsection (a)(1) and (2) of this section and who is enrolled in a secondary school may receive services under this subchapter if DARS DBS determines that children's services are appropriate for the person.

(c) Eligibility requirements are applied without regard to the age, gender, race, color, creed, or national origin of the applicant.

(d) Funding and providing services may be restricted by other criteria in the rules of this subchapter.

§106.1425. Prior Authorization of Services.

DARS DBS does not pay for any service that has not been authorized in advance.

§106.1427. Assessment.

(a) DARS DBS completes a comprehensive assessment to collect information to develop a family service plan that is designed to achieve the consumer's and family's habilitation goals.

(b) The comprehensive assessment gathers information in all the core service areas to determine the need for medical, educational, developmental, social, or other services. Information to form a complete assessment is gathered by:

- (1) taking history of the child;
- (2) observing the child;
- (3) identifying the child's needs; and
- (4) gathering information from other sources, such as family members, medical providers; and educators.

§106.1429. Family Service Plan.

(a) DARS DBS develops a family service plan jointly with the child's parent when it has been determined that the child needs habilitation services.

(b) The family service plan contains a description of the child's planned services, agreements between the parent and DARS DBS, and other information necessary to administer the provisions of this subchapter.

§106.1431. Case Closure.

(a) DARS DBS closes a child's case when:

- (1) the child is no longer eligible under §106.1423 of this subchapter (relating to Eligibility);
- (2) the child's planned services have been completed;
- (3) the child cannot be located;
- (4) the child has died; or
- (5) the parent refuses to cooperate with DARS DBS.

(b) DARS DBS must inform the child's parent of its intent to close the child's case by sending a letter to the parent's last known address. No notice is sent if the case is being closed because of the death of the child.

§106.1433. Reopening Closed Cases.

(a) A case may be reopened if the child's visual condition has worsened or the child needs additional habilitative services.

(b) A case must not be reopened for the sole purpose of providing routine eye exams, glasses, contact lenses, or treatment such as drops for glaucoma and conjunctivitis, unless the BCVDD Program specialist suspects that a child's vision is threatened because of abuse or medical neglect.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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### DIVISION 3. SERVICES

**40 TAC §§106.1441, 106.1443, 106.1445, 106.1447, 106.1449, 106.1451, 106.1453, 106.1455, 106.1457, 106.1459, 106.1461, 106.1463**

#### STATUTORY AUTHORITY

The new rules are proposed under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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

§106.1441. Scope of Services.

Services in this Division that are not case management services, with the exception of purchasing copies of existing records, are subject to application of Division 4 of this subchapter (relating to Economic Resources and Consumer Participation) and Division 5 of this subchapter (relating to Methods of Administration of BCVDD Program).

§106.1443. Assessment.

DARS DBS may pay for medical and diagnostic assessments jointly agreed to by the BCVDD specialist and parent that are necessary to determine the eligibility of a child and to initiate a service plan upon a finding of eligibility.

§106.1445. Physical Examinations and Other Medical Specialty Examinations.

DARS DBS may pay for physical examinations and other necessary medical specialty examinations jointly agreed to by the BCVDD Program specialist and parent when the BCVDD Program specialist determines that the examination is necessary for the child to participate in planned services.

§106.1447. Diagnostic Evaluations.

DARS DBS may provide nonmedical diagnostic evaluations that are necessary to plan developmental services only for children receiving habilitation services and if jointly agreed to by the BCVDD Program specialist and parent.

§106.1449. Restoration.

The BCVDD Program pays for restoration services that are necessary to correct or substantially modify a child's eye condition within a reasonable period of time.

§106.1451. Travel.

(a) The BCVDD Program may pay for travel services for the child and parents or travel companions when travel is necessary for services under this subchapter.

(b) Travel services available to the child's parents or travel companions without cost to DARS DBS must be used first.

§106.1453. Child Care.

The BCVDD Program pays for child-care services provided only for parents of children receiving habilitation services and only to allow the family to participate in services that are expected to substantially contribute to the child's ability to benefit from habilitation services.

§106.1455. Habilitation.

DARS DBS may provide the following habilitation services only for a child and/or the family of a child who meets the definition of a "permanent severely visually impaired child":

- (1) adjustment to blindness services;
- (2) independent living skills;
- (3) travel;
- (4) communication;
- (5) support systems; and
- (6) vocational discovery and development.

§106.1457. Case Management Services.

(a) Case management contacts on behalf of any eligible child under age 21 are subject to this subchapter, regardless of the family's ability to pay.

(b) Case management means services provided under this subchapter to help BCVDD Program-eligible children gain access to medical, social, educational, vocational, and other appropriate services to help them reach or maintain an optimal level of functioning in a community-based setting. Case management includes:

(1) coordinating the performance of evaluations and assessments including eye exams, eye specialty exams, and/or exams under anesthesia; arranging for other medical or nonmedical diagnostics; helping the family understand the results of diagnostic examinations; and communicating the results of diagnostic evaluations and assessments to educators and other professionals involved with the child;

(2) facilitating the development, review, and evaluation of the family service plan in accordance with §106.1427 of this subchapter (relating to Assessment) and DARS DBS procedures; the plan is based on the child's applicable history and identified needs, the parent's input, and the results of all evaluations and assessments;

(3) helping the family identify available service providers and making appropriate referrals to obtain services from medical, social, and educational providers to address identified needs and achieve goals;

(4) following up with the family to help with timely access to services, to discuss the disposition of the referral with the family, and to determine if the services have met the child's needs;

(5) monitoring and reassessing the delivery and effectiveness of services through contacts with the child, family members,

school staff members, and service providers as frequently as necessary and at least annually to determine if:

(A) services are being provided in accordance with the family service plan;

(B) services are adequate; and

(C) when the child has new needs or there are changes in the needs of the child, the family service plan and service arrangements are adjusted to address the identified needs;

(6) facilitating the child's transition to educational, habilitative, or vocational services as appropriate;

(7) documenting all case management activities, the child's and family's response to case management, whether the child and family have declined any services in the plan, and coordination with other case management providers.

(c) Case management may be delivered face-to-face or by telephone.

(1) Contacts are billable when the interaction:

(A) is with an eligible child, and/or the child's parent, the child's caregiver, or other people directly related to identifying the eligible child's needs;

(B) helps the eligible child access services;

(C) identifies needs and supports to help the eligible child obtain services;

(D) provides the BCVDD Program Specialist with useful feedback; or

(E) alerts the BCVDD Program Specialist to changes in the eligible child's needs.

(2) Contacts are billable to the family according to §106.1463 of this subchapter (relating to Case Management Reimbursement Charges).

(d) Case management services are not billable to Medicaid when another payor is liable for payment or when case management services are associated with the proper and efficient administration of the state plan. Case management services associated with the following are not payable as optional case management services under Medicaid and may not be billed to families of children not receiving Medicaid:

(1) Medicaid eligibility determinations and redeterminations;

(2) Medicaid eligibility intake processing;

(3) Medicaid preadmission screening;

(4) prior authorization for Medicaid services;

(5) required Medicaid utilization review;

(6) Texas Health Steps program administration;

(7) Medicaid "lock-in" provided for under the Social Security Act, §1915(a);

(8) services that are an integral or inseparable part of another Medicaid service;

(9) outreach activities that are designed to locate people who are potentially eligible for Medicaid; and

(10) any medical evaluation, examination, or treatment billable as a distinct Medicaid-covered benefit.

§106.1459. Eligibility for BCVDD Program Case Management Services.

In order to receive BCVDD Program case management services, the recipient must meet the criteria established in §106.1423 of this subchapter (relating to Eligibility), have an identified need for case management, and agree to receive services.

§106.1461. Due Process.

(a) Medicaid-eligible people. Any Medicaid-eligible person whose request for eligibility for case management is denied or is not acted upon with reasonable promptness, or whose case management has been terminated, suspended, or reduced is entitled to a fair hearing in accordance with 1 TAC Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules).

(b) All children. If BCVDD Program denies, involuntarily reduces, or terminates case management for a child, the child and family have all rights to file complaints in accordance with Texas Human Resources Code §117.028 and §117.072, and Division 6 of this subchapter (relating to Complaint Resolution Process).

§106.1463. Case Management Reimbursement Charges.

(a) DARS bills for case management contacts at a case-management bundled monthly rate equal to the rate set annually for case-management reimbursements to the Texas Health and Human Services Commission for Medicaid recipients.

(b) A family who does not have Medicaid is billed on a sliding scale, based on the family's gross income and the number of persons residing in the household for whom the parent or legal guardians have legal and/or financial responsibility. Written information about the different levels at which families are billed is available according to §106.1407 of this subchapter (relating to Public Access to Information, Forms, and Documents).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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**DIVISION 4. ECONOMIC RESOURCES AND CONSUMER PARTICIPATION**

**40 TAC §106.1471**

**STATUTORY AUTHORITY**

The new rule is proposed under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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

§106.1471. Determination of Economic Resources.

(a) The parent's economic resources must be determined before DARS DBS authorizes the purchase of certain services contained in Division 3 of this subchapter (relating to Services).

(b) A child in the managing conservatorship of the Department of Family and Protective Services is considered to be a one-member family with no income.

(c) Parents have the right to not disclose their economic resources. When this information is not disclosed, DARS DBS determines economic resources to be in excess of the allowable amount.

(d) To determine the parent's participation in the cost of services that require an expenditure of BCVDD Program funds, DARS DBS considers the parent's gross monthly income, the number of family members for which the parent has financial responsibility, and the type of services the child is receiving. These factors shall be applied to percentages of the currently applicable federal poverty guidelines. Information about the currently applicable federal poverty guidelines, categories of services, and percentages in use by DARS DBS is available as described in §106.1407 of this subchapter (relating to Public Access to Information, Forms, and Documents).

(e) Parents with gross monthly incomes at or below the percentage of federal poverty guidelines in use by DARS DBS are not required to pay part of the cost of services that require an expenditure of BCVDD Program funds.

(f) Parents with gross monthly incomes above the federal poverty guidelines are required to pay part of the cost for services. In making this decision, DARS DBS considers extenuating circumstances that may prohibit the parents' ability to pay, such as medical costs and debts resulting from a permanent disability or chronic illness of the child or family member.

(g) Gross monthly income is any funds available to the child and the child's parent, which includes, but is not limited to, the following:

- (1) wages or salary;
- (2) contributions from relatives, individuals, or organizations received on a regular basis;
- (3) child support payments;
- (4) net rentals from property;
- (5) scholarships and fellowships;
- (6) public assistance payments, including Social Security Income (SSI) and Temporary Assistance for Needy Families (TANF);
- (7) assistance from private welfare agencies;
- (8) income from stock dividends and bond interest;
- (9) any available pension, annuity, compensation, or insurance, including SSDI, health or hospitalization insurance plans, Worker's Compensation, veteran's benefits, Old Age and Survivors Insurance (OASI) from the Social Security Administration, labor union insurance and health and welfare benefits, and unemployment compensation;
- (10) participation in savings plans and deductions for savings bonds;
- (11) income from self-employment, which is defined as gross receipts, minus allowable Internal Revenue Service expenses, from one's own business that results in income. Gross receipts include



the value of all goods sold and services rendered. Expenses include cost of goods sold, rent, utilities, wages and salaries paid, and business taxes (not personal income taxes or self-employment social security taxes); and

(12) any other amounts generally recognized as income.

(h) Gross monthly income at application for services is based on the family's current month's income or the average gross income for the previous three months, whichever is less.

(i) If the provisions of subsection (h) of this section do not accurately reflect the family's economic status, the average of the preceding 12 months may be used.

(j) DARS DBS seeks updated information about income periodically as considered necessary.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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## DIVISION 5. METHODS OF ADMINISTRATION OF BCVDD PROGRAM

### 40 TAC §106.1481, §106.1483

#### STATUTORY AUTHORITY

The new rules are proposed under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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

#### §106.1481. Purpose.

(a) The purpose of this division is to establish an order of selection for payment of services that may be used when funds are insufficient to serve all eligible children.

(b) The public may contact DARS DBS at any local office to inquire if DARS DBS is operating under provisions of this division and to inquire about the expenditure category at which DARS DBS is operating.

#### §106.1483. Application of an Order of Selection.

(a) In determining whether to invoke a change in an order of selection, the assistant commissioner for DARS DBS applies the same criteria as those used in §106.707 of this chapter (relating to Application of an Order of Selection).

(b) The order of selection is applied after eligibility for services is determined.

(c) A service that can be paid from resources other than DARS DBS' may be provided to a child regardless of the order of selection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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## DIVISION 6. COMPLAINT RESOLUTION PROCESS

### 40 TAC §106.1491

#### STATUTORY AUTHORITY

The new rule is proposed under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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

#### §106.1491. BCVDD Program Complaint Resolution Process.

(a) This provision applies to the resolution of a complaint through a review of a BCVDD Program determination concerning:

- (1) ineligibility for services;
- (2) financial participation in the cost of products or services;
- (3) denial of services; or
- (4) termination of services.

(b) A family may file a complaint in writing to the DARS BCVDD Program, Department of Assistive and Rehabilitative Services, 4800 North Lamar, Austin, Texas, 78756. Or, a family may call DARS Inquiries at 1-800-628-5115 or send an email to: [dars.inquiries@dars.state.tx.us](mailto:dars.inquiries@dars.state.tx.us). In accordance with §101.109 of this title (relating to Complaints), BCVDD Program provides, both to each person wishing to file a complaint and to any person who is the subject of the complaint, a copy of the procedures under this subchapter. DARS and BCVDD Program staff members receive, evaluate, and seek satisfactory resolution to each complaint received.

(c) On each complaint under this subchapter, BCVDD Program maintains a file containing the name of the person filing the complaint, the date BCVDD Program received the complaint, the subject matter of the complaint, the name of each person contacted concerning the complaint, a summary of the informal review, and an explanation of the reason the file was closed if the agency closed the file without taking action other than to investigate the complaint.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman  
General Counsel  
Department of Assistive and Rehabilitative Services  
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## CHAPTER 108. DIVISION FOR EARLY CHILDHOOD INTERVENTION SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes to amend Subchapter A, General Rules, §108.101; and Subchapter B, Procedural Safeguards and Due Process Procedures, §108.217 and §108.218.

### BACKGROUND AND PURPOSE

DARS proposes the amendments to comply with guidance received by DARS from the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS), Office of Special Education Programs (OSEP), concerning the Individuals with Disabilities Education Act (IDEA), Part C, State Application and Assurances.

### SECTION-BY-SECTION SUMMARY

DARS proposes to amend §108.101 (relating to Purpose) to include language requiring that new policies or revisions to existing policies be adopted in compliance with 34 CFR §303.208, Public Participation Policies and Procedures, and Texas Government Code, Chapter 2001, Administrative Procedure; §108.217 (relating to Procedures for Investigation and Resolution of Complaints) to update an internal citation; and §108.218 (relating to Mediation) to add the qualifier "if possible" to the requirement that a request for mediation must show that it has been sent to all other parties or that attempts to do so have been made.

### FISCAL NOTE

Mary Wright, DARS Chief Financial Officer, has determined that for each year of the first five years that the proposed amendments will be in effect, there are no foreseeable fiscal implications to either costs or revenues of state or local governments as a result of enforcing or administering the amendments.

### PUBLIC BENEFIT

Ms. Wright also has determined that the public benefit anticipated as a result of administering and enforcing the amended rules will be to assure the public that the necessary rules are in place to provide a clear and concise understanding of the services provided by ECI. Ms. Wright has also determined that there is no probable economic cost to persons who are required to comply with the proposal.

### SMALL AND MICRO-BUSINESS ANALYSIS AND ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

Further, in accordance with Texas Government Code, §2001.022, Ms. Wright has determined that the proposed amendments will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Ms. Wright has determined that the proposed amendments will have no adverse economic effect on small businesses or micro-businesses.

## REGULATORY ANALYSIS

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

### TAKINGS IMPACT ASSESSMENT

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

### PUBLIC COMMENT

Written comments on the proposed amendments may be submitted within 30 days of publication of this proposal in the *Texas Register* to the Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 200, Austin, Texas 78756 or electronically to [DARSRules@dars.state.tx.us](mailto:DARSRules@dars.state.tx.us).

## SUBCHAPTER A. GENERAL RULES

### 40 TAC §108.101

#### STATUTORY AUTHORITY

The proposed amendment is authorized by the Texas Human Resources Code, Chapters 73 and 117; and the IDEA, as amended, 20 USC §1400 et seq. and its implementing regulations, 34 CFR Part 303, as amended. These amendments are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

*§108.101. Purpose.*

(a) - (c) (No change.)

(d) New policies or revisions to existing policies will be adopted in compliance with 34 CFR §303.208 and Texas Government Code, Chapter 2001.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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SUBCHAPTER B. PROCEDURAL SAFEGUARDS AND DUE PROCESS PROCEDURES

40 TAC §108.217, §108.218

STATUTORY AUTHORITY

The proposed amendments are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the IDEA, as amended, 20 USC §1400 et seq. and its implementing regulations, 34 CFR Part 303, as amended. These amendments are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.217. *Procedures for Investigation and Resolution of Complaints.*

(a) - (g) (No change.)

(h) If a written complaint is received that is also the subject of a request for an administrative hearing under Chapter 101, Subchapter E [F], Division 3 of this title (relating to Division for Early Childhood Intervention Services) or a request for a hearing under §108.227 of this title (relating to Opportunity for a Hearing) concerning the requirements of FERPA, or contains multiple issues, of which one or more are part of those hearings, the part of the complaint that is being addressed in those hearings is set aside until the conclusion of the hearings. However, any issue in the complaint that is not a part of such action must be resolved within the 60 day timeline using the complaint procedures.

§108.218. *Mediation.*

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

(c) At any time, a party or all parties to a dispute involving a matter with respect to the provision of appropriate early childhood intervention services or a potential or actual violation of Part C or other applicable federal or Texas statutes or regulations or rules may request mediation of that dispute by sending the request in writing to the DARS

ECI Assistant Commissioner. If the request for mediation is also a complaint pursuant to §108.215 of this title, it will be handled both as a complaint and as a request for mediation under subsection (b) of this section. If the request for mediation is also a request for due process hearing, it will be handled both as a request for due process hearing and a request for mediation under subsection (a) of this section. If the request for mediation does not clearly designate itself as a complaint or request for due process hearing, or if it does not comply with the filing requirements for those procedures, it will be handled only as a request for mediation under this section. A request for mediation must:

(1) be in writing and be signed by the requesting party;

(2) state the dispute to be mediated with some detail showing that it is a matter with respect to the provision of appropriate early childhood intervention services to a particular child or children or that it is a matter with respect to a potential or actual violation of Part C or other applicable federal or Texas statutes or regulations or rules;

(3) name the opposing party or parties and, if they have agreed to mediation, contain their signatures;

(4) give contact information for all parties to the extent known by the requestor; and

(5) show that the request for mediation has also been sent to all other parties or that attempts have been made to do so, if possible.

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

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 5, 2013.

TRD-201300991

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: April 21, 2013

For further information, please call: (512) 424-4050



# 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 OFFICER STANDARDS AND EDUCATION

#### CHAPTER 221. PROFICIENCY CERTIFICATES

##### 37 TAC §221.19

The Texas Commission on Law Enforcement Officer Standards and Education withdraws the proposed amendment to §221.19 which appeared in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7729).

Filed with the Office of the Secretary of State on March 5, 2013.

TRD-201300994

Kim Vickers

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: March 5, 2013

For further information, please call: (512) 936-7713



##### 37 TAC §221.27

The Texas Commission on Law Enforcement Officer Standards and Education withdraws the proposed amendment to §221.27

which appeared in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7730).

Filed with the Office of the Secretary of State on March 5, 2013.

TRD-201300995

Kim Vickers

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: March 5, 2013

For further information, please call: (512) 936-7713



##### 37 TAC §221.28

The Texas Commission on Law Enforcement Officer Standards and Education withdraws the proposed amendment to §221.28 which appeared in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7731).

Filed with the Office of the Secretary of State on March 5, 2013.

TRD-201300996

Kim Vickers

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: March 5, 2013

For further information, please call: (512) 936-7713



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 354. MEDICAID HEALTH SERVICES

##### SUBCHAPTER D. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM

##### DIVISION 4. DSRIP

###### 1 TAC §354.1634

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §354.1634, concerning Waiver Pool Allocation and Valuation, without changes to the proposed text as published in the January 25, 2013, issue of the *Texas Register* (38 TexReg 339) and will not be republished.

###### BACKGROUND AND JUSTIFICATION

On December 12, 2011, the Centers for Medicare and Medicaid Services (CMS) approved HHSC's application for a waiver under §1115 of the federal Social Security Act (42 U.S.C. §1315). The Texas Healthcare Transformation and Quality Improvement Program Waiver is composed of three main parts: expansion of Medicaid managed care, creation of an Uncompensated Care supplemental funding pool, and creation of the Delivery System Reform Incentive Payment (DSRIP) program.

HHSC and CMS negotiated for many months after the approval of the waiver application to develop the specifics of the DSRIP program. In order to receive DSRIP funds to improve quality, health status, patient experience, coordination, and cost-effectiveness, hospitals and other healthcare providers must participate in a Regional Healthcare Partnership (RHP). Each RHP must have one anchoring entity.

On October 31, 2012, the program rules governing the RHP and DSRIP process of the 1115 Waiver became effective. These rules largely reflect agreements with CMS regarding the details of the DSRIP program. Within those rules, the anchor of an RHP could receive a DSRIP payment in the first demonstration year in recognition of the services it provides. That payment could equal 20 percent of the first year DSRIP allocation for the RHP.

However, as of the effective date of the program rules, only Medicaid providers could receive such a payment. Given this caveat, an anchor that is not a Medicaid provider would not receive the first demonstration year DSRIP payment even though it does similar work to an anchor that is a Medicaid provider. After discussions with CMS, HHSC and CMS agreed to allow non-Medic-

aid provider anchors to receive the one-time DSRIP payment for the first demonstration year. HHSC is adopting the amendment to reflect this change.

###### COMMENTS

During the public comment period, which included a public hearing in Austin on February 22, 2013, HHSC received one comment from the Nueces County Hospital District in support of the proposed amendment.

###### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §32.021, and Texas Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2013.

TRD-201301055

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: April 1, 2013

Proposal publication date: January 25, 2013

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

## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 1. GENERAL PROCEDURES

##### SUBCHAPTER Q. PROTEST OF CONTRACT AWARDS OR AGENCY PROCUREMENT PROCEDURES

###### 4 TAC §§1.1100 - 1.1105

The Texas Department of Agriculture (department) adopts new Chapter 1, Subchapter Q, §§1.1100 - 1.1105, concerning protest of the department's contract awards and procurement procedures, without changes to the proposed text as published in the January 18, 2013, issue of the *Texas Register* (38 TexReg 281).

The new sections are adopted to implement the requirements of §2155.076 of the Texas Government Code, relating to protest procedures, to provide formal procedures for actual or prospective bidders, offerors, or contractors who assert or complain of improper process or a procedural defect in connection with the department's solicitation, evaluation, or award of a contract. New §1.1100 provides definitions for use in the subchapter. New §1.1101 provides procedures for filing of a protest. New §1.1102 provides procedures for disposition of a protest by the agency individual responsible for the procurement. New §1.1103 provides an appeal process. New §1.1104 provides for keeping of protest records. New §1.1105 provides that Subchapter Q does not apply to grant awards.

No comments were received on the proposal.

Chapter 1, Subchapter Q, §§1.1100 - 1.1105 are adopted under the Texas Government Code, §2155.076, which requires state agencies to adopt, by rule, protest procedures for resolving vendor protests relating to purchasing issues.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2013.

TRD-201301015

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: March 26, 2013

Proposal publication date: January 18, 2013

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



## CHAPTER 18. ORGANIC STANDARDS AND CERTIFICATION

### SUBCHAPTER F. ADMINISTRATIVE

#### DIVISION 5. MISCELLANEOUS PROVISIONS

##### 4 TAC §18.702

The Texas Department of Agriculture (TDA) adopts amendments to §18.702, concerning organic standards and certification, without changes to the proposed text as published in the January 18, 2013, issue of the *Texas Register* (38 TexReg 282).

The amendment to §18.702(b) revises the scheduled date of the annual update for certified operations, by allowing for annual certification updates to be submitted to TDA throughout the year. The amendment provides convenience and flexibility for a certified operation to submit the annual update at a time more suitable for the operation. This practice will also allow for greater resource allocation by the TDA Organic Certification Program.

No comments were received on the proposal.

The amendment to §18.702 is adopted under Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules for the certification of organic products, and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2013.

TRD-201301012

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: March 26, 2013

Proposal publication date: January 18, 2013

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



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 101. ASSESSMENT

##### SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING THE PARTICIPATION OF ENGLISH LANGUAGE LEARNERS IN STATE ASSESSMENTS

##### DIVISION 1. ASSESSMENTS OF ENGLISH LANGUAGE PROFICIENCY AND ACADEMIC CONTENT FOR ENGLISH LANGUAGE LEARNERS

##### 19 TAC §101.1005

The Texas Education Agency (TEA) adopts an amendment to §101.1005, concerning student assessment. The amendment is adopted without changes to the proposed text as published in the January 4, 2013, issue of the *Texas Register* (38 TexReg 9) and will not be republished. The section addresses assessments of achievement in academic content areas and courses. The adopted amendment specifies that certain qualifying recent asylees and refugees, upon entering a Texas public school, may be exempted from a State of Texas Assessments of Academic Readiness (STAAR®) assessment administration under the Texas Education Code (TEC), §39.023(a), (b), and (l), beginning with the 2012-2013 school year.

Section 101.1005, Assessments of Achievement in Academic Content Areas and Courses, adopted by the commissioner of education effective December 22, 2011, addresses provisions relating to English language learner (ELL) assessment for the STAAR® program.

The adopted amendment to 19 TAC §101.1005 adds language to allow the exemption of certain qualifying ELL asylees and refugees from being administered a STAAR® Grade 3-8 assessment beginning with the 2012-2013 school year. The commissioner's rulemaking authority in the TEC, §39.027(a) and (e), permits the commissioner to consider exempting ELLs from being administered an assessment under the TEC, §39.023, if they are an asylee or refugee with limited or no prior schooling. Because of federal testing requirements, the state can give no more than a one-year exemption, but it includes all testing for Grades 3-8 under the TEC, §39.023(a), (b), and (l).

To qualify for an exemption from Grades 3-8 STAAR® testing, §101.1005 specifies that a Grade 3-8 ELL must be enrolled in a U.S. school as an asylee as defined by 45 Code of Federal Regulations §400.41 or a refugee as defined by 8 United States Code §1101; has a Form I-94 Arrival/Departure record, or a successor document, issued by the United States Citizenship and Immigration Services that is stamped with "Asylee," "Refugee," or "Asylum"; and as a result of inadequate schooling outside the United States, lacks the necessary foundation in the essential knowledge and skills of the curriculum prescribed under the TEC, §28.002, as determined by the language proficiency assessment committee (LPAC).

The adopted amendment to §101.1005 establishes that the exemption only applies during the school year an unschooled asylee or refugee is first enrolled in a U.S. public school. The exemption does not apply to the Texas English Language Proficiency Assessment System (TELPAS) program.

At the high school level, §101.1007, Assessment Provisions for Graduation, already makes allowances for eligible ELLs related to the use of English I and II STAAR® end-of-course (EOC) assessment scores in meeting high school graduation requirements. No changes for §101.1007 are included with this adoption. An ELL enrolled in an English I or II course, or an English for Speakers of Other Languages I or II course, who meets specific eligibility criteria related to time in U.S. schools and level of English language proficiency is not required to use the score on the applicable English I or II assessment as part of the cumulative score for graduation or retake the assessment if the student passes the course but fails to achieve the minimum score on the assessment.

To help guide future assessment and accountability policies for ELLs, as part of the upcoming spring TELPAS administration, districts will be required to submit additional information about ELLs with extenuating needs. ELLs with extenuating needs come to the United States with significant gaps in learning in addition to the challenges faced by ELLs in general. The special circumstances that cause ELLs to have extenuating needs may affect how long it takes to acquire English and academic skills and, therefore, how long these students might need substantial linguistic accommodations during instruction and testing and how long these students might warrant special consideration in accountability measures of instructional effectiveness.

At the state level, the data collection will be used to determine the number of ELLs in the state who have extenuating academic needs that may affect the time it takes to achieve Level II: Satisfactory Academic Performance on STAAR® assessments and the ability to reach progress expectations. Based on the findings of the spring 2013 TELPAS data collection, the TEA will reexamine the asylee/refugee ELL exemption policy and determine whether the one-year exemption should be extended to other ELLs for future test administrations.

The adopted amendment has no procedural and reporting implications beyond those that apply to all Texas students with respect to implementation of the STAAR® program. The adopted amendment will have minimal, if any, effect on the paperwork required and maintained by the LPAC and/or admission, review, and dismissal committee in making assessment and accommodation decisions for ELLs.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore,

no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began January 4, 2013, and ended February 4, 2013. Following is a summary of the public comments received and corresponding agency responses regarding the proposed amendment to 19 TAC Chapter 101, Assessment, Subchapter AA, Commissioner's Rules Concerning the Participation of English Language Learners in State Assessments, Division 1, Assessments of English Language Proficiency and Academic Content for English Language Learners, §101.1005, Assessments of Achievement in Academic Content Areas and Courses.

Comment: An educator from Neches Independent School District (ISD), an educator from Amarillo ISD, five educators from Alief ISD, and an individual commented that the one-year exemption for qualifying students with asylee or refugee status is appropriate and a common-sense approach to addressing the needs of students in these difficult situations.

Agency Response: The agency agrees.

Comment: An educator from North East ISD commented that students with refugee status should be afforded three to five years of exemption status from state assessments. The educator suggested that students with refugee status be assessed with State of Texas Assessments of Academic Readiness linguistically accommodated assessment (STAAR® L) to meet participation requirements in year one and could be assessed with STAAR® L to meet participation and performance requirements in years two through five. The educator also commented that the agency needs to provide a STAAR® L assessment for English I, English II, reading, and writing.

Agency Response: The agency disagrees. The proposed exemption policy was designed to meet the federal and state requirements for the participation of students in the assessment program and to be as inclusive as possible in regard to the participation of English language learners (ELLs) in the state assessment program. Also, students meeting the eligibility criteria for participation in STAAR® L as described in the proposed rule change could be assessed with STAAR® L. The inclusion of these students' assessment results in the state's accountability system is currently under review. The commissioner of education will likely release specific information regarding the state accountability system in March 2013.

Agency staff investigated the need and potential guidelines for the creation of STAAR® L versions of English I reading and writing and English II reading and writing. It was found that the level of linguistic accommodations afforded to students in a STAAR® L administration are not appropriate on language arts assessments as those accommodations will likely compromise the accurate measurement of student learning in reading and writing.

Comment: Three educators from Alief ISD and an individual requested a one-year waiver for a qualifying asylee/refugee student's assessment score from being reflected in the campus's and district's accountability ratings.

Agency Response: Accountability provisions are outside the scope of the current rule proposal. The inclusion of these students' assessment results in the state's accountability system is currently under review. The commissioner of education will likely release specific information regarding the state accountability system in March 2013.

Comment: The Texas Association of School Boards (TASB) commented that proposed §101.1005(c) omits end-of-course (EOC) assessments from the one-year exemption period. Further, TASB noted the one-year exemption only applies during the school year an unschooled asylee or refugee is initially enrolled in a U.S. school and does not permit an additional four-year exemption from testing as allowed by the TEC.

TASB proposed that TEA add EOC assessments to the permissible exemptions for unschooled asylees and refugees. TASB also requests that TEA strike the sentence from the proposed rule that imposes the one-year exemption period and seek a waiver from the U.S. Department of Education if there is any conflict with federal law or regulation.

A representative from Conroe ISD commented that all recently arrived ELLs should be exempt from state testing requirements in their first year in U.S. schools. Two educators from Alief ISD further commented that a recently arrived ELL should not be required to be assessed with an English language assessment. An educator from Amarillo ISD suggested that the rules be flexible for students at the high school level.

Agency Response: The agency disagrees. The proposed exemption policy was designed to meet the federal and state requirements for the participation of students in the assessment program and to be as inclusive as possible in regard to the participation of ELL students in the assessment program. Students meeting the eligibility criteria for participation in STAAR® L, as described in the rule change, could be assessed with STAAR® L and are allowed additional linguistic accommodations on STAAR® reading tests.

Currently, recently arrived unschooled asylee/refugee ELL students are allowed a one-year exemption from testing but are administered linguistically accommodated tests because they are required to be assessed to meet federal adequate yearly progress (AYP) regulations. Also, knowing how these ELLs perform on the STAAR® assessments, even ELLs who are new to the U.S. and appear to know very little English, provides baseline data from which to set progress targets and monitor growth. The ability to analyze student performance data is an important vehicle for improving instruction and closing the achievement gap for ELLs and it is a basic principle of both state and federal accountability that assessment is central to identifying needs of various student populations and driving educational change.

The agency disagrees with the request to exempt certain ELL students from being administered EOC assessments that are needed to fulfill the graduation requirements under the TEC, §39.025. Texas law does not provide for exceptions to the EOC test requirements to receive a Texas diploma. With this in mind, educator groups discussed postponement policies in the planning for STAAR®, but the advice of educators was that postponing EOC testing requirements would be disadvantageous because the students would be required to take tests over the content of courses in which they were no longer enrolled. The agency is aware that students who know very little English and enter the U.S. late in their educational careers face difficulties and that the EOC requirements present additional challenges. The special provisions under §101.1007 do reduce the amount of retesting in English I and II for eligible students. Additional instructional supports and interventions may be necessary to address the needs of these students.

In response to TASB's request to seek a federal waiver if further exemptions conflict with federal requirements, the U.S. Department of Education has not allowed testing exemption waivers from the requirements of the No Child Left Behind Act and AYP under the federal accountability system with Texas or any other state.

The amendment is adopted under the Texas Education Code (TEC), §39.023 and §39.027, which authorize the commissioner of education to adopt rules concerning the participation of certain limited English proficient students, including unschooled asylees or refugees, in the administration of state-required assessment instruments.

The amendment implements the TEC, §39.023 and §39.027.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2013.

TRD-201301024

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: March 27, 2013

Proposal publication date: January 4, 2013

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



## SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

### DIVISION 3. SECURITY OF ASSESSMENTS, REQUIRED TEST ADMINISTRATION PROCEDURES AND TRAINING ACTIVITIES

#### 19 TAC §101.3031

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §101.3031 is not included in the print version of the Texas Register. The figure is available in the on-line version of the March 22, 2013, issue of the Texas Register.)*

The Texas Education Agency (TEA) adopts an amendment to §101.3031, concerning student assessment. The amendment is adopted with changes to the proposed text as published in the January 4, 2013, issue of the *Texas Register* (38 TexReg 11). No changes were made to the rule since published as proposed; however, two minor technical edits were made to the supplement adopted as rule. The section addresses required test administration procedures and training activities to ensure validity, reliability, and security of assessments. The amendment adopts the *2013 Test Security Supplement* as part of the Texas Administrative Code. The earlier version of the security supplement will remain in effect with respect to the year for which it was developed.

Through the adoption of 19 TAC §101.3031, effective March 26, 2012, the commissioner exercised rulemaking authority relating



to the administration of assessment instruments adopted or developed under the Texas Education Code, §39.023, including procedures designed to ensure the security of the assessment instruments. The rule addresses purpose, administrative procedures, training activities, and records retention. As part of the administrative procedures, school districts and charter schools are required to comply with test security and confidentiality requirements delineated annually in test administration materials. TEA legal counsel has advised that procedures related to test security be adopted as part of the Texas Administrative Code.

The adopted amendment to 19 TAC §101.3031, Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments, updates the rule by adopting the *2013 Test Security Supplement* as Figure: 19 TAC §101.3031(b)(2). The *2013 Test Security Supplement* describes the security procedures and guidelines that school districts and charter schools shall be required to follow during the 2013 testing year.

The *2013 Test Security Supplement* incorporates language from 19 TAC §101.65, Penalties, which was repealed by the State Board of Education. The language addresses conduct that violates the security and confidentiality of a test and penalties for such violations.

The amendment also adds language to specify that the security supplement adopted prior to 2013 will remain in effect with respect to that year.

No changes were made to the rule since published as proposed; however, two minor technical edits were made to the *2013 Test Security Supplement* at adoption that corrected a cross-reference on page 3 and subject-verb agreement on page 4.

The adopted amendment establishes in rule the test security procedures outlined in the *2013 Test Security Supplement*. Applicable procedures will be adopted each year as annual versions of the test security supplement are published. The adopted amendment has no additional effect on the paperwork required and maintained by school districts and charter schools.

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

The public comment period on the proposal began January 4, 2013, and ended February 4, 2013. Following is a summary of the public comment received and the corresponding agency response regarding the proposed amendment to 19 TAC Chapter 101, Assessment, Subchapter CC, Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program, Division 3, Security of Assessments, Required Test Administration Procedures and Training Activities, §101.3031, Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments.

Comment: A representative of Conroe Independent School District suggested that the adopted rule state who is responsible for the funding of the testing coordinator position.

Agency Response: The suggestion to specify in Texas Administrative Code the sources of funding for a district position is outside the scope of the current rule proposal.

The amendment is adopted under the Texas Education Code (TEC), §39.0301, which authorizes the commissioner to establish procedures for the administration of assessment in-

struments adopted or developed under TEC, §39.023, including procedures designed to ensure the security of the assessment instruments; and TEC, §39.0304, which authorizes the commissioner to adopt rules necessary to implement training in assessment instrument administration.

The amendment implements the TEC, §39.0301 and §39.0304.

*§101.3031. Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments.*

(a) Purpose. To ensure that each assessment instrument is reliable and valid and meets applicable federal requirements for measurement of student progress, the commissioner of education shall establish test administration procedures and required training activities that support the standardization and security of the test administration process.

(b) Test administration procedures. These test administration procedures shall be delineated in the test administration materials provided to school districts and charter schools annually. Districts and charter schools must comply with all of the applicable requirements specified in the test administration materials. Test administration materials shall include, but are not limited to, the following:

- (1) general testing program information;
- (2) requirements for ensuring test security and confidentiality described in the *2013 Test Security Supplement* provided in this subsection;
- Figure: 19 TAC §101.3031(b)(2)
- (3) procedures for test administration;
- (4) responsibilities of personnel involved in test administration; and
- (5) procedures for materials control.

(c) Training activities. As part of the test administration procedures, the commissioner shall require training activities to ensure that testing personnel have the necessary skills and knowledge required to administer assessment instruments in a valid, standardized, and secure manner. The commissioner may require evidence of successful completion of training activities. Test coordinators and administrators must receive all applicable training as required in the test administration materials.

(d) Records retention. As part of test administration procedures, the commissioner shall require school districts and charter schools to maintain records related to the security of assessment instruments for a minimum of five years.

(e) Applicability. The test administration procedures and required training activities established in the annual test security supplements for years prior to 2013 remain in effect for all purposes with respect to prior years.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2013.

TRD-201301023

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: March 27, 2013

Proposal publication date: January 4, 2013

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



## TITLE 22. EXAMINING BOARDS

### PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

#### CHAPTER 371. EXAMINATION AND LICENSURE

##### 22 TAC §371.25

The Texas State Board of Podiatric Medical Examiners adopts the amendments to §371.25, concerning Residency Requirements, Program Responsibilities and Temporary Licensure, without changes to the proposed text as published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 8918). The text of the rule will not be republished.

The amendments to §371.25 are adopted to increase efficiency in the licensure process for residents in the final year of their approved graduate podiatric medical education program by allowing those persons an extra month to begin the application process to other authorities for Texas Department of Public Safety and U.S. Drug Enforcement Administration registration, Medicaid/Medicare numbers, and other registrations required for a podiatrist to set up a business.

No comments were received in response to the proposed amendments.

The amendments are adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States; and to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

The adopted amendments to §371.25 implement Texas Occupations Code, Chapter 202, Subchapter F.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2013.

TRD-201301026

Janie Alonzo

Staff Services Officer V

Texas State Board of Podiatric Medical Examiners

Effective date: March 27, 2013

Proposal publication date: November 9, 2012

For further information, please call: (512) 305-7000



#### CHAPTER 376. VIOLATIONS AND PENALTIES

##### 22 TAC §376.37

The Texas State Board of Podiatric Medical Examiners adopts new §376.37, concerning Criminal History Evaluation Letters, with changes to the proposed text as published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 8920). The sec-

tion is adopted with changes to make a grammatical correction in §376.37(g).

The new rule is adopted to provide a process by which an individual may request a criminal history evaluation letter regarding the person's eligibility for a license issued by the board.

No comments were received in response to the proposed new rule.

The new rule is adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The adopted new rule implements Texas Occupations Code, §53.102.

##### §376.37. *Criminal History Evaluation Letters.*

(a) The purpose of this section is to provide a process by which an individual may request a criminal history evaluation letter regarding the person's eligibility for a license issued by the Texas State Board of Podiatric Medical Examiners, as allowed by Chapter 53, Subchapter D of the Texas Occupations Code.

(b) Prior to applying for licensure, an individual seeking licensure may request that agency staff review the person's criminal history to determine if the person is ineligible for licensure based solely on the person's criminal background.

(c) Requestors must submit their requests in writing along with appropriate fees as provided in §371.3(b)(19) of this title (relating to Fees).

(d) The agency may require additional documentation including fingerprint cards before issuing a criminal history evaluation letter.

(e) The agency shall provide criminal history evaluation letters that include the basis for ineligibility if grounds for ineligibility exist to all requestors no later than the 90th day after the agency receives all required documentation to allow the agency to respond to a request.

(f) If a requestor does not provide all requested documentation within one year of submitting the original request, the requestor must submit a new request along with appropriate fees.

(g) All evaluation letters shall be based on existing law at the time of the request. All requestors remain subject to the requirements for licensure at the time of application and may be determined ineligible under existing law at the time of application. If a requestor fails to provide complete and accurate information to the agency, the agency may invalidate the criminal history evaluation letter.

(h) An individual shall be permitted to apply for licensure, regardless of the agency's determination in a criminal history evaluation letter. However, the filing of an application and tendering of fees does not in any way obligate the Board to admit the applicant to examination or issue a license until such time the applicant has been approved as meeting all requirements for licensure set forth in the Board's laws and rules. No examination fee will be refunded. Applicants who have furnished false information to the Board or who are alleged to be in violation of the Board's laws and rules will be investigated. Such applicants are subject to refusal for admittance to the examination and denial of licensure; Board disciplinary action. Applicants permitted to take the examination are subject to the laws and rules of the Board and to the following conditions. The Board reserves the right to refuse an applicant admittance to the exam if other information comes to the Board's attention prior to the examination date that necessitates bar-

ring the applicant from the examination. Furthermore, admittance to the examination is not intended and shall not be construed to imply or constitute a finding of the Board regarding the applicant's fitness to sit for the examination nor as an approval of an application for license after the examination, regardless of the applicant's performance on the exam.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201301027

Janie Alonzo

Staff Services Officer V

Texas State Board of Podiatric Medical Examiners

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Proposal publication date: November 9, 2012

For further information, please call: (512) 305-7000

## CHAPTER 378. CONTINUING EDUCATION AND LICENSE RENEWAL

### 22 TAC §378.13

The Texas State Board of Podiatric Medical Examiners adopts the amendments to §378.13, concerning License Renewal, without changes to the proposed text as published in the November 9, 2012, issue of the *Texas Register* (37 TexReg 8921). The text of the rule will not be republished.

The amendments to §378.13 are adopted to clarify the distinction between a "New" license status and an "Active" license status, thereby illustrating what constitutes the practice of podiatry without a license by not activating a new license.

No comments were received in response to the proposed amendments.

The amendments are adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States; and to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The adopted amendments for §378.13 implement Texas Occupations Code Chapter 202, Subchapter F and G; and Texas Occupations Code §202.605.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Janie Alonzo

Staff Services Officer V

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## PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

### CHAPTER 781. SOCIAL WORKER LICENSURE

The Texas State Board of Social Worker Examiners (board) adopts amendments to §§781.102, 781.201, 781.203, 781.204, 781.209, 781.210, 781.304, 781.312, 781.316, 781.401, 781.404, 781.411, 781.412, 781.502, 781.505, 781.506, 781.508, 781.511, 781.514, and 781.603 and new 781.419, concerning the licensure and regulation of social workers. The amendments to §§781.412, 781.506, and 781.508 and new §781.419 are adopted with changes to the proposed text as published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7848). The amendments to §§781.102, 781.201, 781.203, 781.204, 781.209, 781.210, 781.304, 781.312, 781.316, 781.401, 781.404, 781.411, 781.502, 781.505, 781.511, 781.514, and 781.603 are adopted without changes and, therefore, the sections will not be republished.

#### BACKGROUND AND PURPOSE

New §781.419 results from statutory changes made during the 82nd Legislative Session (2011, Regular Session), by the passage of Senate Bill (SB) 1733, codified in the Texas Occupations Code, Chapter 55, requiring the board, by rule, to set alternative licensure requirement procedures for military spouses. Specific amended sections in this proposal update licensure requirements and standards of practice in the regulation of social workers and revisions are outlined in the section-by-section summary of this preamble.

#### SECTION-BY-SECTION SUMMARY

This summary considers only those sections which were substantially changed in language, meaning, or intent. A number of non-substantive modifications were made in the chapter in order to meet the objectives of improving draftsmanship and ensuring clarity.

The amendment to §781.102 recognizes and defines Independent Non-clinical Practice and Independent Practice Recognition as "unsupervised practice."

The amendment to §781.201 adds to the Code of Conduct a new population group for whom social workers shall not refuse to perform any act or service for which the social worker is licensed under this chapter as well as improves draftsmanship and ensures clarity.

The amendment to §781.203 specifies the requirements a social worker must ensure are met prior to providing services to a minor client named in a Suit Affecting Parent Child Relationships (SAPCR).

Amended §781.204 prohibits a social worker from accepting remuneration to or from any person or entity for securing or soliciting social work clients or patronage for or from any health care professional and also provides warnings that such actions will subject the violator to disciplinary action. In addition, the amendment to §781.204 recognizes certain exceptions to maintaining records. The amendment also improves draftsmanship and ensures clarity.

The amendment to §781.209 recognizes certain exceptions to maintaining client records enumerated in §781.204.

The amendment to §781.210 prohibits a social worker from accepting remuneration to or from any person or entity for securing or soliciting social work clients or patronage for or from any health care professional in billing and financial relationships.

The amendment to §781.304 limits the circumstances that allow board or staff members to provide guidance to social workers.

The amendment to §781.312 adds gender identity and expression to the list of personal characteristics the board must disregard in making its decisions. The amendment also improves draftsmanship and ensures clarity.

Amended §781.316 reflects the current board licensure fees. The amendment also improves draftsmanship and ensures clarity.

The amendment to §781.401 specifies the current acronym for "Licensed Social Worker-Advanced Practitioner" and extends the maximum timeframe for supervision and supervised experience. The amendment also improves draftsmanship and ensures clarity.

The amendment to §781.404 modifies the board's recognition of board-approved supervisors and the supervision process; limits the number of supervised hours which may be counted toward licensure or specialty recognition; and specifies the process for approval of applicable supervision plans.

The amendment to §781.411 limits an applicant's temporary license by the board to one per lifetime, per licensing category.

The amendment to §781.412 clarifies board policy regarding the number of times an unsuccessful applicant may take the licensing examination before he or she must formally request and receive permission from the board to retake the examination, as well as the circumstances under which an unsuccessful applicant may retake the exam if he or she has failed the exam the maximum allowable attempt times.

The amendment to §781.502 specifies the dates for licensure renewal.

Amended §781.505 specifies requirements related to converting active licensure to inactive status, payment of appropriate, related fees and consequences for failure to follow these requirements. Additionally, the amendments limit the time period for inactive status and set forth the process a licensee on inactive status must follow in order to reactivate the license.

The amendment to §781.506 sets forth limitations on a licensee's emeritus status as well as the process a licensee on emeritus status must follow in order to reactivate the license, obtain board-approved supervisor status and consequences for an emeritus licensee who fails to reactivate his or her license within 48 months of conversion. Additionally, this amended section limits the ability of an eligible licensee to convert from emeritus status to active status to once per lifetime.

The amendment to §781.508 specifies that a licensee must complete the required hours of continuing education, even for the first renewal of the license.

The amendment to §781.511 specifies that individuals or entities who receive automatic approval as continuing education providers under this chapter will not receive board documentation of the automatic approval and will not be included in the board's rosters of supervisors. Additionally, the amendment

states additional mandatory information a continuing education provider must include on the certificate of attendance issued to each program participant upon program conclusion.

The amendment to §781.514 deletes the limitation on the number of continuing education hours which may be earned in one renewal cycle in a board-approved independent study.

The amendment to §781.603 authorizes the board executive director to request client records from a licensee in complaint procedures and to close certain complaints as non-jurisdictional before presenting them to the Ethics Committee at that Committee's next scheduled meeting. In addition, the amendment allows the board's Ethics Committee to resolve certain pending complaints without a formal disciplinary action or formal hearing.

## COMMENTS

The board has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period. The commenters were individuals, associations, organizations, and entities, including the National Association of Social Workers/Texas Chapter, the Texas Society for Clinical Social Work, and the Texas Council on Family Violence. Some commenters supported the proposed rules. Other commenters were not against the rules in its entirety; however, they suggested recommendations for change as discussed in the summary of comments.

Comment: One commenter agreed with the proposed rules in their entirety.

Response: The board appreciates the support. No changes to the proposed rules were made as a result of this comment.

Comment: Concerning §781.201, two commenters support the proposed language.

Response: The board agrees that adoption of the proposed language is required. No changes to the proposed language were made as a result of the comments.

Comment: Concerning §781.203, one commenter supports the proposed language.

Response: The board agrees that adoption of the proposed language is required. No change to the proposed language was made as a result of the comment.

Comment: Concerning §781.204, the board received two comments. One commenter supports the proposed language; one commenter believes the proposed language regarding remuneration creates contradictory statements and opposes the proposed language which creates an exemption from record keeping under certain circumstances.

Response: The board determined that the proposed language is required and is not contradictory. The exemption to record keeping is necessary because there are some circumstances under which there may be a conflict between the board's record keeping requirements for all licensees and the record keeping requirements for social work practice in certain educational institutions or federal, state, or local government entities or political subdivisions. If such a conflict exists, a licensee is not in violation of the board's rules if he or she is acting within the standards, requirements, and procedures of those settings. No changes to the proposed language were made as a result of the comments.

Comment: Concerning §781.209, the board received three comments. One commenter supports the proposed language; two

commenters oppose the proposed language regarding creating an exemption from record keeping requirement under certain circumstances.

Response: The board determined that the proposed amendment is required because there are some circumstances under which there may be a conflict between the board's record keeping requirements for all licensees and the record keeping requirements for social work practice in certain educational institutions or federal, state, or local government entities or political subdivisions. If such a conflict exists, a licensee is not in violation of the board's rules if he or she is acting within the standards, requirements, and procedures of those settings. Those settings in which there may be an exemption are required to have record keeping requirements which are appropriate to the setting. No changes to the proposed language were made as a result of the comments.

Comment: Concerning §781.210, one commenter believes the proposed language regarding remuneration creates contradictory statements.

Response: The board determined that the proposed amendment is required because the board believes the exemptions, as outlined and previously adopted in rule, related to payment of credentialing or other fees in order for the licensee to be a part of an approved provider list continues to be required, and is not contradictory. No change to the proposed language was made as a result of the comment.

Comment: Concerning §781.304, one commenter supports the proposed language.

Response: The board agrees that adoption of the proposed language is required. No change to the proposed language was made as a result of the comment.

Comment: Concerning §781.312, two commenters support the proposed language.

Response: The board agrees that adoption of the proposed language is required. No changes to the proposed language were made as a result of the comments.

Comment: Concerning §781.401, one commenter supports the proposed language.

Response: The board agrees that adoption of the proposed language is required. No change to the proposed language was made as a result of the comment.

Comment: Concerning §781.404, two commenters disagreed with the proposed change that disallows an Emeritus licensee to serve as a board-approved supervisor in §781.404(b)(1). One commenter, however, supported the proposed language regarding the supervision process and supervision plans in §781.404(b)(12), in which the board reinstated a maximum number of 10 hours of board-approved supervision which may be accrued towards licensure and specialty recognition. The board added clarifying language related to minimum requirements for supervised experience and supervision, and the board created an extended time period (changing the maximum time period of 48 months to 60 months) in which an individual may complete minimum requirements for supervised experience towards Independent Practice Recognition.

Response: The board disagrees. An Emeritus licensee may not serve as a board-approved supervisor because an individual who serves as a board-approved supervisor must maintain an ongoing knowledge of and competency in social work practice and supervision in order to competently perform board-ap-

proved supervision. Active full licensure contains the appropriate safeguards to ensure continuing competency and does not present an undo financial or other burden if the licensee chooses to provide these services. The board agrees that adoption of the proposed language regarding the supervision process and supervision plans in §781.404(b)(12) is required. No changes to the proposed language were made as a result of the comments.

Comment: Concerning §781.412, one commenter supports the proposed language regarding the examination process related to the number of times an unsuccessful applicant may take the licensing examination. However, this commenter also suggested adding language which would require each subsequent attempt to take the licensing examination be approved by the appropriate committee of the board.

Response: The board agrees that adoption of the proposed language is required and disagrees that the recommended, additional language is required because failure to demonstrate minimum professional knowledge for licensure as indicated in passage of the examination on multiple attempts requires acquisition of additional professional knowledge, not just additional examination attempts or engagement in review courses. This provides a mechanism for the board to help the applicant be successful with the examination. No change to the proposed language was made as a result of the comment.

Comment: Concerning §781.419, one commenter suggested that the board clarify the proposed new language regarding the requirement that a new application and fee for licensure be submitted prior to the granting of a social work license.

Response: The board agrees and adds the following language to §781.419(c): "Board approval of a new application, including submission of all required fees and attachments, is required prior to issuance of a license."

Comment: Concerning §781.502, one commenter supports the proposed language.

Response: The board agrees that adoption of the proposed language is required. No change to the proposed language was made as a result of the comment.

Comment: Concerning §781.505, one commenter opposes the requirement that verification of completion of minimum requirements for continuing education be provided if conversion to inactive status is requested within 45 days of the license expiration date; the commenter also opposes lifetime time limits for conversion to inactive status.

Response: The board disagrees that the proposed language is not required since a licensee may avoid verification of completion of minimum requirements for continuing education through the previous two years by changing to inactive status in close proximity to the renewal date. The public is not protected by having this loophole exist. No changes to the proposed language were made as a result of these comments.

Comment: Concerning §781.506, two commenters disagreed with the proposed change to allow an Emeritus licensee to serve as a board-approved supervisor only under certain conditions. One of the two commenters also suggested modification of proposed language for clarification and to eliminate redundancy.

Response: The board disagrees in part. Emeritus licensees may only serve as board-approved supervisors under certain conditions because of the interest of public protection related to the provision of these services requiring demonstration of continu-

ing competency in social work practice and in supervision. The board, however, agrees that changes are necessary to improve draftsmanship and ensure clarity and deleted the sentence "Verification of completion of the Jurisprudence Exam is required" to avoid redundancy in §781.506(c). The board also deleted the word "ever" and inserted the phrase "except as follows" for clarity in §781.506(e). Also, a minor editorial revision replaced the word "reactive" with the word "reactivate" in subsection (e).

Comment: Concerning §781.508, one commenter opposes the proposed, clarifying language regarding minimum requirements for continuing education the first time a license is renewed, and one commenter supports the proposal as written.

Response: The board determined that the proposed amendment is required; but that the phrase "even for" should be deleted and replaced with the word "including" for clarity in §781.508(a).

Comments: Concerning §781.511, one commenter opposes the proposed, clarifying language regarding the board not including all automatically-approved providers' information on the board's website or providing documentation of board-approved status for each.

Response: The board disagrees on the basis that it is impossible for the board to include the information for the substantial number of unknown, automatically-approved providers on its website and it is impractical to provide documentation for each. No change to the proposed language was made as a result of the comment.

A minor grammatical change was made to §781.412(b) to replace the word "not" with the word "no."

## SUBCHAPTER A. GENERAL PROVISIONS

### 22 TAC §781.102

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201301032

Timothy M. Brown, LCSW

Chair

Texas State Board of Social Worker Examiners

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For further information, please call: (512) 776-6972



## SUBCHAPTER B. CODE OF CONDUCT AND PROFESSIONAL STANDARDS OF PRACTICE

### 22 TAC §§781.201, 781.203, 781.204, 781.209, 781.210

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chair

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## SUBCHAPTER C. THE BOARD

### 22 TAC §§781.304, 781.312, 781.316

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. LICENSES AND LICENSING PROCESS

### 22 TAC §§781.401, 781.404, 781.411, 781.412, 781.419

#### STATUTORY AUTHORITY

The amendments and new rule are adopted under Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties; and Texas Occupations Code, §55.004, which authorizes the board to adopt rules necessary concerning licensing of military spouses.

§781.412. *Examination Requirement.*

(a) An applicant for licensure or specialty recognition must pass an examination designated by the board.

(b) When an applicant passes the examination, the individual has no more than one year from the date of passing the examination to complete the requirements for licensure, completing all documentation and paying all fees or the passing examination score will no longer count towards licensure.

(c) If an applicant fails the examination on the first attempt of his/her lifetime, the individual may retake the examination no more than two additional times. An applicant who has failed the examination on the first, second, and third attempts must request in writing to the

board to retake the examination a fourth time. The board may order the applicant to complete one or more social work educational courses as a prerequisite to retaking the examination.

(d) An applicant who fails the examination must wait the required timeframe between examination administrations. The board or executive director may waive the waiting period if the applicant petitions in writing, justifying the waiver in accordance with board policy.

(e) If an applicant fails the examination on the fourth attempt, the person's application will be voided. The applicant will not be permitted to reapply for licensure for one year. Each subsequent attempt must be approved by the appropriate committee of the board.

(f) The board may waive the examination for an applicant with a valid certificate or license from another state if the certificate or license was issued before January 1, 1986, if petitioned in writing.

(g) On the basis of a verified report from ASWB that an applicant has cheated on the examination, the application shall be denied.

*§781.419. Military Spouse.*

(a) This section sets out the alternative license procedure for military spouse required under Texas Occupations Code, Chapter 55 (relating to License While on Military Duty and for Military Spouse).

(b) The spouse of a person serving on active duty as a member of the armed forces of the United States who holds a current license issued by another state that has substantially equivalent licensing requirements shall complete and submit an application form and fee. In accordance with Texas Occupations Code, §55.004(c), the executive director may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(c) The spouse of a person serving on active duty as a member of the armed forces of the United States who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if there are no unresolved complaints against the applicant and if there is no other bar to licensure, such as criminal background or non-compliance with a board order. Board approval of a new application, including submission of all required fees and attachments, is required prior to issuance of a license.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chair

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## SUBCHAPTER E. LICENSE RENEWAL AND CONTINUING EDUCATION

**22 TAC §§781.502, 781.505, 781.506, 781.508, 781.511, 781.514**

## STATUTORY AUTHORITY

The amendments are adopted under Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties.

*§781.506. Emeritus Status.*

(a) A licensee who is at least 60 years of age or disabled, and who is not engaged in professional social work practice, may request emeritus status in writing to the board. An emeritus license must be renewed every two years but requires no renewal fee or continuing education.

(b) The emeritus licensee may only use his or her emeritus title while providing social work services as a volunteer without compensation. The emeritus licensee who volunteers social worker services is under the board's jurisdiction and must comply with the Code of Conduct and Professional Standards of Practice, as well as the Act and the rule requirements in this chapter.

(c) An emeritus licensee whose license is in good standing can be reinstated to an active license within 48 months of conversion to emeritus status. To be eligible for an active license through reinstatement of an emeritus license, the emeritus licensee shall submit an application for licensure at the appropriate category, as well as proof of completion of the Jurisprudence Exam within six months prior to requesting reactivation, and payment of the licensing fee. Verification of education, supervision, and examination score is not required.

(d) An emeritus licensee who reactivates his/her license within 48 months of conversion to emeritus status may not regain board-approved supervisor status upon activation without verification of completion of minimum requirements as a board-approved supervisor in place at the time of reactivation. An emeritus licensee who reactivates his/her license within 48 months may regain other specialty recognition(s) without demonstration of meeting current minimum requirements for that specialty recognition.

(e) An emeritus licensee who does not reactivate his/her license within 48 months of conversion to emeritus status may not convert the license to active status except as follows. An emeritus licensee who did not reactivate his/her license within 48 months of conversion must reapply for active licensure and meet all current minimum requirements for licensure, specialty recognition, and board-approved supervisor status in place at the time of application. If all current minimum requirements for licensure are met, upon issuance of a new license and license number, the emeritus license will be null and void.

(f) A licensee who converts to emeritus status may only reactivate the license to active status once per lifetime.

*§781.508. Hour Requirements for Continuing Education.*

(a) A licensee must complete a total of 30 clock-hours biennially of continuing education obtained from board-approved continuing education providers. A licensee must complete a total of 30 clock-hours of continuing education obtained from a board-approved continuing education provider including the first renewal of the licensure following issuance of the license, which is valid for a period of 13 to 24 months, depending on the licensee's birth month.

(b) As part of the required 30 biennial clock-hours, a licensee must complete a minimum of six clock-hours of continuing education in professional ethics and social work values.

(c) A clock-hour is defined as 60 minutes of standard time.

(d) A licensee may earn credit for ethics as a presenter or a participant.

(e) Upon a licensee's petition, the executive director may waive part, but not all, of the continuing education renewal requirements for good and just cause or may permit the licensee additional time to complete all continuing education requirements. If the director decides not to waive requirements, a licensee may appeal to the board, which may elect to waive the late fees accrued. Should the board not uphold the licensee's petition, all late fees accrued will apply.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Timothy M. Brown, LCSW  
Chair

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## SUBCHAPTER F. COMPLAINTS AND VIOLATIONS

### 22 TAC §781.603

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chair

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## PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

### CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

The Texas State Board of Examiners of Marriage and Family Therapists (board) adopts amendments to §§801.1, 801.2, 801.11 - 801.19, 801.41 - 801.56, 801.71 - 801.73, 801.91 - 801.93, 801.111 - 801.115, 801.141 - 801.143, 801.171 - 801.174, 801.201 - 801.203, 801.231 - 801.237, 801.261 - 801.268, 801.291 - 801.303, 801.331, 801.332, 801.351, and

801.361 - 801.364 and new §801.204, concerning the licensing and regulation of marriage and family therapists. Sections 801.11, 801.41, 801.42, 801.44, 801.142, 801.203, and 801.297 are being adopted with changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7660). Amendments 801.1, 801.2, 801.12 - 801.19, 801.43, 801.45 - 801.56, 801.71 - 801.73, 801.91 - 801.93, 801.111 - 801.115, 801.141, 801.143, 801.171 - 801.174, 801.201, 801.202, 801.231 - 801.237, 801.261 - 801.268, 801.291 - 801.296, 801.298 - 801.303, 801.331, 801.332, 801.351, and 801.361 - 801.364 and new §801.204 are adopted without changes and, therefore, will not be republished.

#### BACKGROUND AND PURPOSE

Texas Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Texas Government Code, Chapter 2001 (Administrative Procedure Act). Sections 801.1, 801.2, 801.11 - 801.19, 801.41 - 801.56, 801.71 - 801.73, 801.91 - 801.93, 801.111 - 801.115, 801.141 - 801.143, 801.171 - 801.174, 801.201 - 801.203, 801.231 - 801.237, 801.261 - 801.268, 801.291 - 801.303, 801.331, 801.332, 801.351, and 801.361 - 801.364 have been reviewed, and the board has determined that the reasons for adopting the sections continue to exist in that rules concerning the licensing and regulation of marriage and family therapists are still needed; however, changes are needed as described in this preamble, and are the result of the comprehensive rule review undertaken by the board and the board's staff.

In general, each section was reviewed and readopted in order to ensure appropriate subchapter, section, and paragraph organization; to ensure clarity; to improve spelling, grammar, and punctuation; to ensure that the rules reflect current legal and policy considerations; to ensure accuracy of legal citations; to eliminate unnecessary catch-titles; to delete repetitive, obsolete, unenforceable, or unnecessary language; to improve draftsmanship; and to make the rules more accessible, understandable, and usable.

The new section establishes procedures for issuance of licenses to military spouses, as required by Senate Bill 1733, 82nd Legislature, 2011, amending Texas Occupations Code, Chapter 55, relating to the licensing process for military spouses.

#### SECTION-BY-SECTION SUMMARY

The following section-by-section summary considers only those sections which were substantially changed in language, meaning, or intent. A number of modifications were adopted for the chapter in order to meet the objectives of the rule review as described previously, such as improving draftsmanship and ensuring clarity.

Nonsubstantive changes were adopted to various sections of the chapter, including §§801.1, 801.14, 801.15, 801.17, 801.19, 801.42, 801.43, 801.46 - 801.48, 801.51, 801.53, 801.54, 801.72, 801.91, 801.111 - 801.115, 801.141, 801.143, 801.171, 801.172, 801.201, 801.203, 801.231, 801.233, 801.235 - 801.237, 801.263, 801.266, 801.267, 801.292 - 801.296, 801.298 - 801.302, 801.331, 801.332, 801.351, and 801.361 - 801.364.

The following changes are adopted concerning Subchapter A (relating to the Introduction).

Adopted changes to §801.2 demonstrate the board no longer recognizes educational institutions registered by the California



Bureau for Private Postsecondary and Vocational Education and relies instead on accredited institutions and programs of or by the Council for Higher Education (CHEA).

Additional amendments to §801.2 clarify the correct terminology for "associate" and expand the definition of "client." Nonsubstantive changes were also made to various portions of §801.2.

The following changes are adopted concerning Subchapter B (relating to The Board).

Amendments to §801.11 alter the procedures for submitting an agenda item and participation during the Public Comment period. Additionally, changes to §801.11 recognize the board's expectation that licensees seek professional consultation and legal advice from qualified individuals for resolution of ethical dilemmas or practice issues not explicitly articulated in board law, rule or policy.

An amendment to §801.12 deletes paragraph (2) concerning rulemaking procedures as unnecessary since the provision is spelled out in Texas Government Code, §2001.021. The remaining paragraphs are renumbered accordingly.

To reflect current operational procedures, an amendment to §801.13 deletes the requirement that the executive director sign the approved minutes of each meeting.

A reference to 42 U.S.C. §12101 et seq. was added to §801.16 for the Americans with Disabilities Act.

Amended §801.18 reflects the current electronic address to which applications and renewal applications are sent and processed.

The following changes are adopted concerning Subchapter C (relating to Guidelines for Professional Therapeutic Services and Code of Ethics).

Amended §801.41 adds the requirement that a licensee observe and comply with the code of ethics and standards of practice and that failure to do so is grounds for disciplinary action.

Amended §801.42 reflects that the practice of marriage and family therapy is not limited to the marital relationship but includes couples therapy; the term "marriage" is deleted in the context of describing the changing life cycle.

Amended §801.44 clarifies confidentiality provisions, specifies requirements related to soliciting and contracting with certain referral sources, prohibits a licensee from exploiting a position of trust, simplifies, removes redundancies with other sections and reorders subsections (l) - (s) to accommodate changes. Amended §801.44 also adds new subsections related to exempting certain licensees from the record keeping requirements, prohibiting a licensee from knowingly offering or providing professional services to an individual concurrently receiving professional services for another mental health service provider unless special precautions are taken; changes to §801.44 also add new subsections that restrict an impaired licensee from providing services and require a licensee to take reasonable steps to facilitate the transfer of a client. Changes to §801.44 prohibit a licensee from aiding or abetting the unlicensed practice of marriage and family therapy, require the licensee to report unlicensed practice to the board and prohibit a licensee from entering into a non-professional relationship with certain persons related to or known by a client if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.

Regarding §801.45, the board adopts several substantive changes including expanding the scope of individuals with whom the licensee may not engage in sexual conduct, deleting the previous time limitation on sexual contact, permanently barring sexual contact with a current client or a former client.

Amended §801.48 requires a licensee also comply with Texas Health and Safety Code, Chapter 181, in addition to those statutes or rules regarding access to mental health records and confidentiality.

Amended §801.49 mandates certain written reports that must be made to the board and states that the failure to do so may result in disciplinary action against the licensee.

Amended §801.50 changes the section name from "Assumed Names" to "Corporation and Business Names" to provide clarity about the intent of the section.

Changes to §801.52 modify the existing language of subsection (a) for clarity and add new subsection (e), regarding responsibility of the licensee for any use or misuse of a reproduced board-issued license.

Amended §801.53 references the exceptions to allowable advertising; amended §801.55 and §801.56 make changes throughout the section to recognize the terminology "parenting coordinator."

The following changes are adopted concerning Subchapter D (relating to Application Procedures).

Amended §801.71 adds "marriage and family therapist associate" as being covered by Subchapter D of this chapter; changes to §801.73 include the requirement that applicants report any disciplinary actions taken by other jurisdictions on the application form. The board also adopts edits to §801.73(a)(2) and (7) for clarity.

The following changes are adopted concerning Subchapter E (relating to the Criteria for Determining Fitness of Applicants for Examination and Licensure).

Changes to §801.92 remove the requirement that an applicant may be considered unfit for licensure only if he or she lacks the necessary skills and abilities to provide adequate marriage and family therapy in an independent practice setting.

Regarding §801.93, the board adopts a change to allow the board to discipline a licensee based upon information received after license issuance even if it determines the violation occurred prior to the license issuance date.

The adopted changes concerning Subchapter F (relating to the Academic Requirements for Examination and Licensure) are editorial for clarity and improved draftsmanship.

The following changes are adopted concerning Subchapter G (relating to the Experience Requirements for Licensure).

Regarding §801.142, the board adopts amendments to reorganize and rework paragraph (1)(A) for clarity and consistency with current board policies related to minimum requirements for licensure for supervision and supervised experience. The deletion of subparagraph (G) of the paragraph eliminates redundancy with the changes as adopted in paragraph (1)(A); the following subparagraphs were reordered accordingly.

The following changes are adopted concerning Subchapter H (relating to Examinations).

Section 801.171 and §801.172 specify licensure must be board-approved. Section 801.173 states that when an applicant is no-

tified of application disapproval, the notification must provide the reason for disapproval. The changes also require payment of appropriate fees. Adopted changes to §801.174 would require an applicant to pay an examination fee to the appropriate party as dictated by the current contract or agreement rather than simply at the examination site.

The following changes are adopted concerning Subchapter I (relating to Licensing).

Amended §801.201 specifies that upon receipt and approval of application documentation and required fees, the board shall issue the person a license with a unique license number within 30 days.

Regarding §801.202, the board adopts changes to subsection (b) and the addition of subsections (c) - (e) to articulate the exceptions to the 72-month maximum time limit that an individual may hold an LMFT Associate license to meet all minimum requirements for licensure as an LMFT.

New §801.204, "Licensing of Spouses of Members of the Military," adds the licensing process for military spouses as required by Senate Bill 1733, 82nd Legislature (Regular Session) 2011.

The following changes are adopted concerning Subchapter J (relating to License Renewal and Inactive Status).

Changes to §801.231 and §801.232 set forth the period of licensure renewal and deadlines. Changes to §801.234 reduce the time frame for sending a licensure renewal form to each licensee from 60 to 30 days of license expiration date to accommodate potential logistical challenges in renewal form distribution.

The following changes are adopted concerning Subchapter K (relating to Continuing Education Requirements).

Concerning §801.261, a licensee must complete continuing education biennially or as appropriate for license renewal.

Regarding §801.264, the board adopts revisions, including reorganization, of this section, to expand the types of acceptable continuing education providers and activities.

Regarding §801.265, the board adopts edits to identify the appropriate board committee to review continuing education provider approval issues and clarification related to paragraphs (9), (10), and (11).

Regarding §801.268, the board deletes subsection (c) related to acceptance of continuing education credits from providers who are not board-approved.

The following changes are adopted concerning Subchapter L (relating to Complaints and Violations).

Regarding §801.291, the board adopts modification of paragraph (1)(H) to include license or certification revocation by a governmental agency.

Regarding §801.296, the board adopts new language in subsection (c) to clarify that the board, the executive director or his/her designee may request that all relevant client records be submitted in conjunction with the investigation of an allegation. The board also adopts clarification to subsection (j) to identify that a complaint may be closed through informal measures, including a "Conditional Letter of Agreement" or other action which is not a formal disciplinary action but which would constitute a formal request of the board.

Regarding §801.297, the board adopts new subsections (f), (g), and (h) to specifically articulate some of the conditions of proba-

tion, the requirements for release of probation, and information about board-ordered supervision.

Regarding §801.303, the board adopts edits of existing language and new language related to resolution of pending complaints with actions which are not considered formal disciplinary actions.

The editorial changes concerning Subchapter M (relating to the Licensing of Persons with Criminal Backgrounds), Subchapter N (relating to Informal Conferences), and Subchapter O (relating to Formal Hearings) are adopted to improve clarity and draftsmanship.

## COMMENTS

The board has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period. The commenters were associations, including the following: Texas Association of Marriage and Family Therapists and Texas Counseling Association. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments. Commenters were generally in favor of the rules.

Comment: Concerning §801.2(1), one commenter questioned the board's rationale for the proposed amendment, as well as the public benefit. The commenter also implied that certain license applicants may be negatively affected by the amendment.

Response: The board disagrees. The amendment is appropriate, as the accreditation standards for the California Bureau for Private Postsecondary and Vocational Education are significantly lower than those of the Council for Higher Education Accreditation. The public benefits from consistent, high quality accreditation standards. No change was made as a result of this comment.

Comment: Concerning §801.41, one commenter stated that the amendment is vague.

Response: The board disagrees that the language is vague. However, the board has determined that the amendment may be unnecessary or unenforceable and has deleted the proposed language.

Comment: Concerning §801.44(i), one commenter suggested removing "prospective clients" from the amendment.

Response: The board agrees and has made the recommended change.

Comment: Concerning §801.44(j), one commenter questioned whether the amendment conforms to a Texas Supreme Court ruling on this topic.

Response: The board agrees and the proposed change to §801.44(j) was not adopted and the word "may" was left as in existing language.

Comment: Concerning §801.44(p), one commenter suggested adding "electronic communication" to this rule.

Response: The board disagrees. The phrase "in writing" is inclusive of various forms of electronic communication. No change was made as a result of the comment.

Comment: Concerning §801.44(q), one commenter recommended adding the phrase "electronic communication," so that consumers are aware that they can contact the board via email.

Response: The board agrees and has added the phrase to the rule.

Comment: Concerning §801.44(w), one commenter stated that the rule may be in conflict with federal law and requested that the board clarify the meaning of "impaired."

Response: The board agrees in part. In relation to the concern about federal law, the phrase "physical health, mental health, medical condition" were not adopted as part of the rule. In relation to the meaning of "impaired," the board believes no clarification is necessary.

Comment: Concerning §801.142(1)(A)(ii)(III), one commenter recommended that an LMFT Associate who is not changing supervisors, but only practice locations, should not be required to report the change to the board.

Response: The board disagrees. The board believes that required reporting of both supervision and practice location for LMFT Associates is an appropriate and effective regulatory mechanism. No change was made as a result of this comment.

Comment: Concerning §801.142(1)(A)(iii)(IV), one commenter recommended that one-half of the required supervision hours should be accepted via telephone or electronic means. Additionally, the commenter recommended that the rule should specify whether the supervisor must be physically present in Texas when providing supervision via telephone or electronic means.

Response: The board is unable to make this substantive change to the rules at the time of adoption, as other stakeholders have not had an opportunity to comment on this proposal. The board agrees to work with the commenter to study these concerns in the future. No change was made as a result of this comment.

Comment: Concerning §801.142(1)(A)(iii), one commenter recommended that the rule should reflect that a supervision hour is 50 minutes in duration and that a minimum of one supervision hour should be required every two weeks.

Response: The board agrees and has added these two clarifications in §801.142(1)(A)(iii)(V) and (VI).

Comment: Concerning §801.203, one commenter recommends adding new language similar to the language in §801.204 which gives the executive director the flexibility to waive licensing prerequisites for certain applicants who hold out-of-state licenses.

Response: The board disagrees. The referenced language is statutory and applies only to military spouses, as described in new §801.204. Section 801.203 applies to out-of-state applicants who are not military spouses, which is controlled by Texas Occupations Code, §502.259. This section does not authorize the board to accept the recommendation. No change was made as a result of this comment.

Comment: Concerning §801.297(f)(1)(E), two commenters identified a typographical error in the rule.

Response: The board agrees and has changed the term "social work licensing authorities" to "marriage and family therapist licensing authorities" in renumbered §801.297(f)(5).

Comment: Concerning proposed §801.297(f)(2), one commenter expressed concerns that some of the special conditions described in the proposed rule may place the board in a potentially libelous situation.

Response: The board consulted with its legal counsel and the board disagrees that the proposed language is potentially

libelous. Upon further consideration of the rule, however, the board has determined that §801.297(f)(2) should be deleted. Subsection (f)(2) was deleted and subsection (f) was renumbered.

Concerning §801.11(h)(1)(C), §801.42(8), and §801.203(c)(2), grammatical changes were corrected.

## SUBCHAPTER A. INTRODUCTION

### 22 TAC §801.1, §801.2

#### STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Michael Miller

Chair

Texas State Board of Examiners of Marriage and Family Therapists

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For further information, please call: (512) 776-6972



## SUBCHAPTER B. THE BOARD

### 22 TAC §§801.11 - 801.19

#### STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

#### §801.11. *The Board.*

(a) **Membership.** The board is composed of nine members appointed by the governor. Four members must be selected from the general public. Five members must be eligible for licensure under the Act, at least one of whom must be a professional educator in marriage and family therapy. These members must have engaged in the practice or education of marriage and family therapy for at least five years, or have 5,000 hours of clinical experience in the practice of marriage and family therapy.

(b) **Terms.** Members of the board hold office for staggered six-year terms. Three members' terms expire February 1 of each odd-numbered year.

(c) **Vacancies.** In the event of a vacancy, the governor shall appoint a replacement who meets the qualifications of the vacated office to fill the unexpired part of the term.

(d) **Elections.** At the meeting held nearest to August 31 of each year, the board shall elect a vice-chair by a majority vote of the members present.

(e) Officers.

(1) Chair. The chair shall be appointed by the governor and will serve at the will of the governor.

(A) The chair shall preside at all meetings at which he or she is in attendance and shall perform all duties prescribed by law and board rules.

(B) The chair is authorized by the board to make minor procedural decisions regarding board activities in order to facilitate the responsiveness and effectiveness of the board. The executive director shall keep a tabulation of the minor procedural decisions and include them in the executive director's report to the board.

(C) The chair shall sign the approved minutes of each meeting.

(2) Vice-chair.

(A) The vice-chair shall perform the duties of the chair in the absence or disability of the chair.

(B) Should the office of the chair become vacant, the vice-chair shall serve until a successor is named.

(f) Committees. The chair may appoint board members to committees to assist the board in its work. All committees appointed by the chair shall consist of no more than four members and shall make reports to the board at regular meetings. The board shall direct all such reports to the executive director for distribution. The board shall appoint at least one public member to any board committee established to review a complaint filed with the board or review an enforcement action against a license holder related to a complaint filed with the board.

(g) Compensation. No member of the board may receive compensation for serving on the board. Each member is entitled to reimbursement of travel expenses for each day that the member performs functions as a member of the board.

(h) Meetings.

(1) Agendas.

(A) The executive director or the executive director's designee shall prepare and submit to each member of the board an agenda which includes items required by law, items requested by members, and other matters of board business which have been approved by the chair.

(B) The official agenda of a board meeting shall be filed with the Texas secretary of state as required by the Texas Open Meetings Act.

(C) Any individual wishing to be on the agenda to present a specified topic at a meeting of the board must provide a written request to the executive director in time to be placed on the agenda (not later than 30 days prior to the scheduled date of the meeting) which describes the topic to be addressed. The chair may limit as appropriate the time for public participation.

(2) Frequency of meetings. The board shall meet at least biannually and may meet at other times as the chair deems necessary. All meetings shall be conducted in accordance with the Texas Open Meetings Act.

(3) Attendance. If a member is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during the calendar year, unless the absence is excused by majority vote of the board, a potential ground for removal from the board may exist. The chair shall notify the governor that a potential ground for removal exists. The attendance records of the members may

be made available to the governor of the State of Texas and/or the Texas Sunset Advisory Commission.

(4) Rules of parliamentary procedure. All official decisions made by the board shall be made according to parliamentary procedure as set forth in the latest edition of Robert's Rules of Order Revised. If a question arises concerning interpretation of the latest edition of Robert's Rules of Order Revised, the chair or acting chair will make the decision.

(5) Transaction of official business. The board may transact official business only when it is a legally constituted meeting with a quorum present. Five members of the board constitute a quorum.

(i) The board shall not be bound in any way by any statement or action on the part of any board member, subcommittee member, or staff member, except when a statement or action is in pursuance of the specific instruction of the board. Board member or staff member opinions, except when a statement or action is in pursuance of the specific instructions of the board, about ethical dilemmas or practice issues should never be substituted for appropriate professional consultation or legal advice.

(j) Training. A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that meets the requirements established in the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Michael Miller

Chair

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## SUBCHAPTER C. GUIDELINES FOR PROFESSIONAL THERAPEUTIC SERVICES AND CODE OF ETHICS

### 22 TAC §§801.41 - 801.56

#### STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

#### §801.41. Purpose.

The purpose of this subchapter is to provide guidelines regarding the provision of professional therapeutic services and to establish standards of professional and ethical conduct required of a licensee.

#### §801.42. Professional Therapeutic Services.

The following are professional therapeutic services which may be provided by a Licensed Marriage and Family Therapist or a Licensed Marriage and Family Therapist Associate.

(1) Marriage and couples therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve resolution of problems associated with cohabitation and interdependence of adults living as couples through the changing life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of either partner.

(2) Sex therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies in the resolution of sexual disorders.

(3) Family therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective, and family systems methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of a family member.

(4) Child therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective and family systems methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of a child.

(5) Play therapy which utilizes systems, methods, and processes which include play and play media as the child's natural medium of self-expression, and verbal tracking of the child's play behaviors as part of the therapist's role in helping children overcome their social, emotional, and mental problems.

(6) Individual psychotherapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective and family systems methods and strategies to achieve mental, emotional, physical, social, moral, educational, spiritual, and career development and adjustment through the developmental life span. These family system approaches assist in stabilizing and alleviating mental, emotional or behavioral dysfunctions in an individual.

(7) Divorce therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive behavioral, developmental, psychodynamic, affective and family system methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of the partners.

(8) Mediation which utilizes systems, methods, and processes to facilitate resolution of disputes between two or more dissenting parties, including but not limited to any issues in divorce settlements, parenting plan modifications, parent-child conflicts, pre-marital agreements, workplace conflicts, and estate settlements. Mediation involves specialized therapeutic skills that foster cooperative problem solving, stabilization of relationships, and amicable agreements. A court appointed mediation requires a specialized training period.

(9) Group therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies

to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment throughout the life span.

(10) Chemical dependency therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective methods and strategies, and 12-step methods to promote the healing of the client.

(11) Rehabilitation therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve adjustment to a disabling condition and to reintegrate the individual into the mainstream of society.

(12) Referral services which utilizes systems methods and processes which include evaluating and identifying needs of clients to determine the advisability of referral to other specialists, and informing the client of such judgment and communicating as requested or deemed appropriate to such referral sources. This includes social studies and family assessments of the individual within the family.

(13) Diagnostic assessment which utilizes the knowledge organized in the Diagnostic and Statistical Manual of Mental Disorders (DSM) as well as the International Classification of Diseases (ICD) as part of their therapeutic role to help individuals identify their emotional, mental, and behavioral problems when necessary.

(14) Psychotherapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to assist clients in their efforts to recover from mental or emotional illness.

(15) Hypnotherapy which utilizes systems methods and processes which include the principles of hypnosis and post-hypnotic suggestion in the treatment of mental and emotional disorders and addictions.

(16) Biofeedback which utilizes systems methods and processes which include electronic equipment to monitor and provide feedback regarding the individual's physiological responses to stress. The therapist who uses biofeedback must be able to prove academic preparation and supervision in the use of the equipment as a part of the therapist's academic program or the substantial equivalent provided through continuing education.

(17) Assessment and appraisal which utilizes systems methods and processes which include formal and informal instruments and procedures, for which the therapist has received appropriate training and supervision in individual and group settings for the purposes of determining the client's strengths and weaknesses, mental condition, emotional stability, intellectual ability, interests, aptitudes, achievement level and other personal characteristics for a better understanding of human behavior, and for diagnosing mental problems.

(18) Consultation which utilizes systems, methods, and processes which include the application of specific principles and procedures in consulting to provide assistance in understanding and solving current or potential problems that the consultee may have in relation to a third party, whether individuals, groups, or organizations.

(19) Activities under the Texas Family Code, Chapter 153, Subchapter K, pertaining to parenting plan and parenting facilitator.

(20) Parent education and parent training including advice, counseling, or instructions to parents or children.

(21) Life coaching and any related techniques or modalities.

(22) Any other related services provided by a licensee.

§801.44. *Relationships with Clients.*

(a) A licensee shall provide marriage and family therapy professional services only in the context of a professional relationship.

(b) A licensee shall make known to a prospective client the important aspects of the professional relationship, including but not limited to, the licensee's status as a Licensed Marriage and Family Therapist, including any probationary status or other restrictions placed on the licensee by the board, office procedures, after-hours coverage, fees, and arrangements for payment (which might affect the client's decision to enter into the relationship).

(c) A licensee shall obtain an appropriate consent for treatment before providing professional services. A licensee shall make reasonable efforts to determine whether the conservatorship, guardianship, or parental rights of the client have been modified by a court.

(d) A licensee shall make known to a prospective client the confidential nature of the client's disclosures and the clinical record, including the legal limitations of the confidentiality of the mental health record and information.

(e) No commission or rebate or any other form of remuneration shall be given or received by a licensee for the referral of clients for professional services. A licensee employed or under contract with a chemical dependency facility or a mental health facility, shall comply with the requirements in the Texas Health and Safety Code, §164.006, relating to soliciting and contracting with certain referral sources. Compliance with the Treatment Facilities Marketing Act, Texas Health and Safety Code, Chapter 164, shall not be considered as a violation of state law regarding illegal remuneration.

(f) A licensee shall not exploit his/her position of trust with a client or former client.

(g) A licensee shall not engage in activities that seek to meet the licensee's personal needs instead of the needs of the client.

(h) A licensee shall not provide marriage and family therapy services to family members, personal friends, educational associates, business associates, or others whose welfare might be jeopardized by such a dual relationship.

(i) A licensee shall set and maintain professional boundaries with clients and former clients.

(j) A licensee may disclose confidential information to medical or law enforcement personnel if the licensee determines that there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client.

(k) In group therapy settings, the licensee shall take reasonable precautions to protect individuals from physical or emotional trauma resulting from interaction within the group.

(l) A licensee shall make a reasonable effort to avoid non-therapeutic relationships with clients or former clients. A non-therapeutic relationship is an activity initiated by either the licensee or the client for the purposes of establishing a non-therapeutic relationship. It is the responsibility of the licensee to ensure the welfare of the client if a non-therapeutic relationship arises.

(m) A licensee shall keep accurate records of therapeutic services to include, but not be limited to, dates of services, types of services, progress or case notes, and billing information for a minimum of 5 years for an adult client and 5 years beyond the age of 18 years of age for a minor.

(n) Records created by licensees during the scope of their employment by educational institutions; by federal, state, or local government agencies; or political subdivisions or programs are not required to comply with the requirements of subsection (m) of this section.

(o) A licensee shall bill clients or third parties for only those services actually rendered or as agreed to in writing.

(p) A licensee shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from it. Upon termination, if the client still requires mental health services, the licensee shall make reasonable efforts in writing to refer the client to appropriate services.

(q) A licensee who engages in interactive therapy via the telephone or internet must provide the client with his/her license number and information on how to contact the board by telephone, electronic communication, or mail, and must adhere to all other provisions of this chapter.

(r) A licensee shall only offer those services that are within his or her professional competency, and the services provided shall be within accepted professional standards of practice and appropriate to the needs of the client.

(s) A licensee shall base all services on an assessment, evaluation, or diagnosis of the client.

(t) A licensee shall evaluate a client's progress on a continuing basis to guide service delivery and will make use of supervision and consultation as indicated by the client's needs.

(u) A licensee shall not promote or encourage the illegal use of alcohol or drugs by clients.

(v) A licensee shall not knowingly offer or provide professional services to an individual concurrently receiving professional services from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent professional services, the licensee shall take immediate and reasonable action to inform the other mental health services provider.

(w) A licensee shall refrain from providing services while impaired by medication, drugs, or alcohol.

(x) Upon termination of a relationship, if professional counseling or other marriage and family therapy services are still necessary, the licensee shall take reasonable steps to facilitate the transfer to appropriate care.

(y) A licensee shall not aid or abet the unlicensed practice of marriage and family therapy services by a person required to be licensed under the Act. A licensee shall report to the board knowledge of any unlicensed practice.

(z) A licensee shall not enter into a non-professional relationship with a client's family member or any person having a personal or professional relationship with a client, if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Michael Miller  
Chair  
Texas State Board of Examiners of Marriage and Family Therapists  
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For further information, please call: (512) 776-6972

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**SUBCHAPTER D. APPLICATION PROCEDURES**

**22 TAC §§801.71 - 801.73**

**STATUTORY AUTHORITY**

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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**SUBCHAPTER E. CRITERIA FOR DETERMINING FITNESS OF APPLICANTS FOR EXAMINATION AND LICENSURE**

**22 TAC §§801.91 - 801.93**

**STATUTORY AUTHORITY**

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

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**SUBCHAPTER F. ACADEMIC REQUIREMENTS FOR EXAMINATION AND LICENSURE**

**22 TAC §§801.111 - 801.115**

**STATUTORY AUTHORITY**

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

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**SUBCHAPTER G. EXPERIENCE REQUIREMENTS FOR LICENSURE**

**22 TAC §§801.141 - 801.143**

**STATUTORY AUTHORITY**

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

*§801.142. Supervised Clinical Experience Requirements and Conditions.*

The following supervised clinical experience requirements and conditions shall apply.

(1) Supervised clinical experience accrued in Texas may only be accrued under licensure as a Licensed Marriage and Family Therapist Associate (with the exceptions noted in subparagraph (A)(i)(III) and (iii)(II) of this paragraph.

(A) The applicant must have completed a minimum of two years of work experience in marriage and family therapy services after conferral of the master's or doctoral degree in accordance with this chapter and must include the following:

(i) 3,000 hours of board-approved marriage and family therapy practice:

(I) of the 3,000 required hours, 1,500 hours must be direct clinical services, and 750 hours of the 1,500 hours shall be provided to couples or families;

(II) of the 3,000 required hours, the remaining 1,500 hours may come from related experiences that may include but

not be limited to workshops, public relations, writing case notes, consulting with referral sources, etc.;

(III) of the 3,000 hours, no more than 500 hours may be transferred from a Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) accredited doctoral program; and

(IV) the 3,000 hours cannot begin accumulating before the issuance date of the license, except as described in subclause (III) of this clause.

(ii) a board-approved Supervisory Agreement Form, which requires the following:

(I) submission of a Supervisory Agreement Form to the board which designates the supervisor and the location of practice and which must be submitted to the board with the license application along with a copy of the license certificate of the supervisor, indicating that the supervisor's license is current and the supervisor is a board-approved supervisor; or if one or more Supervisory Agreement Form(s) are submitted after licensure, submission of a Supervisory Agreement Form(s) within 60 days of commencement of supervised services, accompanied by a copy of the license certificate of the supervisor, indicating that the supervisor's license is current and the supervisor is a board-approved supervisor;

(II) official board approval of the completed Supervisory Agreement Form after submission, as evidenced by receipt of an associate license for which the application package included a completed Supervisory Agreement Form, or by written verification from the board; and

(III) submission of additional Supervisory Agreement Form(s) and verification of the supervisor's license and board-approved supervisor status to the board if there is more than one location of practice, if there is a change in practice location, or if supervisors are added or changed. Additional forms must be approved in writing by the board at the beginning of the supervision process.

(iii) at least 200 hours of board-approved supervision, which requires:

(I) at least 100 hours of individual supervision;

(II) no more than 100 hours being transferred from the graduate program;

(III) at least 50 hours of the post-graduate supervision must be individual supervision;

(IV) of the 200 hours, no more than 50 hours may be by telephonic or electronic media;

(V) a minimum of one hour of supervision every two weeks; and

(VI) a supervision hour is no less than 50 minutes.

(B) An associate may practice marriage and family therapy in any setting under supervision, such as a private practice, public or private agencies, hospitals, etc.

(C) During the post graduate supervision, both the supervisor and the associate may have disciplinary actions taken against their licenses for violations of the Act or this chapter.

(D) Supervision must be conducted under a supervision contract, which must be submitted to the board on the official form within 60 days of the initiation of supervision. The supervision contract submitted to the board must be approved by the board. Fees charged

by a supervisor during the course of supervision, which occurred without a board-approved supervision contract in place and subsequently resulted in the supervised experience hours of the supervisee being denied by the board solely on the basis that there was no board approved supervision contract in place within 60 days of the initiation of supervision, must be reimbursed to the supervisee.

(E) Group supervised experience of an associate may count toward an associate's supervision requirement only if the supervision group consisted of a minimum of three and no more than six associates during the supervision hour.

(F) Individual supervised experience of an associate may count toward the associate's supervision requirement only if the supervision consisted of no more than two associates.

(G) An associate may have no more than two board-approved supervisors at a time, unless given prior approval by the board or its designee.

(H) The associate may receive credit for up to 500 clock hours toward the required 3,000 hours of supervised clinical services by providing services via telephonic or other electronic media, as approved by the supervisor.

(2) Supervision and supervised clinical experience accrued toward licensure as a Licensed Marriage and Family Therapist in another jurisdiction are accepted by endorsement only (except as noted in paragraph (1)(A)(i)(III) and (iii)(II) of this section.

(A) It is the applicant's responsibility to ensure that supervision and supervised experience accrued in another jurisdiction is verified by the jurisdiction in which it occurred and that the other jurisdiction provides verification of supervision to the board.

(B) If an applicant has been licensed as a marriage and family therapist in a United States jurisdiction for the 5 years preceding the application, the supervised clinical experience requirements will be considered to have been met. If licensed for any other period of 5 years, the board will determine whether clinical experience requirements have been met.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER H. EXAMINATIONS

### 22 TAC §§801.171 - 801.174

#### STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.



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## SUBCHAPTER I. LICENSING

### 22 TAC §§801.201 - 801.204

#### STATUTORY AUTHORITY

The amendments and new rule are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

#### §801.203. *Provisional License.*

(a) A provisional license may be granted to a person who:

(1) is licensed or otherwise registered as a marriage and family therapist by another state or other jurisdiction, whose requirements for licensure or registration, at the time the license or registration was obtained, were substantially equivalent to the requirements set out in §801.73 of this title (relating to Required Application Materials);

(2) has successfully passed a national examination relating to marriage and family therapy or an examination approved by the board;

(3) is sponsored by a licensed marriage and family therapist in Texas with whom the provisional license holder may practice under this section;

(4) provides documentation, on board prescribed forms, of the experience requirements set out in Subchapter G of this chapter (relating to Experience Requirements for Licensure); and

(5) meets any other requirements set forth under the Act.

(b) Upon formal written request, the board may waive the requirement set out in subsection (a)(3) of this section if the board determines that compliance with subsection (a)(3) of this section would cause undue hardship to the applicant.

(c) The board shall issue a license to a holder of a provisional license if:

(1) the provisional license holder passes the examination required by Subchapter H of this chapter (relating to Licensure Examinations);

(2) the provisional license holder provides official graduate transcripts meeting the requirements set forth in Subchapter F of this chapter (relating to Academic Requirements for Examination and Licensure);

(3) the provisional license holder provides documentation, on board prescribed forms, of the experience requirements set out in Subchapter G of this chapter; and

(4) the provisional license holder meets any other requirements set forth under the Act.

(d) The board must complete the processing of a provisional license holder's application for license within 180 days after the provisional license was issued. The board may extend the 180-day deadline to allow for the receipt and tabulation of pending examination results.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER J. LICENSE RENEWAL AND INACTIVE STATUS

### 22 TAC §§801.231 - 801.237

#### STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

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## SUBCHAPTER K. CONTINUING EDUCATION REQUIREMENTS

### 22 TAC §§801.261 - 801.268

#### STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

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## SUBCHAPTER L. COMPLAINTS AND VIOLATIONS

### 22 TAC §§801.291 - 801.303

#### STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

#### §801.297. *Monitoring of Licensees.*

(a) The department shall maintain a complaint tracking system.

(b) Each licensee that has had disciplinary action taken against his or her license shall be required to submit regularly scheduled reports, if ordered by the board. The report shall be scheduled at intervals appropriate to each individual situation.

(c) The executive director or executive director's designee shall review the reports and notify the ethics committee if the requirements of the disciplinary action are not met.

(d) The ethics committee may consider more severe disciplinary proceedings if non-compliance occurs.

(e) As an alternative to the denial of a license, the board may, as a condition of initial licensure, require monitoring of a licensee who may pose a potential threat to public health or safety, regardless of whether a formal complaint has been received by the board. The board may require a licensee on monitoring status to comply with specified conditions set forth by the board. A licensee placed on this type of monitoring is not considered to have formal disciplinary action taken against their license, but must comply fully with the order of the board or face possible formal disciplinary action levied by the board. Factors that may constitute a potential threat to public health or safety may include, but are not limited to, reports of chemical abuse by a licensee, mental and/or physical health concerns, and/or criminal activity or allegations, whether pending or in final disposition by a court of law.

(f) Probation. If probation is ordered or agreed to, the following terms may be required. General conditions of probation.

(1) The licensee shall obey all federal, state and local laws and rules governing marriage and family practice in this state.

(2) Under penalty of perjury, the licensee shall submit periodic reports as the board requests on forms provided by the board, stating whether the licensee has complied with all conditions of probation.

(3) The licensee shall comply with the board's probation monitoring program.

(4) The licensee shall appear in person for interviews with the board or its designee at various intervals and with reasonable notice.

(5) If the licensee leaves this state to reside or to practice outside the state, the licensee must notify the board in writing of the dates of departure and return. Periods of practice outside this state will not count toward the time of this probationary period. The marriage and family therapist licensing authorities of the jurisdiction to which the licensee is moving or has moved must be promptly notified of the licensee's probationary status in this state. The probationary period will resume when the licensee returns to the state to reside or practice.

(6) If the licensee violates probation in any respect, the board, after giving formal notice and the opportunity to be heard, may revoke the licensee's license and/or board-approved supervisor status or take other appropriate disciplinary action. The period of probation shall be extended until the matter is final.

(7) The licensee shall promptly notify in writing all settings in which the licensee practices marriage and family therapy of his or her probationary status.

(8) While on probation, the licensee shall not act as a supervisor or gain any hours of supervised practice required for any board-issued license.

(9) The licensee is responsible for paying the costs of complying with conditions of probation.

(10) The licensee shall comply with the renewal requirements in the Act and the board rules.

(11) A licensee on probation shall not practice marriage and family therapy except under the conditions described in the probation order.

(12) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:

(A) submit one supervisory plan for each practice location to the board for approval by the board or executive director/designee within 30 days of initiating supervision;

(B) submit a current job description from the agency in which the Marriage and Family Therapist or Associate is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;

(C) ensure that the supervisor submits reports to the board on a schedule determined by the board. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and

(D) notify the board immediately if there is a disruption in the supervisory relationship or change in practice location, and submit a new supervisory plan within 30 days of the break or change in practice location.

(g) Release from Probation.

(1) If the executive director believes that a licensee has satisfied the terms of probation, the executive director shall report to the ethics committee the status of the licensee's probation.

(2) If the executive director does not believe that the licensee has successfully completed probation, the executive director shall so notify the licensee and shall refer the matter to the ethics committee for review and recommendations. The licensee shall continue supervision and all requirements set forth in the board order, including periodic reports, until the ethics committee reviews and disposes of the case.

(h) Board-Ordered Supervision.

(1) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:

(A) submit one supervisory plan for each practice location to the board for approval by the board or executive director/designee within 30 days of initiating supervision;

(B) submit a current job description from the agency in which the marriage and family therapist or associate is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;

(C) ensure that the supervisor submits reports to the board on a schedule determined by the board. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and

(D) notify the board immediately if there is a disruption in the supervisory relationship or change in practice location, and submit a new supervisory plan within 30 days of the break or change in practice location.

(2) The supervisor who agrees to provide board-ordered supervision of a licensee who is under board disciplinary action must understand the board order and follow the supervision stipulations outlined in the order. The supervisor must address with the licensee those professional behaviors that led to board discipline, and must help to remediate those concerns while assisting the licensee to develop strategies to avoid repeating illegal, substandard, or unethical behaviors.

(3) Board-ordered and mandated supervision timeframes are specified in the board order.

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## SUBCHAPTER M. LICENSING OF PERSONS WITH CRIMINAL BACKGROUNDS

### 22 TAC §801.331, §801.332

#### STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

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## SUBCHAPTER N. INFORMAL CONFERENCES

### 22 TAC §801.351

#### STATUTORY AUTHORITY

The amendment is authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

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## SUBCHAPTER O. FORMAL HEARINGS

### 22 TAC §§801.361 - 801.364

#### STATUTORY AUTHORITY

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## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 169. ZONOSIS CONTROL

##### SUBCHAPTER A. RABIES CONTROL AND ERADICATION

### 25 TAC §§169.21 - 169.34

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§169.21 - 169.34, concerning the control of rabies. The amendments to §§169.22, 169.26, 169.27, 169.30, and 169.33 are adopted with changes to the proposed text as published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8684). The amendments to §§169.21, 169.23 - 169.25, 169.28, 169.29, 169.31, 169.32, and 169.34 are adopted without changes and, therefore, the sections will not be republished.

#### BACKGROUND AND PURPOSE

The amendments are necessary to comply with Health and Safety Code, Chapter 826, "Rabies," §826.011, which provides the Executive Commissioner of the Health and Human Services Commission with the authority to administer the rabies control program and adopt rules necessary to effectively administer the program.

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 169.21 - 169.34 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

The amendments to §§169.21, 169.23 and 169.24 modify language to make the sections more concise and remove superfluous language.

The amendment to §169.22 updates the definitions to make them technically correct.

The amendment to §169.25 clarifies the type of exposure and adds a legal citation.

The amendment to §169.26 clarifies facility and animal care requirements and provides succinct descriptions.

The amendment to §169.27 clarifies language relating to rabies exposure and animal quarantine and disposition, plus reformats current language to establish a smoother reading transition.

The amendment to §169.28 clarifies and updates language relating to the requirements of quarantine facilities, including an explanation of how appeals are handled.

The amendment to §169.29 clarifies the rabies vaccination requirement and the intent of the rule.

The amendment to §169.30 modifies language pertaining to disposition of domestic animals exposed to rabies to coincide with proposed updates to definitions and to provide consistency.

The amendments to §169.31 and §169.32 clarify language pertaining to dogs and cats coming into Texas from other states and other countries and required rabies vaccination documentation.

The amendment to §169.33 modifies language pertaining to the submission of rabies specimens for laboratory examination to meet recent changes in the needs of the department's laboratory.

The amendment to §169.34 clarifies language pertaining to the statewide quarantine and the animals subject to the statewide quarantine, including updating information on associated agencies.

#### COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rule during the comment period, which the commission has reviewed and accepts. The commenters were individuals, associations, and/or groups, including the following: Texas Veterinary Medical Association, Texas Department of Agriculture, and a member of the Texas Legislature. One commenter was in agreement with the rule in its entirety. The other commenters were not against the rule in its entirety; however, they suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning the rules in general, one commenter suggested replacing the term "humanely killed" with "euthanize" to make it coincide with the updated definitions section.

Response: The commission agrees that the term "euthanize" should be used consistently. However, since this term is already used consistently throughout the rules as revised in the proposed rules, no change was made to the rules as a result of this comment.

Comment: Concerning §169.22(11), one commenter suggested removing the date for the publication of the *AVMA Guidelines on Euthanasia* and replacing it with the language, "the latest edition," making it easier for those who must comply with the definition.

Response: The commission agrees and removed the existing publication date in the text, replacing it with the respective recommended language in the rule.

Comment: One commenter suggested adding the provision of a clarifying reference to §169.27 (relating to Quarantine Method and Testing) in the definition for "observation period" in §169.22(20).

Response: The commission agrees and has added the reference.

Comment: One commenter suggested that, for clarity and accuracy, the verbiage "a whole bat or small rodent" be added to the definition of "suitable specimen" in §169.22(27).

Response: The commission agrees and has added the recommended language to the rule.

Comment: Concerning §169.26(a)(12), one commenter suggested removing the date for the publication of the *Guidelines for Standards of Care in Animal Shelters* and replacing it with the language, "the latest edition," making it easier for those who must comply with the section.

Response: The commission agrees and deleted the existing publication date in the text, replacing it with the respective recommended language to the rule.

Comment: One commenter suggested that the addition of the *Guidelines for Standards of Care in Animal Shelter* prepared by the Association of Shelter Veterinarians to the minimum standards in §169.26(a)(12) will make it difficult for shelters to attain the minimum standards because they are very ideal and are beyond the practical scope for some shelters.

Response: The commission agrees that these guidelines are ideal and would be difficult for some shelters to attain, which is why it is a "should" (recommendation) in the rule, not a "shall" or "must" (mandate). No change was made to the rule as a result of this comment.

Comment: One commenter suggested that, for grammar and consistency purposes, the word "which" be replaced with the word "that" in §169.27(a), (d) and (g).

Response: The commission agrees and has added the recommended change to the rule.

Comment: One commenter wanted to re-categorize certain animals that are defined as high risk for the transmission of rabies into a low-risk category when assessing quarantine versus testing of an animal that potentially exposed a person to rabies in §169.27(e). They requested that the following criteria be incorporated to exempt certain wildlife from having to be tested in potential exposure scenarios:

-The animal must be owned by a facility that holds an education permit authorized by Texas Parks and Wildlife in accordance with Parks and Wildlife Code, Chapter 43, Subchapter C.

-The animal receives routine vaccinations from a licensed veterinarian or a person licensed to provide vaccinations. The wildlife facility must maintain records of the vaccinations.

-The animal does not come into contact with other wildlife that are considered high risk for the transmission of rabies.

Response: The commission agrees with the concept that the commenter is trying to achieve but disagrees with the suggested language changes due to the following components:

-The suggested criterion limits an objective assessment of risk to those animals possessed under the Texas Parks and Wildlife Department (TPWD) permit. There are other entities (e.g. zoos, wildlife parks) whose animals may also be spared if qualifying criteria are met.

-The TPWD permit does not indicate reduced relative rabies risk.

-The safety and efficacy of parenteral rabies vaccination of wildlife have not been established, and no parenteral rabies vaccines are licensed for these animals.

-In Texas, rabies vaccine must be administered by or under the direct supervision of a veterinarian licensed to practice in Texas.

-Use of rabies vaccine in wildlife is "off-label" use. The veterinarian must justify off-label use of drugs and biological products. Consequently, mandating off-label use of rabies vaccine can be problematic.

-Wildlife caretakers may consult with a veterinarian who may choose to use off-label rabies vaccination in an attempt to protect the animal.

-In the context of wildlife exhibits and zoological parks, the *Compendium of Animal Rabies Control and Prevention*, which is prepared by the National Association of State Public Health Veterinarians, Inc., states that wild-caught animals susceptible to rabies should be quarantined for a minimum of 6 months to assess the possibility that the wild-caught animal was incubating rabies when captured. Personal consultation with the Centers for Disease Control and Prevention prompted extension of the 6-month (180 days) period to 200 days in the verbiage added by the commission.

The commission has incorporated verbiage to §169.27 to address this comment.

In §169.27(e), the following new language in italics was added to read as: "(e) *"Free-roaming animal" as used in this section includes animals that have been in captivity less than 200 days immediately prior to the potential exposure and those that are not in captivity. If the animal implicated in the potential exposure is a free-roaming high-risk animal, it shall be euthanatized and a suitable specimen submitted for rabies testing. If the animal implicated in the potential exposure is a high-risk animal that has been in captivity without contact with free-roaming animals for 200 days or more immediately prior to the potential exposure or is less than 200 days old, has always been in captivity without contact with free-roaming animals, and is the progeny of a dam that has been in captivity without contact with free-roaming animals for 200 days or more immediately prior to the potential exposure, the local rabies control authority shall conduct a risk assessment to gauge the probability that the animal could have been exposed to rabies and, therefore, poses a public health risk. If the probability that the animal implicated in the potential exposure could have had animal contact conducive to rabies transmission is low and the potential exposure poses a negligible public health risk, the local rabies control authority may require that the animal involved in the potential exposure be quarantined at a department-licensed quarantine facility or a veterinary clinic or confined elsewhere as deemed appropriate by the local rabies control authority for a 30-day observation period as an alternative to euthanatizing and testing. The local rabies control authority or a veterinarian must observe the animal at least on the first and last days of the quarantine or confinement that was deemed appropriate by the local rabies control authority."*

Additionally, in §169.27(h), the following new language in italics was added to read as: "(h) If the animal implicated in the potential exposure is not included in *subsection (a), (b), (c), (d), (f), or (g) of this section or the portion of subsection (e) of this section pertaining to a free-roaming high-risk animal*, the animal either will be euthanized and a suitable specimen submitted for rabies testing or the local rabies control authority may require the animal to be quarantined at a department-licensed quarantine facility or a veterinary clinic or confined elsewhere as deemed appropriate by the local rabies control authority for the 30-day observation period as an alternative to euthanizing and testing. *The local rabies control authority's decision on whether to quarantine or euthanize and test those other animals described in subsection (e) of this section will be determined by risk-assessment parameters as described in subsection (e) of this section.* If the potential rabies exposure occurs in a city or county other than where the animal's custodian resides, the animal may be transferred to a department-licensed quarantine facility or a veterinary clinic in the city or county of the custodian's residence or allowed confinement deemed appropriate if there is mutual agreement to do so between the local rabies control authorities for the city or county where the exposure occurred and where the custodian resides. During the observation period, the animal's custodian must monitor the animal's behavior and health status and immediately notify the local rabies control authority if any change is noted. *The local rabies control authority or a veterinarian must observe the animal at least on the first and last days of the quarantine or confinement that was deemed appropriate by the local rabies control authority.*"

Comment: One commenter suggested that, for consistency with other animals involved in a potential rabies exposure, an animal listed in §169.27(e), (h), and (k) should be observed by the local rabies control authority or a veterinarian at the beginning and end of the observation period.

Response: The commission agrees and has added this language.

Comment: One commenter suggested that it would be prudent to add to §169.27(m) that vaccinating animals in rabies quarantine against any disease, not just rabies, may be contraindicated because of the possibility of an adverse reaction being confused with clinical signs of rabies.

Response: The commission agrees and has added the language "or receive other vaccinations or non-essential medications that may complicate assessment of behavioral change or health status" to the rule.

Comment: One commenter suggested that, for grammar and consistency purposes, the word "which" be replaced with the word "that" in §169.30(a) and (b).

Response: The commission agrees and has added the recommended changes to the rule.

Comment: One commenter suggested that, for clarity and consistency, the verbiage "or on holidays" be added to the end of §169.33(7)(A).

Response: The commission agrees and has added the recommended language to the rule.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been re-

viewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

#### STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §826.011, which provides the department with the authority to administer the rabies control program and adopt rules necessary to effectively administer this program; §826.012, which provides that rules adopted by the department are minimum standards for rabies control; §826.042, which provides that the department shall adopt rules governing the testing of quarantined animals and the procedure for and method of quarantine; §826.045, which requires the department to adopt rules to enforce an area rabies quarantine; §826.051, which requires the department to adopt rules governing the types of facilities that may be used to quarantine or impound animals; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

#### §169.22. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Unless defined in this section, all words have definitions as provided in the Texas Health and Safety Code, §826.002.

- (1) Animal--Any mammal, domesticated or wild.
- (2) Assistance animal--An animal that is specially trained or equipped to help a person with a disability and that:
  - (A) is used by a person with a disability who has satisfactorily completed a specific course of training in the use of the animal; and
  - (B) has been trained by an organization generally recognized by agencies involved in the rehabilitation of persons with disabilities as reputable and competent to provide animals with training of this type.
- (3) Cat--Any domestic cat, excluding hybrids.
- (4) Confinement--The restriction of an animal to an area, in isolation from other animals and people, except for contact necessary for its care.
- (5) Currently vaccinated--Vaccinated and satisfying all the following criteria:
  - (A) The animal must have been vaccinated against rabies with a vaccine licensed by the United States Department of Agriculture (USDA) for that species at or after the minimum age requirement and using the recommended route of administration for the vaccine.
  - (B) At least 30 days have elapsed since the initial vaccination.
  - (C) The time elapsed since the most recent vaccination has not exceeded the recommended interval for booster vaccination as established by the manufacturer.
  - (6) Custodian--A person or agency which feeds, shelters, harbors, owns, has possession or control of, or has the responsibility to control an animal.
  - (7) Department--The Department of State Health Services.

- (8) Dog--Any domestic dog, excluding hybrids.
- (9) Domestic animal--Any animal normally adapted to live in intimate association with humans or for the advantage of humans.
- (10) Domestic ferret--Any *Mustela putorius furo*.
- (11) Euthanize--To cause the death of an animal implementing a technique that is in accordance with the methods, recommendations, and procedures prepared by the American Veterinary Medical Association (AVMA) and set forth in the latest edition of the *AVMA Guidelines on Euthanasia* and:
- (A) rapidly produces unconsciousness and death with minimal pain or distress; or
- (B) utilizes anesthesia produced by an agent that causes painless loss of consciousness and death following such loss of consciousness.
- (12) Health service region--A contiguous group of Texas counties, so designated by the Executive Commissioner of the Health and Human Services Commission.
- (13) High-risk animals--Those animals which have a high probability of transmitting rabies; they include skunks, bats, foxes, coyotes, and raccoons.
- (14) Housing facility--Any room, building, or area used to contain a primary enclosure or enclosures.
- (15) Hybrid--Any offspring of two animals of different species.
- (16) Impoundment--The collecting and confining of an animal by a government entity or government contractor pursuant to a state or local ordinance.
- (17) Impoundment facility--An enclosure or a structure in which an animal is collected or confined by a government entity or government contractor pursuant to a state or local ordinance.
- (18) Local rabies control authority--The officer designated by the municipal or county governing body under the Texas Health and Safety Code, §826.017.
- (19) Low-risk animals--Those animals which have a low probability of transmitting rabies; they include all animals of the orders Didelphimorphia, Insectivora, Rodentia, Lagomorpha, and Xenarthra.
- (20) Observation period--The time following a potential rabies exposure during which the health status of the animal responsible for the potential exposure must be monitored. The observation period for dogs, cats, and domestic ferrets (only) is 10 days (240 hours); the observation period for other animals, not including those defined as high risk, unless otherwise specified in §169.27 of this title (relating to Quarantine Method and Testing), or low risk, is 30 days. All observation periods are calculated from the time of the potential exposure.
- (21) Police service animal--An animal as defined in the Texas Penal Code, §38.151.
- (22) Potential exposure--An incident in which an animal has bitten a human or in which there is probable cause to believe that an animal has otherwise exposed a human to rabies; also referred to as a potential rabies exposure.
- (23) Primary enclosure--Any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, or hutch.

(24) Quarantine facility--A structure where animals are held for rabies observation.

(25) Quarantine period--That portion of the observation period during which an animal that has potentially exposed a human to rabies is under physical confinement for observation as provided for in §169.27 of this title.

(26) Sanitize--To make visibly clean followed by the use of a disinfectant to destroy disease-producing agents.

(27) Suitable Specimen--For rabies testing, a whole bat or small rodent, a head with brain and brain stem intact, or a complete transverse cross section of the brain stem and tissue from at least one of the following: cerebellum and/or hippocampus.

(28) Unowned animal--Any animal for which a custodian has not been identified.

(29) Vaccinated--Properly administered by or under the direct supervision of a veterinarian with a rabies vaccine licensed for use in that species by the USDA.

(30) Veterinarian--A person licensed to practice veterinary medicine in the United States.

(31) Zoonosis Control Branch--The branch within the department to which the responsibility for administering this subchapter is assigned.

§169.26. *Facilities for the Quarantining or Impounding of Animals.*

(a) Generally.

(1) Structural strength. Housing facilities shall be structurally sound and shall be maintained in good repair in order to protect the animals from injury, to contain them, and to prevent transmission of diseases.

(2) Water and electric power. Reliable and adequate electric power, if required to comply with other provisions of this subchapter, and adequate fresh, clean water shall be available.

(3) Storage. Supplies of food and bedding shall be stored in facilities which adequately protect such supplies against infestation or contamination by vermin. Refrigeration shall be provided for supplies of perishable food. Non-perishable foods, such as dry food, do not require refrigeration. Open bags of non-perishable dry food should be sealed or stored in sealed cans, and unopened bags should be stacked on pallets or shelves with at least 12 inches of clearance between the floor and the first level to enable effective inspection and cleaning practices.

(4) Waste disposal. Provision shall be made for the removal and disposal of animal and food wastes, bedding, dead animals, and debris. Disposal facilities shall be so provided and operated as to minimize vermin infestations, odors, and disease hazards. A suitable method shall be provided to rapidly and safely remove water and other liquid waste from housing facilities. Housing facilities should be designed to have animal excreta removed through sanitary sewers, septic systems, or garbage. All closed drainage systems should be equipped with traps, vents, and acceptable drain covers to exclude rodents and prevent any backup of sewer gas and odors into the facility.

(5) Washrooms and sinks. Facilities for personal hygiene, such as washrooms, basins, or sinks, shall be provided for employees.

(6) Management. The manager of a facility should be either an individual who has satisfactorily completed an appropriate training course or a veterinarian.

(7) Records. Records shall be kept on each animal processed through the housing facility. At a minimum, the records shall document the animal's description, impoundment date, disposition

date, and method of disposition. Records shall be available for inspection by the department.

(8) Heating. Adequate shelter shall be provided to protect animals from any form of cold or inclement weather and direct effects of wind, rain, or snow. Auxiliary heat or clean, dry bedding material shall be provided any time the ambient temperature falls below 50 degrees Fahrenheit (10 degrees Celsius) when animals are present. If supplemental bedding material is used during cold weather, quantities should be adequate to prevent hypothermia as temperatures drop.

(9) Cooling and Ventilation. Adequate shelter shall be provided to protect animals from any form of overheating and direct rays of the sun. Facilities shall be provided with fresh air either by means of windows, doors, vents, fans, or air conditioning and shall be ventilated so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as fans or air conditioning, shall be provided in indoor facilities when the ambient temperature is 85 degrees Fahrenheit (29.5 degrees Celsius) or higher when animals are present.

(10) Lighting. Housing facilities shall have ample light of sufficient intensity to permit routine inspection and cleaning. Primary enclosures shall be situated to protect the animals from excessive illumination.

(11) Construction. Housing facilities must be constructed in such a manner that they will protect the animal and not create a health risk or public nuisance. The building surfaces shall be constructed and maintained so that they are impervious to moisture and may be readily sanitized. Floors shall be made of durable, nonabsorbent material.

(12) Primary enclosures. Primary enclosures should be designed based upon enclosure guidelines prepared by The Association of Shelter Veterinarians and set forth in the latest edition of the *Guidelines for Standards of Care in Animal Shelters*. Primary enclosures shall:

- (A) be structurally sound and maintained in good repair;
- (B) provide convenient access to clean food and water;
- (C) enable the animal to remain dry and clean;
- (D) be constructed and maintained so that the surfaces are impervious to moisture and may be readily sanitized;
- (E) be constructed so as to protect the animal's feet and legs from injury; and
- (F) provide sufficient space to allow each animal to make normal postural adjustments without touching the top of the enclosure, including turning freely, standing easily, sitting, stretching, moving its head, lying in a comfortable position with limbs extended, and moving and assuming a comfortable posture for feeding, drinking, urinating, and defecating.

(b) Feeding.

- (1) All food shall be free from contamination, wholesome, palatable, and of sufficient quality and nutritive value to meet the normal daily requirements for the condition, size, and age of the animal.
- (2) Dogs and cats shall be fed at least once a day or more often as appropriate for the age and condition of the animal, except as directed by a veterinarian.
- (3) Domestic ferrets shall have continuous access to food.
- (4) All other animals shall be fed appropriately as described on the packaging of a commercial, species-specific food, except as directed by a veterinarian.

(5) Food receptacles shall be accessible to all animals and shall be located so as to minimize contamination by excreta. Food receptacles shall be durable and kept clean and sanitary. Disposable food receptacles may be used but must be discarded after each feeding or, for domestic ferrets, after 24 hours of use. Self feeders may be used for feeding dry foods to animals acclimated to their use.

(c) Watering. If fresh, clean water is not accessible to all animals at all times, it shall be offered to them at least twice daily for periods of not less than one hour, except as directed by a veterinarian. Drinking bottles may be used for animals acclimated to their use. Domestic ferrets shall have fresh, clean water accessible at all times, provided in drinking bottles of appropriate size to maintain a fresh supply. Water receptacles shall be kept clean and sanitary.

(d) Sanitation.

(1) Cleaning of primary enclosures. Excreta shall be removed from primary enclosures as often as necessary to prevent contamination of the inhabitants, but not less than daily.

(2) Sanitation of primary enclosures. Cages, rooms, and pens shall be maintained in a sanitary condition.

(3) Building and premises. Building and premises shall be kept clean.

(e) Pest Control. A regular program for the control of insects, ectoparasites, and other pests shall be established and maintained. The facility shall be free of visible signs of rodents and keep other vermin infestations to a minimum at all times. Each pesticide must be used in accordance with its manufacturer's label instructions.

(f) Outdoor facilities are acceptable under this section provided those facilities meet all the requirements of this section.

(g) This section applies to all animal shelters located in counties with a population of 75,000 or greater as required by the Texas Health and Safety Code, Chapter 823, and to all quarantine or impoundment facilities regardless of county population.

§169.27. *Quarantine Method and Testing.*

(a) When a dog, cat, or domestic ferret that has bitten a human has been identified, the custodian will place the animal (regardless of its vaccination status) in quarantine as defined in the Texas Health and Safety Code, §826.002, until the end of the 10-day observation period. The animal must also be quarantined if there is probable cause to believe that it has otherwise exposed a human to rabies. The observation period will begin at the time of the exposure. The animal must be placed in a department-licensed quarantine facility specified by the local rabies control authority and observed at least twice daily. However, the local rabies control authority may allow the animal to be quarantined in a veterinary clinic. As an alternative to quarantine at a department-licensed facility or a veterinary clinic, the local rabies control authority may allow home confinement. To allow home confinement, the following criteria must be met.

(1) A secure enclosure approved by the local rabies control authority must be used to prevent escape.

(2) The animal has been vaccinated against rabies and the time elapsed since the most recent vaccination has not exceeded the manufacturer recommendations for the vaccine. If an unvaccinated animal is not over 16 weeks of age at the time of the potential exposure, it may be allowed home confinement.

(3) During the confinement period, the animal's custodian must monitor the animal's behavior and health status and immediately notify the local rabies control authority if any change is noted.



(4) The local rabies control authority or a veterinarian must observe the animal at least on the first and last days of the home confinement.

(5) The animal was not a stray as defined in the Texas Health and Safety Code, §826.002, at the time of the potential exposure.

(b) If the potential rabies exposure described in subsection (a) of this section occurs in a city or county other than where the animal's custodian resides, the animal may be transferred to a department-licensed quarantine facility or a veterinary clinic in the city or county of the custodian's residence or allowed home confinement, if applicable, if there is mutual agreement to do so between the local rabies control authorities for the city or county where the exposure occurred and where the custodian resides.

(c) The alternative to quarantining (to include home confining) a dog, cat, or domestic ferret that has bitten or otherwise potentially exposed a person to rabies as described in subsection (a) of this section is to have the animal euthanatized in such a manner that the brain is not damaged and a suitable specimen submitted to a department-designated laboratory for rabies testing. A list of department-designated laboratories may be found on the department's website or may be obtained from any of the department's regional Zoonosis Control offices.

(d) A domestic animal that has potentially exposed a human to rabies and has been designated by the local rabies control authority as unowned may be euthanatized. If the animal is euthanatized, a suitable specimen shall be submitted for rabies testing.

(e) "Free-roaming animals" as used in this section includes animals that have been in captivity less than 200 days immediately prior to the potential exposure and those that are not in captivity. If the animal implicated in the potential exposure is a free-roaming high-risk animal, it shall be euthanatized and a suitable specimen submitted for rabies testing. If the animal implicated in the potential exposure is a high-risk animal that has been in captivity without contact with free-roaming animals for 200 days or more immediately prior to the potential exposure or is less than 200 days old, has always been in captivity without contact with free-roaming animals, and is the progeny of a dam that has been in captivity without contact with free-roaming animals for 200 days or more immediately prior to the potential exposure, the local rabies control authority shall conduct a risk assessment to gauge the probability that the animal could have been exposed to rabies and, therefore, poses a public health risk. If the probability that the animal implicated in the potential exposure could have had animal contact conducive to rabies transmission is low and the potential exposure poses a negligible public health risk, the local rabies control authority may require that the animal involved in the potential exposure be quarantined at a department-licensed quarantine facility or a veterinary clinic or confined elsewhere as deemed appropriate by the local rabies control authority for a 30-day observation period as an alternative to euthanatizing and testing. The local rabies control authority or a veterinarian must observe the animal at least on the first and last days of the quarantine or confinement that was deemed appropriate by the local rabies control authority.

(f) If the animal implicated in the potential exposure is a low-risk animal, neither quarantine nor rabies testing will be required unless the local rabies control authority has cause to believe the animal is rabid, in which case it shall be euthanatized and a suitable specimen submitted for rabies testing.

(g) The local rabies control authority may require an animal that has inflicted multiple bite wounds, punctures, or lacerations to a person to be euthanatized. If the animal is euthanatized, a suitable specimen shall be submitted for rabies testing.

(h) If the animal implicated in the potential exposure is not included in subsection (a), (b), (c), (d), (f), or (g) of this section or the portion of subsection (e) of this section pertaining to a free-roaming high-risk animal, the animal either will be euthanatized and a suitable specimen submitted for rabies testing or the local rabies control authority may require the animal to be quarantined at a department-licensed quarantine facility or a veterinary clinic or confined elsewhere as deemed appropriate by the local rabies control authority for the 30-day observation period as an alternative to euthanatizing and testing. The local rabies control authority's decision on whether to quarantine or euthanatize and test those other animals described in subsection (e) of this section will be determined by risk-assessment parameters as described in subsection (e) of this section. If the potential rabies exposure occurs in a city or county other than where the animal's custodian resides, the animal may be transferred to a department-licensed quarantine facility or a veterinary clinic in the city or county of the custodian's residence or allowed confinement deemed appropriate if there is mutual agreement to do so between the local rabies control authorities for the city or county where the exposure occurred and where the custodian resides. During the observation period, the animal's custodian must monitor the animal's behavior and health status and immediately notify the local rabies control authority if any change is noted. The local rabies control authority or a veterinarian must observe the animal at least on the first and last days of the quarantine or confinement that was deemed appropriate by the local rabies control authority.

(i) Any animal required to be quarantined under this section that cannot be maintained in secure quarantine shall be euthanatized and a suitable specimen submitted for rabies testing.

(j) All laboratory specimens referred to in subsections (c) - (i) of this section shall be submitted in accordance with §169.33 of this title (relating to Submission of Specimens for Laboratory Examination).

(k) At the discretion of the local rabies control authority, assistance animals may not be required to be placed in quarantine (to include confinement) during the observation period. During the applicable observation period, the animal's custodian must monitor the animal's behavior and health status and immediately notify the local rabies control authority if any change is noted. The local rabies control authority or a veterinarian must observe the animal at least at the beginning and on the last day of the applicable observation period.

(l) Police service animals are exempted from quarantine per the Texas Health and Safety Code, §826.048, including confinement. During the applicable observation period, the animal's custodian must monitor the animal's behavior and health status and immediately notify the local rabies control authority if any change is noted.

(m) Animals should not be vaccinated against rabies or receive other vaccinations or non-essential medications that may complicate assessment of behavioral change or health status during the observation period; however, animals may be treated for medical problems that are diagnosed by a veterinarian and are not related to rabies. If the animal becomes ill during the observation period, the local rabies control authority must be notified by the person having possession of the animal.

*§169.30. Disposition of Domestic Animals Exposed to Rabies.*

(a) Not currently vaccinated animals that have been bitten by, directly exposed by physical contact with, or directly exposed to the fresh tissues of a rabid animal shall be:

(1) euthanatized; or

(2) immediately vaccinated against rabies, placed in confinement for 90 days, and given booster vaccinations during the third and eighth weeks of confinement. For young animals, additional vaccinations may be necessary to ensure that the animal receives at least

two vaccinations at or after the age prescribed by the United States Department of Agriculture (USDA) for the vaccine administered.

(b) Currently vaccinated animals that have been bitten by, directly exposed by physical contact with, or directly exposed to the fresh tissues of a rabid animal shall be:

(1) euthanized; or

(2) immediately given a booster rabies vaccination and placed in confinement for 45 days.

(c) These provisions apply only to domestic animals for which a USDA-licensed rabies vaccine is available.

(d) In situations where none of the requirements of this section are applicable, the recommendations contained in the latest edition of the publication titled *Compendium of Animal Rabies Prevention and Control*, published by the National Association of State Public Health Veterinarians, should be followed. The administration of a rabies vaccine in a species for which no licensed vaccine is available is at the discretion of the veterinarian; however, an animal receiving a rabies vaccine under these conditions will not be considered to be vaccinated against rabies virus in potential rabies exposure situations.

*§169.33. Submission of Specimens for Laboratory Examination.*

Preparation of specimens either for shipment or for personal delivery for rabies diagnosis shall include the following.

(1) Damage to the brain caused by shooting or other traumatizing procedures shall be avoided.

(2) The head of the suspect animal shall be separated from the body by a qualified person wearing appropriate personal protective equipment as soon as possible after the death of the animal. Only the head shall be submitted with the exception that whole bats and small rodents may be submitted. If only the brain is submitted rather than the entire head, the minimum tissue requirements for rabies testing are a complete transverse cross section of the brain stem and tissue from at least one of the following: cerebellum and/or hippocampus. Submissions that do not meet these tissue requirements will be considered unsatisfactory due to a lack of sufficient material.

(3) The specimen shall be immediately chilled to between 32 degrees Fahrenheit and 45 degrees Fahrenheit either in a refrigerator or by packing for shipping with sufficient amounts of refrigerants in the container; the specimen should not be frozen. When shipping, sufficient refrigerant shall be added so the specimen will remain chilled for a minimum of 48 hours. Do not use dry ice. Gel packs or similar refrigerants are recommended. Ice is not recommended.

(4) If specimens are shipped, containment in compliance with requirements in the Code of Federal Regulations (CFR), Title 49, shall be used for packing. Packing methods shall prevent leakage and provide for proper identification (such as an identification number) of the specimen.

(5) A completed department Form G-9, Rabies Submission Form, which is available at the department's Laboratory Services Section, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, is required for each specimen submitted to the department's Laboratory Services Section. Each form must contain the same identification information provided with the specimen as stated in paragraph (4) of this section. Submission form(s) shall be contained in a water-proof bag.

(6) Labeling on the outside of the shipping container shall be legible and include:

(A) name, address, and telephone number of the laboratory;

(B) name, return address, and telephone number of the shipper;

(C) language in compliance with requirements in the CFR, Title 49, pertaining to the shipment of infectious substances for diagnostic purposes; and

(D) the following information: "RABIES IDENTIFICATION TEAM, LABORATORY SERVICES SECTION - REFRIGERATE ON ARRIVAL."

(7) The following procedures are required for shipment:

(A) shipment shall be by bus or other reliable carrier; the department does not recommend the United States Postal Service. If an overnight carrier (other than bus) is used, ship the specimen such that it will arrive by Friday or delay shipment until Monday. Do not ship via overnight carrier on Friday or the day before a holiday. These services do not deliver to the department on the weekend or on holidays;

(B) a shipping receipt will be obtained and retained by the shipper;

(C) at the time of the shipment, the shipper shall notify laboratory personnel of the shipment via telephone or laboratory-approved electronic format; and

(D) the shipper shall provide the return postage (in the form of stamps, not money) if return of the shipping container is desired.

(8) Paragraphs (5) and (6) of this section apply to specimens submitted to the department's Laboratory Services Section. The appropriate form, labeling instructions, and shipping requirements for another department-designated laboratory can be obtained by contacting that laboratory; a list of these laboratories with their contact information will be maintained on the department's website.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2013.

TRD-201301069

Lisa Hernandez

General Counsel

Department of State Health Services

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Proposal publication date: November 2, 2012

For further information, please call: (512) 776-6972



## TITLE 28. INSURANCE

### PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

#### CHAPTER 166. ACCIDENT PREVENTION SERVICES

##### 28 TAC §§166.1 - 166.3, 166.5

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) adopts amendments to §§166.1, 166.3, and 166.5; and new §166.2, relating to Acci-

dent Prevention Services. The Division adopts the repeal of existing §§166.2, 166.4, and 166.6 - 166.9, which is published concurrently in this issue of the *Texas Register*. Sections 166.1 - 166.3 and 166.5 are adopted with changes to the proposed text as published in the December 14, 2012, issue of the *Texas Register* (37 TexReg 9744).

The Division published three informal drafts of the new and amended sections on the Division's website on June 8, 2012, August 17, 2012, and November 1, 2012, and received several informal comments. As a result of some of the informal comments received and other feedback from system participants, the Division made several changes to the proposal. A public hearing for the proposal was held on January 4, 2013. The public comment period closed on January 15, 2013. The Division received six public comments.

In accordance with Government Code §2001.033(a)(1), the Division's reasoned justification for these rules is set out in this order, which includes the preamble. The preamble contains a summary of the factual basis of the rules, a summary of comments received from interested parties, the names of entities who commented and whether they were in support of or in opposition to the adoption of the rules, and the reasons why the Division agrees or disagrees with the comments and recommendations.

Chapter 411 of the Labor Code, relating to Workers' Health and Safety, sets forth the requirements for accident prevention services (APS or services) in Subchapter E, §§411.061 - 411.068. These statutes require an insurance company, as a prerequisite for writing workers' compensation insurance in Texas, to maintain or provide accident prevention facilities that are adequate to provide accident prevention services required by the nature of its policyholders' operations. An insurance company is also required to use the accident prevention services in a reasonable manner to prevent injury to employees of its policyholders. These statutes provide an insurance company with some flexibility as to the method in which it provides qualified accident prevention personnel and services, but some provisions such as §411.061(b) require APS to include specific services such as training programs and other recommendations. To provide the personnel and services, an insurance company may employ qualified personnel, retain qualified independent contractors, contract with the policyholder to provide the personnel and services, or use a combination of these methods. These statutes also require an insurance company to submit to the Division at least once a year detailed information on the type of accident prevention facilities offered to its policyholders. Finally, these statutes give the Division the authority to conduct inspections to determine the adequacy of the required accident prevention services for each insurance company writing workers' compensation insurance in Texas.

Chapter 166 contains the Division's rules that implement the statutory requirements relating to accident prevention services provided by an insurance company. This chapter includes rules specifying what services an insurance company must at a minimum provide to its policyholders, rules setting out the due date and content requirements for the statutorily required annual report, and rules detailing the procedures that apply to a Division inspection of an insurance company's accident prevention services. The amendments and new §166.2 are designed to eliminate requirements that are administratively burdensome and that do not further the provision of quality accident prevention services to policyholders. These rules also give an insurance com-

pany more flexibility to efficiently and effectively deliver accident prevention services.

The Division is adopting other amendments in addition to the minimum service requirement rules. The rules delineate in §166.3 certain data that must be included in an insurance company's annual report. The amendments to §166.5 govern the Division's inspection of an insurance company's APS facilities and services. The adoption also includes relocating provisions from repealed §166.6 and §166.7 into §166.5 with some amendments to those provisions. These amendments also eliminate the mandatory requirement that the Division inspect the accident prevention services of each insurance company at least every two years.

Additionally, there have also been nonsubstantive amendments made to these sections to conform to current nomenclature, re-formatting, consistency, clarity, and editorial reasons.

The Division has changed some of the proposed language in the text of the rule by postponing the effective date of the rule from September 1, 2013 to October 1, 2013. This is necessary to provide adequate time between the date of adoption and the date the rules become effective for an insurance company to transition to the new framework. The changes introduce no new subject matter nor do the changes affect persons in addition to those subject to the proposal as published.

The effective date of the rules is October 1, 2013. The initial annual report required by §166.3(a) will be due no later than April 1, 2014. An inspection of the adequacy of an insurance company's services under the new rule will occur no sooner than 90 days after the initial annual report is received. The effective date and deadlines have been set to reduce the burden of transitioning to the new and amended rules as much as possible.

#### HOW THE SECTIONS WILL FUNCTION.

Amended Title of Chapter 166.

The adoption amends the title of Chapter 166 from "Workers' Health and Safety--Accident Prevention Services" to "Accident Prevention Services" in order to more succinctly describe the contents of the chapter.

Amended §166.1.

Adopted new §166.1 revises several definitions applicable to APS. Section 166.1(a)(1) is amended to include "information" as an element of "Accident prevention facilities" in order to include electronic correspondence. The word "maintain" is added to mirror statutory language in Labor Code §411.061(a). Amendments remove the definitions for repealed §166.1(2) "Division," §166.1(3) "Field safety representative," §166.1(4) "Loss ratio," §166.1(6) "On-site visit," and §166.1(7) "Other appropriate services" because these definitions are no longer required by the rules or are not essential for a complete understanding of the rules. The amendment to §166.1(a)(3) revises the definition of "Premium" to mirror the definition in Insurance Code §2053.001(2-a). The amendment to §166.1(a)(4) adds a definition of "Survey," which is defined as an on-site visit to a policyholder's worksite in Texas where the risk exists or the loss occurred and during which the insurance company's accident prevention personnel performs a hazard assessment of the worksite, reviews safety and health programs, and makes recommendations to assist in mitigating risks and preventing injuries and illnesses. Labor Code §411.061(b) requires a facility to include surveys, and this definition is necessary to clarify what constitutes a survey in fulfillment of that statutory duty.

## New §166.2.

New §166.2 describes what constitutes adequate APS and replaces repealed §166.4. New §166.2 eliminates some of the service requirements in §166.4 and modifies others. Elements of §166.4 that are repealed and are not carried forward in the rule include provision of services based on prescribed premium levels, loss ratios, and time frames; written solicitation of comments letters; and written notification of claims experience.

Subsection (a) requires an insurance company to maintain or provide accident prevention facilities that are adequate to provide APS required by the nature of its policyholders' operations. This rule is consistent with the statutory requirements placed upon an insurance company in Labor Code §411.061(a) and §411.068(a)(1). Subsection (a)(1) - (10) sets out the elements that must be included in an insurance company's accident prevention facilities. Subsection (a)(1) - (7) mirrors elements found in Labor Code §411.061(b)(1) - (7), which includes surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene, and industrial health services.

Subsection (a)(8) requires the facilities to include qualified accident prevention personnel. This requirement will ensure that the requisite level of APS are provided to policyholders. Consistent with Labor Code §411.063, subsection (a)(8) states that an insurance company may employ qualified personnel, retain qualified independent contractors, contract with the policyholder to provide personnel and services, or use a combination of those methods to provide qualified APS personnel and services.

Subsection (a)(9) describes the written procedures an insurance company must maintain and is similar to repealed §166.4(c)(4). Subsection (a)(9)(A) pertains to notifying policyholders of available APS. Subsection (a)(9)(B) is the same as repealed §166.4(c)(4)(A) and pertains to determining the appropriate APS for a policyholder. Subsection (a)(9)(C) is the same as repealed §166.4(c)(4)(B) and pertains to determining the specific time frame and manner for provision of service. Subsection (a)(9)(D) is the same as repealed §166.4(c)(4)(C) and pertains to the provision of training programs to policyholders. Subsection (a)(9)(E) and (F) relate to repealed §166.4(c)(4)(D) and pertain to the provision of written recommendations and reports to the policyholder, or both the policyholder and insurance company, identifying hazardous conditions and work practices on the policyholder's premises by an insurance company or an independent contractor acting on the insurance company's behalf. Subsection (a)(9)(G) requires written procedures for APS submitted on the initial annual report by an insurance company. The written procedures required by subsection (a)(9) are essential to the new regulatory framework the Division has developed because they provide an insurance company the authority and flexibility to develop its own procedures. The procedures will serve as a metric by which to assess whether an insurance company has in fact provided APS in accordance with what it has represented.

Subsection (a)(10) requires written records, reports, and evidence of all APS provided to each policyholder; this provision mirrors repealed §166.4(c)(5). The recordkeeping component of an APS program is necessary because the documents provide evidence concerning the effectiveness of and accomplishments of an insurance company's APS, as well as evidence concerning whether an insurance company has complied with applicable statutes and Division rules, its written procedures, and the information submitted on the annual report. This recordkeeping will

help both the Division and an insurance company to track compliance with all applicable requirements governing APS.

Subsection (b) implements the requirement in Labor Code §411.068(a)(2) that an insurance company utilize APS in a reasonable manner to prevent injury to the employees of its policyholders. Subsection (b) describes what the Division considers the minimum reasonable use of APS. This subsection is necessary to ensure that the end goal of accident prevention is achieved through proper utilization of services by an insurance company.

In accordance with Labor Code §411.066, subsection (b)(1) requires an insurance company to provide notice of APS and return-to-work coordination services on the information page or on the front of the policy. The rule text includes the specific language required to be in the notice. This requirement is similar to the notice requirement previously found in repealed §166.4(c)(8)(A) - (B) with modifications. The notice text includes seven elements that are required to be in an APS facility as listed in Labor Code §411.061(b)(1) - (7). Including these elements in this notice is necessary because it provides more specificity for employers regarding which services by law are available to them. Text includes an email address as contact information to assist employers in communicating with an insurance company via email. Text also includes a reference to the availability of the return-to-work reimbursement program under Labor Code §413.022, along with a telephone number and email address. The subsection implements Labor Code §413.021, which requires an insurance carrier to notify the employer of the availability of the return-to-work reimbursement program. The last sentence of notice text includes instructions to the employer on how to file a complaint with the Division should a policyholder choose to do so.

Subsection (b)(2) describes the mandatory procedure following a work-related fatality and requires an insurance company to contact a policyholder and offer a survey within seven working days of knowledge of a work-related fatality. A survey offer is not required if the fatality occurred outside of Texas or was the result of an accident on a common carrier. A survey shall be initiated within 60 days of policyholder acceptance of a survey offer. This subsection is necessary because it ensures that surveys are offered in circumstances in which they are needed, as in the case of a work-related fatality. The subsection also allows for the policyholder's participation in determining whether a survey is needed and contains an expanded time frame, which is necessary to allow for accident investigation by outside entities. This will result in a more productive survey. Proof of compliance with this requirement may take the form of a documented survey offer or other verifiable means of attempting to offer a survey to a policyholder.

Subsection (b)(3) requires an insurance company to evaluate a policyholder's need for services and is similar to repealed §166.4(c)(1)(A) - (C). The evaluation shall be conducted in accordance with the procedures developed by the insurance company under §166.2(a)(9) and must take into consideration the following criteria: generally accepted industry standards and practices governing occupational safety and health, nature of losses, frequency of claims, loss ratio, severity of claims, risk exposure, experience modifier, premium, and other relevant information. This subsection is necessary to ensure that an insurance company evaluates whether APS are necessary and does so in accordance with its written procedures. These criteria are listed so that an insurance company has proper

guidance on which specific elements out of numerous possible considerations should be analyzed during the determination of a policyholder's need. These criteria are similar to previous requirements and are commonly used in the occupational safety and health industry. The specific time frame in the subsection has been removed, and the new time frame will be established by the insurance company's written procedures.

Subsection (b)(4) requires an insurance company, after evaluating and determining the policyholder's need for services, to offer and provide all services determined to be needed within a reasonable time and in accordance with its written procedures and annual information submitted to the Division. This subsection is necessary because it will ensure that an insurance company acts upon its determination that a policyholder is in need of services and does so within a reasonable period of time. This subsection will also ensure that an insurance company meets the requirements, including deadlines, specified in its written procedures and annual information submitted under §166.3(a)(2)(G). The Division recognizes that some services do not require acceptance of an offer, such as providing a brochure or informational materials. Proof of compliance with this requirement may take the form of a documented offer or other verifiable means of attempting to offer services to a policyholder.

Subsection (b)(5) states that an insurance company shall provide service to a policyholder within 15 days of a request for service if service can be provided without conducting a survey, and within 60 days if a survey is required. This is similar to repealed §166.4(c)(2)(A). Changes have been made to track statutory language, which states that services provided must be required by the nature of a policyholder's operations. The deadline for an on-site visit has been extended from 30 days to 60 days. These deadlines are necessary to ensure that service is provided within a reasonable period of time when requested by a policyholder. These deadlines are also necessary to require an insurance company to be responsive to policyholder needs. This subsection retains provisions in repealed §166.4(c)(2)(A), which allows requested service to be provided at a later date if circumstances require and the later date is agreed upon by the policyholder. This subsection will provide flexibility for situations in which the insurance company and policyholder believe it appropriate to provide the requested service after the 15 or 60 day deadline, as applicable.

Service requirements that are part of the repealed rules, but not part of the adopted rules, are as follows: the requirement in repealed §166.4(c)(2)(B) for an on-site visit, or provision of other appropriate services, on a periodic basis and at least every 12 months based on premium and loss ratio; the requirement in repealed §166.4(c)(2)(C) for a mandatory on-site visit on a periodic basis and at least every 12 months based on premium and loss ratio; the requirement in repealed §166.4(c)(2)(E) for written solicitation of comment letters; the requirement in repealed §166.4(c)(6) for written notification at least every 12 months to each policyholder of actual claims experience; and the requirement in repealed §166.4(c)(7) for written documentation of loss analysis at least every 12 months based on premium and loss ratio.

Subsection (c) lists how the Division determines adequacy of APS, which is as follows: (1) the requirements of Chapter 166; (2) generally accepted tools and guidelines of loss control provision; (3) review of initial and subsequent reports of annual information; and (4) inspections of accident prevention services and facilities. This subsection is necessary because it informs an in-

surance company how the Division will examine the adequacy of an insurance company's APS.

Subsection (d) prohibits an insurance company from charging an additional fee for APS, and corresponds to repealed §166.4(b). This subsection does not change the former requirement. This subsection is necessary to ensure that services are made available to each and every policyholder, regardless of ability or willingness to pay an amount in addition to the premium. Subchapter E of Chapter 411 of the Labor Code imposes a duty on an insurance company regarding APS, and this duty is not conditioned on the payment of an additional fee by a policyholder.

Subsection (e) reiterates the statutory mandate placed upon an insurance company to maintain or provide APS for a policyholder. This subsection also prohibits an insurance company from soliciting or obtaining a prospective waiver from policyholders to decline APS. Subchapter E of Chapter 411 of the Labor Code requires an insurance company to maintain or provide accident prevention facilities that are adequate to provide APS required by the nature of its policyholders' operations and to use the services in a reasonable manner to prevent injury to employees of its policyholders. A prospective waiver would negate these statutory obligations for an insurance company.

Amended §166.3.

The amendment to §166.3 codifies Labor Code §411.065, which requires an insurance company to submit to the Division at least once a year detailed information on the type of accident prevention facilities offered to its policyholders. Information that Labor Code §411.065(b) requires on the annual report is (1) the amount of money spent by the insurance company on accident prevention services; (2) the number of site inspections performed; (3) APS which the insurance company contracts; (4) a breakdown of the premium size of the risks to which services were provided; (5) evidence of the effectiveness of and accomplishments in accident prevention; and (6) any additional information required by the commissioner. The Division solicits such information on the annual report to fulfill the reporting requirement in Labor Code §411.065(b) and to maintain an on-going appraisal of an insurance company's APS outside of information the Division would obtain through an inspection. Additionally, the Division can use this information to determine whether an inspection is necessary.

This rule will require each insurance company to submit an initial annual report and a subsequent annual report not later than April 1st of each calendar year. The reporting requirements in this rule have expanded upon repealed §166.3 by detailing data elements that must be included in initial and subsequent annual reports. The data elements listed in this rule include information already being provided by an insurance company on its annual report under repealed §166.2, new information tailored to the new program requirements under these rules, and information required by Labor Code §411.065(b).

Subsection (a) addresses the initial annual report, and subsection (a)(1) states that an insurance company's initial report on its accident prevention services is due not later than April 1, 2014, for an insurance company currently writing workers' compensation insurance. An insurance company that writes its first workers' compensation insurance policy after the effective date of this section must file its initial annual report not later than the effective date of its first workers' compensation insurance policy. The initial report is necessary so the Division can initiate a review of an insurance company's APS program for adequacy.

Subsection (a)(2) lists elements that must be included in the report, which are as follows: insurance company's name; group name; name, email, phone number, and mailing address of the primary loss control contact for Texas; National Association of Insurance Commissioners (NAIC) number; A.M. Best rating; changes in ownership, organizational structure, or management since the last annual report that affect the provision of APS; for each of the accident prevention services listed in §166.2(a)(1) - (7), the criteria used to determine a policyholder's need for APS, the time frame and manner of making an offer of APS, the time frame and manner of providing APS, specification of each entity that will provide APS, and the method of documentation; the manner of determining a loss ratio; personnel qualification requirements; method for assuring the provision of adequate APS by personnel; number of policies in effect; number of policies sorted by premium group that received APS; amount of money spent on APS; number of requests for APS; number of fulfilled requests for APS; number of surveys performed; number of work-related fatalities; evidence of effectiveness of APS; and an insurance company representative's contact information and certification that the report is correct and complete.

Subsection (a)(2)(A) - (E) solicits basic identification-related information about an insurance company. Subsection (a)(2)(G) - (J) relates to service guidelines, which informs the Division how an insurance company plans to assess and implement APS. The other elements solicit information regarding services provided during the previous calendar year. Subsection (a)(2)(K) - (R) pertains to an insurance company's book of business. Subsection (a)(2)(L), (M), (P), (R), and subsection (a)(2)(G)(iv) are required by Labor Code §411.065(b)(1) - (5). Much of the information solicited by the adopted subsection was previously required by the Division.

Subsection (a)(2)(F), regarding changes in ownership, specifically refers only to changes in ownership that affect the provision of APS rather than unrelated changes. Subsection (a)(2)(G)(iv) is intended to garner general information regarding whether the insurance company provided services, contracted with a third party to provide services, or contracted with the policyholder to provide services, rather than the specific name of every individual working for each entity that provided services. Subsection (a)(2)(R) corresponds to Labor Code §411.065(b)(5) and solicits, for example, the following types of information: total number of new workers' compensation claims opened (not by injury date), total amount paid on workers' compensation claims, total amount of workers' compensation reserves being held on December 31, total number of work-related fatalities incurred by policyholders, or other information that the insurance company determines will provide evidence of effectiveness of and accomplishments in accident prevention. These data elements are necessary to adequately inform the Division about an insurance company's provision of services.

Subsection (b) lists requirements for a subsequent annual report submitted by an insurance company. Subsection (b)(1) corresponds to repealed §166.3(a) - (b), and requires that the annual report on APS be filed no later than April 1 of each calendar year. Subsection (b)(2) specifies the format and manner of the report, and corresponds to repealed §166.3(c). As specified by subsection (b)(2)(A) - (F), a subsequent report must include: the insurance company's name; group name; contact information for the primary loss control contact; NAIC number; information from §166.3(a)(2)(E) - (R) that has changed since the previous annual report; and an insurance company representative's contact information and certification that the report is correct and com-

plete. The annual report should contain information from January 1 through December 31 of the previous year. Amendments to the annual reporting requirements are necessary so the Division has access to information needed to effectively evaluate an insurance company's performance as it relates to APS and determine if an inspection is necessary.

Subsection (c) corresponds to repealed §166.3(e) and prohibits inclusion of the expense or cost of an underwriting visit to a policyholder's premises unless APS are provided during the visit.

Subsection (d) requires an insurance company that is resuming writing workers' compensation insurance in Texas and has not written workers' compensation insurance with exposures in Texas for 12 months or more to submit an initial annual report not later than the effective date of its first workers' compensation policy. Repealed §166.2(b) only required an insurance company to notify the Division within 60 days of writing its first new policy. The adopted subsection requires submittal of an initial annual report. This provision is necessary because it affords the Division the opportunity to make a determination of adequacy based on sufficient information.

Subsection (e) clarifies that a report is considered filed with the Division only if it contains all the required, accurate data elements and is received by the Division. This subsection is necessary in order to ensure that an insurance company provides the Division with data that is complete and accurate.

Amended §166.5.

The amendment to §166.5 describes the manner in which the Division will conduct inspections to determine the adequacy of accident prevention facilities and services. Subsection (a) corresponds to both Labor Code §411.064 and repealed §166.5(a)(1), and states the Division may conduct inspections to determine the adequacy of an insurance company's APS.

Subsection (a)(1) concerns frequency of inspections and differs from repealed §166.5(a)(1), which required an inspection at least every two years. The adopted subsection requires one initial inspection and allows additional inspections, but does not require at least one inspection every two years. This amendment is consistent with the statutory authority in Labor Code §411.064, which allows the Division to conduct inspections to determine the adequacy of the APS for each insurance company writing workers' compensation insurance in Texas. Subsection (a)(2) mirrors language in repealed §166.5(a)(2) and allows affiliated companies of an insurer to be inspected together if they share the same facilities, programs, and personnel. Subsection (a)(3) states the Division shall notify the insurance company in writing at least 90 days prior to an inspection, and the notice shall include the site of inspection. This differs from repealed §166.5(a)(3), which required the Division to mail the notice at least 60 days prior to an inspection. The Division is increasing the length of time by 30 days to give an insurance company additional time to make arrangements for the inspection. Removing the requirement for the Division to mail the notice affords it the opportunity to provide the notice electronically. Subsection §166.5(a)(4) states the Division may conduct unannounced on-site visits in accordance with §180.4 of this title (relating to Monitoring and Enforcement). This provision is necessary to reflect in this subsection the Division's authority set out in Labor Code §414.005 and §180.4 of this title to conduct unannounced on-site visits when reviewing the operations of a person regulated by the Division.

The amendment to subsection (b) replaces language from repealed subsection (b)(1)(A) concerning agreement by the Divi-

sion and insurance company as to the site of inspection with language indicating the decision is within the Division's discretion. Subsection (b)(2) removes the option of conducting the inspection at an agreed location if the insurance company has no office in Texas, and clarifies that the Division's Austin headquarters, either in person or via electronic means, is the second option for site of inspection. The amendment to §166.5(b) removes the option of inspecting an insurance company's APS at a location outside the state of Texas on a reimbursement basis. These amendments are necessary to eliminate inefficiencies in the inspection process.

Provisions in repealed §166.6 and §166.7 have been amended and moved to subsections (c) - (f). This is necessary to unite two rules governing the same subject matter.

Subsection (c) corresponds to repealed §166.6(a), which relates to the pre-inspection exchange of information. Subsection (c)(1) differs from repealed §166.6(a)(1) in that the amendment requires the insurance company to provide information 60 days prior to the inspection rather than 45 days. This provision is necessary to allow the Division sufficient time to review the information submitted before the inspection occurs. This subsection also requires the information to be provided in the format and manner specified by the Division. The Division solicits information before an inspection to improve the efficiency of the inspection process. The pre-inspection exchange of information reduces time spent at an insurance company's office during the inspection and decreases associated costs for an insurance company. The Division also uses the information to determine which specific policyholder files to select for evaluation.

Subsection (c)(1)(A) lists information an insurance company must submit to the Division prior to inspection. The information must be taken from the most current records, be separated by affiliated companies, arranged in descending order by premium, and include all policies for the period of time determined by the Division. An insurance company must submit the following information to the Division under this subsection: a list of policyholders for the period of time determined by the Division by name, policy number, effective date or expiration date of the policy, premium, number of fatalities, principal Texas location, indication of whether the insurance company has contracted with the policyholder for APS, and an indication of whether the policyholder has requested APS. The last two elements, whether the insurance company has contracted with the policyholder for APS, and an indication of whether the policyholder has requested APS, are new requirements, as is the number of fatalities. The repealed subsection required the data element of "Texas locations." The adopted rule modifies the repealed subsection to require "principal Texas location." The submission of this information affords the Division the ability to narrow the scope of its inspection to those aspects of an insurance company's APS that require further analysis.

Subsection (c)(1)(B) requires an insurance company to submit to the Division a copy of all APS procedures, including any changes since the insurance company's last annual report. This subsection allows the Division to assess changes and potential impacts to the adequacy of an insurance company's APS.

Removed from the list of data that must be provided by an insurance company during the pre-inspection exchange of information is a list of the name, location, status (whether employee or contractor), and proof of qualifications of each person acting as a field safety representative for the insurance company. The data element in repealed §166.6(a)(1)(B) has been modified and

moved to subsection (d)(6) as information the Division may request during the inspection.

Subsection (c)(2) corresponds with repealed §166.6(a)(2) and states the Division shall select specific policyholder files for evaluation within 10 days of receipt of the policyholder list. The Division notifies an insurance company of the specific policyholder files it will inspect in order to facilitate a more efficient, less time-consuming review.

Subsection (c)(3) corresponds with repealed §166.6(a)(4) and requires an insurance company to prepare a worksheet for each policy selected by the Division. These amendments delineate data elements that must be included in the worksheet. The worksheet must include data elements described in subsection (c)(3)(A) - (K), which have been selected for verification of adherence to written procedures. The Division solicits this information to provide the Division inspector a detailed view of an insurance company's provision of service to a particular policyholder, as well as to monitor compliance with Chapter 166.

Most of the elements in §166.5(c)(3)(A) - (K) are currently solicited by the Division through an existing form. The subsection includes these elements as well as new elements. The subsection requires the dates of fatalities, in addition to an experience modifier and underwriting request, both of which may trigger a need for service. An insurance company's accident prevention facilities must by statute include the following services: recommendation letters, training programs, consultations, industrial hygiene services, and industrial health services.

Subsection (c)(4) corresponds to repealed §166.6(a)(5) and changes the date by which an insurance company must file completed worksheets from five days to ten days prior to the date of inspection. This change in the time frame is intended to allow the Division more time to review information and visit policyholders before an inspection.

Several elements in subsection (c) require relevant dates to be reported. However, the Division has adopted Chapter 166 to provide an insurance company the flexibility to establish in written procedures its own schedule for the provision of adequate APS to a policyholder. These amendments replace the specific time frames formerly specified by Division rule, which in turn create greater flexibility for an insurance company. The dates listed in subsection (c) will be compared to an insurance company's written procedures. These dates are essential to the Division's determination of whether services were provided in accordance with the insurance company's written procedures.

Not included in the amendments is repealed §166.6(a)(3), which requires the insurance company to provide the Division a completed Accident Prevention Services Questionnaire at least 35 days prior to the date set for inspection.

Subsection (d) lists information to be made available at the inspection and corresponds with repealed §166.6(b)(1), but changes the relevant time frame from the date of the last inspection or initiation of coverage to a time frame specified by the Division. Subsection (d)(1) - (6) includes the following elements: loss control files corresponding to the requested worksheets; a sample policy declaratory page as evidence that each policyholder has been provided the required notice; a copy of loss runs that includes the number of injuries, accident or illness types, body parts involved, injury causes, and fatalities; a copy of all documentation of services provided in accordance with adopted §166.2(b)(2) - (5); samples of policyholder training materials, audiovisual aids, and training programs; and other

information that may include, but is not limited to, records of surveys, consultations, recommendations, training provided, loss analyses, industrial health and hygiene services, return-to-work coordination services information, and the name, location, status (whether employee or contractor), and qualifications of each person that provided APS found in the loss control files being reviewed during the inspection. An insurance company must furnish the information described above because the information is necessary to the Division's determination of adequacy of APS.

Subsection (e) adds a provision stating the Division may contact a policyholder and conduct scheduled visits of a policyholder's jobsite to obtain information about an insurance company's APS. Repealed §166.7(a)(4) allowed for unscheduled inspections of policyholder jobsites. The Division uses such information to determine the effectiveness of APS as it relates to the end user of these services.

Subsection (f) corresponds with repealed §166.7(b), which relates to the written report of inspection. Subsection (f)(1) requires the Division to prepare a written report of the inspection and provide a copy to the insurance company's management and the Texas Department of Insurance, Loss Control Regulation Division. The amendment deletes the provision regarding completion of the report within 30 days of the inspection. The Division will continue to complete the report in a timely manner.

Subsection (f)(2) corresponds with repealed §166.7(b)(2) and requires the Division to include in the report a determination of adequacy with specific findings and required corrective actions in accordance with Labor Code §411.061 and §166.2. The amendment requires one of three findings for an insurance company's APS: final determination of adequacy, initial determination of inadequacy, or final determination of inadequacy. The Division includes the new option of an initial determination of inadequacy to allow an insurance company a meaningful opportunity to cure defects in its services, which may obviate the need for reinspection.

Subsection (f)(3) corresponds with repealed §166.7(b)(3) and states the Division will provide written notification to the insurance company of specific deficiencies and recommendations if the insurance company earns an initial determination of inadequacy. The subsection requires an insurance company to provide written documentation that demonstrates compliance with the Division's recommendations. The documentation must include corrective actions taken to address each finding. An insurance company may request an extension to implement the recommendations, if necessary. This subsection is necessary because it establishes a procedure that the Division will follow before it issues a final determination.

Subsection (f)(4) corresponds with repealed §166.7(b)(5) and states the Division shall issue a certificate of inspection to an insurance company whose APS is deemed adequate by inspection. Subsection (f)(5) clarifies that a certificate of inspection or reinspection may be withheld due to a final determination of inadequacy. This subsection is necessary because the Division is responsible for determining the adequacy of APS provided by the insurance company.

Subsection (g) concerning reinspections codifies Labor Code §411.064(b), and (g)(1) and states the Division shall reinspect the APS of an insurance company that received a final determination of inadequacy not earlier than the 180th day or later than the 270th day after the date the APS were determined inade-

quate by the Division. Subsection (g)(2) clarifies that information required at the time of initial inspection must also be furnished at the time of reinspection. This is necessary because a reinspection is conducted in the same manner as an initial inspection.

#### SUMMARY OF COMMENTS AND AGENCY RESPONSES

**General Comment:** A commenter states that the proposed rule should be submitted to the mayors and county judges in the State of Texas for their comment.

**Agency Response:** The Division disagrees. The Division made the proposed text available to all members of the general public in the December 14, 2012, issue of the *Texas Register* (37 TexReg 9744).

**General Comment:** A commenter requests flexibility in enforcing any time frames when there is a reasonable justification for technical non-adherence.

**Agency Response:** The Division disagrees. If an insurance company misses a deadline set forth in Division rules, this results in an administrative violation per Labor Code §415.002(20). However, in assessing an administrative penalty or sanction, the Division considers, among other criteria, demonstrated good faith of the violator and other matters that justice may require, per Labor Code §415.021(c).

**General Comment:** A commenter believes costs are likely be three to four times as high as those assumed in the Public Benefit/Cost Note, possibly into the hundreds of thousands of dollars for an insurance company, because the amount of time estimated to complete tasks does not fully take into account the effort required to track and report new data elements and the extensive review and approval processes associated with making changes to policyholder notice, including changes to country-wide forms and complying with federal law. An insurance company must rely on several types of employees other than those identified in the estimates to implement the rule changes.

**Agency Response:** The Division disagrees. The Division based its estimate on an average-sized company and used data solicited from stakeholders. This figure may be scaled up or down relative to the size and nature of each individual insurance company's operations. However, it is difficult based on the information provided in the comment to determine how an insurance company might incur costs into the hundreds of thousands of dollars to comply with the new and amended rules.

Although an insurance company may incur some up-front costs transitioning to the requirements of the adopted rules, the Division anticipates some immediate cost savings because these amendments eliminated requirements that were administratively burdensome. The Division now allows an insurance company to establish its own written procedures for the criteria and time frame for evaluating policyholder need, which was previously prescribed in repealed §166.4(c)(1). The Division no longer requires an on-site visit or other services every 12 months under repealed §166.4(c)(2)(B) - (C). The Division no longer requires a written solicitation of comments under repealed §166.4(c)(2)(E). The Division no longer requires written notification at least every 12 months to each policyholder of actual claims experience and a loss analysis under repealed §166.4(c)(6) - (7). In addition, the Division no longer automatically inspects each insurance company's APS every two years under repealed §166.5(a)(1).

Additionally, much of the information in an insurance company must provide to comply with the new and amended rules is al-



ready solicited by the Division in inspections. Therefore, costs of compliance are not as high as they appear.

General Comment: A commenter requests a Division meeting before the rules are implemented. Division management and all audit staff should participate to ensure that there is no misinterpretation of the new and amended rules. The meeting should include a discussion of how the new rules will be enforced and what is expected from insurance company loss control or risk management departments.

Agency Response: The Division agrees that a meeting held before the rules are implemented will increase stakeholder awareness. The Division will incorporate an educational component into its implementation plan for the rules, and the meeting agenda will be determined at a later time. However, it is the system participant's responsibility to comply with Chapter 166 regardless of a pre-implementation meeting.

General Comment: A commenter states that insurance companies and policyholders have reduced the number of occupational injuries in Texas. Consequently, the intense level of regulation of APS is no longer necessary.

Agency Response: The Division agrees that some of the requirements in the repealed rules are no longer necessary. Therefore, the Division has eliminated requirements in Chapter 166 that are administratively burdensome and that do not further the provision of quality APS to policyholders. These amendments reflect the Division's goal of increasing flexibility for an insurance company while carrying out the statutory requirements for APS under the Labor Code.

General Comment: Multiple commenters appreciate the Division's work on the rule amendments.

Agency Response: The Division appreciates the support.

§166.2(b)(1) Comment: Commenters state that the expanded notice language is too long to fit on the policy information page, which is where most insurance companies have placed the notice in the past. This will increase the cost of providing notice of APS to a policyholder.

Agency Response: The Division disagrees. The length of the new notice does not necessarily mean that it will not fit on each insurance company's policy information page. The space available on the policy information page varies among insurance companies. However, if the new notice does not fit on the information page, then the notice may be located on a page attached to the front of the policy. Historically, many of the insurance companies participating in the workers' compensation system have provided the APS notice on a separate page placed on the front of the policy. Therefore, costs associated with providing the required notice to policyholders will not increase for those companies.

§166.2(b)(1) Comment: A commenter recommends deleting the following sentence from the draft notice contained in the proposal:

"If (name of company) fails to respond to your request for accident prevention services or return-to-work coordination services, you may file a complaint with the TDI-DWC in writing at <http://www.tdi.texas.gov> or by mail to Texas Department of Insurance, Division of Workers' Compensation, MS-8, at 7551 Metro Center Drive, Austin, Texas 78744-1645".

Agency Response: The Division disagrees. Complaints are processed by the Division in accordance with Labor Code

§§402.023, 402.0231, and 402.0235, as well as §180.2 of this title, concerning Filing a Complaint. The notice language is necessary to adequately inform policyholders of the opportunity to file a complaint. Further, deletion of this portion of the notice does not necessarily ensure that the notice will fit on an insurance company's policy information page.

§166.2(b)(1) Comment: A commenter is not aware of any complaints or concerns expressed by policyholders regarding the notice language or requesting additional information in the notice. The commenter recommends shortening the notice language.

Agency Response: The Division disagrees. The Division is aware of instances in which an insurance company has not effectively communicated to a policyholder the availability of APS. Therefore, the Division believes changes to the notice language are appropriate to adequately inform policyholders of statutory duties placed upon an insurance company in Labor Code Chapter 411, Subchapter E, relating to Accident Prevention Services.

§166.2(b)(1) Comment: A commenter states the new wording may mislead policyholders into believing that all policyholders are entitled to surveys, recommendations, training programs, consultations, analysis of accident causes, industrial hygiene, and industrial hygiene services.

The commenter suggests the following language: "These services may, but are not required to include surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene, and industrial health services."

Agency Response: The Division disagrees. Accident prevention services must be provided as required by the nature of a policyholder's operations, as specified in Labor Code §411.061(a) and (b). Surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene, and industrial health services are required to be maintained or provided when applicable.

These rules provide the flexibility for an insurance company to determine the need for APS depending on the nature of a policyholder's operations, but the APS offered must include the statutory services, as appropriate.

§166.2(b)(1) Comment: The commenter requests that the only change to current notice language be to correct the identification of the agency from "Texas Workers Compensation Commission" to "Division of Workers Compensation".

Agency Response: The Division disagrees. The new notice language is necessary to accurately and succinctly inform a policyholder of an insurance company's statutory obligations to provide APS.

§166.2(b)(4) Comment: A commenter states that the Division should focus on whether an insurance company does the following: maintains sufficient capacity to provide APS, provides adequate notice to policyholders of availability or service, and responds appropriately to policyholder requests for service.

The commenter recommends deleting the words "and provide" from the rule. The commenter states that forcing unwanted service upon a policyholder would create an unproductive, adversarial relationship between the policyholder and its insurance company.

Agency Response: The Division disagrees. The adopted rule language refers to "all offers of services and the provision of services" instead of "offer and provide." The adopted rule language

takes into account the fact that not all offers of service will be accepted, and in such cases the provision of service is not required. As a result, unwanted services will not be forced upon a policyholder.

§166.2(b)(4) Comment: A commenter supports the language in §166.2(b)(4) that requires an insurance company to offer and provide accident prevention services to policyholders within a reasonable period of time instead of within a pre-determined number of days.

Agency Response: The Division appreciates the support.

§166.2(b)(5) Comment: A commenter suggests permitting an insurance company to provide services in response to a policyholder request under §166.2(b)(5) within a reasonable time frame, instead of within 15 days of a request, or within 60 days if a survey is required. The commenter believes this will promote uniformity within the rule. The commenter also states that a date-intensive approach to audits can obscure the mutual goal of qualitative reviews of an insurance company's provision of services.

Agency Response: The Division disagrees. The rule language states that "Services can be provided at a later date if circumstances require and the later date is agreed upon by the policyholder." This subsection provides flexibility and gives an insurance company more time to comply when necessary and when agreed upon by the policyholder.

§166.2(c) Comment: A commenter states that the preamble to the proposed rule suggests that the Division may conduct an inspection under the new rules 90 days after the initial annual report is received.

Commenters state the initial inspection should not occur sooner than 90 days after the initial annual report is reviewed by, not received by, the Division and input provided to the insurance company. A commenter states that an inspection may occur within 90 days from submission of the initial annual report.

Commenters state that at the time of the initial inspection, an insurance company will have expended significant resources to develop and implement procedures that have not been determined adequate by the Division.

Commenters request that the adoption order and a Commissioner's Bulletin outline a voluntary procedure that allows an insurance company to submit its new policies and procedures to the Division for review at any time after the effective date of the rules and prior to the filing of the initial annual report. Commenters seek qualified approval of the new procedures before filing an initial annual report.

Agency Response: The Division agrees in part. Per §166.2(c), the Division may determine adequacy of an insurance company's APS through a review of its annual report and inspections. An insurance company may solicit informal input regarding the sufficiency of its written procedures at any point after adoption of these rules up to the due date for the initial annual report on April 1, 2014. The Division intends to communicate with an insurance company that submits such information regarding its procedures prior to conducting an initial inspection under §166.5. However, the Division cannot guarantee that it will provide input to an insurance company regarding the adequacy of its initial annual report more than 90 days before the initial inspection.

The Division disagrees that the April 1, 2014, deadline for the initial annual report should be delayed further. As a matter of policy the Division has elected not to perform inspections until at least 90 days from when the initial annual report is received. The Division will take into consideration the fact that an insurance company will be submitting new procedures when the Division reviews the initial annual report and inspects the insurance company's APS. The six-month period from the adoption date to the effective date of the rules will provide an insurance company ample time to develop new written procedures and then submit the initial annual report by April 1, 2014.

§166.2(e) Comment: Commenters ask the Division to allow large, sophisticated policyholders to waive their entitlement to APS under Labor Code Chapter 411, Subchapter E. Commenters suggest conditioning the waiver on whether a policyholder's account is written on a loss-sensitive basis, whether the policyholder has actively sought a waiver from the services, and whether the policyholder has provided a written declination. Another commenter suggests conditioning waiver on thresholds applied to premium volume net worth or number of employees.

Commenters believe that the provisions in Labor Code Chapter 411, Subchapter E permit exceptions for large, sophisticated policyholders that are either providing their own APS or obtaining APS from a third party. When a policyholder secures APS through another channel, an insurance company need not provide services because no services would be required by the nature of the policyholder's operations.

Agency Response: The Division disagrees. The Division has only those powers that have been delegated to it by the Legislature. The Division has the duty to ensure that laws regarding accident prevention services are executed. The Division has not been delegated the authority to permit a waiver from entitlements specified in Labor Code Chapter 411, Subchapter E.

An insurance company must provide accident prevention services required by the nature of its policyholders' operations and when APS are implemented they must include services set forth in §411.061(b) as appropriate. This obligation is a prerequisite for writing workers' compensation in Texas. The qualifying clause "required by the nature of its policyholders' operations" cannot be interpreted to imply that the obligation to provide APS is no longer a prerequisite for writing workers' compensation insurance. The clause requires an insurance company to do the following for each of its policyholders: 1) analyze a policyholder's operations to determine which services the policyholder will require, and 2) maintain or provide facilities that are adequate to provide those particular services. To implement an APS program a facility must include surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene, and industrial health services. To expand the meaning of "required by the nature of its policyholders' operations" to the point of requiring no services at all for a policyholder would contravene the plain language of the statute, as well as thwart the overall purpose of the program.

A review of laws governing APS since 1989 demonstrates no intention on the part of the Legislature to carve out exemptions for particular insurance companies or their policyholders. During this time, the Legislature has made a number of changes to the APS statutes, which have added flexibility to and improved efficiency in the program's administration, but do not permit a waiver for an insurance company from these statutes.

An insurance company has the authority to contract with a policyholder to provide the personnel and services, such as when a large, sophisticated policyholder prefers to manage its own APS. The statutes in Chapter 411, Subchapter E, prescribe floor-level workplace safety requirements. If the assumption is that a large, sophisticated policyholder already provides these services and more, then such a policyholder need only alter its current practices to account for statutorily mandated recordkeeping and inspection requirements, which have been implemented by rule in Chapter 166. An insurance company also has the authority to contract with a third party to provide APS for a policyholder if neither the insurance company nor the policyholder elects to do so. As when a policyholder provides its own APS, the requirements in Chapter 411, Subchapter E, including the recordkeeping and inspection components, continue to apply. Specifically, the Legislature's solicitation of evidence of the effectiveness of and accomplishments in accident prevention must be fulfilled.

Given the legal posture of APS statutes, as well as a number of policy considerations and the parameters of the Administrative Procedure Act for proposing and adopting rules, the Division is unable to adopt exemptions from APS requirements for an insurance company.

§166.3(a)(2)(N) - (P) Comment: Multiple commenters state that the new reporting requirements, specifically §166.3(a)(2)(N), (O), and (P), are unnecessary and should be deleted. Commenters state that the number of reporting requirements has grown over the years. How will the new data elements improve the Division's ability to evaluate the accident prevention services of an insurance company? Commenters doubt that the majority of the new data elements could be useful in evaluating an insurance company's APS.

Commenters state that there is no documented crisis in the delivery of accident prevention services in Texas. Injury frequency and severity continue to decline in Texas. In general, new regulatory burdens should only be imposed to correct a systemic problem.

Agency Response: The Division disagrees that the new reporting requirements are unnecessary and should be deleted. Subsection 166.3(a)(2)(N) solicits the number of policyholder requests for service. Subsection 166.3(a)(2)(O) solicits the number of policyholder requests for service fulfilled. Input solicited from stakeholders during the rule development process indicates that policyholder requests are few in number. The Division considers the number of requests for service and number of requests for service fulfilled to be basic elements when evaluating the adequacy of APS. Additionally, the information required by §166.3(a)(2)(P), regarding number of surveys performed, is required by Labor Code §411.065(b)(2), and §411.061(b)(1) requires APS facilities to include surveys which are defined in §166.1 as an on-site visit. All of the data and information gathered is necessary because it assists the Division in determining whether an insurance company has maintained or provided accident prevention facilities that are adequate to provide APS required by the nature of its policyholders' operations.

§166.3(a)(2)(N) - (P) Comment: Commenters express concern about the burden of reporting the number of policyholder requests for service, number of policyholder requests for service fulfilled, and number of surveys performed. Commenter states that many accident prevention resources will be pulled from the field to focus on gathering new data elements so an insurance company can satisfy reporting requirements. Commenter expresses concern about the resources required to complete an-

nual reports, and about the burdensome new data elements applicable to all policies that will necessitate expensive reprogramming of services/claims systems.

Agency Response: The Division disagrees. The expanded reporting elements specified by comments are as follows: number of policyholder requests for service, number of policyholder requests for service fulfilled, and number of surveys performed. A tally of these three numbers can be maintained by personnel in the field while performing APS. Therefore, the Division does not anticipate that the new reporting requirements will detract from the provision of adequate APS.

§166.3(a)(2)(N) - (P) Comment: A commenter states that if the new reporting requirements are not deleted, then they should not be required until policies have been selected for audit. It would be extremely burdensome for an insurance company to collect and report this data for all policies rather than just the ones selected for audit.

Agency Response: The Division disagrees. Subsection 166.3(a)(2)(N) - (P) solicits quantitative data that describes an insurance company's provision of service in the aggregate. This information facilitates a more general assessment of adequacy of services rather than a case-by-case assessment. Therefore, soliciting this data during further evaluation of select policyholder files would not produce information responsive to a comprehensive assessment.

§166.3(b)(1) Comment: A commenter states that an insurance company should provide a copy of its annual report to the mayor and county judge of a locality where an accident occurs. The commenter urges coordination with municipalities in the adoption of health and safety codes, as well as with local emergency providers, to promote workplace safety.

Agency Response: The Division disagrees. An annual report contains information relevant to an insurance company's overall provision of APS, rather than information about its policyholders, specific workplace accidents, or coordinating with local emergency providers. Therefore, distributing annual reports to mayors and county judges will not likely enhance workplace safety. It is not clear that any benefit received from providing copies of the annual report to mayors and county judges would outweigh the new administrative burden placed upon an insurance company to comply. In addition, the Division lacks statutory authority to require an insurance company to distribute its annual report to mayors or county judges.

§166.5(c)(3)(K)(vi) - (xv) Comment: A commenter expresses concern about new data elements that an insurance company must report on worksheets prior to an inspection. A commenter requests that §166.5(c)(3)(K) be amended to eliminate the requirement that an insurance company list all dates for items (vi) through (xv). The commenter states that tracking the provision of services such as training programs would be extremely burdensome. It should be sufficient that an inspector can see service dates when reviewing reports during an audit.

Agency Response: The Division disagrees. An insurance company must track this information to meet the minimum adequacy requirements for APS in §166.3(a)(10), which consists of written records, reports, and evidence of all APS provided to each policyholder.

Because of the flexibility allowed in §166.3(a)(2)(G), APS criteria will differ from insurance company to insurance company. The Division requires that dates be reported to determine what doc-

umentation will be necessary prior to the actual date of inspection. This information also demonstrates whether an insurance company has provided service in accordance with its written procedures and annual report.

If the dates of service were not provided before the inspection, then the inspection process would be much more labor intensive. Insurance company representatives familiar with their own procedures, data systems, and documentation processes will be able to more efficiently ascertain this information than a Division inspector would. If the dates were not reported, the Division inspector would spend much more time at the insurance company's office scrutinizing policyholder files in search of pertinent information and related documentation. During the inspection, the Division may need additional resources and knowledgeable personnel from the insurance company to extract files, query data systems, or otherwise produce documentation. This would increase costs for an insurance company because it would have to dedicate more employee hours to the inspection. The result would be a less efficient inspection process for both the insurance company and the Division.

Further, a re-inspection would be more expensive because an inspection company must reimburse the Division for reasonable costs for conducting the re-inspection. Again, without providing the dates of service through the pre-inspection exchange of information, the inspection process would take more of the Division inspector's time and be more costly as a consequence.

§166.5(c)(3)(K)(xiii) - (xv) Comment: A commenter questions the benefit of requiring an insurance company to specify whether services have been provided based on an underwriting request, policyholder request, or the insurance company's internal criteria for providing service.

Agency Response: The Division disagrees. The Division uses this information to determine whether an insurance company has provided service in accordance with its written procedures and annual report and to determine the adequacy of services.

Repealed §166.7(b)(4) Comment: A commenter requests an explanation of repealed §166.7(b)(4) and confirmation that the referenced appeals process and other aspects of Chapter 415 of the Texas Workers' Compensation Act continue to apply to an insurance company providing accident prevention services.

Agency Response: The Division clarifies that an insurance company providing APS is entitled to the hearing procedures of Labor Code Chapter 415, relating to Administrative Violations, if the Division pursues enforcement action based on an inspection report or for any other reason.

Additionally, under the new framework in §166.5(f)(2), the inspection report will indicate whether the Division has issued a final determination of adequacy, a final determination of inadequacy, or an initial determination of inadequacy with regard to an insurance company's APS.

The option for an initial determination of inadequacy affords an insurance company a meaningful opportunity to cure defects in its services before the Division assigns a final determination of inadequacy and possibly takes enforcement action as a result. However, the specific procedure of §166.7(b)(4) has been repealed.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL

For: None

For, with changes: Property Casualty Insurers Association of America, American Insurance Association, Insurance Council of Texas

Against: None

Neither for or Against: One Individual, Federated Mutual Insurance Company

The amendments and new rule are adopted under Labor Code §§411.061, 411.063 - 411.068, 413.021, 414.005, 402.00116, 402.00111, 402.061, 402.00128, and 415.021. Section 411.061 requires an insurance company to maintain or provide accident prevention facilities. Sections 411.063 - 411.068 require an insurance company to provide qualified accident prevention personnel; authorize inspections of an insurance company to determine the adequacy of services provided; require an insurance company to submit information to the division; require an insurance company to provide notice of services to a policyholder; require an insurance company to use the services in a reasonable manner to prevent injury to employees of its policyholders; and provide for an administrative penalty for violation of the requirements. Section 402.00116 grants the powers and duties of chief executive and administrative officer to the Commissioner and the authority to enforce the Labor Code, Title 5, and other laws applicable to the Division or Commissioner. Section 413.021 requires an insurance carrier, with the agreement of a participating employer, to provide the employer with return-to-work coordination services. Section 413.021 also requires an insurance carrier to notify the employer of the availability of the return-to-work reimbursement program under Labor Code §413.022. Section 414.005 provides that the Commissioner is not required to announce an on-site visit in advance when conducting a review under §414.005. Section 402.00111 provides that the Commissioner shall exercise all executive authority, including rulemaking authority, under the Labor Code, Title 5. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Workers' Compensation Act. Section 402.00128 vests general operational powers to the Commissioner including the authority to delegate, and assess and enforce penalties as authorized by the Labor Code, Title 5. Section 415.021 provides for assessment of administrative penalties if a person violates, fails to comply with, or refuses to comply with a rule or the Texas Workers' Compensation Act.

§166.1. *Definitions of Terms.*

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

(1) Accident prevention facilities--All personnel, procedures, equipment, materials, documents, buildings, programs, and information necessary to maintain or provide accident prevention services to the policyholder.

(2) Nature of the policyholders' operations--Type of business or industry with specific reference to potential for accident, injury or disease determined by the standard hazards associated with the most hazardous industrial operations in which the policyholder is engaged.

(3) Premium--The amount charged for a workers' compensation insurance policy, including any endorsements, after the application of individual risk variations based on loss or expense considerations as defined by Insurance Code §2053.001(2-a).

(4) Survey--An on-site visit to a policyholder's worksite in Texas where the risk exists or the loss occurred and during which the insurance company's accident prevention personnel performs a hazard

assessment of the worksite, reviews safety and health programs, and makes recommendations to assist in mitigating risks and preventing injuries and illnesses.

(b) This section is effective October 1, 2013.

*§166.2. Adequacy of Accident Prevention Services.*

(a) Pursuant to Labor Code §411.061 and §411.068(a)(1), an insurance company writing workers' compensation insurance in Texas shall maintain or provide accident prevention facilities that are adequate to provide accident prevention services required by the nature of its policyholders' operations, and must include:

- (1) surveys;
- (2) recommendations;
- (3) training programs;
- (4) consultations;
- (5) analyses of accident causes;
- (6) industrial hygiene;
- (7) industrial health services;
- (8) qualified accident prevention personnel. To provide qualified accident prevention personnel and services, an insurance company may:
  - (A) employ qualified personnel;
  - (B) retain qualified independent contractors;
  - (C) contract with the policyholder to provide personnel and services; or
  - (D) use a combination of the methods provided in this paragraph;
- (9) written procedures. An insurance company shall maintain written procedures for:
  - (A) notifying policyholders of the availability of accident prevention services;
  - (B) determining the appropriate accident prevention services for a policyholder;
  - (C) the specific time frame and manner in which the services will be delivered to a policyholder as required by subsection (b) of this section;
  - (D) providing training programs to policyholders;
  - (E) providing written recommendations to the policyholders, which identify hazardous conditions and work practices on the policyholder's premises if the insurance company provides accident prevention services;
  - (F) providing written reports to the insurance company and policyholders, which identify hazardous conditions and work practices on the policyholder's premises if the insurance company contracts out the accident prevention services or retains qualified independent contractors; and
  - (G) items set forth in §166.3(a)(2)(G) of this title (relating to Annual Information Submitted by Insurance Companies); and
- (10) written records, reports, and evidence of all accident prevention services provided to each policyholder.

(b) Pursuant to Labor Code §411.068(a)(2), an insurance company shall utilize accident prevention services to prevent injuries to

employees of its policyholders in a reasonable manner, which at a minimum, include:

(1) Notice of availability of accident prevention services and return-to-work coordination services. An insurance company shall include a notice on the information page or on the front of the policy containing text identical to the following in at least 10-point bold type for each workers' compensation insurance policy delivered or issued for delivery in Texas: Pursuant to Texas Labor Code §411.066, (name of company) is required to notify its policyholders that accident prevention services are available from (name of company) at no additional charge. These services may include surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene, and industrial health services. (Name of company) is also required to provide return-to-work coordination services as required by Texas Labor Code §413.021 and to notify you of the availability of the return-to-work reimbursement program for employers under Texas Labor Code §413.022. If you would like more information, contact (name of company) at (telephone number) and (email address) for accident prevention services or (telephone number) and (email address) for return-to-work coordination services. For information about these requirements call the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) at 1-800-687-7080 or for information about the return-to-work reimbursement program for employers call the TDI-DWC at (512) 804-5000. If (name of company) fails to respond to your request for accident prevention services or return-to-work coordination services, you may file a complaint with the TDI-DWC in writing at <http://www.tdi.texas.gov> or by mail to Texas Department of Insurance, Division of Workers' Compensation, MS-8, at 7551 Metro Center Drive, Austin, Texas 78744-1645;

(2) Contact and surveys following fatalities. An insurance company shall contact the policyholder within seven working days of knowledge of a work-related fatality and offer a survey. Survey offers accepted by the policyholder shall be initiated by the insurance company within 60 days of policyholder acceptance of the survey offer. No offer of a survey is required if the fatality occurred outside of Texas or was the result of an accident on a common carrier, unless the fatality involves an employee of the common carrier during the course and scope of normal job duties;

(3) Insurance company evaluation of need for service. An insurance company shall evaluate a policyholder's need for services in accordance with the procedures required by subsection (a)(9) of this section taking into consideration the following criteria:

(A) generally accepted industry standards and practices governing occupational safety and health, such as: A.M. Best, North American Industry Classification System (NAICS), Bureau of Labor Statistics data, workers' compensation classification codes, occupational safety and health standards, and underwriting requests;

- (B) nature of losses;
- (C) frequency of claims;
- (D) loss ratio;
- (E) severity of claims;
- (F) risk exposure;
- (G) experience modifier;
- (H) premium; and
- (I) any other information relevant under the circumstances;

(4) Services offered and provided by an insurance company. After evaluating and determining the policyholder's need for

services, all offers of services and the provision of services shall be rendered to a policyholder within a reasonable period of time and in accordance with the insurance company's written procedures under this section and their annual information submitted under §166.3(a)(2)(G) of this title; and

(5) Services requested by a policyholder. Notwithstanding any other provision of this section, an insurance company shall provide to each policyholder accident prevention services required by the nature of their policyholders' operations within 15 days from the date of a policyholder request for services, if appropriate services can be provided without conducting a survey; and within 60 days from the date of a policyholder request, if a survey is required. Services can be provided at a later date if circumstances require and the later date is agreed upon by the policyholder.

(c) The division may determine adequacy of an insurance company's accident prevention services in accordance with the requirements of this chapter and generally accepted tools and guidelines of loss control provision and through:

(1) review of the initial and subsequent reports of annual information, as required by §166.3 of this title; and

(2) inspections, as specified in §166.5 of this title (relating to Inspections of Adequacy of Accident Prevention Facilities and Services).

(d) Accident prevention services shall be provided to policyholders at no additional charge.

(e) An insurance company shall not solicit nor obtain from its policyholders a prospective waiver declining all accident prevention services. If an insurance company, pursuant to Labor Code §411.063(a)(3), contracts with a policyholder to provide accident prevention personnel or services, this contract does not limit in any way the insurance company's authority or responsibility to comply with any statutory or regulatory requirement contained in this chapter. Insurance companies are responsible for maintaining or providing all services, including contracted services, in accordance with this chapter.

(f) This section is effective October 1, 2013.

§166.3. *Annual Information Submitted by Insurance Companies.*

(a) Initial annual report by insurance company.

(1) Not later than April 1, 2014, each insurance company writing workers' compensation insurance in Texas as of the effective date of this section shall file with the division an initial annual report on its accident prevention services. An insurance company that writes its first workers' compensation insurance policy after the effective date of this section shall file with the division an initial annual report on its accident prevention services not later than the effective date of its first workers' compensation insurance policy.

(2) An initial annual report required by this subsection shall be filed in the format and manner prescribed by the division and shall include:

(A) insurance company's name;

(B) group name;

(C) name, email, phone number, and mailing address of the primary loss control contact for Texas;

(D) National Association of Insurance Commissioners (NAIC) number;

(E) company's A.M. Best rating;

(F) changes in ownership, organizational structure, or management of the insurance company since the last annual report that affect the provision of accident prevention services;

(G) for each of the accident prevention services listed in §166.2(a)(1) - (7) of this title (relating to Adequacy of Accident Prevention Services):

(i) criteria, including the specific time frame and manner, that the insurance company will use to evaluate and determine a policyholder's need for accident prevention services required by the nature of its policyholder's operations based on frequency and severity of claims and risk exposures, including how the insurance company will ascertain the date of the final determination;

(ii) the specific time frame and manner in which an insurance company will make an offer of accident prevention services to policyholders once a determination has been made;

(iii) the specific time frame and manner in which services will be provided to policyholders;

(iv) specify each entity that will provide the services, such as the insurance company, contracted provider, or contracted policyholder; and

(v) how the provision of services to policyholders will be documented;

(H) the manner in which an insurance company determines a loss ratio;

(I) insurance company qualification requirements for employing or contracting with accident prevention personnel;

(J) method for assuring that the accident prevention personnel provide the requisite level of service to the insurance company's policyholders;

(K) total number of workers' compensation policies in effect as of December 31 of the report year;

(L) number of policies in the following premium groups that received any type of workers' compensation accident prevention services:

(i) less than \$25,000;

(ii) \$25,000 - \$100,000; and

(iii) more than \$100,000;

(M) total dollar amount spent for accident prevention services for Texas workers' compensation policyholders;

(N) number of policyholder requests for service;

(O) number of policyholder requests for service fulfilled;

(P) number of surveys performed;

(Q) number of work-related fatalities incurred by policyholders;

(R) evidence of the effectiveness of and accomplishments in accident prevention; and

(S) contact information of and certification by an insurance company representative that the information submitted under this subsection is correct and complete.

(b) Subsequent annual reports by insurance company.

(1) Subsequent to an insurance company's initial annual report under subsection (a) of this section, an insurance company shall

file with the division an annual report on its accident prevention services not later than April 1 of each calendar year.

(2) An annual report required by this subsection shall be filed with the division in the format and manner prescribed by the division and shall include the:

- (A) insurance company's name;
- (B) group name;
- (C) name, email, phone number, and mailing address of the primary loss control contact for Texas;
- (D) NAIC number;
- (E) information in subsection (a)(2)(E) - (R) of this section that has changed since the last annual report; and
- (F) contact information of and certification by an insurance company representative that the information submitted under this subsection is correct and complete.

(c) The initial and subsequent annual reports shall not include the expenses or the costs of underwriting visits to a policyholder's premises unless accident prevention services are provided during the visit. In that case, the proportionate costs of the accident prevention services may be included in the report.

(d) When resuming writing workers' compensation insurance in Texas, any insurance company that has not written workers' compensation insurance with exposures in Texas for 12 months or more shall submit, not later than the effective date of its first workers' compensation policy, the initial annual report required under this section.

(e) Insurance companies are responsible for timely and accurate reporting under this section. A report required by this section is considered filed with the division only when it accurately contains all of the required data elements and is received by the division.

(f) This section is effective October 1, 2013.

*§166.5. Inspections of Adequacy of Accident Prevention Facilities and Services.*

(a) Inspections. The division may conduct inspections to determine the adequacy of an insurance company's accident prevention services.

(1) The division will conduct an initial inspection of each insurance company's accident prevention facilities and the company's use of accident prevention services after the effective date of this section. After the initial inspection, the division may conduct an inspection of an insurance company's accident prevention facilities and the company's use of accident prevention services as often as the division considers necessary to determine compliance with this chapter.

(2) Affiliated companies of an insurer may be inspected together if the same facilities, programs, and personnel are used by each of the companies.

(3) At least 90 days prior to an inspection, the division shall notify the insurance company in writing of the inspection. The notice shall specify the location of the inspection and the date on which the inspection will occur.

(4) Notwithstanding the provisions of this section, the division may conduct unannounced on-site visits to determine compliance with the Act and division rules in accordance with the procedures governing on-site visits in Chapter 180 of this title (relating to Monitoring and Enforcement).

(b) Site of inspection. The inspection of the insurance company's accident prevention services shall take place as determined by the division at:

- (1) the insurance company office in Texas; or
  - (2) the division's Austin headquarters.
- (c) Pre-inspection exchange of information.

(1) At least 60 days prior to the date set for inspection, in the format and manner specified by the division, the insurance company shall provide to the division:

(A) a list of policyholders, for the period of time determined by the division, by policyholder name, policy number, effective date or expiration date of the policy, premium, number of fatalities, principal Texas location, indication of whether the insurance company has contracted with the policyholder for accident prevention services, and indication of whether that policyholder has requested accident prevention services. The list shall be taken from the insurance company's most current records, separated by affiliated companies, arranged in descending order by premium, and include all policies; and

(B) a copy of all accident prevention services procedures, including any changes since the insurance company's last annual report.

(2) Within 10 days of receipt of the policyholder list, the division shall select the specific policyholder files to be evaluated and notify the insurance company of those selected files.

(3) For each policy selected by the division, the insurance company shall prepare an accident prevention services worksheet in the format and manner prescribed by the division. The worksheet shall include the:

- (A) policyholder name;
- (B) policy number;
- (C) number of employees;
- (D) principal Texas office address or principal corporate office address if there is no principal Texas office address;
- (E) primary NAICS code;
- (F) A. M. Best Hazard index number;
- (G) policyholder contact person's name, phone number, and email address;
- (H) insurance company name;
- (I) effective date of the policy;
- (J) name of person completing the form and date completed;
- (K) service and loss information for policy years as requested by the division, including:
  - (i) total premium;
  - (ii) number of claims;
  - (iii) number of and dates of fatalities;
  - (iv) loss ratio;
  - (v) experience modifier;
  - (vi) surveys (list all dates);
  - (vii) recommendation letters (list all dates);
  - (viii) training programs (list all dates);

- (ix) consultations (list all dates);
- (x) analyses of accident causes (list all dates);
- (xi) industrial hygiene services (list all dates);
- (xii) industrial health services (list all dates);
- (xiii) policyholder requests (list all dates requested and dates provided);
- (xiv) underwriting requests (list all dates requested and dates provided);
- (xv) insurance company determinations in accordance with §166.2(b)(4) of this title (relating to Adequacy of Accident Prevention Services) (list all dates need for services were determined and dates offered);
- (xvi) description of policyholder operations; and
- (xvii) comments.

(4) At least 10 days prior to the date of the inspection, the insurance company shall file the completed worksheets with the division.

(d) Information to be made available at the inspection. The insurance company shall make available for the time frame specified by the division:

(1) the loss control files corresponding to the requested worksheets;

(2) a sample policy declaratory page as evidence that each policyholder has been provided the notice required by §166.2(b)(1) of this title;

(3) a copy of loss runs for each selected policyholder that includes:

- (A) number of injuries;
- (B) accident or illness types;
- (C) body parts involved;
- (D) injury causes; and
- (E) fatalities;

(4) a copy of all documentation of services provided in accordance with §166.2(b)(2) - (5) of this title.

(5) samples of policyholder training materials, audiovisual aids, and training programs; and

(6) other information requested by the division which is necessary to complete the inspection. Information requested may include, but is not limited to:

- (A) records of surveys;
- (B) consultations;
- (C) recommendations;
- (D) training provided;
- (E) loss analyses;
- (F) industrial health and hygiene services;
- (G) return-to-work coordination services information;

and

(H) the name, location, status (whether employee or contractor), and qualifications of each person that provided accident

prevention services in the loss control files being reviewed during the inspection.

(e) Insurance company policyholder visits and contacts. The division may conduct scheduled visits of the jobsite of an insurance company's policyholder and make other off-site contacts with a policyholder to obtain information about the insurance company's accident prevention facilities and use of services.

(f) Written report of inspection.

(1) The division shall prepare a written report of the inspection and shall provide a copy to the insurance company's executive management and to the Texas Department of Insurance, Loss Control Regulation Division.

(2) The inspection report shall contain the division's determination of adequacy in accordance with Labor Code §411.061 and §166.2 of this title, and include specific findings and required corrective actions. The inspection report will indicate whether the division has issued a final determination of adequacy, a final determination of inadequacy, or an initial determination of inadequacy with regard to an insurance company's accident prevention services.

(3) The division will provide written notification to the insurance company of specific deficiencies and recommendations for corrective action if it assigns an initial determination of inadequacy. Not later than the 60th day after the date of the initial inspection report, the insurance company shall provide written documentation evidencing its compliance with the division's recommendations contained in the initial inspection report. The written documentation shall detail the corrective actions being taken to address each specific finding. If the insurance company believes that it will take more than 60 days to implement the recommendations listed in the initial inspection report, it shall request an extension from the division. After the end of the correction period a final determination of adequacy or inadequacy will be assigned. The division shall provide the insurance company with notification of this final determination.

(4) The division shall issue a certificate of inspection to each insurance company after completion of an inspection in which the accident prevention services are deemed adequate.

(5) In addition to any sanction authorized by law, a final determination of inadequacy may be cause for withholding a certificate of inspection or reinspection.

(g) Reinspection.

(1) After an inspection and a final determination of inadequacy of an insurance company's accident prevention services, the division shall reinspect the accident prevention services of the insurance company not earlier than the 180th day or later than the 270th day after the date the accident prevention services were determined by the division to be inadequate.

(2) Information required under this section to be provided at the time of initial inspection is required to again be provided at the time of reinspection in accordance with the time frames established within this section.

(h) This section is effective October 1, 2013.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2013.  
TRD-201301053



Dirk Johnson  
General Counsel  
Texas Department of Insurance, Division of Workers' Compensation  
Effective date: October 1, 2013  
Proposal publication date: December 14, 2012  
For further information, please call: (512) 804-4703



## CHAPTER 166. WORKERS' HEALTH AND SAFETY--ACCIDENT PREVENTION SERVICES

### 28 TAC §§166.2, 166.4, 166.6 - 166.9

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) adopts the repeal of §§166.2, 166.4, and 166.6 - 166.9, concerning Accident Prevention Services (APS or services). The repeal is necessary for clarity and consistency with new §166.2 and amended §§166.1, 166.3, and 166.5, concerning APS, which are published concurrently in this issue of the *Texas Register*. The repeal of §§166.2, 166.4, 166.6, and 166.7 is adopted due to reorganization, re-codification, and updates to APS requirements contained in Chapter 166. The repeal of §166.8 and §166.9 is due to the repeal of Labor Code §411.062 by House Bill 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005 (HB 7).

The Division published three informal drafts of the repealed sections on the Division's website on June 8, 2012, August 17, 2012, and November 1, 2012, and received several informal comments. The repeals were proposed in the *Texas Register* (37 TexReg 9756) on December 14, 2012. A public hearing for the proposal was held on January 4, 2013. The public comment period closed on January 15, 2013. The Division received one public comment. The Division made no changes to the repeal as a result of the comment. Changes made to new §166.2 and amended §§166.1, 166.3, and 166.5, which are published concurrently in this issue of the *Texas Register*, are discussed more fully in the preamble to those sections.

In accordance with Government Code §2001.033(a)(1), the Division's reasoned justification for these repeals is set out in this order, which includes the preamble. The preamble contains a summary of the factual basis of the repealed rules, a summary of comments received from interested parties, the names of entities who commented and whether they were in support of or in opposition to the adoption of the repeals, and the reasons why the Division agrees or disagrees with the comments and recommendations.

Chapter 411 of the Labor Code, relating to Workers' Health and Safety, sets forth the requirements for APS in Subchapter E, §411.061 - 411.068. These statutes require an insurance company, as a prerequisite for writing workers' compensation insurance in Texas, to maintain or provide accident prevention facilities that are adequate to provide accident prevention services required by the nature of its policyholders' operations. An insurance company is also required to use APS in a reasonable manner to prevent injury to employees of its policyholders. These statutes provide an insurance company with flexibility as to the method in which it may provide qualified accident prevention personnel and services. To provide the personnel and services, an insurance company may employ qualified personnel, retain qualified independent contractors, contract with the policyholder to provide the personnel and services, or use a combination of these methods. These statutes also require an insurance com-

pany to submit to the Division at least once a year detailed information on the type of accident prevention facilities offered to its policyholders. Finally, these statutes give the Division the authority to conduct inspections to determine the adequacy of the required APS for each insurance company writing workers' compensation insurance in Texas.

Chapter 166 contains the Division's rules that implement the statutory requirements relating to APS provided by an insurance company. This chapter includes rules specifying what services an insurance company must at a minimum provide to its policyholders, rules setting out the due date and content requirements for the statutorily required annual report, and rules detailing the procedures that apply to a Division inspection of an insurance company's APS. The repeal, together with the newly adopted rule and amendments to Chapter 166 also published in this issue of the *Texas Register*, are chiefly designed to remove administratively burdensome requirements that do not further the provision of quality APS to policyholders, and to give an insurance company more flexibility to efficiently and effectively use loss control resources.

This repeal becomes effective October 1, 2013, when the amended and new Chapter 166 rules become effective.

#### HOW THE SECTIONS WILL FUNCTION

##### Repealed §166.2.

Section 166.2, concerning Initial Writing and Resumption of Writing of Workers' Compensation Insurance, requires an insurance company prior to writing its initial workers' compensation insurance policy in Texas or with Texas exposure to file with the Division a plan describing the APS that the insurance company will provide. This rule requires the Division to evaluate the plan's compliance with the requirements listed in §166.4(c) and resolve any discrepancies with the insurance company. An insurance company may request a hearing at the State Office of Administrative Hearings if the insurance company disagrees with the Division's evaluation of the plan. This rule requires the Division to issue a letter of approval to the insurance company upon completion of the evaluation and successful resolution of any disputes.

This rule is repealed because the review process in this rule is replaced by provisions in new §166.2 and amended §166.3 and §166.5. Those rules are discussed in more detail in the preamble for the adoption of new and amended sections and generally require an insurance company that writes its first workers' compensation insurance policy after the effective date of those rules to file with the Division an initial annual report on its APS not later than the effective date of its first workers' compensation insurance policy. Those rules allow the Division to determine adequacy of the insurance company's APS through review of the initial reports of annual information and inspections as specified in amendments to §166.5.

##### Repealed §166.4.

Section 166.4 requires an insurance company writing workers' compensation insurance in Texas to maintain or provide accident prevention facilities and services. This rule also prescribes the service requirements an insurance company's APS program must at a minimum meet. The repeal of this rule is necessary due to new §166.2, also published in this issue of the *Texas Register*, which amends service requirements applicable to accident prevention programs.

The amendments to service requirements include retaining certain existing requirements in repealed §166.4, modifying other existing service requirements in this rule, and eliminating other service requirements. These amendments are more fully described in the preamble for new §166.2 published in this issue of the *Texas Register*.

Repealed §166.6 and §166.7.

Section 166.6 and §166.7 govern the exchange of information for the inspection of an insurance company's APS and the inspection of APS, respectively. The repeal of these sections is necessary in light of amendments that relocate these rules in §166.5, which also governs inspections of APS. The Division is also amending these relocated rules. The relocation and accompanying amendments are more fully described in the preamble for amendments to §166.5 published in this issue of the *Texas Register*.

Repealed §166.8 and §166.9.

Section 166.8 and §166.9 govern the qualification of field safety representatives and approval of occupational health and safety education programs, respectively. The repeal of these rules is necessary due to the repeal of Labor Code §411.062 by HB 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005.

Repealed Labor Code §411.062 required the Texas Workers' Compensation Commission, the Division's predecessor agency, to by rule establish qualifications for field safety representatives, which include education and experience requirements for those representatives. These rules implemented this repealed statute and are no longer necessary with its repeal by HB 7.

#### SUMMARY OF COMMENT AND AGENCY RESPONSE

Repealed §166.7(b)(4) Comment: A commenter requests an explanation of repealed §166.7(b)(4) and confirmation that the referenced appeals process and other aspects of Chapter 415 of the Texas Workers' Compensation Act continue to apply to an insurance company providing accident prevention services.

Agency Response: The Division clarifies that an insurance company providing APS is entitled to the hearing procedures of Labor Code Chapter 415, relating to Administrative Violations, if the Division pursues enforcement action based on an inspection report or for any other reason.

Additionally, under the new framework in §166.5(f)(2), the inspection report will indicate whether the Division has issued a final determination of adequacy, a final determination of inadequacy, or an initial determination of inadequacy with regard to an insurance company's APS. The option for an initial determination of inadequacy affords an insurance company a meaningful opportunity to cure defects in its services before the Division assigns a final determination of inadequacy and possibly takes enforcement action as a result. However, the specific procedure of §166.7(b)(4) has been repealed.

#### NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL

For: None

For, with changes: American Insurance Association

Against: None

Neither for or Against: None

The repeal is adopted under Labor Code §§411.061, 411.063 - 411.068, 402.00116, 402.00111, 402.061, 402.00128, and 415.021. Section 411.061 requires an insurance company to maintain or provide accident prevention facilities. Sections 411.063 - 411.068 require an insurance company to provide qualified accident prevention personnel; authorize inspections of an insurance company to determine the adequacy of services provided; require an insurance company to submit information to the division; require an insurance company to provide notice of services to a policyholder; require an insurance company to use the services in a reasonable manner to prevent injury to employees of its policyholders; and provide for an administrative penalty for violation of the requirements. Section 402.00116 grants the powers and duties of chief executive and administrative officer to the Commissioner and the authority to enforce the Labor Code, Title 5, and other laws applicable to the Division or Commissioner. Section 402.00111 provides that the Commissioner shall exercise all executive authority, including rulemaking authority, under the Labor Code, Title 5. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Workers' Compensation Act. Section 402.00128 vests general operational powers to the Commissioner including the authority to delegate, and assess and enforce penalties as authorized by the Labor Code, Title 5. Section 415.021 provides for assessment of administrative penalties if a person violates, fails to comply with, or refuses to comply with a rule or the Texas Workers' Compensation Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2013.

TRD-201301054

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

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Proposal publication date: December 14, 2012

For further information, please call: (512) 804-4703



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 1. GENERAL LAND OFFICE

#### CHAPTER 15. COASTAL AREA PLANNING

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

###### 31 TAC §15.28

The General Land Office (GLO) adopts an amendment to 31 TAC §15.28, relating to Certification Status of Town of Quintana Dune Protection and Beach Access Plan (Plan), without changes to the proposed text as published in the December 7, 2012, issue of the *Texas Register* (37 TexReg 9599). The text of the rule will not be republished.

The amendment adopts a new subsection (b) which certifies as consistent with state law the Plan, as amended by the Brazoria

County Erosion Response Plan (ERP), which was adopted by Town of Quintana on August 13, 2012 by Resolution 2012-05.

Copies of Brazoria County's ERP can be obtained by contacting Richard Hurd, Brazoria County Park Director, at (979) 864-1541; and from the GLO's Archives Division, P.O. Box 12873, Austin, Texas 78711-2873, telephone number (512) 463-5277.

#### BACKGROUND

Quintana is a coastal town located in Brazoria County and is accessible from the north via FM 1495. Quintana consists of areas bordering the City of Freeport to the northwest and southwest and the Gulf of Mexico to the south. Quintana includes approximately 2 miles of beach bordering on the Gulf of Mexico. The areas governed by the Plan include those beaches and adjacent areas bordering the Gulf of Mexico located within the town.

Pursuant to §33.607 of the Coastal Public Lands Management Act of 1973 (Texas Natural Resources Code, Chapter 33) and the Beach Dune Rules (31 TAC §15.17), Quintana has adopted an ERP and submitted it to the GLO for certification as an amendment to its Plan. Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC §15.3), a local government with jurisdiction over Gulf beaches must submit its dune protection and beach access plan and any amendments to such a plan to the GLO for certification. Quintana amended its Plan to include Brazoria County's ERP by ordinance on October 15, 2012. The GLO is required to review such plans and certify by rule those plans that are consistent with the Open Beaches Act, the Dune Protection Act, and 31 TAC Chapter 15. The certification by rule reflects the state's approval of the plan, but the text of the plan is not adopted by the GLO under 31 TAC §15.3(o)(4).

#### THE TOWN OF QUINTANA AMENDMENTS

Quintana adopted Brazoria County's ERP and submitted it to the GLO for certification as an amendment to its Plan in accordance with 31 TAC §15.17, 31 TAC §15.3(o) and Texas Natural Resources Code §33.607 and §61.011. Quintana amended its Plan by Resolution 2012-05 on August 13, 2012 to adopt Brazoria County's ERP. Based on the information provided by Quintana, the GLO has determined that the ERP is consistent with the Open Beaches Act, the Dune Protection Act, and the 31 TAC Chapter 15 and that the requirements of the ERP are incorporated into Quintana's Plan and procedures for reviewing and approving permit applications. Therefore, the GLO finds that the approved amendments to the Plan are consistent with state law and hereby approves and certifies Quintana's adoption of the ERP as an amendment to its Plan.

#### REASONED JUSTIFICATION

The justification for the adopted amendment is that implementation of an ERP will preserve and enhance dunes, which delays erosion, reduces the intensity of storm surges and increases protection for infrastructure located in coastal areas. Construction standards established in the ERP will increase protection against erosion and storms for structures located within or landward of the dune conservation area. Construction requirements will reduce loss of life and reduce public expenditures associated with damage to and loss of public infrastructure due to erosion, storm damage, and disaster response costs. The identification of restoration areas in the ERP will focus mitigation and restoration efforts in areas that may be vulnerable to storm inundation and are potential avenues for floodwaters that may cause dam-

age to public infrastructure and private properties. The setback line in the ERP allows for the formation of dunes, which maintains a natural buffer against normal storm tides, and allows dune processes to function with minimal disturbance to the dune system and property owners. Preservation of and improvements to fore-dune ridges protect existing structures and properties against damage from storm surge and reduce the possibility of structures becoming located on state-owned submerged lands, which results in a loss to landowners and increases expenditure of public funds for removal of the unauthorized structures from public beaches. Improvements to beach access points preserve public access and protect against degradation of coastal areas by erosion and storm surge.

#### SUMMARY AND RESPONSE TO COMMENTS

No public comments were received during the 30-day comment period.

#### CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The amendment to §15.28, relating to Certification Status of Town of Quintana Dune Protection and Beach Access Plan, is subject to the Coastal Management Program (CMP) goals and policies as provided in Texas Natural Resources Code §33.2053(a)(10) and §33.2051(c). The applicable CMP goals and policies are found under 31 TAC §501.12, relating to Goals, and 31 TAC §501.26, relating to Policies and Construction in the Beach/Dune System. The GLO reviewed the amendment for consistency and determined that the amendment is consistent with the Beach/Dune regulations and the applicable CMP goals and policies. No comments were received from the public or the Commissioner regarding the consistency determination. Consequently, the GLO has determined that the adopted rule amendment is consistent with the applicable CMP goals and policies.

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Natural Resources Code §33.607 and §61.011 relating to GLO's authority to adopt rules to preserve and enhance the public's right to access the public beach and reduce public expenditures from erosion and storm damage to public and private property, including public beaches.

Texas Natural Resources Code §§33.601 - 33.613 and §61.015 are affected by the adopted amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2013.

TRD-201301030

Larry Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Effective date: March 27, 2013

Proposal publication date: December 7, 2012

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



#### 31 TAC §15.37

The General Land Office (GLO) adopts amendments to 31 TAC §15.37, relating to Certification Status of City of Freeport Dune

Protection and Beach Access Plan (Plan), without changes to the proposed text as published in the December 7, 2012, issue of the *Texas Register* (37 TexReg 9601). The text of the rule will not be republished.

The amendment adopts a new subsection (b) which certifies as consistent with state law the Plan, as amended by the Brazoria County Erosion Response Plan (ERP), which was adopted by City of Freeport by ordinance on October 15, 2012.

Copies of Brazoria County's ERP can be obtained by contacting Richard Hurd, Brazoria County Park Director, at (979) 864-1541; and from the GLO's Archives Division, P.O. Box 12873, Austin, Texas 78711-2873, telephone number (512) 463-5277.

#### BACKGROUND

Freeport is a coastal city located in Brazoria County and is accessible from the north via State Highway 288 and from the southeast via State Highway 332. Freeport includes approximately 3.5 miles of beach bordering on the Gulf of Mexico. The area of beaches is bounded south from the Town of Quintana continuing to the mouth of the Brazos River. The areas governed by the Plan include those beaches and adjacent areas bordering the Gulf of Mexico located within the City.

Pursuant to §33.607 of the Coastal Public Lands Management Act of 1973 (Texas Natural Resources Code, Chapter 33) and the Beach Dune Rules (31 TAC §15.17), Freeport has adopted an ERP and submitted it to the GLO for certification as an amendment to its Plan. Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC §15.3), a local government with jurisdiction over Gulf beaches must submit its dune protection and beach access plan and any amendments to such a plan to the GLO for certification. Freeport amended its Plan to include Brazoria County's ERP by ordinance on October 15, 2012. The GLO is required to review such plans and certify by rule those plans that are consistent with the Open Beaches Act, the Dune Protection Act, and 31 TAC Chapter 15. The certification by rule reflects the state's approval of the plan, but the text of the plan is not adopted by the GLO under 31 TAC §15.3(o)(4).

#### THE CITY OF FREEPORT AMENDMENTS

Freeport adopted Brazoria County's ERP and submitted it to the GLO for certification as an amendment to its Plan in accordance with 31 TAC §15.17, 31 TAC §15.3(o) and Texas Natural Resources Code §33.607 and §61.011. Freeport amended its Plan by ordinance on October 15, 2012 to adopt Brazoria County's ERP. Based on the information provided by Freeport, the GLO has determined that the ERP is consistent with the Open Beaches Act, the Dune Protection Act, and the 31 TAC Chapter 15 and that the requirements of the ERP are incorporated into Freeport's Plan and procedures for reviewing and approving permit applications. Therefore, the GLO finds that the approved amendments to the Plan are consistent with state law and hereby approves and certifies Freeport's adoption of the ERP as an amendment to its Plan.

#### REASONED JUSTIFICATION

The justification for the adopted amendment is that implementation of an ERP will preserve and enhance dunes, which delays erosion, reduces the intensity of storm surges and increases

protection for infrastructure located in coastal areas. Construction standards established in the ERP will increase protection against erosion and storms for structures located within or landward of the dune conservation area. Construction requirements will reduce loss of life and reduce public expenditures associated with damage to and loss of public infrastructure due to erosion, storm damage, and disaster response costs. The identification of restoration areas in the ERP will focus mitigation and restoration efforts in areas that may be vulnerable to storm inundation and are potential avenues for floodwaters that may cause damage to public infrastructure and private properties. The setback line in the ERP allows for the formation of dunes, which maintains a natural buffer against normal storm tides, and allows dune processes to function with minimal disturbance to the dune system and property owners. Preservation of and improvements to fore-dune ridges protect existing structures and properties against damage from storm surge and reduce the possibility of structures becoming located on state-owned submerged lands, which results in a loss to landowners and increases expenditure of public funds for removal of the unauthorized structures from public beaches. Improvements to beach access points preserve public access and protect against degradation of coastal areas by erosion and storm surge.

#### SUMMARY AND RESPONSE TO COMMENTS

No public comments were received during the 30-day comment period.

#### CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The amendment to §15.37, relating to Certification Status of City of Freeport Dune Protection and Beach Access Plan, is subject to the Coastal Management Program (CMP) goals and policies as provided in Texas Natural Resources Code §33.2053(a)(10) and §33.2051(c). The applicable CMP goals and policies are found under 31 TAC §501.12, relating to Goals, and 31 TAC §501.26, relating to Policies and Construction in the Beach/Dune System. The GLO reviewed the amendment for consistency and determined that the amendment is consistent with the Beach/Dune regulations and the applicable CMP goals and policies. No comments were received from the public or the Commissioner regarding the consistency determination. Consequently, the GLO has determined that the adopted rule amendment is consistent with the applicable CMP goals and policies.

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Natural Resources Code §33.607 and §61.011 relating to GLO's authority to adopt rules to preserve and enhance the public's right to access the public beach and reduce public expenditures from erosion and storm damage to public and private property, including public beaches.

Texas Natural Resources Code §§33.601 - 33.613 and §61.015 are affected by the adopted amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2013.  
TRD-201301031

Larry Laine  
Chief Clerk, Deputy Land Commissioner  
General Land Office  
Effective date: March 27, 2013  
Proposal publication date: December 7, 2012  
For further information, please call: (512) 475-1859



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER A. GENERAL RULES

###### 34 TAC §3.9

The Comptroller of Public Accounts adopts an amendment to §3.9, concerning electronic filing of returns and reports; electronic transfer of certain payments by certain taxpayers, without changes to the proposed text as published in the January 25, 2013, issue of the *Texas Register* (38 TexReg 355).

Subsection (a) is revised to reflect more precisely the comptroller's current practices and procedures regarding voluntary electronic filing of returns and reports. Subsection (b), concerning the required electronic transfer of certain payments by certain taxpayers pursuant to Tax Code, §111.0625, is being revised to improve clarity, to delete a reference to assessments for the Telecommunications Infrastructure Fund, which was repealed effective September 1, 2008, and to make conforming changes required by revisions to Chapters 15 and 16 of this title.

A new subsection (c), concerning payment dates for electronic transfers of funds, is added to explain the time limitation for taxpayers to submit payment information to the comptroller using the State of Texas Financial Network (TexNet), the electronic data interchange (EDI) system, or another approved means of electronic funds transfer and to provide an updated reference to the comptroller's TexNet filing rules, found in 34 TAC §15.33. Subsection (d) is being amended to make conforming changes. No substantive changes to policy or procedure are intended as a result of new subsection (c) or the revisions to subsection (d).

Former subsection (c) is relocated to subsection (e) and is amended to improve clarity and to implement changes made to Tax Code, Chapter 151 by House Bill 11, 82nd Legislature, 2011. Tax Code, §§151.461 - 151.470 were enacted to require brewers, distributors, manufacturers, retailers, and wholesalers of alcoholic beverages to report electronically to the comptroller the monthly net sales made to each outlet or location of a retailer in this state.

Subsections (f), (g), (h), and (i), formerly subsections (e), (f), (g), and (h), are amended to make conforming changes and to improve clarity.

No comments were received regarding adoption of the amendment.

The 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, and §151.463, which pro-

vides the comptroller with the authority to adopt rules to implement Subchapter I-1.

The amendment implements Tax Code, §§111.0625, 111.0626, 112.051, 151.461 - 151.470, and 151.703.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2013.

TRD-201301002

Ashley Harden

General Counsel

Comptroller of Public Accounts

Effective date: March 26, 2013

Proposal publication date: January 25, 2013

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



### SUBCHAPTER O. STATE SALES AND USE TAX

###### 34 TAC §3.324

The Comptroller of Public Accounts adopts an amendment to §3.324, concerning oil, gas, and related well service, with changes to the proposed text as published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10122).

Subsections (b)(5) and (e)(2) and (3) are amended to reflect the new titles of §3.294 and §3.357, which are referenced therein. Subsection (h) is amended to clarify, but not change, the comptroller's existing policy that allows a well operator to claim an exemption from sales and use tax on the purchase of CO2 for stimulation and enhanced oil recovery, provided the operator issues a properly completed exemption certificate in lieu of paying the tax.

Comments were received from the State Tax Committee of the Texas Society of Certified Public Accountants expressing concern that the proposed amendments to subsection (h) did not clearly identify the circumstances under which a well operator may purchase oil soluble chemicals tax-free. To improve the clarity of this section, subsection (h)(1) has been left unamended. In addition, the amendment to subsection (h)(3) has been revised to delete the reference to oil soluble chemicals, because those items are already addressed in the unamended subsection (h)(1).

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, §151.0101.

§3.324. *Oil, Gas, and Related Well Service.*

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

(1) Oil, gas, and related well service--An activity performed for others for a consideration or compensation at any well site including an oil, gas, water disposal, or injection well.

(2) Taxable services--The total charge to repair, restore, remodel, or maintain tangible personal property or to repair, remodel, or

restore improvements to real property at a lease site. Taxable services also include, but are not limited to, real property services such as surveying and structural pest control at the lease site.

(3) Nontaxable services--The labor to start or stimulate production or the labor to work on the formation outside the well. Pumping the product is not considered to be stimulating production.

(b) Responsibilities of those providing a nontaxable well service.

(1) The labor to perform those services subject to the 2.42% oil well service tax imposed under Tax Code, Chapter 191, is not taxable under Tax Code, Chapter 151.

(2) Work performed inside the wellbore for the purpose of starting initial production or increasing production by working on the formation is not taxable. The following activities are not taxable.

(A) Fracturing (frac job)--Work done on a well using high pressure pumps to stimulate production by increasing the permeability of the producing formation. Under extremely high hydraulic pressure a fluid (water, oil, alcohol, hydrochloric acid, liquefied petroleum gas, foam) is pumped down through the tubing and forced into perforations in the casing. The fluid enters the producing formation and parts or fractures it. Sand, aluminum pellets, glass beads, or similar materials are carried in suspension into the fractures. These are propping agents. When pressure is released at the surface the frac fluid returns to the wellbore and the fractures partially close on the proppants leaving channels for oil or gas to flow through to the wellbore. The well is then ready to complete or put back on production. (See Tax Code, Chapter 191, relating to the 2.42% well servicing tax.)

(B) Perforating--A special service done by lowering into the well a perforating gun that fires electrically detonated bullets or shaped charges. The gun is controlled from the surface. The casing and cement wall are pierced to provide holes through which the contents of the formation may enter.

(C) Squeeze cement--Cementing trucks with high pressure pumps force cement slurry to a specified point in the well to cause seals at the points of squeeze. It is a secondary cementing method that is used to isolate a producing formation or seal off water. (See subsection (d)(5) of this section for the tax responsibilities to repair the casing string.)

(D) Workover--To perform one or more remedial operations when the formation has declined in production or ceased to produce, with the hope of restoring or increasing production. Workover operations can include deepening or plugging back.

(E) Acidizing--The treatment of formations by chemical reaction with acid in order to increase production. Hydrochloric or other acid is pumped into the formation under pressure causing the pore space and permeability to increase. The acid may be held under pressure for a period of time before the well is put back on production. Chemical inhibitors are combined with the acid to prevent corrosion of the pipe. (See Tax Code, Chapter 191, relating to 2.42% well servicing tax.)

(F) Logging--A device which is run into the well to record certain electrical or radioactive characteristics of the formations. The purpose of the well log is to locate, identify, and evaluate the various formations present. (See Tax Code, Chapter 191, relating to 2.42% well servicing tax.)

(G) Drilling deeper--A workover operation where the well is deepened in either the existing or another producing formation.

(H) Plug back--A workover operation placing cement in the bottom of a well for the purpose of excluding bottom water, sidetracking or producing from a formation already drilled through. A mechanical plug can be set by wireline, tubing, or drill pipe.

(I) Completion--The act of bringing a well to productive status. Numerous services are used to complete a well, including running casing, cementing, logging, perforating, fracturing, acidizing, swabbing, and other special services depending on characteristics of the formation.

(J) Plug and abandon--To set cement plugs into a well preparatory to abandonment.

(K) Pulling or resetting casing liner--A liner is any string of casing whose top is located below the surface. Liners are set for the purpose of admitting production to the bottom of the well. Pulling or resetting a liner involves moving this casing up or down the hole or pulling it out of the well.

(L) Installing a casing liner--This service is similar to that described in subparagraph (K) of this paragraph except that it involves the initial installation of the casing to the desired depth for producing the well.

(M) Drilling out a plug--The removal by drilling of the cement set as a plug in the wellbore.

(N) Putting on artificial lift (new installation)--If a well will not produce by natural energy, a method is used to lift the oil to the surface. Artificial lift systems include rod pumping, gas lifting, hydraulic pumping, and centrifugal pumping.

(O) Running a bottom hole bomb--The pressure in a well at a point opposite the producing formation is recorded by a bottom hole pressure bomb, a steel container that houses a precision pressure gauge. The bomb is lowered on a wireline.

(P) Swabbing--Operating a rubber faced cylinder up and down on a wireline to bring fluids to the surface when the well will not flow naturally. In the event an oil well does not flow after being swabbed it is necessary then to install artificial lift equipment.

(Q) Jetting--Introduction of nitrogen or other inert gases into the wellbore to enhance production or recovery. The gases have no beneficial effect on downhole equipment.

(R) Gravel packing--The installation of a screen to prevent the intrusion of formation sand into the wellbore.

(S) Hot oil treatment of formation--If a hot oil unit is used for the purpose of treating the formation, it will be considered a nontaxable service. The invoice must clearly identify the purpose of the treatment or it will be considered to be a treatment on the wellbore and taxable.

(3) The provider of a nontaxable service should pay sales tax on any machinery or equipment purchased or rented to provide the service and on any materials (except cement) used, consumed, or expended in the well.

(4) The provider of a nontaxable service may not collect sales tax from customers on any portion of the charge for service. If the provider of the service wishes to be reimbursed for sales tax paid on the purchase price of provided materials used, the tax must be included in a single charge for materials. The tax may not be separately stated.

(5) If the provider of a nontaxable service sells any materials to a customer that were not used in the well servicing, sales tax must be collected on the sales price. Any machinery or equipment transferred to the customer will be taxable to the customer if sold or rented

without an operator. Those items listed on the well service invoice as "rentals" which are so called merely because of the carry-over of the term from past industry practice are not rentals as defined in §3.294 of this title (relating to Rental and Lease of Tangible Personal Property).

(6) Direct payment permit holders should not issue direct payment exemption certificates to persons providing nontaxable services.

(7) When a direct payment permit holder is doing business with a person who may be selling taxable items as well as nontaxable services, the direct payment exemption certificate must indicate that it does not cover any nontaxable services that the servicer may provide. The issuance of a specific direct payment exemption certificate will be considered evidence of the direct payment permit holder's intent to purchase any tangible personal property transferred by the service provider rather than the purchase of a nontaxable service.

(c) Sale or rental versus service.

(1) If a company merely provides equipment and a supervisor, the presumption will be that the company is not providing services but selling or renting equipment. The charge for the supervisor's time is part of the tax base as an expense connected with the sale or rental. Mileage charges are also taxable. Equipment being incorporated into the wellbore, i.e., hanger liners, packers, plugs, etc., may be purchased tax free by issuing a resale certificate. The invoice and/or back-up work tickets must clearly indicate what is occurring.

(2) A service company must pay tax on tools and equipment used to provide a service. If a service company also rents the tools to others, sales tax must be collected on the rental price. A service company that issues a resale certificate for tools which it will rent to others must keep those tools separate from those which it uses to perform services.

(d) Responsibilities of those providing taxable services.

(1) Persons who provide taxable services must collect sales tax from their customers on the total charge (materials and labor) for the service. Charges for mileage, trip charges, standby charges, etc., connected with taxable services will also be taxable. The following activities by service companies are taxable.

(A) Pump change--Replacing bottom hole pump.

(B) Rod/tubing job--Pulling sucker rods and/or tubing out of and running it back in the well. See subsection (e)(1) of this section.

(C) Fishing for rods or tubing--When sucker rods break or part, or tubing parts, a fishing tool is run to recover the parted rods or tubing.

(D) Tubing leak--The small diameter pipe in a well that serves as conduit for the oil and gas may become worn or develop a leak. Tubing is pulled and tubing or collar replaced.

(E) Change packer or anchor--A packer is a device used to block communication through the annular space between two strings of pipe. Production packers may be retrievable or permanent. An anchor is a device that secures or fastens downhole equipment. Rods and/or tubing may be pulled to change a packer or anchor.

(F) Hot oil or water treatment of casing, tubing or flow lines--The treatment of a producing well with heated oil or water so as to melt accumulated paraffin in the annulus, tubing or surface piping (flow line) through which the oil travels from the well to storage. Special truck-mounted hot oil units heat the oil or water and pump it down the well or through the flow lines.

(2) The provider of a taxable service should pay sales tax on any machinery or equipment purchased or rented to provide the service and on any materials (except cement) used or consumed in providing the service which do not become a part of the items inside the wellbore.

(3) Those items of equipment which become a component part of the items inside the wellbore are considered to be sold as a part of the taxable service and may be purchased tax free by the provider of the taxable service. The provider of the taxable service will collect sales tax from the customer on the total charge (materials and labor) for the taxable service.

(4) On occasion, down hole services described in this subsection may be performed in order to facilitate a nontaxable service, e.g., pull tubing to perform workover. This will render the taxable service nontaxable. Any equipment incorporated into the well, in this situation, will still be considered as sold to the operator; and the operator will owe tax on the amount charged for the equipment.

(5) The labor to repair, remodel, or restore an item of real property is a taxable service. Tax is due on the total amount charged for the taxable service. The following activities are taxable.

(A) Squeeze cement--Cementing trucks with high pressure pumps force cement slurry to a specified point in the well to cause seals at the points of squeeze. It is a secondary cementing method used to repair casing leaks or damage;

(B) Pulling or resetting casing liner--Pulling or resetting a liner for the purpose of repairing the casing string.

(e) Work crews.

(1) The labor charge by persons who prepare a well for servicing will be taxable or not taxable depending on what is actually done by the provider of the service. For example, a crew removing rods so that a pump may be repaired would be providing taxable labor. A crew removing tubing so that a workover could be accomplished would not be providing taxable labor.

(2) General maintenance around a well site may be either maintenance on tangible personal property, a real property service (§3.356 of this title (relating to Real Property Service)), or a repair of an improvement to real property (§3.357 of this title (relating to Non-residential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance)) depending on the service provided. Examples of maintenance of tangible personal property include service to tanks with a capacity of 500 barrels or less, flow lines, whether above or below ground, pumps, and gauges. Examples of real property services would include structural pest control by a licensed exterminator. An example of a repair or restoration of real property would be sandblasting and repainting 1000 barrel tanks. Examples of nontaxable services performed at well sites include cutting weeds, covering oil spills and mowing grass.

(3) All welding in the field will be presumed to be taxable unless billings clearly indicate the labor was performed as part of new construction as defined in §3.357 of this title or third-party installation (initial only) of customer-owned equipment.

(f) Lost or damaged items.

(1) Any charges by the service company for items lost or damaged beyond repair while providing the well service will not be considered a sale of such items but a reimbursement of cost by the customer. The transaction should not be labeled as a "sale" on the invoice. The service company may be reimbursed for the sales or use tax it paid by including the sales or use tax on the invoice to the customer as a

part of the charge for such item. The reimbursement of sales or use tax may not be separately stated as tax.

(2) When a service company actually rents items to a customer, their charges are taxable. This includes any charges for damage waiver or repair to the items after their return.

(g) All process licenses are intangible items, and the fees paid by the service company to the holder of the patents are nontaxable where there is a service only.

(h) Chemicals, brine water, potassium chloride (KCL), CO<sub>2</sub>--sales versus service.

(1) Because maintenance to tangible personal property is taxable, the injection of maintenance-type chemicals such as corrosion inhibitors, bactericides, etc., into the wellbore is considered a taxable service. Since certain chemicals are oil soluble and remain in the product flow after injection, the well operator may purchase those chemicals separately from the service provider and issue a resale certificate in lieu of tax on the charge for the chemicals. All charges associated with the injection would be taxable including mileage, standby, pump truck, and labor.

(2) The injection of chemicals to stimulate production or remove impurities from the product being removed such as acid, emulsifiers, or nitrogen is a nontaxable service. The service company is the consumer of all chemicals pumped down hole and must pay tax at the time of purchase.

(3) Excluding that which may be purchased to provide nontaxable well services identified in subsection (b) of this section, CO<sub>2</sub> used to stimulate production may be purchased, exempt from tax, by the well operator for injection provided the well operator issues a properly completed exemption certificate in lieu of paying the tax.

(4) Kill charges will be taxable or nontaxable depending on the overall purpose. All kill charges will be presumed taxable until the contrary is established. The service company should bill tax if it is not known at the time of billing what the overall purpose was. The operator must then pay the tax or provide either a direct payment exemption certificate or a statement that the purpose was to facilitate a nontaxable service. The statement must be definite in the purpose claimed. Statements such as "to stimulate production" are insufficient and will be disallowed.

(5) A service company will be considered to be providing services if they do the actual injection into the well. Delivery into a frac tank or other storage unit will be considered a sale of tangible personal property. If it is unclear from the invoice, the presumption will be that if a high pressure pump truck is used, a service has occurred; if a vacuum truck is used to deliver the fluids or CO<sub>2</sub>, then a sale of tangible personal property has occurred. The service company may purchase all components of the fluids tax free when making a sale or providing a taxable service.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2013.

TRD-201301038

Ashley Harden

General Counsel

Comptroller of Public Accounts

Effective date: March 28, 2013

Proposal publication date: December 28, 2012

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



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

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

#### CHAPTER 148. SEX OFFENDER CONDITIONS OF PAROLE OR MANDATORY SUPERVISION

##### 37 TAC §148.50

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §148.50, concerning procedure after waiver of hearing. The amended rule is adopted without changes to the proposed text as published in the January 18, 2013, issue of the *Texas Register* (38 TexReg 287). The text of the rule will not be republished.

The amended rule is adopted to replace "offender" with "releasee" and "release" with "releasee."

No public comments were received regarding adoption of these amendments.

The amendments are adopted under §§508.036, 508.0441, 508.045, 508.141 and 508.147, Government Code. Section 508.036 authorizes the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.0441 provides the board with the authority to adopt reasonable rules as proper or necessary relating to the eligibility of an inmate for release on parole or release to mandatory supervision. Section 508.147 authorizes parole panels to determine the conditions of release to mandatory supervision.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2013.

TRD-201301041

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Effective date: March 28, 2013

Proposal publication date: January 18, 2013

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





# TABLES & GRAPHICS

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

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

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Figure: 31 TAC §155.15(b)(1)(C)(iii)

### Residential Use, Category III

#### Coastal Easement Rent and Fees

**Notable Definitions**

Residential use, Category III--One single family residential dwelling and accessory building(s) on one defined lot or parcel of land that is being used for (in part or whole) short-term residential rental--i.e. daily, weekly, monthly, seasonal; both land and improvements are typically under the same ownership. (Definition from 31 TAC §155.1(d)(49))

Fill formula--Encumbered state land multiplied by the appraised market value of adjacent littoral property multiplied by the return on investment. (Definition from 31 TAC §155.1(d)(28))

**Fees**

Application Fee: \$50.00 (per occurrence on new, amendment, and assignment applications)

**Rent**

Rental consideration is determined by taking the greater of:

- i) Minimum Rent (\$100.00 per year)
- ii) Project Component Rent (listed below)

Project Component	Annual Rent
Piers, Docks, and Watercraft Storage	\$0.15 per square foot
Multiple Boatlift, Boathouse, Covered Boat Slip, Oversized Personal and Watercraft Slip	\$250.00 for each additional
Covered Second Level (Partially or Fully)	\$75.00 per structure
Breakwater, Jetty, Groin	\$0.20 per square foot
Dredge	
New Dredge	\$0.50 per cubic yard <sup>1</sup>
Existing Dredge	\$0.01 per square foot
Open Encumbered Area	\$0.02 per square foot
Fill	
Proposed Fill	\$0.10 per square foot -OR- Fill Formula
Existing Fill	Variable <sup>2</sup>
Concrete Stairs and Slabs	\$0.15 per square foot
Rip Rap and/or Vegetative Shoreline Stabilization	No rent

<sup>1</sup> New Dredge is a one-time rent assessed at the initial dredging, subject to §155.15(b)(4)

<sup>2</sup> (-a-) existing fill (excluding bulkheads) not permitted as of August 15, 1995: \$0.02 per square foot  
 (-b-) existing fill permitted after August 15, 1995: \$0.10 per square foot -OR- fill formula  
 (-c-) existing fill at renewal: 110% of the previous contract fill rate for each five year period.

Figure: 31 TAC §155.15(b)(1)(C)(v)

<b>Structure (Cabin) Permits</b>	
Cabin Permit Rent and Fees	
<b><u>Notable Definitions</u></b>	
A structure under this section shall be defined as any housing, capable of residential use or which otherwise would typically be considered an improvement on real property, which is in any manner attached or affixed to coastal public land and is not associated with the ownership of littoral property. (Definition from 31 TAC §155.4(b))	
<b><u>Fees</u></b> <sup>1</sup>	
Application Fee:	\$175.00 (per occurrence on renewal and amendment applications)
Application Fee:	\$325.00 (per occurrence on transfer applications)
Late Payment Fee:	25% of past due amount
<b><u>Deposit</u></b>	
Refundable Deposit: \$200.00	
<b><u>Rent</u></b> <sup>2 &amp; 3</sup>	
Rental consideration is determined by taking the greater of:	
i) Minimum Rent (\$175.00 per year)	
ii) Project Component Rent (listed below)	
<b>Project Component</b>	<b>Annual Rent</b>
Cabin Structures	\$0.60 per square foot
Piers, Docks, and Walkways	No Fee *
<p><sup>1</sup> Filing fee for competitive bid proposal for permit for structure determined by the board to be abandoned or for which the permit was terminated by the board for cause: \$50.00</p> <p><sup>2</sup> Bonus payment for new contract issuance for structure determined by the board to be abandoned or for which the permit was terminated by the board for cause: negotiable/minimum to be determined by the board</p> <p><sup>3</sup> Permittee may apply for a continuation of the previous fee if the permit was issued prior to July 18, 1983 (the date of the initial rate increase), and if the annual fee will impose an undue financial hardship on a current permit holder</p> <p>* A fee of \$0.20 per square foot will be charged for piers, docks, and walkways effective September 1, 2015</p>	

# IN

# ADDITION

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

## Department of Assistive and Rehabilitative Services

Notice of Public Hearing for Maximum Affordable Payment Schedule To Be Effective May 1, 2013

The Department of Assistive and Rehabilitative Services (DARS) will hold a public hearing from 2:00 p.m. to 4:00 p.m. on Wednesday, April 3, 2013, in Conference Room 3540 of the Brown-Heatly Building at 4900 North Lamar Boulevard in Austin, Texas 78751, to receive public comments on the proposed FY 2013-2014 Maximum Affordable Payment Schedule (MAPS) rates used for the purchase of medical and medical-related services. The proposed implementation date for the new MAPS rates is May 1, 2013.

The schedule of proposed rates may be viewed or copies may be obtained by calling Stuart McPhail with DARS at (512) 424-4144 or visiting DARS at the Brown Heatly Building at 4900 North Lamar, Austin, Texas 78751.

Written comments on the proposed rates may be submitted to Stuart McPhail, Department of Assistive and Rehabilitative Services, 4900 North Lamar Boulevard, Austin, Texas 78751.

TRD-201301070

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Filed: March 11, 2013

## Office of the Attorney General

Contract Award

This publication is filed pursuant to Texas Government Code, §2254.030. The Request for Proposal was published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10288).

### DESCRIPTION OF ACTIVITIES OF PRIVATE CONSULTANT:

The Office of the Attorney General of Texas (the "OAG") has entered into a major consulting services contract for the following services:

The OAG administers millions of dollars of federal funds for the Child Support (Title IV-D) and Medicaid (Title XIX) programs. The OAG recoups its indirect costs from these federal programs based on rates approved by the United States Department of Health and Human Services ("DHHS"). Contractor will review the indirect cost methodologies of the OAG to determine areas of cost recovery which will maximize revenue from the recovery of indirect costs and will develop indirect cost rates throughout the OAG, as appropriate. Contractor will prepare an Indirect Cost Allocation Plan for FY 2012 (based on actual expenditures as presented in the OAG's FY 2012 Annual Financial Report) in accordance with OMB Circular A-87, for submission to DHHS for federal approval and will negotiate approval of the plan with DHHS. Contractor will also analyze existing legal billing rates of the OAG for purposes of reconciling those existing rates with actual costs of the OAG in providing the legal services and will provide to the OAG a report of that reconciliation. Contractor will develop the FY 2014 billing rates

for legal services. Contractor will negotiate with DHHS for approval of the FY 2014 billing rates. Finally, Contractor will provide guidance to the OAG in the implementation of the plan and billing rates.

### NAME AND BUSINESS ADDRESS OF PRIVATE CONSULTANT:

The private consultant engaged by the OAG for these activities is MGT of America, Inc., whose business address is 502 E. 11th Street, Suite 300, Austin, Texas 78701.

### TOTAL VALUE AND TERM OF THE CONTRACT:

The total value of the contract is \$39,500. The term of the contract began on February 25, 2013, and will terminate on August 31, 2013, or upon completion of work described herein.

### DATES ON WHICH REPORTS ARE DUE:

The Indirect Cost Allocation Plan must be submitted to DHHS no later than April 30, 2013. The final report regarding the FY 2014 billing rates for legal services must be submitted to the OAG no later than August 30, 2013.

TRD-201301018

Katherine Cary

General Counsel

Office of the Attorney General

Filed: March 6, 2013

## Comptroller of Public Accounts

Notice of Request for Information

Pursuant to Chapter 2155, §2155.001; Chapter 403, §403.011; and Chapter 2156, §2156.121 of the Texas Government Code; and Chapter 54, Subchapters F, G, H, and I of the Texas Education Code, the Texas Comptroller of Public Accounts ("Comptroller"), Comptroller, as Chair and Executive Director of the Texas Prepaid Higher Education Tuition Board ("Board") announces the issuance of a Request for Information ("RFI") to gather information from firms interested in providing 529 plan services for the State of Texas' qualified tuition plans established and maintained in accordance with Section 529 of the Internal Revenue Code of 1986 (IRC Section 529), as amended. This RFI includes (i) the Texas Tuition Promise Fund®, a prepaid tuition plan, (ii) the Texas College Savings Plan®, a direct-sold college savings plan, and (iii) the LoneStar Plan®, an advisor-sold college savings plan (the aforementioned plans are known collectively as the "Plans" in this RFI). Responses to the RFI will aid Comptroller's general understanding of the providers of various 529 service offerings and related services which are available in the industry and interested in the Plans. All references to "Comptroller" include the "Board."

Comptroller is looking for information from providers interested in providing services to IRC Section 529 plans ("Respondents") that are capable of and interested in providing for one or more of the Plans all or any of the following services: all-in plan manager services, or tax and legal compliance services, or recordkeeping services, or marketing services, or administrative services, or distribution services, or customer

call center and related services, or Web site development and maintenance services, or any combination of one or more of these services for one or more of the Plans. Additionally, any Respondent that indicates ability and interest in providing any one or more of the aforementioned services should complete the section of the Respondent Questionnaire related to information on providing investment management services for one or more of the Plans.

This RFI is not gathering information from Respondents who only provide investment management services.

Contact: The RFI is currently available electronically on the Electronic State Business Daily ("ESBD") at: <http://esbd.cpa.state.tx.us>. Parties interested in a hard copy of the RFI should contact Jennifer W. Sloan, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th St., Rm 201, Austin, Texas, 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Closing Date: Responses must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Monday, April 8, 2013. Respondents shall be solely responsible for ensuring the timely receipt of their proposals in the Issuing Office.

TRD-201301105

Jennifer W. Sloan

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: March 13, 2013

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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 03/18/13 - 03/24/13 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 03/18/13 - 03/24/13 is 18% for Commercial over \$250,000.

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

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

TRD-201301092

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: March 12, 2013

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## Commission on State Emergency Communications

### Public Notice of Workshop Regarding ESInet Coordination, Governance, and Policy Development

The staff of the Commission on State Emergency Communications ("CSEC") will conduct a workshop regarding coordination, governance, and policy development for connecting emergency services internet protocol networks ("ESInets") on **Thursday, April 25, 2013, from 10:00 a.m. to 4:00 p.m., in the Hobby Building, 333 Guadalupe Street, Room 100, Austin, Texas 78701**. Registration information is provided below. (Please note that no audio-conference bridge for the workshop will be available.) All 9-1-1 Entities, service

providers, and interested persons are invited to attend this public workshop.

In 2011, the Texas Legislature amended Health and Safety Code, Chapter 771, to add §771.0511, Emergency Services Internet Protocol Network; Emergency Communications Advisory Committee. Section 771.0511 authorizes CSEC, with the assistance of an advisory committee, to "establish policy and oversee agency involvement in the development and implementation of the interconnected state-level emergency services Internet Protocol network." The "state-level ESInet" is a component of the Texas Next Generation Emergency Communications System ("Texas' NG9-1-1 System").

Critical to the development of Texas' NG9-1-1 System is the coordination, governance, and policies for connecting ESInets. Currently, regional ESInets or Internet Protocol-enabled 9-1-1 systems are in the process of being deployed by councils of government (COGs) and emergency communication districts (ECDs), including the Capital Area and North Central Texas COGs and the Bexar Metro 9-1-1 Network and Denco Area 9-1-1 Network ECDs. And various GIS enhancement and location coordination efforts have been ongoing in regions and districts. For its part, CSEC's Legislative Appropriations Request for Fiscal Years 2014 and 2015 included funding requests for Next Generation 9-1-1 consistent with the NG9-1-1 transition plan in CSEC's Agency Strategic Plan for FY 2013 - 2017. Accordingly, the initial focus of this first workshop is to identify the appropriate coordination of ESInet policies amongst 9-1-1 Entities to ensure interoperability as it pertains to connecting PSAPs and communications providers to an ESInet; and the connecting of ESInets. The workshop will be the first step in the process of identifying appropriate coordination of ESInet policies. This notice is not a formal notice of proposed rulemaking; however, an additional purpose of the workshop is to assist CSEC in determining whether a CSEC rulemaking proceeding is appropriate.

### WORKSHOP AGENDA

#### 1. ESInet, NG9-1-1, and NENA i3

##### a. What is an ESInet?

i. What is the difference between an Internet Protocol network and an ESInet that will be used to receive and route 9-1-1 calls?

##### b. What is NG9-1-1?

##### c. What is NENA i3?

##### d. Differences between:

i. an Internet Protocol network and an ESInet that will be used to receive and route 9-1-1 calls?

ii. an ESInet being NG9-1-1 capable as opposed to being NENA i3 capable?

#### 2. Connecting to an ESInet

##### a. Connecting with what features?

##### b. PSAPs

##### c. Other intra-state ESInets

##### d. State ESInet connecting to other states and federal ESInets

##### e. Communications providers connecting to an ESInet

f. Emergency Responders connecting to networks connected to an ESInet

#### 3. Possible Points and Types of Connections to and from ESInets for wireline, wireless, VoIP, texting, etc.

- 4. ESInet Policies
  - a. Considerations
  - b. Development of Roles and Responsibilities
  - c. Documenting
  - d. Implementing

**CSEC staff does not anticipate posting questions for comment prior to the workshop.** If comments are requested, they may be filed electronically by sending them to [csecinfo@csec.texas.gov](mailto:csecinfo@csec.texas.gov) or by mailing them to CSEC, c/o Patrick Tyler, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942. Please include in the subject line "Comments for ESInet Governance and Policy Development Workshop."

To register for the workshop, please contact Melinda Crockom via e-mail to [melinda.crockom@csec.texas.gov](mailto:melinda.crockom@csec.texas.gov) or by phone at (512) 305-6928. For additional information please go to the "What's New at CSEC" section of our website at [www.911.state.tx.us](http://www.911.state.tx.us) and click on "ESInet Governance and Policy Development Workshop." Questions concerning the workshop or this notice should be sent to Patrick Tyler at [patrick.tyler@csec.texas.gov](mailto:patrick.tyler@csec.texas.gov) or by phone at (512) 305-6915. Hearing- and speech-impaired individuals with a telecommunications device for the deaf may contact CSEC at (512) 305-6925.

TRD-201301097

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Filed: March 12, 2013



## 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 April 22, 2013. 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 April 22, 2013. 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 com-

ment 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: A & K Karam, Incorporated dba Big Star Food Mart; DOCKET NUMBER: 2012-2504-PST-E; IDENTIFIER: RN102364049; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: AG-MEIER INDUSTRIES L.L.C.; DOCKET NUMBER: 2012-2115-MLM-E; IDENTIFIER: RN101058865; LOCATION: Belton, Bell County; TYPE OF FACILITY: industrial manufacturing; RULE VIOLATED: 30 TAC §335.4, by failing to prevent the unauthorized discharge of industrial waste; 30 TAC §335.62 and 40 Code of Federal Regulations (CFR) §262.11, by failing to identify and classify all industrial wastes generated at the facility; 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities under the Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR050000; 30 TAC §335.2(b), by failing to store and process hazardous waste at an authorized facility; 30 TAC §335.69(a)(2) and (3) and 40 CFR §262.34(a)(2) and (3) and (b), by failing to ensure that each container used to store hazardous waste is labeled or marked clearly with the words "Hazardous Waste" and by failing to label all hazardous waste drums with accumulation start dates; 30 TAC §335.69(a)(1)(A) and 40 CFR §264.173(a) and §265.173(a), by failing to keep hazardous waste containers closed except when adding or removing waste; and 30 TAC §335.431(c) and 40 CFR §268.7(a)(5), by failing to develop and follow a written waste analysis plan which describes the procedures that will be followed to comply with treatment standards; PENALTY: \$15,375; Supplemental Environmental Project offset amount of \$6,150 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Air Liquide Large Industries U.S. LP; DOCKET NUMBER: 2012-2413-IWD-E; IDENTIFIER: RN100233998; LOCATION: La Porte, Harris County; TYPE OF FACILITY: air separation and cogeneration; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0004330000, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, Outfall Numbers 003 and 004, by failing to comply with the permitted effluent limits for oil and grease at Outfall 004 and maximum pH at Outfall 003; PENALTY: \$4,970; Supplemental Environmental Project offset amount of \$1,988 applied to Gulf Coast Waste Disposal Authority - River, Lakes, Bays, and Bayous Trash Bash; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Amy Becker and Jodie Taylor dba Martins Mill Water Supply Corporation; DOCKET NUMBER: 2012-1743-MLM-E; IDENTIFIER: RN101217669; LOCATION: Ben Wheeler, Van Zandt County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and by

failing to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.106(e), by failing to report the results of annual nitrate/nitrite monitoring to the executive director; 30 TAC §290.106(e) and §290.113(e), by failing to report the results for triennial metals, minerals, and Stage 1 Disinfectant Byproducts monitoring to the executive director; 30 TAC §290.107(e), by failing to report the results for triennial synthetic organic contaminants monitoring to the executive director; 30 TAC §290.51(b) and TWC, §5.702, by failing to pay all annual Public Health Service fees for fiscal years of 2009 - 2012, including any associated late fees and penalties, for TCEQ Financial Administration Account Number 92340013; 30 TAC §290.41(c)(1)(D), by failing to ensure that livestock in pastures are not allowed within 50 feet of a water supply well; 30 TAC §290.42(j), by failing to use American National Standards Institute/National Sanitation Foundation Standard 60 certified chemicals in the treatment of water supplied by the facility; 30 TAC §290.41(c)(1)(F), by failing to secure sanitary control easements covering all land within 150 feet of each well location, secured from adjacent landowners and recorded at the county courthouse to ensure that hazards will not develop within the well area; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment as to minimize the possibility of harboring rodents, insects and other disease vectors, and in such a way as to prevent other conditions that might cause the contamination of the water; and 30 TAC §290.121(a) and (b), by failing to develop, maintain on hand, and make available to the executive director upon request an accurate and up-to-date chemical and microbiological monitoring plan that includes but is not limited to: identifying all sampling locations that are representative of the distribution system, describing the sampling frequency, and specifying the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; PENALTY: \$2,896; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: BASF Corporation; DOCKET NUMBER: 2012-1934-IHW-E; IDENTIFIER: RN100225689; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §335.2(b), by failing to prevent the disposal of Class 1 waste at an unauthorized facility; and 30 TAC §335.10, by failing to correctly manifest Class 1 waste utilizing a correctly completed Uniform Hazardous Waste Manifest; PENALTY: \$47,700; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Bongshi Corporation dba Sunrise Super Stop 15; DOCKET NUMBER: 2012-2276-PST-E; IDENTIFIER: RN103146536; LOCATION: Houston, Fort Bend County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3) and §334.8(c)(4)(C) and (5)(A), by failing to provide an amended registration for any change or additional information regarding the underground storage tanks (USTs) within 30 days from the date of the occurrence of the change or addition and by failing to obtain a UST delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of the ownership change; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: \$2,876; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825;

REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Bridgeport Country Club, Incorporated; DOCKET NUMBER: 2013-0044-WR-E; IDENTIFIER: RN106511330; LOCATION: Bridgeport, Wise County; TYPE OF FACILITY: golf course; RULE VIOLATED: TWC, §11.121 and 30 TAC §297.11, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (713) 767-3500.

(8) COMPANY: Chaudhry & Sons, Incorporated dba Kuykendahl Cito; DOCKET NUMBER: 2012-2639-PST-E; IDENTIFIER: RN101814945; LOCATION: Tomball, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: CHUN, L.L.C. dba Villager Grocery; DOCKET NUMBER: 2012-2729-PST-E; IDENTIFIER: RN101790145; LOCATION: Pittsburg, Camp County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b)(1)(B), by failing to maintain underground storage tank (UST) records and making them immediately available for inspection upon request by agency personnel; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$4,193; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: City of Joaquin; DOCKET NUMBER: 2013-0066-PWS-E; IDENTIFIER: RN101274181; LOCATION: Joaquin, Shelby County; TYPE OF FACILITY: public water supply; RULE VIOLATED: Texas Health and Safety Code, §341.031(a) and 30 TAC §290.109(f)(3), by failing to comply with the maximum contaminant level for total coliform during the months of July 2012 and November 2012; and 30 TAC §290.109(c)(3)(ii), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform positive result during the month of July 2012; PENALTY: \$517; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2012-2329-AIR-E; IDENTIFIER: RN102450756; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Texas Health and Safety Code, §382.085(b), and Flexible Permit Numbers 49138, PSDTX768M1, PSDTX799, PSDTX802, PSDTX932, and PSDTX992M1, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$25,000; Supplemental Environmental Project offset amount of \$12,500 applied to Texas Air Research Center - Flare Speciation and Air Quality Modeling; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(12) COMPANY: FEMIO, INCORPORATED dba Femio Mobil; DOCKET NUMBER: 2012-2282-PST-E; IDENTIFIER: RN100718113; LOCATION: Plano, Collin County; TYPE OF FA-

CILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: FJ TRADE, INCORPORATED dba PMI 1; DOCKET NUMBER: 2012-2727-PST-E; IDENTIFIER: RN102407764; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,134; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(14) COMPANY: H & ROZY, INCORPORATED dba K & K Food Mart 2; DOCKET NUMBER: 2012-2636-PST-E; IDENTIFIER: RN102374733; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; PENALTY: \$16,350; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: H & C Fuels, LLC; DOCKET NUMBER: 2012-2736-PST-E; IDENTIFIER: RN105578975; LOCATION: Blum, Hill County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: HASS ENTERPRISES, INCORPORATED dba Pay N Save; DOCKET NUMBER: 2012-2448-PST-E; IDENTIFIER: RN102399318; LOCATION: Alba, Wood County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$2,943; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(17) COMPANY: HINA ENTERPRISES, INCORPORATED dba Super Stop 3; DOCKET NUMBER: 2012-2340-PST-E; IDENTIFIER: RN101444081; LOCATION: Vidor, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VI-

OLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$4,687; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: Huntsman Petrochemical LLC; DOCKET NUMBER: 2012-0135-AIR-E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O2287, Special Terms and Conditions Number 9, and Air Permit Number 20134, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$10,000; Supplemental Environmental Project offset amount of \$4,000 applied to Southeast Texas Regional Planning Commission - Southeast Texas Regional Air Monitoring Network Ambient Air Monitoring Station; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: Hydro Conduit of Texas, LP; DOCKET NUMBER: 2012-2316-IWD-E; IDENTIFIER: RN103028999; LOCATION: Houston, Harris County; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System General Permit Number TXG110621, Part III, Permit Requirements, Section A, by failing to comply with permitted effluent limits; PENALTY: \$2,875; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: I Star Enterprises, Incorporated dba In & Out Express #1; DOCKET NUMBER: 2012-0527-PST-E; IDENTIFIER: RN101727725; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,250; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: Jack Halliburton dba Jacks Drive In; DOCKET NUMBER: 2012-2171-PST-E; IDENTIFIER: RN102719812; LOCATION: El Campo, Wharton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(1) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ certificate before accepting delivery of a regulated substance into the USTs; PENALTY: \$3,299; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Kenneth Dupuis dba Dupuis Chevron; DOCKET NUMBER: 2012-2435-PST-E; IDENTIFIER: RN101778025; LOCATION: Bridge City, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; and 30 TAC §334.10(b), by fail-



ing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$9,625; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(23) COMPANY: LAKESHORE UTILITY COMPANY dba The Reserve; DOCKET NUMBER: 2012-2522-PWS-E; IDENTIFIER: RN104966544; LOCATION: Athens, Smith County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) 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 running annual average; and 30 TAC §290.122(c)(2)(A), by failing to provide public notification for the failure to submit a Disinfectant Level Quarterly Operating Report for the first quarter of 2011; PENALTY: \$276; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(24) COMPANY: Lamar Consolidated Independent School District; DOCKET NUMBER: 2012-2613-PST-E; IDENTIFIER: RN106076425; LOCATION: Rosenberg, Fort Bend County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: M & L LUCKY STOP, LLC dba Keith Mart; DOCKET NUMBER: 2012-2295-PST-E; IDENTIFIER: RN101750016; LOCATION: Mount Pleasant, Titus County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(26) COMPANY: Mirasaad Mousavijam dba East Point Market; DOCKET NUMBER: 2012-2338-PST-E; IDENTIFIER: RN102394392; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$4,259; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(27) COMPANY: New Star Business, Incorporated dba Express Store; DOCKET NUMBER: 2012-2702-PST-E; IDENTIFIER: RN101777159; LOCATION: Tomball, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: \$2,888; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: Ochiltree County; DOCKET NUMBER: 2012-2651-PWS-E; IDENTIFIER: RN101220432; LOCATION: Perryton, Ochiltree County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the month of November 2011; 30 TAC §290.109(c)(2)(F), by failing to collect at least five routine distribution coliform samples the month following a coliform-positive sample result; and 30 TAC §290.109(f)(3) and THSC, §341.031(a), by failing to comply with the Maximum Contaminant Level for total coliform during the months of September and November 2012; PENALTY: \$720; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(29) COMPANY: Oxy Vinyls, LP; DOCKET NUMBER: 2012-2179-AIR-E; IDENTIFIER: RN100224674; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O1324, Special Terms and Conditions (STC) Number 24, and New Source Review (NSR) Permit Number 3855B, Special Conditions (SC) Number 1, by failing to prevent unauthorized emissions (Incident Number 172423); 30 TAC §101.201(b)(1)(H), THSC, §382.085(b), and FOP Number O1324, General Terms and Conditions and STC Number 2F, by failing to include the permit authorization on the final report for Incident Numbers 171901 and 172423; and 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number O1324, STC Number 24, NSR Permit Number 3855B, SC Number 1, by failing to prevent unauthorized emissions (Incident Number 171901); PENALTY: \$16,000; Supplemental Environmental Project offset amount of \$6,400 applied to Harris County - Ambient Air Pollutants Monitoring Study; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Paul T. Bryant dba Shell Food Mart; DOCKET NUMBER: 2012-2372-PST-E; IDENTIFIER: RN102253259; LOCATION: San Marcos, Hays County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$9,504; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(31) COMPANY: PESHAWAR, INCORPORATED dba Super Stop 4; DOCKET NUMBER: 2012-2235-PST-E; IDENTIFIER: RN103001798; LOCATION: Vidor, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: \$4,687; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(32) COMPANY: Pilot Travel Centers LLC; DOCKET NUMBER: 2012-2708-WQ-E; IDENTIFIER: RN106481955; LOCATION: Tye, Taylor County; TYPE OF FACILITY: full service fueling station and truck stop with a collection system serviced by a lift station; RULE VIOLATED: TWC, §26.121(a), by failing to prevent an unau-

thorized discharge of wastewater from the collection system into or adjacent to water in the state; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(33) COMPANY: PILOT TRAVEL CENTERS LLC dba Pilot Travel Center 432; DOCKET NUMBER: 2013-0051-PST-E; IDENTIFIER: RN103138798; LOCATION: Robinson, McLennan County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE 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: \$6,750; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(34) COMPANY: Ranger Utility Company; DOCKET NUMBER: 2011-1171-PWS-E; IDENTIFIER: RN101216133; LOCATION: Waller County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(ii), Texas Health and Safety Code (THSC), §341.0315(c), and TCEQ AO Docket Number 2008-0346-PWS-E, Ordering Provision (OP) Number 2.a.i, by failing to provide a total storage capacity of 200 gallons per connection; and 30 TAC §290.45(b)(1)(C)(iii), THSC, §341.0315(c), and TCEQ AO Docket Number 2008-0346-PWS-E, OP Number 2.a.ii, by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection; PENALTY: \$21,250; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(35) COMPANY: SHIVAMSAGAR, INCORPORATED dba Northend Grocery; DOCKET NUMBER: 2012-2384-PST-E; IDENTIFIER: RN101752517; LOCATION: Princeton, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(36) COMPANY: SPT Interests LLC dba The Washboard; DOCKET NUMBER: 2012-2321-PST-E; IDENTIFIER: RN105011258; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(C) and (5)(B), by failing to obtain an underground storage tank (UST) delivery certificate and notify the agency of any change or additional information regarding the UST system within 30 days after change in ownership of the facility; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$7,088; ENFORCEMENT COORDINATOR: Steven Van LANDINGHAM, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(37) COMPANY: Tarkington Independent School District; DOCKET NUMBER: 2012-2588-PST-E; IDENTIFIER: RN102488442; LOCA-

TION: Cleveland, Liberty County; TYPE OF FACILITY: fleet refueling depot; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(38) COMPANY: TEKNI-PLEX, INCORPORATED; DOCKET NUMBER: 2012-1629-AIR-E; IDENTIFIER: RN100215508; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: package manufacturing; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(1) and (2), Texas Health and Safety Code (THSC), §382.085(b) and Federal Operating Permit (FOP) Number O2097, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 7, by failing to submit a Permit Compliance Certification within 30 days after the end of the certification period; 30 TAC §122.143(4) and §122.145(2)(B), THSC, §382.085(b) and FOP Number O2097, GTC and STC Number 7, by failing to submit a deviation report within 30 days after the end of the reporting period; and 30 TAC §116.115(c), THSC, §382.085(b), and Air Permit Number 80166, Special Condition Number 9, by failing to limit printing ink usage to 6.3 tons per year; PENALTY: \$11,000; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(39) COMPANY: TIN, Incorporated; DOCKET NUMBER: 2012-2649-AIR-E; IDENTIFIER: RN100214428; LOCATION: Orange, Orange County; TYPE OF FACILITY: linerboard mill; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1408, Special Terms and Conditions Number 12, and New Source Review Permit Numbers 9654A, PSD-TX-833M3, and N-60M2, Special Conditions Number 1, by failing to comply with the permitted emission rates during a stack test conducted on July 24, 2012 on the Bark Boiler (Emission Point Number 2); PENALTY: \$3,188; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(40) COMPANY: TOTAL STOP, L.P. dba Total Stop Mount Pleasant; DOCKET NUMBER: 2012-2379-PST-E; IDENTIFIER: RN102379286; LOCATION: Mount Pleasant, Titus County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(41) COMPANY: Town of Woodsboro; DOCKET NUMBER: 2012-2414-PWS-E; IDENTIFIER: RN101387157; LOCATION: Woodsboro, Refugio County; TYPE OF FACILITY: municipal public water supply; RULE VIOLATED: 30 TAC §290.121(a) and (b), by failing to develop, maintain, and make available for commission review an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirement; 30 TAC §290.44(h)(2) and Texas Health and Safety Code (THSC), §341.033(f), by failing to ensure that a backflow prevention assembly or an air gap is installed at all residences and establishments where

an actual or potential contamination hazard exists; and 30 TAC §290.43(c)(3), by failing to maintain the facility's storage tanks in strict accordance with current American Water Works Association (AWWA) standards; 30 TAC §290.39(j)(1)(A) and THSC, §341.0351, by failing to notify the commission prior to making any significant change or addition where the change in the existing distribution system results in an increase or decrease in production, treatment, storage, or pressure maintenance capacity; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; and 30 TAC §290.43(c)(8), by failing to maintain the facility's elevated storage tank in strict accordance with current AWWA standards; PENALTY: \$900; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(42) COMPANY: TRI-W CONSTRUCTION, INCORPORATED; DOCKET NUMBER: 2012-2690-AIR-E; IDENTIFIER: RN103218632; LOCATION: Longview, Harrison County; TYPE OF FACILITY: oilfield equipment fabrication plant; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operation; PENALTY: \$1,150; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(43) COMPANY: United Parcel Service, Incorporated; DOCKET NUMBER: 2012-2466-AIR-E; IDENTIFIER: RN100822931; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: non-retail fleet refueling; RULE VIOLATED: 30 TAC §114.100(a) and Texas Health and Safety Code, §382.085(b), by failing to comply with the minimum oxygen content of 2.7% by weight of gasoline during the control period of October 1 - March 31, 2012; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(44) COMPANY: VP FUEL MART, INCORPORATED; DOCKET NUMBER: 2012-2436-PST-E; IDENTIFIER: RN101443174; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; and 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and making them immediately available for review upon request by agency personnel; PENALTY: \$8,406; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201301093

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 12, 2013



#### Enforcement Orders

An agreed order was entered regarding Sreesai, Inc. dba HWY 21 Food Mart, Docket No. 2012-0188-PST-E on February 14, 2013 assessing \$5,129 in administrative penalties with \$1,025 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Parks and Wildlife Department, Docket No. 2012-0299-PST-E on February 14, 2013 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ZAIN'S INVESTMENTS, INCORPORATED dba Z Fast Shop, Docket No. 2012-0435-PST-E on February 14, 2013 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LBC Houston, L.P., Docket No. 2012-0565-AIR-E on February 14, 2013 assessing \$6,038 in administrative penalties with \$1,207 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HAMEEDA INVESTMENTS, INC. dba Peachtree Food & Beer Wine, Docket No. 2012-0633-PST-E on February 14, 2013 assessing \$3,100 in administrative penalties with \$620 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M SIDDIQI & SON'S, INC. dba B-Z SHOP 2, Docket No. 2012-0852-PST-E on February 14, 2013 assessing \$2,379 in administrative penalties with \$475 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tommy Hefner dba JT Cattle, Docket No. 2012-0974-AGR-E on February 14, 2013 assessing \$2,040 in administrative penalties with \$408 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRAK GROUP, INC. dba Trak 10, Docket No. 2012-1079-PST-E on February 14, 2013 assessing \$2,550 in administrative penalties with \$510 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (713) 422-8970, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nick Patel dba Beltway Express, Docket No. 2012-1163-PST-E on February 14, 2013 assessing \$5,640 in administrative penalties with \$1,128 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NATURAL WASTE SOLUTIONS, INC. dba Natures Way Resources Conroe, Docket No. 2012-1184-MSW-E on February 14, 2013 assessing \$7,469 in administrative penalties with \$1,493 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Alice, Docket No. 2012-1186-AIR-E on February 14, 2013 assessing \$1,063 in administrative penalties with \$212 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NANCY N. RABB PROPERTIES, LTD., Docket No. 2012-1272-EAQ-E on February 14, 2013 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ACATEX LLC dba Acatex Food Mart, Docket No. 2012-1274-PST-E on February 14, 2013 assessing \$4,755 in administrative penalties with \$951 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aledo Midway Corp. dba Midway Food Store, Docket No. 2012-1294-PST-E on February 14, 2013 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Georgia-Pacific Wood Products South LLC dba Camden Plywood & Lumber Complex, Docket No. 2012-1312-PWS-E on February 14, 2013 assessing \$1,105 in administrative penalties with \$220 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Matthew L. Riggs dba West End Convenience Store, Docket No. 2012-1318-PST-E on February 14, 2013 assessing \$5,756 in administrative penalties with \$1,151 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James Triplett and Marvin Triplett dba Triplett Waste Service, Docket No. 2012-1323-MSW-E on February 14, 2013 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JETTA, INC. and Paul Sims dba Rosebowl Regency Inn, Docket No. 2012-1324-PWS-E on February 14, 2013 assessing \$455 in administrative penalties with \$91 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RKL Holdings LLC dba Graford Mini Mart, Docket No. 2012-1341-PST-E on February 14, 2013 assessing \$3,825 in administrative penalties with \$765 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jose O. Beltran and Maria A. Beltran dba 1017 Cafe, Docket No. 2012-1353-PWS-E on February 14, 2013 assessing \$1,025 in administrative penalties with \$205 deferred.

Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SPEEDY BUSINESS, INC. dba Speedy Food Market, Docket No. 2012-1355-PST-E on February 14, 2013 assessing \$6,300 in administrative penalties with \$1,260 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bell Hai Grocery, Inc. dba Bell Hai Grocery, Docket No. 2012-1363-PST-E on February 14, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nazma Khan dba KV COUNTRY STORE, Docket No. 2012-1377-PST-E on February 14, 2013 assessing \$4,630 in administrative penalties with \$926 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Dodd City, Docket No. 2012-1383-MWD-E on February 14, 2013 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Azhar Niazi dba Tex's Grocery, Docket No. 2012-1394-PST-E on February 14, 2013 assessing \$3,883 in administrative penalties with \$776 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jay Madi Inc. dba Beachside Market, Docket No. 2012-1416-PST-E on February 14, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Municipal Utility District 480, Docket No. 2012-1425-MWD-E on February 14, 2013 assessing \$5,250 in administrative penalties with \$1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chong Duve dba Duves Quick Stop, Docket No. 2012-1426-PST-E on February 14, 2013 assessing \$3,825 in administrative penalties with \$765 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jose Luis Perez, Docket No. 2012-1431-MLM-E on February 14, 2013 assessing \$1,574 in administrative penalties with \$314 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CAMPBELL OIL CO., Docket No. 2012-1468-PST-E on February 14, 2013 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Durham School Services, L.P. dba Durham Transportation, Docket No. 2012-1469-PST-E on February 14, 2013 assessing \$3,188 in administrative penalties with \$637 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RAM DOOT ENTERPRISES, INC. dba One Stop Store, Docket No. 2012-1471-PST-E on February

14, 2013 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Randolph Field Independent School District, Docket No. 2012-1477-PST-E on February 14, 2013 assessing \$5,689 in administrative penalties with \$1,137 deferred.

Information concerning any aspect of this order may be obtained by contacting Joel McAlister, Enforcement Coordinator at (512) 239-2619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Petro-Chemical Transport, LLC, Docket No. 2012-1483-PST-E on February 14, 2013 assessing \$1,250 in administrative penalties with \$250 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BAY AREA HEALTHCARE GROUP, LTD. dba Corpus Christi Medical Center, Docket No. 2012-1484-PST-E on February 14, 2013 assessing \$2,939 in administrative penalties with \$587 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jr.'s Texas Best, LLC dba Jr.'s Texas Best Smokehouse, Docket No. 2012-1496-PST-E on February 14, 2013 assessing \$3,880 in administrative penalties with \$776 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding XTREME COLLISION REPAIR, L.P., Docket No. 2012-1498-AIR-E on February 14, 2013 assessing \$1,213 in administrative penalties with \$242 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding N & S Investments, Inc. dba Sonik Food Mart, Docket No. 2012-1504-PST-E on February 14, 2013 assessing \$2,141 in administrative penalties with \$428 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ViaWest, Inc. dba Plano Data Center, Docket No. 2012-1507-PST-E on February 14, 2013 assessing \$1,313 in administrative penalties with \$262 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Masud Reza dba Valley View Station, Docket No. 2012-1508-PST-E on February 14, 2013 assessing \$2,941 in administrative penalties with \$588 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WALTER C. KELLER DISTRIBUTOR, INC. dba Tejano Mart 418, Docket No. 2012-1516-PST-E on February 14, 2013 assessing \$6,900 in administrative penalties with \$1,380 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J & H PLANT CONSTRUCTION, INC., Docket No. 2012-1522-PST-E on February 14, 2013 assessing \$7,362 in administrative penalties with \$1,472 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KULSOOM BANO, INC. dba Get N Go, Docket No. 2012-1523-PST-E on February 14, 2013 assessing \$1,625 in administrative penalties with \$325 deferred.

Information concerning any aspect of this order may be obtained by contacting Joel McAlister, Enforcement Coordinator at (512) 239-2619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LyondellBasell Acetyls, LLC, Docket No. 2012-1526-AIR-E on February 14, 2013 assessing \$7,125 in administrative penalties with \$1,425 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County, Docket No. 2012-1536-PST-E on February 14, 2013 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ghulam Food Enterprises, Inc. dba Grab A Snack, Docket No. 2012-1537-PST-E on February 14, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding IFS Coatings, Inc., Docket No. 2012-1555-AIR-E on February 14, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hub City Convenience Stores, Inc. dba Fast Stop 9, Docket No. 2012-1572-PST-E on February 14, 2013 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Joel McAlister, Enforcement Coordinator at (512) 239-2619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leading Edge Completion Center, LLC, Docket No. 2012-1580-AIR-E on February 14, 2013 assessing \$1,250 in administrative penalties with \$250 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHAMPION PET FOODS, INC., Docket No. 2012-1603-AIR-E on February 14, 2013 assessing \$4,125 in administrative penalties with \$825 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2012-1607-AIR-E on February 14, 2013 assessing \$6,563 in administrative penalties with \$1,312 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MAISAH ENTERPRISE, LLC dba Maisah Food Mart, Docket No. 2012-1625-PST-E on February 14, 2013 assessing \$5,100 in administrative penalties with \$1,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding L FAKIR INC. dba West Hardy Diamond, Docket No. 2012-1654-PST-E on February 14, 2013 assessing \$3,621 in administrative penalties with \$724 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United Services Automobile Association, Docket No. 2012-1658-AIR-E on February 14, 2013 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lama Enterprises, Inc. dba L & M Superette 1, Docket No. 2012-1666-PST-E on February 14, 2013 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BOENING BROTHERS DAIRY, INC., Docket No. 2012-1669-PST-E on February 14, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James Thomas Ramage dba Family Community Center Mobile Home Park, Docket No. 2012-1684-PWS-E on February 14, 2013 assessing \$920 in administrative penalties with \$183 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding IOM ENTERPRISE INC dba Moes Mini Mart, Docket No. 2012-1693-PST-E on February 14, 2013 assessing \$3,959 in administrative penalties with \$791 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Lanningham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David Stanley Wallace, Sr. dba Spring Meadow Mobile Home Park, Docket No. 2012-1699-PWS-E on February 14, 2013 assessing \$1,227 in administrative penalties with \$244 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sirhan Investments, Inc. dba Lucky Mart 3072, Docket No. 2012-1701-PST-E on February 14, 2013 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KSS ENTERPRISES, INC. dba BEST STOP 2, Docket No. 2012-1706-PST-E on February 14, 2013 assessing \$3,050 in administrative penalties with \$610 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding East Texas Medical Center, Docket No. 2012-1707-PST-E on February 14, 2013 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CAMP LONGHORN CAPITAL, INC., Docket No. 2012-1710-MWD-E on February 14, 2013 assessing \$4,470 in administrative penalties with \$894 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-

5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Webber, LLC, Docket No. 2012-1712-IWD-E on February 14, 2013 assessing \$1,250 in administrative penalties with \$250 deferred.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HH & BAR INVESTMENTS, INC. dba Pic-N-Sav, Docket No. 2012-1717-PST-E on February 14, 2013 assessing \$3,350 in administrative penalties with \$670 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (713) 422-8970, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STARKEY PLUMBING COMPANY, Docket No. 2012-1736-PST-E on February 14, 2013 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding B K SINGH ENTERPRISES, INC. dba New Quick N Easy, Docket No. 2012-1740-PST-E on February 14, 2013 assessing \$4,000 in administrative penalties with \$800 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Resham Lowt dba Shamrock Gas Mart Richey Road, Docket No. 2012-1745-PST-E on February 14, 2013 assessing \$1,975 in administrative penalties with \$395 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding First National Bank of Granbury, Docket No. 2012-1754-WR-E on February 14, 2013 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foad, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Syed Sajid dba Discount Gas & Food Mart, Docket No. 2012-1776-PST-E on February 14, 2013 assessing \$2,380 in administrative penalties with \$476 deferred.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Yam United Investment Group, LLC dba River City RV Park, Docket No. 2012-1785-PWS-E on February 14, 2013 assessing \$755 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Newcastle, Docket No. 2012-1826-WR-E on February 14, 2013 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding South Main Grocery Inc, Docket No. 2012-1859-PST-E on February 14, 2013 assessing \$3,879 in administrative penalties with \$775 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Monarch Utilities I L.P., Docket No. 2012-1941-MWD-E on February 14, 2013 assessing \$4,012 in administrative penalties with \$802 deferred.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding McLennan County Water Control and Improvement District No. 2, Docket No. 2012-2023-MWD-E on February 14, 2013 assessing \$1,125 in administrative penalties with \$225 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kelly Harris dba Kelly Harris Tire Wrecker and Quick Lube, Docket No. 2011-1216-MSW-E on March 1, 2013 assessing \$17,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sabitha Nimma dba Kens Minit Market 3, Docket No. 2011-1492-PST-E on March 1, 2013 assessing \$22,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Naples, Docket No. 2012-0048-MWD-E on March 1, 2013 assessing \$8,730 in administrative penalties with \$1,746 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Gunter, Docket No. 2012-0276-MWD-E on March 1, 2013 assessing \$7,667 in administrative penalties with \$1,533 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Khaled Karim and Shaki Pyakurel dba Kwick Korner Shell, Docket No. 2012-0340-PST-E on March 1, 2013 assessing \$10,132 in administrative penalties with \$2,026 deferred.

Information concerning any aspect of this order may be obtained by contacting Maggie Dennis, Enforcement Coordinator at (512) 239-2578, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DEVELOPMENT II PARTNERS, INC. dba Katy on the Run, Docket No. 2012-0379-PST-E on March 1, 2013 assessing \$10,632 in administrative penalties with \$2,126 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TERRILL PETROLEUM CO., INC., Docket No. 2012-0428-PST-E on March 1, 2013 assessing \$9,050 in administrative penalties with \$1,810 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AMTUL ENTERPRISES, INC. dba Corner Market 102, Docket No. 2012-0590-PST-E on March 1, 2013 assessing \$8,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding C & R WATER SUPPLY INC., Docket No. 2012-0595-MWD-E on March 1, 2013 assessing \$18,438 in administrative penalties with \$3,687 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Big Lake, Docket No. 2012-0634-MWD-E on March 1, 2013 assessing \$18,340 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding River Chase Subdivision II, Ltd., Docket No. 2012-0733-EAQ-E on March 1, 2013 assessing \$180,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.



A default and shutdown order was entered regarding FASS INC. dba Bunnys CT, Docket No. 2012-0795-PST-E on March 1, 2013 assessing \$8,882 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ken Russell, Docket No. 2012-0803-MSW-E on March 1, 2013 assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Utilities, Inc., Docket No. 2012-0858-MWD-E on March 1, 2013 assessing \$21,089 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding B F Beverage, Inc dba NRH Shell, Docket No. 2012-0979-PST-E on March 1, 2013 assessing \$21,280 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David Fogle dba Enviro Waste Systems, Docket No. 2012-0997-MSW-E on March 1, 2013 assessing \$7,875 in administrative penalties with \$1,575 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2012-1006-AIR-E on March 1, 2013 assessing \$50,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXAS NEW HORIZON, INC. dba Merito Food Mart, Docket No. 2012-1078-PST-E on March 1, 2013 assessing \$12,500 in administrative penalties with \$2,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (713) 422-8970, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding HH&K, LLC dba Get N Go, Docket No. 2012-1088-PST-E on March 1, 2013 assessing \$9,272 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Total Petrochemicals & Refining USA, Inc., Docket No. 2012-1093-AIR-E on March 1, 2013 assessing \$10,370 in administrative penalties with \$2,074 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CLJS, Inc. dba Speedmax 6, Docket No. 2012-1203-PST-E on March 1, 2013 assessing \$7,609 in administrative penalties with \$1,521 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FOREST GLEN, INC., Docket No. 2012-1224-MWD-E on March 1, 2013 assessing \$10,500 in administrative penalties with \$2,100 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jim Hogg County Water Control and Improvement District No. 2, Docket No. 2012-1233-MWD-E on March 1, 2013 assessing \$7,790 in administrative penalties with \$1,558 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding FIRST GOLDEN JUBILEE ENT., INC. dba SNS Food Mart, Docket No. 2012-1238-PST-E on March 1, 2013 assessing \$8,881 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S.L.C. WATER SUPPLY CORPORATION, Docket No. 2012-1266-PWS-E on March 1, 2013 assessing \$417 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hallsville, Docket No. 2012-1365-MWD-E on March 1, 2013 assessing \$2462 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulf Marine Fabricators, L.P., Docket No. 2012-1415-MWD-E on March 1, 2013 assessing \$2,462 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Presbyterian Village North, Docket No. 2012-1497-PST-E on March 1, 2013 assessing \$11,500 in administrative penalties with \$2,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Orange County Water Control and Improvement District No. 1, Docket No. 2012-1632-MWD-E on March 1, 2013 assessing \$9,858 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201301102

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 13, 2013



### Notice of Water Quality Applications

The following notices were issued on February 27, 2013 through March 8, 2013.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

#### INFORMATION SECTION

H BOWERS, INC. which operates Bowers Shrimp, has applied for a renewal of TCEQ Permit No. WQ0004815000, which authorizes The disposal of process wastewater from the wash down of a shrimp and catfish processing facility at a daily average flow not exceed 102,740 gallons per day, and a daily maximum flow not to exceed 150,000 gallons per day via irrigation of 36.5 acres. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located at 24781 State Highway 35 South, Palacios, Texas 77465, which is 3.5 miles north of the City of Palacios on State Highway 35, 1000 feet south of the intersection of State Highway 35 and FM 521, Matagorda County, Texas 77465.

WOLF HOLLOW I, LP which operates Wolf Hollow I, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004288000, which authorizes the discharge of cooling tower blowdown, boiler blowdown and previously monitored effluent (low volume wastewater from internal Outfall 101) at a daily average flow not to exceed 1,100,000 million gallons per day via Outfall 001. The facility is located at the intersection of Wolf Hollow Court and Farm-to-Market Road 2425, approximately 1.1 miles east of the intersection Farm-to-Market Road 2425 and State Highway 144, Hood County, Texas.

CITY OF CLYDE has applied for a renewal of TPDES Permit No. WQ0010149001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 593,000 gallons per day. The facility is located at 3550 County Road 275, Clyde in Callahan County, Texas 79510.

CITY OF TEAGUE has applied for a renewal of TPDES Permit No. WQ0010300003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located 3000 feet east of the intersection of U.S. Highway 84 and Farm-to-Market Road 1367 in Freestone County, Texas 75860.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER 84 has applied for a renewal of TPDES Permit No. WQ0010558001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 16224 Bear Bayou Drive, Channelview, TX, southwest of the intersection of Bear Bayou and North Avenue, in the Old River Subdivision in Harris County, Texas 77530.

CEDARSTONE ONE INVESTORS, LTD. has applied for a renewal of TPDES Permit No. WQ0013697001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,000 gallons per day. The facility is located at 1544 Sawdust Road, on the front parking lot of Cedarstone Commercial Complex, on the north side of Sawdust Road, approximately one-tenth of a mile of the intersection of Sawdust Road and Sawmill Road in the Woodlands in Montgomery County, Texas 77380.

AQUA TEXAS, INC. has applied for a renewal of TPDES Permit No. WQ0014114001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 4.25 miles northwest of the intersection of SR-336 Loop and Interstate Highway 45; approximately 0.25 mile east of Lake Conroe in Montgomery County, Texas 77304.

AQUA TEXAS, INC. has applied for a renewal of TPDES Permit No. WQ0014219001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility will be located approximately 3,250 feet northwest of the intersection of Old Needville-Fairchilds Road and Jeske Road in Fort Bend County, Texas 77461.

BAHRAM SOLHJOU has applied for a renewal of TPDES Permit No. WQ0014620001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 70,000 gallons per day in the final phase. The facility will be located 1,800 feet south of Isom Road, approximately 3,500 feet east of Hardy Tollway in Harris County, Texas 77039.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of TPDES Permit No. WQ0014972001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located at 3523 Independence Parkway South, La Porte, approximately one mile north of the intersection of Independence Parkway South and Vista Road in Harris County, Texas 77571.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201301100

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 13, 2013



### Notice of Water Rights Application

Notice issued March 6, 2013.

APPLICATION NO. 14-1783A; West Texas Rehabilitation Center, 3001 S. Jackson Street, San Angelo, Texas 76904 seeks to amend its portion of Certificate of Adjudication No. 14-1783 to add a place of use, decrease the diversion rate, and add an upstream diversion point on the San Saba River, Colorado River Basin in Menard County, Texas. More information on the application and how to participate in the permitting process is given below. The Applicant indicates the diversion point is located in zip code 76859. The application was received on November 15, 2010. Additional information and fees were received on March 17, July 5, July 14, December 27, 2011; and January 6, February 9, March 13, and April 12, 2012. The application was declared administratively complete and filed with the Office of the Chief Clerk on November 27, 2012. The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions, including streamflow restrictions. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by March 25, 2013.

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.texas.gov/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201301101

Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: March 13, 2013

## Texas Ethics Commission

### List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5780.

#### **Deadline: 30-day Pre-election Report due April 30, 2012 for Candidates and Officeholders**

Jack C. Lee, P.O. Box 980563, Houston, Texas 77098-0563

Rod Ponton, 2301 N. Highway 118, Alpine, Texas 79830-2034

#### **Deadline: 30-day Pre-election Report due April 30, 2012 for Committees**

James Frinzi, Goodman Networks, Inc. Texas PAC, 10300 Lisa Cove, Austin, Texas 78733-1538

#### **Deadline: 8-day Pre-election Report due May 21, 2012 for Candidates and Officeholders**

Rod Ponton, 2301 N. Highway 118, Alpine, Texas 79830-2034

#### **Deadline: 8-day Pre-election Report due May 21, 2012 for Committees**

Shawn Stevens, Collin County Democratic Party (P), P.O. Box 795126, Dallas, Texas 75379-5216

Grace M. Uzomba, Bexar County Democratic Party (CEC), 10004 Wurzbach Rd. #132, San Antonio, Texas 78230-2214

#### **Deadline: Semiannual Report due July 16, 2012 for Candidates and Officeholders**

Michael Berlanga, 4110 Greensboro Dr., San Antonio, Texas 78229-4613

Timoteo C. Betancourt, P.O. Box 4255, Edinburg, Texas 78540-4255

Rasuali W. Bray, 2115 Runnels St. #2109, Houston, Texas 77003-1079

Robert Garza, 2116 Veterans Blvd., Ste. 5, Del Rio, Texas 78840-3042

Colin J. Guerra, 1401 Hill St., Bastrop, Texas 78602-3010

Gregory P. Lowery, P.O. Box 56, Paradise, Texas 76073-0056

#### **Deadline: Semiannual Report due July 16, 2012 for Committees**

Johnny J. Peet, Friends of Brandon Creighton, 2257 N. Loop 336, Ste. 140-366, Conroe, Texas 77304-3566

#### **Deadline: 30-day Pre-election Report due October 9, 2012 for Candidates and Officeholders**

Rasuali W. Bray, 2115 Runnels St. #2109, Houston, Texas 77003-1079

#### **Deadline: 8-day Pre-election Report due October 29, 2012 for Candidates and Officeholders**

Rasuali W. Bray, 2115 Runnels St. #2109, Houston, Texas 77003-1079

#### **Deadline: 8-day Pre-election Report due October 29, 2012 for Committees**

K. Michael Apodaca, Texas Young Democrats PAC, 3323 Sacramento Ave., El Paso, Texas 79930-4621

Leslie A. Gower, Hidalgo County Texas Democratic Women, 712 Walnut Ave., McAllen, Texas 78501-2165

**Deadline: Special Pre-election Report due November 2, 2012**

Sylvester Turner, 440 Louisiana St., Ste. 1880, Houston, Texas 77002-1638

**Deadline: Special Pre-election Report due November 5, 2012**

Raul Torres, 4118 Ayers St., Corpus Christi, Texas 78415-5318

**Deadline: Lobby Activities Report due November 13, 2012**

Jennifer E. Sellers, P.O. Box 684501, Austin, Texas 78768

**Deadline: Lobby Activities Report due January 10, 2013**

Anthony Haley, 301 Congress Ave., Ste. 1700, Austin, Texas 78701

Robin Melanson, 400 W. 15th St., Ste. 1200, Austin, Texas 78701

Ben Shepperd, P.O. Box 132, Midland, Texas 79702

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709

**Deadline: Monthly Report due January 7, 2013 for Committees**

Peter Hwang, Houston 80-20 PAC, 8300 Bender Rd., Humble, Texas 77396-2309

Kevin Cox, Grand Prairie Police Association PAC, P.O. Box 531184, Grand Prairie, Texas 75053-1184

**Deadline: Semiannual Report due January 15, 2013 for Candidates and Officeholders**

John A. Alaniz, c/o CFMS, 3320 Pecan Valley Dr., Ste. C, Temple, Texas 76502-1565

Bob Bagley, 14655 Old Humble Pipeline Rd., Conroe, Texas 77302-4435

Larry W. Baraka, 1512 E. McKinney St., Ste. 203, Denton, Texas 76209-4521

Joan Campbell, 4611 Huisache, Bellaire, Texas 77401-5115

Rebecca J. Cervera, 5111 N. 10th St. #345, McAllen, Texas 78504-2835

Denise Collins, P.O. Box 924475, Houston, Texas 77292-4475

Susan Delgado, 2284 Jean St., Houston, Texas 77023-5009

Josh B. Flynn, P.O. Box 431158, Houston, Texas 77243-1158

Guillermo Gandara, Jr., 10736 Thunder Rd., El Paso, Texas 79927-4817

Gerardo A. Garza, 1509 Summit Dr., Laredo, Texas 78045-6319

Michael D. Gibson, 603 Muirwood Ln., Sugar Land, Texas 77498-3034

Timothy M. Giddens, Jr., 5622 Evers Rd., Apt. 4606, San Antonio, Texas 78238-1753

Guadalupe A. Gonzalez, 2111 Dorado Dr., Mission, Texas 78573-8590

Colin J. Guerra, 1401 Hill St., Bastrop, Texas 78602-3010

Agustin Hernandez, Jr., 1801 Wendy Dr., Edinburg, Texas 78539-5358

Marilyn D. Jackson, P.O. Box 18982, Austin, Texas 78760-8982

Matthew Grant Johnston, 12960 Trail Hollow Dr., Houston, Texas 77079-3837

Joseph Glen Maya, 10264 Luella Ave., El Paso, Texas 79925-4363

Andrew C. McMillan, 1708 Elkhart Ave., Apt. B, Lubbock, Texas 79416-5341

Richard F. Melendrez, 3030 Altura Ave., El Paso, Texas 79930-3326

Choco G. Meza, 13707 Cape Bluff, San Antonio, Texas 78216-1606

Donald R. Mullins, 1431 Dominion Dr., Katy, Texas 77450-4311

Rick W. Neudorff, 531 Bois D Arc Ave., Princeton, Texas 75407-7438

David L. Nigh, 494 S. Seguin Ave., Ste. 201, New Braunfels, Texas 78130-7653

Dorothy M. Olmos, 6678 Sylvan Rd., Houston, Texas 77023-4829

John Pena, 102 W. 10th St., La Joya, Texas 78560-9076

Bruce Priddy, 17327 Davenport Rd., Dallas, Texas 75248-1367

Brett H. Pritchard, 2202 S. W.S. Young Dr., Killeen, Texas 76543-5318

Jonathan G. Rhine, 214 Joyce St., Apt. A, Weatherford, Texas 76085-1615

Daniel G. Rios, 323 W. Nolana Ave., McAllen, Texas 78504-2514

Frank Salazar, 15721 Garlang St., Channelview, Texas 77530-4207

Anthony B. Schram, 8018 Broadway St., Ste. 101, San Antonio, Texas 78209-2655

David L. Scott, 8007 Sunburst Pkwy., Round Rock, Texas 78681-3443

Heriberto Silva, P.O. Box 249, Garciasville, Texas 78547-0249

Emily G. Tobolowsky, 4506 Gilbert Ave., Dallas, Texas 75219-2121

Joseph F. Vinas IV, 505 Columbia, Houston, Texas 77007

Donald L. Williams, 3301 Rain Dance Dr., El Paso, Texas 79936-2320

**Deadline: Semiannual Report due January 15, 2013 for Committees**

Suzanne Bellsnyder, Texas Republicans Online PAC, 815A Brazos St., Ste. 317, Austin, Texas 78701-2502

Somiya Bhatnagar, United for Allen's Future PAC, 919 Pelican Dr., Allen, Texas 75013-4878

Richard C. Bodin Jr., Port Arthur Firefighters PAC, 197 Osborne Dr., Bridge City, Texas 77611-3023

Dee Ann Burns, Lake Travis Republican PAC, 107 Lakeway Hills Cv., Lakeway, Texas 78734-5064

Ronal Callender, Ellis County Sheriffs Officers Association Political Action Committee, 4680 Plainview Rd., Midlothian, Texas 76065-6315

Elida Carrasco, Concerned Citizens, P.O. Box 351, Hidalgo, Texas 78557-0351

Laquinta D. Donatto, KEY PAC, 3722 Rio Vista St., Houston, Texas 77021-1514

William Elliott, Texas Card Players Association Political Action Committee, P.O. Box 26176, Austin, Texas 78755-0176

Rebecca A. Ellisor, Area 5 Democratic Club, 227 Travis St., Webster, Texas 77598-5049

Rebecca A. Ellisor, Blue Star Democrats SD 11 PAC, 227 Travis St., Webster, Texas 77598-5049

Kenneth W. Flippin, Turn Texas Blue, 6209B Adalee Ave., Austin, Texas 78723-3317

Glen F. Fuller, Plumbers PAC, 11501 W. Hardy Rd., Houston, Texas 77076-1923

Len Goff, Fort Bend Democrats, 602 Texas Pkwy., Missouri City, Texas 77489-1202

Leslie A. Gower, Hidalgo County Texas Democratic Women, 712 Walnut Ave., McAllen, Texas 78501-2165

Michelle Hill, Citizens State Bank Woodville, Texas PAC, 800 Washington Ave., Waco, Texas 76701-1253

Jared H. Hockema, Fairness and Justice for All PAC, P.O. Box 533909, Harlingen, Texas 78553-3909

Patrick Johnson, Houstonians For A Better Tomorrow, 4610 Beechnut St., Apt. 104, Houston, Texas 77096-1811

Justin R. Jordan, Conservative Republicans of Houston, 11115 Sage Valley Dr., Houston, Texas 77089

Kerney Laday, North Texas African-American PAC, 18208 Preston Rd., Ste. D9-176, Dallas, Texas 75252-6007

Maria R. Lucio, Caldwell County Democrats, 126 S. Mitchell St., San Marcos, Texas 78666-5338

Lalique L. R. Martinez, Stop Tax Payer Abuse, 501 E. Oltorf St., Apt. 407, Austin, Texas 78704-5610

Heriberto Medrano, Harlingen Citizens Leadership Council Inc., 2009 E. Harrison Ave., Ste. B, Harlingen, Texas 78550-7386

Argelia Meza, Tejano Democrats of North Texas, 6952 Andress Dr., Fort Worth, Texas 76132-5030

Rochelle Ricks, Muslim Democratic Caucus Political Action Committee, 11411 Harwin Dr., Apt. 19, Houston, Texas 77072-1468

Daniel G. Simmons, Harris County Council of Organizations Political Action Committee, 4210 Tylergate Dr., Spring, Texas 77373-6728

Michael Sleeman, Tomball Tea Party, 15011 House Rd., Hockley, Texas 77447-9108

Todd M. Smith, Christmas PAC, 1001 Congress Ave., Ste. 250, Austin, Texas 78701-5002

Todd M. Smith, Stop Sharia PAC, 1001 Congress Ave., Ste. 250, Austin, Texas 78701-5002

Michael K. Stewart, Aggregate Transporters Association Political Action Committee, 816 Congress Ave., Ste. 1120, Austin, Texas 78701-2683

Jamie Story, Citizen Leader PAC, P.O. Box 27133, Houston, Texas 77227-7133

Joe D. Webb, Richmondrail.org, 3701 Kirby Dr., Ste. 916, Houston, Texas 77098-3922

Brian J. Welker, Republican Liberty PAC, 7715 Robin Rd., Dallas, Texas 75209-4109

Curtis Williams II, Unity PAC, 3401 Louisiana St., Ste. 250, Houston, Texas 77002

TRD-201301022

David Reisman

Executive Director

Texas Ethics Commission

Filed: March 7, 2013



**Texas Facilities Commission**

#### Request for Proposals #303-4-20367

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-4-20367. TFC seeks a five (5) year lease of approximately 9,159 square feet of office space in Temple or Belton, Bell County, Texas.

The deadline for questions is April 1, 2013, and the deadline for proposals is April 12, 2013, at 3:00 p.m. The award date is May 24, 2013. 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 Regional Leasing Assistant, 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=104801](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=104801).

TRD-201301087

Kay Molina

General Counsel

Texas Facilities Commission

Filed: March 11, 2013



#### Request for Proposals #303-4-20374

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-4-20374. TFC seeks a five (5) or ten (10) year lease of approximately 18,731 square feet of office space in Corpus Christi, Nueces County, Texas.

The deadline for questions is April 3, 2013, and the deadline for proposals is April 11, 2013, at 3:00 p.m. The award date is May 15, 2013. 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 Regional Leasing Assistant, 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=104808](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=104808).

TRD-201301094

Kay Molina

General Counsel

Texas Facilities Commission

Filed: March 12, 2013



#### Request for Proposals #303-4-20375

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) #303-4-20375. TFC seeks a five (5) or ten (10) year lease of approximately 10,789 square feet of office space in Bryan, Brazos County, Texas.

The deadline for questions is April 5, 2013, and the deadline for proposals is April 19, 2013, at 3:00 p.m. The award date is May 24, 2013.

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 Regional Leasing Assistant, 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=104807](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=104807).

TRD-201301095  
Kay Molina  
General Counsel  
Texas Facilities Commission  
Filed: March 12, 2013

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## Texas Health and Human Services Commission

### Public Notice

The Texas Health and Human Services Commission 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 April 1, 2013.

The purpose of this amendment is to update the fee schedules in the current state plan by including fees for new services and by modifying fees for existing services. These rate actions are being taken to comply with §355.8085(1)(B), Texas Medicaid Reimbursement Methodology for Physicians and Certain Other Practitioners under Title 1, Part 15, Chapter 355, Subchapter J of the Texas Administrative Code, which requires the Health and Human Services Commission to review fees for individual services at least once every two years. After performing the required review, the Health and Human Services Commission has determined that amendments to the fee schedule are appropriate.

Accordingly, the amendments will modify the fee schedules in the Texas Medicaid State Plan as a result of Medicaid fee adjustments for:

Dental Services;

Durable Medical Equipment, Prosthetics, Orthotics, and Supplies;

Early and Periodic Screening, Diagnosis, and Treatment Services (EPSDT); and

Physicians and Certain Other Practitioners.

The proposed amendment is estimated to result in an additional annual cost of \$1,598,732 for federal fiscal year (FFY) 2013, consisting of \$948,048 in federal funds and \$650,684 in state general revenue. For FFY 2014, the estimated annual cost is \$3,476,912 consisting of \$2,040,600 in federal funds and \$1,436,312 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 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at [dan.huggins@hhsc.state.tx.us](mailto:dan.huggins@hhsc.state.tx.us). Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201301090

Steve Aragon  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: March 12, 2013

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### Public Notice

The Texas Health and Human Services Commission announce 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 April 1, 2013.

The amendment will reduce the Medicaid rates for clinical laboratory services as a result of corresponding reductions to the Medicare fees upon which the Medicaid rates are based.

The proposed amendment is estimated to result in a reduced annual aggregate expenditure of \$16,616,991 for the remainder of federal fiscal year (FFY) 2013, with an estimated reduction of \$9,852,895 in federal funds and \$6,764,096 in state funds. For FFY 2014, the estimated annual reduction in aggregate expenditure is \$34,968,737, with an estimated reduction of \$20,523,152 in federal funds and \$14,445,585 in state funds. For FFY 2015, the estimated annual reduction in aggregate expenditure is \$36,629,727, with an estimated reduction of \$21,303,849 in federal funds and \$15,325,878 in state funds.

Interested parties may obtain copies of the proposed amendment by contacting Laura Skaggs, Hospital Reimbursement, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1348; by facsimile at (512) 491-1998; or by e-mail at [laura.skaggs@hhsc.state.tx.us](mailto:laura.skaggs@hhsc.state.tx.us). Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201301098  
Steve Aragon  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: March 12, 2013

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### Public Notice

The Texas Health and Human Services Commission (HHSC) intends to submit to the Centers for Medicare and Medicaid Services a request for a renewal to the NorthSTAR Behavioral Health waiver program, under the authority of §1915(b) of the Social Security Act. The NorthSTAR Behavioral Health waiver program is currently set to expire on September 30, 2013. The proposed effective date for this renewal is October 1, 2013. The NorthSTAR waiver provides behavioral health services (mental health and substance abuse) to Medicaid-eligible individuals in the Dallas service delivery area. These services are provided to eligible clients in a managed care setting. Individuals enrolled in NorthSTAR have access to coordinated mental health and substance abuse/chemical dependency services that exceed the traditional Medicaid service array. NorthSTAR serves seven counties in Texas: Collin, Dallas, Ellis, Hunt, Kaufman, Navarro, and Rockwall.

Major changes in this renewal include: Remove the exclusion which does not allow individuals who are age 65 or over and are receiving services through Institutions for Mental Diseases to receive services through the waiver. This renewal, if approved, would allow those individuals to participate in the waiver and receive services.

The Health and Human Services Commission is requesting that the Centers for Medicare & Medicaid Services approve this waiver renewal beginning October 1, 2013, and ending September 30, 2015. The waiver renewal application maintains cost effectiveness for federal years 2013 through 2015. To obtain copies of the proposed waiver application, interested parties may contact Meisha Scott by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-370, Austin, Texas 78708-5200, phone (512) 491-1315, fax (512) 491-1953, or by e-mail at TX\_Medicaid\_Waivers@hhsc.state.tx.us.

TRD-201301104

Steve Aragon  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: March 13, 2013

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**Department of State Health Services**

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	Austin Texas Radiation Oncology Group, P.A. dba Austin Cancer Centers	L01761	Austin	68	02/13/13
Bellaire	Texas Nuclear Imaging, Inc. dba Excel Diagnostic Imaging Clinic Medical Center	L05009	Bellaire	42	02/20/13
Brownwood	Brownwood Hospital, L.P. dba Brownwood Regional Medical Center	L02322	Brownwood	59	02/22/13
Edinburg	McAllen Hospitals, L.P. dba Edinburg Regional Medical Center	L04262	Edinburg	21	02/13/13
Fort Worth	Physicians Surgical Center of Fort Worth dba Physicians Surgical Center of Fort Worth	L05863	Fort Worth	05	02/13/13
Gonzales	Gonzales Healthcare System dba Memorial Hospital	L03473	Gonzales	15	02/19/13
Houston	Memorial Hermann Health System dba Memorial Hermann Texas Medical Center	L04655	Houston	46	02/25/13
Houston	American Diagnostic Tech, L.L.C.	L05514	Houston	87	02/14/13
Houston	Hillcroft Medical Clinic Association	L05618	Houston	08	02/14/13
Houston	The Methodist Hospital Research Institute	L06383	Houston	05	02/18/13
Houston	Radiomedix, Inc. dba Radiomedix	L06044	Houston	07	02/22/13
Lamesa	Dawson County Hospital District dba Medical Arts Hospital	L06244	Lamesa	09	02/14/13
La Porte	Total Petrochemicals & Refining USA, Inc.	L04640	La Porte	28	02/19/13
Midland	Texas Oncology, P.A. dba Allison Cancer Center	L04905	Midland	17	02/22/13
Paris	Essent PRMC, L.P. dba Paris Regional Medical Center	L03199	Paris	53	02/14/13
Pasadena	CHCA Bayshore, L.P. dba Bayshore Medical Center	L00153	Pasadena	96	02/20/13
Plano	Physician Reliance Network, Inc. dba Texas Oncology Plano West Cancer Center	L05896	Plano	21	02/18/13
Port Neches	TPC Group, L.L.C.	L06106	Port Neches	03	02/26/13
Richardson	Truglo, Inc.	L05519	Richardson	09	02/22/13
Round Rock	Columbia/St. David's Healthcare System, L.P. dba Medical Center of Round Rock	L03469	Round Rock	44	02/18/13
San Antonio	Medi-Physics, Inc. dba GE Healthcare	L04764	San Antonio	42	02/18/13
San Antonio	ACA SA, Ltd. dba Sendero Imaging and Treatment Center	L05567	San Antonio	20	02/14/13
Sugar Land	St. Luke's Community Development Corporation-Sugar Land dba St. Luke's Sugar Land Hospital	L06532	Sugar Land	01	02/14/13
Tyler	Mother Frances Hospital Regional Health Care Center	L01670	Tyler	181	02/22/13
Wichita Falls	Clinics of North Texas, L.L.P.	L00523	Wichita Falls	57	02/15/13
Throughout TX	Desert NDT, L.L.C. dba Midwest Inspection Services	L06462	Abilene	09	02/15/13
Throughout TX	DMS Health Technologies, Inc.	L05594	Cameron	17	02/15/13
Throughout TX	Critical Response Inspection Service, L.L.C.	L06497	Dayton	02	02/19/13
Throughout TX	Thrubit, L.L.C.	L06030	Houston	15	02/19/13
Throughout TX	Baker Hughes Oilfield Operations, Inc.	L06453	Houston	05	02/19/13
Throughout TX	Kleinfelder Central, Inc.	L01351	Irving	80	02/20/13



AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Throughout TX	Industrial Nuclear Company	L04508	La Porte	09	02/19/13
Throughout TX	Raba-Kistner Consultants, Inc. dba Raba-Kistner-Brytest Consultants, Inc.	L01571	San Antonio	75	02/25/13
Throughout TX	American Electric Power-Public Service Company of Oklahoma	L03481	Vernon	25	02/19/13

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Richardson	Truglo, Inc.	L05519	Richardson	08	03/01/13
Throughout TX	Oceaneering International, Inc.	L04463	Ingleside	81	02/19/13

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Brownwood	Brownwood Specialty Group dba BSG Imaging	L05878	Brownwood	07	02/22/13
Midland	The University of Texas System	L04648	Midland	13	02/15/13
Throughout TX	Numed Imaging Centers, Inc.	L05016	Denton	22	02/20/13

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201301021  
 Lisa Hernandez  
 General Counsel  
 Department of State Health Services  
 Filed: March 7, 2013

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**Heart of Texas Council of Governments**

Request for Proposals

The Heart of Texas Council of Governments (HOTCOG) is seeking to enter into a consulting services contract or contracts for the creation of maps using Geographic Information Systems to show water line, sewer line, and land use data for approximately 33 cities in a rural five-county area.

There will be three elements of the work: first, the conversion of existing paper and digital maps into a single set of GIS map layers; second, field work to improve upon the quality and accuracy of the mapping

data; and third, the broad identification of commercial versus residential areas in a land use layer.

Interested parties are requested to submit their proposals by 4:00 p.m., April 1, 2013, to HOTCOG for evaluation.

For a copy of the full request for proposals, please contact Angela Hughes at [angela.hughes@hot.cog.tx.us](mailto:angela.hughes@hot.cog.tx.us) or Kathy Trimmer at [kathy.trimmer@hot.cog.tx.us](mailto:kathy.trimmer@hot.cog.tx.us). Questions may be directed to Kathy Hughes or Angela Trimmer at (254) 292-1800.

TRD-201301020  
 Claudette Yates  
 Administrator  
 Heart of Texas Council of Governments  
 Filed: March 7, 2013

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**Texas Lottery Commission**

Instant Game Number 1518 "Cash Bam Boom"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1518 is "CASH BAM BOOM". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1518 shall be \$2.00 per Ticket.

1.2 Definitions in Instant Game No. 1518.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, FIRECRACKER SYMBOL, STAR SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000 and \$20,000.

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. 1518 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
FIRECRACKER SYMBOL	WIN
STAR SYMBOL	DOUBLE
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000 or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1518), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1518-0000001-001.

K. Pack - A Pack of "CASH BAM BOOM" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CASH BAM BOOM" Instant Game No. 1518 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "CASH BAM BOOM" Instant Game is determined once the latex on the Ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to either of the WINNING NUMBER Play Symbols, the player wins the PRIZE for that number. If a player reveals a "FIRE-CRACKER" Play Symbol, the player wins the PRIZE for that symbol instantly. If a player reveals a "STAR" Play Symbol, the player wins DOUBLE the prize for that symbol! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets will not have identical play data, spot for spot.

B. No duplicate non-winning YOUR NUMBERS Play Symbols on a Ticket.

C. No duplicate WINNING NUMBERS Play Symbols on a Ticket.

D. The "STAR" (doubler) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

E. The "FIRECRACKER" (auto win) Play Symbol will never appear more than once on a Ticket.

F. No more than two (2) identical non-winning Prize Symbols will appear on a Ticket.

G. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 5 and \$5).

I. The top prize will appear on every Ticket unless otherwise restricted by the prize structure.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "CASH BAM BOOM" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASH BAM BOOM" Instant Game prize of \$1,000 or \$20,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH BAM BOOM" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "CASH BAM BOOM" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "CASH BAM BOOM" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of

the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 Tickets in the Instant Game No. 1518. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1518 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	480,000	12.50
\$4	552,000	10.87
\$5	72,000	83.33
\$10	84,000	71.43
\$20	36,000	166.67
\$50	39,950	150.19
\$100	5,550	1,081.08
\$1,000	40	150,000.00
\$20,000	6	1,000,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.73. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1518 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1518, 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-201301089

Bob Biard

General Counsel

Texas Lottery Commission

Filed: March 12, 2013



Instant Game Number 1542 "Break the Bank"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1542 is "BREAK THE BANK". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1542 shall be \$2.00 per Ticket.

1.2 Definitions in Instant Game No. 1542.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, MONEY 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. 1542 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
MONEY SYMBOL	MONEY
\$2.00	TWOS
\$4.00	FOUR\$
\$6.00	SIX\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$200	TWO HUND
\$1,000	ONE THOU
\$3,000	THR THOU
\$30,000	30 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

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 Ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1542), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1542-0000001-001.

K. Pack - A Pack of "BREAK THE BANK" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BREAK THE BANK" Instant Game No. 1542 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, 16 TAC §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant Ticket. A prize winner in the "BREAK THE BANK" Instant Game is determined once the latex on the Ticket is scratched off to expose 19 (nineteen) Play Symbols. If the player matches any of YOUR

NUMBERS Play Symbols to any of the 3 LUCKY NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "MONEY" Play Symbol, the player wins the PRIZE instantly. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 19 (nineteen) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut, and have exactly 19 (nineteen) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
15. The Ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
16. Each of the 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 Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

C. No duplicate LUCKY NUMBERS Play Symbols on a Ticket.

D. There will be no correlation between the matching Play Symbols and the prize amount.

E. The "MONEY" (auto win) Play Symbol will never appear more than once on a Ticket.

F. No duplicate non-winning YOUR NUMBERS Play Symbols on a Ticket.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "BREAK THE BANK" Instant 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 Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00 or \$200 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BREAK THE BANK" Instant Game prize of \$1,000, \$3,000 or \$30,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BREAK THE BANK" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas

Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

- a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
- b. in default on a loan made under Chapter 52, Education Code; or
- c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title 1V-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "BREAK THE BANK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "BREAK THE BANK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 50,160,000 Tickets in the Instant Game No. 1542. The approximate number and value of prizes in the game are as follows:



Figure 2: GAME NO. 1542 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	4,915,680	10.20
\$4	2,909,280	17.24
\$6	802,560	62.50
\$8	200,640	250.00
\$10	501,600	100.00
\$12	601,920	83.33
\$20	300,960	166.67
\$50	186,010	269.66
\$200	34,903	1,437.13
\$1,000	1,045	48,000.00
\$3,000	257	195,175.10
\$30,000	33	1,520,000.00

\*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 Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1542 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1542, 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-201301019  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: March 7, 2013



**Panhandle Regional Planning Commission**

Legal Notice

The Panhandle Regional Planning Commission (PRPC) is seeking proposals from qualified organizations with demonstrated competence, knowledge, qualifications, successful performance, and reasonable fees to provide fiscal and program monitoring services for the workforce development programs administered in the Panhandle Workforce

Development Area (PWDA). Monitoring services to be provided are to ensure that the programs, functions and activities supported by Texas Workforce Commission (TWC) funds are in compliance with applicable federal and/or state requirements, and that programs achieve intended results, resources are efficiently and effectively used for authorized purposes, and resources are protected from waste, fraud, and abuse. The purpose of this solicitation is to enable PRPC to evaluate and select an entity capable of performing these services and to enter into negotiation for a contract at a fair and reasonable price.

Interested proposers may obtain a copy of the solicitation packet by contacting Leslie Hardin, at (806) 372-3381/(800) 477-4562 or lhardin@theprpc.org. The proposals must be submitted to PRPC no later than April 12, 2013.

TRD-201301040  
 Leslie Hardin  
 WFD Facilities, Support and Training Coordinator  
 Panhandle Regional Planning Commission  
 Filed: March 8, 2013



**Public Utility Commission of Texas**

Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 11, 2013, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Peoples Communication, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 41283.

Applicant intends to provide data, facilities-based, and resale telecommunications services.

Applicant intends to provide telecommunications services within the entire State of Texas, excluding those exchanges currently being served by Peoples Telephone Cooperative, Inc.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than March 29, 2013. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 41283.

TRD-201301091

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 12, 2013



#### Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on March 7, 2013, to amend a certificate of convenience and necessity for a proposed transmission line in Terry and Gaines Counties.

Docket Style and Number: Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a Proposed 115-kV Transmission Line within Terry and Gaines Counties, Docket Number 41222.

The Application: The application of Southwestern Public Service Company (SPS) to amend a certificate of convenience and necessity for a proposed 115-kV transmission line in Terry and Gaines Counties, Texas, is designated as the Diamondback Substation to Sulphur Springs Substation Transmission Line Project. The facilities include construction of a new Diamondback Substation, located in northeastern Gaines County, and a proposed 115-kV transmission line that will extend to the existing Sulphur Springs Substation located in southern Terry County. The proposed transmission line will be single-circuit. However, depending upon the route selected, some sections will be double-circuit. The total estimated cost for the project ranges from approximately \$17.3 million to \$20.5 million depending on the route chosen.

The proposed project is presented with 14 alternate routes consisting of a combined 45 segments and is estimated to be approximately 12 to 18 miles in length depending on which route is chosen. Any of the routes or route segments presented in the application could be approved by the commission.

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 1-888-782-8477. The deadline for intervention in this proceeding is April 22, 2013. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 41222.

TRD-201301044

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 8, 2013



#### Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on March 7, 2013, to amend a certificate of convenience and necessity for a proposed transmission line in Dawson County.

Docket Style and Number: Application of Lyntegar Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a Proposed 138-kV Transmission Line within Dawson County, Docket Number 41245.

The Application: The application of Lyntegar Electric Cooperative, Inc. (LEC) to amend a certificate of convenience and necessity for a proposed 138-kV transmission line in Dawson County, Texas, is designated as the West Lamesa 138-kV Transmission Line Project. The facilities include construction of a new 138-kV transmission line northwest of the City of Lamesa. The proposed line extends north from the recently constructed Jim Payne Breaker Station terminating at the West Lamesa Substation. LEC proposes to construct the line with steel or concrete single pole structures.

The total estimated cost for the project ranges from approximately \$4,834,932 to \$4,946,841 depending on the route chosen. The proposed project is presented with two alternate routes and is estimated to be approximately 4.45 miles in length. Any of the routes or route segments presented in the application could be approved by the commission.

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 1-888-782-8477. The deadline for intervention in this proceeding is April 22, 2013. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 41245.

TRD-201301045  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 8, 2013



#### Railroad Commission of Texas

##### Notice of Contract Assignment

The Railroad Commission of Texas (Commission) entered into a contract for professional engineering services with Corrigan Consulting, Inc. (12000 Aerospace Ave., Suite 450, Houston, Texas 77034) on July 14, 2009. These services included environmental assessments and site investigations at oil and gas industry exploration and production sites and associated facilities across the state for the control or cleanup of oil and gas waste or other substances or materials, including hazardous materials, regulated by the Commission, or other state or federal agencies that are causing or likely to cause surface or subsurface pollution of the soil, groundwater, or water wells.

The term of this contract was for two years with an option to extend the contract for one or more periods up to and including August 31, 2015. The contract was amended on March 10, 2011, to extend the contract through August 31, 2013. The contract was amended on March 11, 2013, to extend the contract through August 31, 2015.

Pursuant to Section 19 of the original contract, the Commission intends to agree to the assignment of Corrigan Consulting, Inc.'s (Corrigan) contract to Kleinfelder Central, Inc. (Kleinfelder) due to the acquisition of Corrigan by Kleinfelder. Kleinfelder has agreed to all contract conditions including the insurance certificate requirements.

For additional information, please contact Mr. Tom Morgan, Purchasing Manager, Railroad Commission of Texas, 1701 North Congress Ave., Austin, Texas 78711, or by telephone at (512) 463-7680.

TRD-201301096

Cristina Martinez Self

Attorney

Railroad Commission of Texas

Filed: March 12, 2013



## Texas Department of Transportation

### Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Eastland, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Eastland Municipal Airport during the course of the next five years through multiple grants.

**Current Project:** City of Eastland. TxDOT CSJ No.: 13TBESTLD. Scope:

Provide engineering/design services to:

1. construct a terminal building
2. expand terminal apron
3. construct new entrance road and auto parking and hangar access road
4. relocate terminal fence and gate
5. install fencing

The HUB goal for the current project is 10 percent. The TxDOT Project Manager is Stephanie Kleiber, P.E.

Future scope work items for engineering/design services within the next five years may include the following: rehabilitate and expand apron; rehabilitate and mark Runway 17-35; rehabilitate cross Taxiway; construct Taxiway from north apron to Runway.

The City of Eastland reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at

[www.txdot.gov/inside-txdot/division/aviation/projects](http://www.txdot.gov/inside-txdot/division/aviation/projects)

by selecting "Eastland Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

[www.txdot.gov/inside-txdot/division/aviation/projects](http://www.txdot.gov/inside-txdot/division/aviation/projects).

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight and one half by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

**ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

#### **Please note:**

**SEVEN** completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **April 16, 2013, 4:00 p.m.** Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at

[www.txdot.gov/inside-txdot/division/aviation/projects](http://www.txdot.gov/inside-txdot/division/aviation/projects)

under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Stephanie Kleiber, P.E., Project Manager.

TRD-201301067

Angie Parker

Associate General Counsel

Texas Department of Transportation

Filed: March 11, 2013



Public Hearing Notice - Unified Transportation Program

The Texas Department of Transportation (department) will hold a public hearing on Tuesday, April 9, 2013, 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 2013 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 2013 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 Monday, April 8, 2013, 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 2013 UTP to Marc D. Williams, Director of Planning, P.O. Box 149217, Austin, Texas 78714-9217. Interested parties may also submit comments regarding the updates to the 2013 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 Monday, April 22, 2013.

TRD-201301068  
Angie Parker  
Associate General Counsel  
Texas Department of Transportation  
Filed: March 11, 2013

## Upper Rio Grande Workforce Development Board

Request for Proposals for Real Estate Broker Services  
PY12-RFP-200-802

It is the intention of the Upper Rio Grande Workforce Development Board to enter into an agreement with a qualified broker or brokerage firm to provide real estate advisory services and commercial leasing agent representation on behalf of the Workforce Board. Services will be on an as-needed basis for Workforce Board identified sites throughout the contracted year. Currently the Workforce Board has 13 locations throughout our six-county region consisting of administrative offices, career centers, and satellite centers. Our satellite centers are co-locations with institutions of higher learning, other governmental entities and non-profit organizations. It is the intent of the Workforce Board to develop state-of-the-art career centers that incorporate highly visible locations strategically located to maximize clientele utilization. These facilities should have certain common attributes:

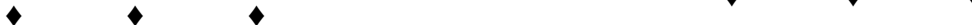
- Efficiency and cost effectiveness
- Flexibility and expandability
- Clean Surroundings
- Easy visibility
- Accessibility
- Professional image
- Aesthetically pleasing
- Security and safety

Release Date: March 11, 2013

Submission Deadline: April 15, 2013, 5:00 p.m. MST

To ensure a fair and objective evaluation, all questions related to the RFP must be submitted in writing to:

Workforce Solutions Upper Rio Grande  
Muriel Thomas-Borders, Contracts Administrator  
300 E. Main, Suite 800  
El Paso, Texas 79901  
Phone (915) 887-2220  
Fax: (915) 351-2790  
E-mail: [muriel.borders@urgjobs.org](mailto:muriel.borders@urgjobs.org)  
And/or [procurement@urgjobs.org](mailto:procurement@urgjobs.org)  
TRD-201301043  
Joseph G. Sapien  
Program Administrator  
Upper Rio Grande Workforce Development Board  
Filed: March 8, 2013



## How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules**- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 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 "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION

#### Part 4. Office of the Secretary of State

#### Chapter 91. Texas Register

40 TAC §3.704.....950 (P)