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# TEXAS REGISTER

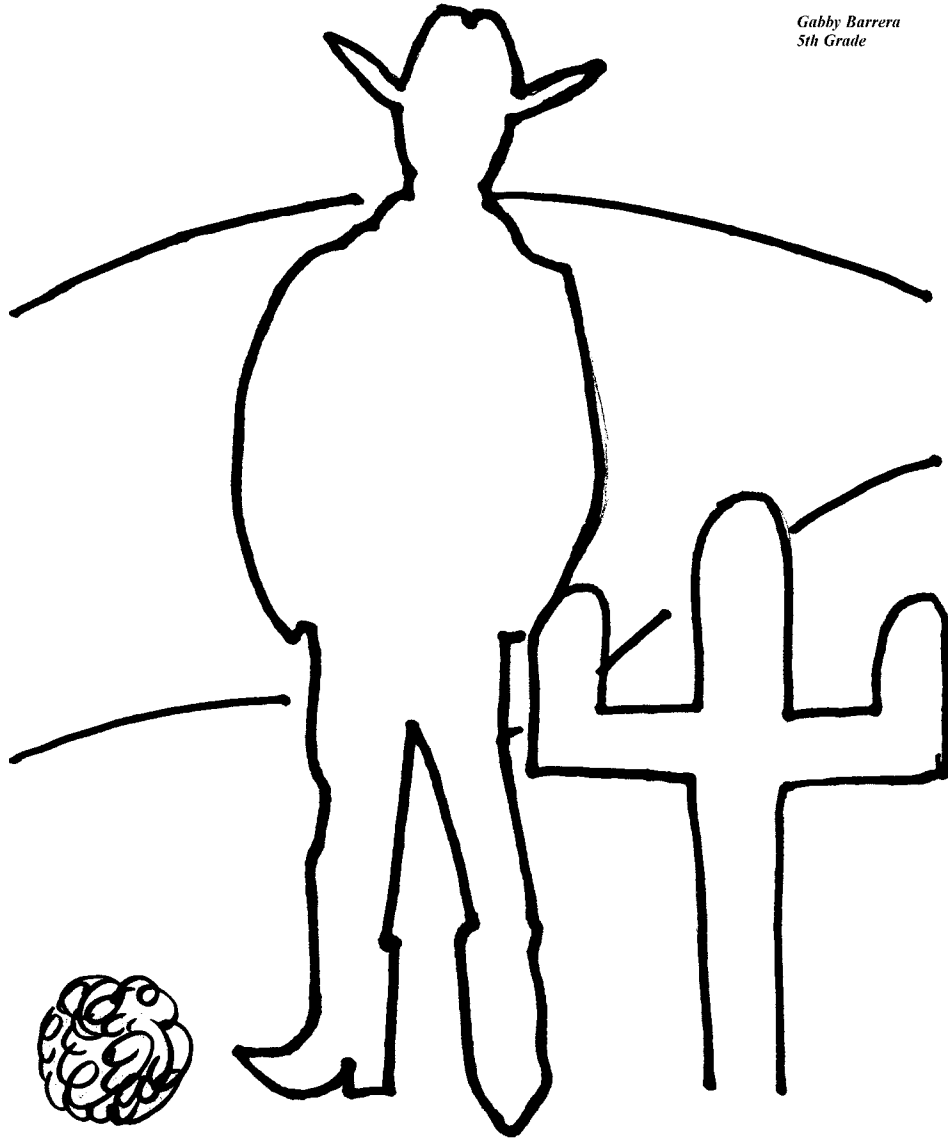
*Volume 37 Number 7*

*February 17, 2012*

*Pages - 1030*

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*Gabby Barrera  
5th Grade*



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

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

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

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

# TEXAS REGISTER

a section of the  
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# IN THIS ISSUE

## **GOVERNOR**

Appointments.....821

## **ATTORNEY GENERAL**

Requests for Opinions.....823

Opinions.....823

## **PROPOSED RULES**

### **TEXAS ANIMAL HEALTH COMMISSION**

#### **BRUCELLOSIS**

4 TAC §35.4.....825

#### **ENTRY REQUIREMENTS**

4 TAC §§51.3, 51.7, 51.14.....827

### **TEXAS HOLOCAUST AND GENOCIDE COMMISSION**

#### **COMMISSION PROCEDURES**

13 TAC §191.4.....830

13 TAC §191.6.....831

### **TEXAS LOTTERY COMMISSION**

#### **ADMINISTRATION OF STATE LOTTERY ACT**

16 TAC §401.320.....833

#### **CHARITABLE BINGO ADMINISTRATIVE RULES**

16 TAC §402.302.....834

16 TAC §402.321.....835

16 TAC §402.322.....837

16 TAC §402.323.....838

16 TAC §402.324.....839

16 TAC §402.325.....840

16 TAC §402.326.....842

16 TAC §402.327.....843

16 TAC §402.328.....844

### **TEXAS BOARD OF CHIROPRACTIC EXAMINERS**

#### **APPLICATIONS AND APPLICANTS**

22 TAC §71.15.....845

#### **RULES OF PRACTICE**

22 TAC §75.2.....846

### **STATE BOARD OF DENTAL EXAMINERS**

#### **DENTAL LICENSURE**

22 TAC §101.6.....847

#### **DENTAL HYGIENE LICENSURE**

22 TAC §103.6.....848

#### **PROFESSIONAL CONDUCT**

22 TAC §108.8.....849

### **TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS**

#### **PRACTICE AND PROCEDURE**

22 TAC §575.8.....849

22 TAC §575.22.....850

22 TAC §575.24.....852

22 TAC §575.25.....853

22 TAC §575.27.....854

22 TAC §575.29.....856

22 TAC §575.35.....857

22 TAC §575.36.....858

22 TAC §575.40.....859

22 TAC §575.50.....860

22 TAC §575.61.....861

### **TEXAS BOARD OF LICENSURE FOR PROFESSIONAL MEDICAL PHYSICISTS**

#### **MEDICAL PHYSICISTS**

22 TAC §§601.1 - 601.24.....862

### **TEXAS PARKS AND WILDLIFE DEPARTMENT**

#### **FINANCE**

31 TAC §53.2.....873

#### **FISHERIES**

31 TAC §57.910.....874

31 TAC §§57.971 - 57.973, 57.975.....878

31 TAC §57.981.....880

#### **WILDLIFE**

31 TAC §§65.7, 65.8, 65.11, 65.25.....882

31 TAC §65.42, §65.60.....883

### **TEXAS STATE SOIL AND WATER CONSERVATION BOARD**

#### **FINANCIAL ASSISTANCE**

31 TAC §§517.22 - 517.37.....884

### **TEXAS COMMISSION ON FIRE PROTECTION**

#### **STANDARDS FOR CERTIFICATION**

37 TAC §421.9.....896

#### **FIRE FIGHTER SAFETY**

37 TAC §435.1.....897

### **TEXAS VETERANS COMMISSION**

#### **ADMINISTRATION GENERAL PROVISIONS**

40 TAC §452.2.....898

<b>DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES</b>	
CHILD PROTECTIVE SERVICES	
40 TAC §700.108.....	900
CHILD PROTECTIVE SERVICES	
40 TAC §700.850.....	902
40 TAC §700.1043.....	902
<b>WITHDRAWN RULES</b>	
<b>TEXAS STATE LIBRARY AND ARCHIVES COMMISSION</b>	
STATE RECORDS	
13 TAC §6.10.....	905
LOCAL RECORDS	
13 TAC §7.125.....	905
13 TAC §§7.161 - 7.166.....	905
<b>ADOPTED RULES</b>	
<b>TEXAS HEALTH AND HUMAN SERVICES COMMISSION</b>	
MEDICAID HEALTH SERVICES	
1 TAC §354.1865.....	907
<b>TEXAS DEPARTMENT OF AGRICULTURE</b>	
TEXAS AGRICULTURAL FINANCE AUTHORITY	
4 TAC §28.24.....	907
<b>TEXAS ANIMAL HEALTH COMMISSION</b>	
FEES	
4 TAC §33.4.....	908
<b>PUBLIC UTILITY COMMISSION OF TEXAS</b>	
SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS	
16 TAC §26.130.....	909
<b>TEXAS BOARD OF CHIROPRACTIC EXAMINERS</b>	
APPLICATIONS AND APPLICANTS	
22 TAC §71.13.....	910
<b>TEXAS WATER DEVELOPMENT BOARD</b>	
GROUNDWATER MANAGEMENT	
31 TAC §356.23.....	910
<b>TEXAS COMMISSION ON FIRE PROTECTION</b>	
FIRE SERVICE INSTRUCTORS	
37 TAC §425.1.....	911
MINIMUM STANDARDS FOR FIRE INSPECTORS	

37 TAC §§429.201, 429.203, 429.205, 429.207, 429.209, 429.211	911
FIRE INVESTIGATION	
37 TAC §431.3.....	912
FIRE OFFICER	
37 TAC §451.3.....	912
37 TAC §451.203.....	913
<b>DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES</b>	
MINIMUM STANDARDS FOR SHELTER CARE	
40 TAC §743.3, §743.7.....	914
40 TAC §§743.105, 743.107, 743.109.....	914
40 TAC §743.201.....	914
40 TAC §§743.301, 743.303, 743.305, 743.307, 743.309.....	915
40 TAC §§743.401, 743.403, 743.405, 743.407, 743.409, 743.411	915
40 TAC §§743.501, 743.503, 743.505, 743.507, 743.509, 743.511, 743.513, 743.515, 743.517, 743.519.....	915
40 TAC §§743.601, 743.603, 743.605, 743.607.....	916
40 TAC §743.701, §743.703.....	916
MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS	
40 TAC §744.105.....	918
40 TAC §744.201.....	918
40 TAC §744.305.....	919
40 TAC §744.603.....	919
40 TAC §§744.1309, 744.1311, 744.1319, 744.1327, 744.1331.....	919
40 TAC §744.1329.....	920
40 TAC §§744.2651, 744.2653, 744.2655.....	921
40 TAC §§744.2651, 744.2653, 744.2655, 744.2663, 744.2665.....	921
LICENSING	
40 TAC §745.21.....	924
40 TAC §745.33, §745.37.....	924
40 TAC §745.115, §745.117.....	924
40 TAC §745.243.....	924
40 TAC §§745.503, 745.505, 745.509.....	925
40 TAC §745.601.....	925
40 TAC §745.615.....	925
40 TAC §745.696.....	926
40 TAC §§745.901, 745.903, 745.905, 745.907, 745.911, 745.913	926
40 TAC §745.8407, §745.8427.....	926
40 TAC §745.8605.....	927
40 TAC §745.8805.....	927



Company Licensing .....	985	Notice of Application for Designation as an Eligible Telecommunications Carrier .....	1025
Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer .....	986	Notice of Application for Retail Electric Provider Certification ...	1026
<b>Texas Lottery Commission</b>		Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line.....	1026
Instant Game Number 1387 "\$500,000,000 Extreme Cash Blast" ..	986	Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208(h) .....	1026
Instant Game Number 1398 "Cash Farmer" .....	991	Notice of Joint Agreement to Provide Extended Area Service.....	1026
Instant Game Number 1399 "Easy Money" .....	995	Public Notice of Spanish Language Prepaid Disclosure Statement	1027
Instant Game Number 1400 "Texas 7's" .....	999	Public Notice of Workshop on Transparency and Accountability in the Administration of the Texas Universal Service Fund .....	1027
Instant Game Number 1407 "Hot Numbers®" .....	1003	Request for Comment and Notice of Workshop .....	1027
Instant Game Number 1409 "Fast Cash" .....	1008	Request for Comment and Notice of Workshop .....	1028
Instant Game Number 1437 "Monthly Bonus" .....	1012	<b>Texas Department of Transportation</b>	
Instant Game Number 1438 "Bonus Cashword" .....	1016	Aviation Division - Request for Proposal for Professional Engineering Services .....	1028
Instant Game Number 1440 "Weekly Grand" .....	1020	Aviation Division - Request for Proposal for Professional Engineering Services .....	1029
Notice of Public Comment Hearing .....	1024	Aviation Division - Request for Proposal for Professional Engineering Services .....	1029
Notice of Public Comment Hearing.....	1024	Public Hearing Notice - Unified Transportation Program .....	1030
<b>North Central Texas Council of Governments</b>			
Consultant Contract Award.....	1025		
<b>Public Utility Commission of Texas</b>			
Notice of Application for Amendment to Certificated Service Area Boundary.....	1025		
Notice of Application for Amendment to Service Provider Certificate of Operating Authority.....	1025		

# 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 January 23, 2012

Appointed as District Attorney for the 259th Judicial District, Jones and Shackelford Counties, for a term until the next General Election and until his successor shall be duly elected and qualified, Joe Edd Boaz of Anson (replacing Billy John Edwards of Anson who retired).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2017, Mabrie Jackson of Plano (replacing James Endicott, Jr. of Harker Heights whose term expired).

Appointed to the Texas Bioenergy Policy Council for a term to expire January 1, 2014, James A. Brody of Lufkin (reappointed).

Appointed to the Texas Bioenergy Policy Council for a term to expire January 1, 2014, Paul Dickerson of Houston (reappointed).

Appointed to the Texas Bioenergy Policy Council for a term to expire January 1, 2014, Kevin J. Land of Lake Jackson (reappointed).

Appointed to the Texas Bioenergy Policy Council for a term to expire January 1, 2014, Danny M. Vines of Lufkin (reappointed).

Appointed to Humanities Texas for a term to expire December 31, 2013, J. Bruce Bugg, Jr. of San Antonio (reappointed).

Appointed to Humanities Texas for a term to expire December 31, 2013, Pauline Peters of Dallas (reappointed).

Appointed to Humanities Texas for a term to expire December 31, 2013, Polly Sowell of Austin (reappointed).

Appointed to the Texas Medical Board for a term to expire April 13, 2013, William "Roy" Smythe of Belton (replacing Charles Oswalt, III of Waco who resigned).

Appointed to the Texas Medical Board for a term to expire April 13, 2015, Tessa Paulette Southard of Alice (replacing Timothy Turner of Houston who resigned).

Appointed to the Texas Medical Board for a term to expire April 13, 2017, Carlos L. Gallardo of Frisco (replacing Paulette Southard of Alice whose term expired).

Appointed to the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments for a term to expire December 31, 2017, William M. McCrae of San Antonio (replacing Melissa Rodriguez of El Paso whose term expired).

Appointed to the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments for a term to expire December 31, 2017, Jesus "Jesse" Rangel, Jr. of Longview (replacing Kenneth Haesy of Houston whose term expired).

Appointed to the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments for a term to expire December 31, 2017, Barbara A. Willy of Sugar Land (Ms. Willy is being reappointed).

Designating Sheri S. Krause as presiding officer of the Texas Historical Commission, effective January 28, 2012, for a term at the pleasure of the Governor. Ms. Krause is replacing Jon Hansen of El Paso as presiding officer.

Appointed to the Texas Historical Commission, effective January 28, 2012, for a term to expire February 1, 2017, Robert K. "Bob" Shepard of Weatherford (replacing Thomas Phillips of Bastrop whose term expired).

### Appointments for January 24, 2012

Appointed to the Texas Tech University System Board of Regents for a term to expire January 31, 2015, John B. Walker of Houston (replacing John Huffaker of Amarillo who resigned).

### Appointments for January 27, 2012

Appointed to the Governor's Commission for Women for a term to expire December 31, 2013, Regina "Gina" Bridwell of Abilene (Ms. Bridwell is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2013, Stephanie P. Cavender of San Antonio (Ms. Cavender is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2013, Jewel "Julie" Crosswell of Houston (replacing Claudia Abney of Marshall whose term expired).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2013, Cynthia T. Jenkins of Irving (Ms. Jenkins is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2013, Claudia Kreisle of Houston (replacing Daisy White of Houston whose term expired).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2013, Elisa "Lisa" Lucero of Austin (Ms. Lucero is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2013, Virginia "Ivy" Pate of Beaumont (replacing Cris Graham of Fredericksburg whose term expired).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2013, Becky D. McKinley of Amarillo (Ms. McKinley is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2013, M. Carmen Pagan of McAllen (Ms. Pagan is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2013, Carol F. Peterson of Alpine (Ms. Peterson is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2013, Tresa Rockwell of Austin (Ms. Rockwell is being reappointed).

Appointed to the Governor's Commission for Women for a term to expire December 31, 2013, Connie Weeks of Austin (Ms. Weeks is being reappointed).

Appointed to the Texas Medical Board District One Review Committee for a term to expire January 15, 2018, Sharon J. Barnes of Rosharon (Ms. Barnes is being reappointed).

Appointed to the Texas Medical Board District One Review Committee for a term to expire January 15, 2018, David D. Davila of Cypress (replacing Frank Wellborne of Houston whose term expired).

Appointed to the Texas Medical Board District Two Review Committee for a term to expire January 15, 2016, Lewis J. Benavides of Oak Point (replacing Ruthie Burrus of Austin whose term expired).

Appointed to the Texas Medical Board District Two Review Committee for a term to expire January 15, 2018, Randall B. Isenberg of Dallas (replacing David Baucom of Sulphur Springs whose term expired).

Appointed to the Texas Medical Board District Two Review Committee for a term to expire January 15, 2018, Hari Reddy of Fairview (Dr. Reddy is being reappointed).

Appointed to the Texas Medical Board District Two Review Committee for a term to expire January 15, 2018, Melissa D. Tonn of Dallas (Dr. Tonn is being reappointed).

Appointed to the Texas Medical Board District Three Review Committee for a term to expire January 15, 2018, David W. Miller of Abilene (Dr. Miller is being reappointed).

Appointed to the Texas Medical Board District Three Review Committee for a term to expire January 15, 2018, John S. Scott, Jr. of Keller (replacing Roberta Kalafut of Abilene whose term expired).

Appointed to the Texas Medical Board District Four Review Committee for a term to expire January 15, 2018, Ruthie Burrus of Austin (replacing Paul Carrozza of Austin whose term expired).

Appointed to the Texas Medical Board District Four Review Committee for a term to expire January 15, 2018, John R. Guerra of Mission (Dr. Guerra is being reappointed).

Appointed to the Texas Medical Board District Four Review Committee for a term to expire January 15, 2018, Richard Newman of San Antonio (Dr. Newman is being reappointed).

Rick Perry, Governor

TRD-201200555





# THE ATTORNEY GENERAL

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

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

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

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

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## Requests for Opinions

### RQ-1038-GA

#### Requestor:

The Honorable Lisa Pence

Erath County Attorney

100 West Washington

Stephenville, Texas 76401

Re: Duty of a county clerk with regard to foreclosure liens under section 51.0022, Property Code (RQ-1038-GA)

#### Briefs requested by March 2, 2012

*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-201200633

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: February 7, 2012



## Opinions

### Opinion No. GA-0910

The Honorable Florence Shapiro

Chair, Committee on Education

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Application of nepotism law, chapter 573, Government Code, to a school superintendent's reassignment of his spouse, a school district counselor (RQ-0991-GA)

## S U M M A R Y

A superintendent of an independent school district is not a public official subject to the anti-nepotism provisions of the Government Code when assigning an employee to a particular district campus.

#### Opinion No. GA-0911

Mr. Douglas Oldmixon, Commissioner

Texas Appraiser Licensing and Certification Board

Post Office Box 12188

Austin, Texas 78711

Re: Jurisdiction of the Appraiser Licensing and Certification Board over a property tax appraiser's uniform and equal analysis (RQ-0992-GA)

## S U M M A R Y

Chapter 1103 of the Texas Occupations Code regulates the licensing and certification of real estate appraisers. Chapter 1103 subjects appraisers to the Uniform Standards of Professional Appraisal Practice ("USPAP") and Texas Appraiser Licensing and Certification Board ("Board") rules. If the USPAP or Board rules regulate a particular task that appraisers might perform, chapter 1103 would require appraisers to comply with those regulations. Subject to administrative and judicial review, the Board may determine whether the USPAP or Board rules regulate particular tasks that appraisers might perform.

*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-201200625

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: February 7, 2012



# 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 4. AGRICULTURE

### PART 2. TEXAS ANIMAL HEALTH COMMISSION

#### CHAPTER 35. BRUCELLOSIS

##### SUBCHAPTER A. ERADICATION OF BRUCELLOSIS IN CATTLE

###### 4 TAC §35.4

The Texas Animal Health Commission (Commission) proposes amendments to §35.4, concerning Entry, Movement, and Change of Ownership. The Commission is removing the Brucellosis test requirement and adding a requirement that cattle be identified when there is a change of ownership.

The Commission ceased to enforce the requirement for change of ownership Brucellosis testing because of insufficient funds to supplement the cost of testing at livestock markets. This became effective on August 1, 2011. For that reason, the agency is amending the rule to no longer require testing. Historically, cattle that were tested for brucellosis had permanent official identification applied (such as ear tags) and recorded. This reality was a significant asset to the agency's ability to successfully track or trace down cattle as needed for all disease programs, not just brucellosis. The identification capability was also lost at the time the testing requirement was no longer enforced. For that reason, the Commission is also proposing to require that all cattle that are parturient or post parturient or 18 months of age and older, except steers and spayed heifers, changing ownership within Texas shall be officially identified with Commission approved permanent identification.

The Commission believes that it is in the best interest of the state's cattle industry to develop and implement a minimal identification requirement in order to maintain a surveillance standard that supports the full completion of the Brucellosis eradication program as well as other ongoing disease eradication or surveillance efforts. This requirement was enforced prior to August 1, 2011, and though the testing requirement is proposed to be halted, the need for permanent identification for traceability reasons is still relevant. With an increased dependence on brucellosis testing at slaughter, and an increase in tuberculosis prevalence nationwide, the need for permanent identification is more critical than ever.

###### FISCAL NOTE

Dr. Matt Cochran, Assistant Executive Director of Administration, has determined for the first five-year period the rule is in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or admin-

istering the rule. A component of this rule change is removal of required first point brucellosis testing, and there is no negative fiscal impact for this change in a singular context. The supplies required for tagging cattle as proposed are readily available to producers and other parties who will apply official ID, and according to the federal adt rule, new tags will be available from the USDA at no extra charge. The necessity of official ID also creates an opportunity for provision of ID applications by a third party for a nominal fee. The actual cost of tagging will vary some depending on the situation. Having a reasonable level of traceability will result in cost savings in the long run, as disease exposure and sources will be more readily identified; saving unrelated animals, facilities, ranchers, and brokers the time and cost of having to review their records and have their animals tested. The cost of disease is tied in large part to trade-dependent animal/product value, and disease traceability mitigates the negative effect that animal disease has on trade.

###### PUBLIC BENEFIT NOTE

Dr. Cochran has also 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 sustained disease surveillance, control, enhanced marketability, quality assurance, and the related relative freedoms of commerce both intra and interstate.

###### LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed amendments will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

###### TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. The proposed amendments are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7 and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

###### REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us."

###### STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and do-

mestic fowl from disease. The Commission is authorized by §161.041(b) to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That authority is found in §161.061.

As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the Commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

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

*§35.4. Entry, Movement, and Change of Ownership.*

(a) Requirements for cattle from foreign countries without comparable brucellosis status that enter and remain in Texas. (Note: Cattle from foreign countries with comparable brucellosis status would enter by meeting the requirements for a state with similar status.)

(1) Permit requirement. Sexually intact cattle must obtain an "E" permit from the Texas Animal Health Commission prior to moving to a destination in Texas other than direct to slaughter, quarantined feedlot or designated pens. The permit number must be entered on the Importation Certificate (VS Form 17-30) and a copy of that certificate forwarded to the Commission's office in Austin immediately following issuance.

(2) Branding requirements.

(A) Sexually intact cattle destined for a quarantined feedlot or designated pen must be "S"-branded prior to or upon arrival at the quarantined feedlot or designated pen.

(B) Spayed heifers shall be identified by branding prior to entry as specified in §35.1 of this title (relating to Definitions).

(3) Vaccination requirement. Nonvaccinated sexually intact female cattle between four and 12 months of age entering for purposes other than immediate slaughter or feeding for slaughter in a quarantined feedlot or designated pen shall be placed under quarantine on arrival and officially brucellosis vaccinated as outlined in §35.2(m) of this title (relating to General Requirements). The quarantine may be released after meeting test requirements.

(4) Testing requirements for bulls entering for purposes other than immediate slaughter or feeding in a quarantined feedlot

or designated pen. Bulls entering for purposes other than immediate slaughter or feeding in a quarantined feedlot or designated pen shall be tested at the port of entry into Texas under the supervision of the port veterinarian, and placed under quarantine and retested 120 to 180 days after arrival. The quarantine will be released following a negative brucellosis test.

(5) Testing requirements for females entering for purposes other than immediate slaughter or feeding in a quarantined feedlot or designated pen. All sexually intact female cattle entering for purposes other than immediate slaughter or feeding for slaughter in a quarantined feedlot or designated pen shall be tested at the port of entry into Texas under the supervision of the port veterinarian, and placed under quarantine on arrival and retested for brucellosis in no less than 120 days nor more than 180 days after arrival for release of the quarantine; however, if the sexually intact female cattle have not had their first calf prior to the 120 to 180 day post entry test, the quarantine will not be released until a second negative test for brucellosis is conducted no sooner than 30 days after the animal has had its first calf and the second negative test has been confirmed.

(6) Testing requirements for sexually intact cattle moving directly to a quarantined feedlot or designated pen. All sexually intact cattle destined for feeding for slaughter in a quarantined feedlot or designated pen must be tested at the port of entry into Texas under the supervision of the port veterinarian. These cattle must be "S"-branded prior to or upon arrival at the quarantined feedlot or designated pen, and may move to the quarantined feedlot or designated pen only in sealed trucks with a VS 1-27 permit issued by a representative of TAHC or USDA [personnel].

(7) Responsibility for costs. All costs of calfhood vaccination, testing, and retesting shall be borne by the owner.

(b) Requirements for cattle entering Texas from other states.

(1) Vaccination. All non vaccinated female cattle between four and 12 months of age shall be officially vaccinated prior to entry. Exceptions to these vaccination requirements are:

(A) Female cattle entering for purposes of shows, fairs and exhibitions and returning to their original location.

(B) Female cattle moving within commuter herds.

(C) Spayed heifers.

(D) Female cattle from free states.

(E) Female cattle from other than free states shall be vaccinated as follows:

(i) Entering from an out-of-state farm of origin will be accompanied by a waybill to a Texas market, a feedlot for feeding for slaughter, or direct to slaughter. These cattle may be vaccinated at the market at no expense to the state prior to leaving the market and be moved freely. If these cattle are not vaccinated at the market, then they shall be consigned from the market only to a feedlot for feeding for slaughter or direct to slaughter, accompanied by an "S" permit. If consigned to a feedlot, they shall also be "F" branded high on the tail-head prior to or upon entering the feedlot.

(ii) Entering from an out-of-state livestock market to a Texas livestock market, a feedlot for feeding for slaughter or direct to slaughter will be accompanied by an "S" brand permit or certificate of veterinary inspection. Individual identification is not required. These cattle may be vaccinated at no expense to the state prior to leaving the market and be moved freely. If these cattle are not vaccinated at the market, then they shall be consigned from the market only to a feedlot for feeding for slaughter, or direct to slaughter, and accompanied by an

"S" permit. If consigned to a feedlot, they shall also be "F" branded high on the tail-head prior to or upon entering the feedlot.

(iii) Entering from any out-of-state location and destined for a Texas premise may enter on a calfhood vaccination permit and must be vaccinated at no expense to the state within 14 days after arriving at the premise of destination.

(2) Testing. All non-quarantined cattle that are parturient or post parturient or that are 18 months of age and over (as evidenced by the loss of the first pair of temporary incisor teeth), except steers and spayed heifers entering Texas:

(A) shall be moved directly from:

- (i) a class free state or area; or
- (ii) a certified free herd; or
- (iii) a commuter herd as defined in these sections; or

(B) Cattle not from class free states or areas, certified brucellosis free herds, or commuter herds shall be "S"-branded and moved directly to a quarantined feedlot, to designated pens, or to slaughter, accompanied with an "S" permit, or moved directly from a farm of origin to a USDA specifically approved livestock market to be "S"-branded and moved directly to a quarantined feedlot, to designated pens, or to slaughter accompanied with an "S" permit; or

(C) shall be tested negative one or more times as described in this subparagraph:

(i) cattle from a Class "A" state or area shall:

(I) be tested negative within 30 days prior to entry; or

(II) be moved directly from a farm of origin to a USDA specifically approved livestock market for a negative test prior to sale;

(ii) cattle from a class "B" state or area shall:

(I) be tested negative within 30 days prior to entry, accompanied with an "E" permit, and held under quarantine for a negative retest 45-120 days at a farm, ranch, or feedlot; or

(II) be moved directly from a farm of origin to a USDA specifically approved livestock market for a negative test and held under quarantine for a negative retest 45-120 days after sale to a farm, ranch, or feedlot.

(c) Change of ownership within Texas. [This requirement will be dependent upon the Commission having sufficient supplemental funding for testing at the livestock market. Two (2) months before the funds will be depleted the agency will provide notice that the requirement will cease to be enforced on a specific date.]

(1) Vaccination. It is recommended that all female cattle between four and 12 months of age being purchased or sold for use in grazing, breeding, or dairying operations be officially vaccinated.

(2) Identification [Testing]. All cattle that are parturient or post parturient or 18 months of age and older except steers and spayed heifers changing ownership within Texas shall be officially identified with an official ear tag or other form of official permanent identification as approved by the Commission.[:]

~~{(A) originate from a certified free herd; or}~~

~~{(B) be tested negative by the seller within 30 days prior to sale; or}~~

~~{(C) consigned to a livestock market and tested negative prior to sale; or}~~

~~{(D) consigned to a slaughter establishment for testing or blood collection.}~~

(d) Movement to Mexico. All cattle 18 months of age and older except steers and spayed heifers must be tested negative within 120 days prior to export to Mexico for slaughter. Steers, spayed heifers, and feedlot finished bulls and heifers are not required to be tested prior to export. Test results must be recorded on the Certificate of Veterinary Inspection.

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 January 31, 2012.

TRD-201200466

Gene Snelson  
General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 719-0724



## CHAPTER 51. ENTRY REQUIREMENTS

### 4 TAC §§51.3, 51.7, 51.14

The Texas Animal Health Commission (Commission) proposes amendments to §51.3, concerning Exceptions, §51.7, concerning All Livestock - Special Requirements, and §51.14, concerning Swine. The purpose of these amendments is to make the entry requirements more consistent with the current national interstate movement standards.

The Commission is amending §51.3 to clarify and modify requirements for sheep, goats and swine. The first amendment is providing an exception for swine consigned from out-of-state directly to slaughter or from an out-of-state premise of origin to a Texas livestock market specifically approved under the Code of Federal Regulations, Title 9, §71.20. This amendment is expanding the current exception for entry permits to include an exception to both entry permits and health certificates.

The Commission is also amending the entry permit exception for sheep and goats consigned from out-of-state to clarify it is for those originating from "Consistent States" which have an active scrapie surveillance and control program.

The Commission is removing a requirement in §51.7 related to Vesicular stomatitis (VS). VS is a viral disease that primarily affects cattle, horses, and swine and occasionally sheep, goats, llamas, and alpacas. VS has been confirmed only in the Western Hemisphere. It is known to be an endemic disease in the warmer regions of North, Central, and South America, but outbreaks of the disease in other temperate geographic parts of the Hemisphere occur sporadically. The Southwestern and Western United States have experienced a number of vesicular stomatitis outbreaks in recent years. Outbreaks in the Southwestern United States have usually occurred during the warmer months, often along waterways and in valleys.

Currently, when an animal comes from a state where VS has been diagnosed, the Certificate of Veterinary Inspection (CVI)

must state that for any equine, bovine, porcine, caprine, ovine, or cervidae entering Texas from a state where vesicular stomatitis has been diagnosed within the last 30 days that they have not been exposed. Through agency experience and by analyzing cases in the Western United States over the past decade, the agency has found that VS does not appear to be particularly contagious. It rarely affects more than one or two animals on a premise and has not been shown to spread to susceptible animals on adjacent premises. The Commission is of the opinion that discontinuing the requirement for a CVI and accompanying statement will allow more normal commerce without jeopardizing the health of Texas livestock. The requirement prohibiting entry of certain livestock from a premises or area under quarantine for vesicular stomatitis will be left in place to protect Texas livestock.

In §51.14, the Commission is removing the requirement that swine imported into Texas for feeding, breeding, or exhibition purposes shall be accompanied by a certificate of veterinary inspection certifying that swine have not been exposed to hog cholera, which is now called Classical Swine Fever (CSF). CSF has been eradicated from the United States and there is no need to require this statement anymore.

#### FISCAL NOTE

Dr. Matt Cochran, Assistant Executive Director of Administration, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rules. An Economic Impact Statement (EIS) is required if the proposed rules have an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact and therefore there is no need to do an EIS. Implementation of these rules poses no significant fiscal impact on small or micro-businesses.

#### PUBLIC BENEFIT NOTE

Dr. Cochran has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to protect our livestock industry from exposure to disease by ensuring these animals are properly tested.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

#### TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. The proposed amendments are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

#### REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us."

#### STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That authority is found in §161.061.

As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the interstate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

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

#### §51.3. Exceptions.

(a) Exceptions for a certificate of veterinary inspection and entry permit.

(1) Cattle 18 months of age and over delivered directly from the farm of origin to slaughter;

(2) Beef breed cattle 18 months of age and over entering from other than a farm-of-origin may be moved to slaughter, or to an approved feedyard when accompanied by a VS 1-27 Form on which each animal is individually identified. Brucellosis test data shall be written on the VS 1-27 Form which must include the test date and results;

(3) Beef breed cattle 18 months of age and over delivered directly to a USDA specifically approved livestock market by the owner or consigned there and accompanied by a waybill;

(4) Beef breed steers, spayed heifers, beef breed cattle under 18 months of age, delivered to slaughter and accompanied by a waybill or to a livestock market by the owner or consigned there and accompanied by a waybill;

(5) Beef breed steers, spayed heifers and beef breed cattle under 18 months of age delivered to a feedlot for feeding for slaughter by the owner or consigned there and accompanied by a waybill;

(6) Swine and poultry delivered to slaughter by the owner or consigned there and accompanied by a waybill;

(7) Baby poultry which have not been fed or watered if from a national poultry improvement plan (NPIP) or equivalent hatchery, and accompanied by NPIP Form 9-3 or Animal and Plant Health Inspection Service (APHIS) Form 17-6, or have an approved "Commuter Poultry Flock Agreement" on file with the state of origin and the Texas Animal Health Commission;

(8) Beef breed steers, spayed heifers, and beef breed cattle under 18 months of age originating in New Mexico which are accompanied by a New Mexico official certificate of livestock inspection;

(9) Feral Swine being shipped directly to slaughter. Feral swine shall be shipped in a sealed vehicle accompanied by a 1-27 permit with the seal number noted on the permit also providing the number of head on the permit; ~~and~~

(10) Equine when accompanied by a valid equine interstate passport or equine identification card and a completed VS Form 10-11 showing negative results to an official EIA test within the previous six months; ~~and~~[-]

(11) Swine consigned from out-of-state directly to slaughter or from an out-of-state premise of origin to a Texas livestock market specifically approved under the Code of Federal Regulations, Title 9, §71.20.

(b) Exceptions for a certificate of veterinary inspection. Equine may enter Texas when consigned directly to a veterinary hospital or clinic for treatment or for usual veterinary procedures when accompanied by a permit number issued by the Texas Animal Health Commission. Following release by the veterinarian, equidae must be returned immediately to the state of origin by the most direct route. Equine entering Texas for sale at a livestock market, may first be consigned directly to a veterinary hospital or clinic for issuance of the certificate of veterinary inspection, when accompanied by a prior entry permit issued by the Texas Animal Health Commission.

(c) Exceptions for an entry permit.

~~{(1) Swine consigned from out-of-state directly to slaughter or from an out-of-state premise of origin to a Texas livestock market specifically approved under the Code of Federal Regulations, Title 9, §71.20;}~~

(1) ~~[(2)]~~ Swine that originate from an approved Swine Commuter Herd or that originate from a Pseudorabies Stage IV or V state or area and Brucellosis free state or area and are not vaccinated for pseudorabies;

(2) ~~[(3)]~~ Poultry that originate from an approved Poultry Commuter Flock;

(3) ~~[(4)]~~ Cattle that originate from an approved Cattle Commuter Herd;

(4) ~~[(5)]~~ Equine accompanied by a valid equine interstate passport or equine ID card and a completed VS Form 10-11 showing negative results to an official EIA test within the previous six months;

(5) ~~[(6)]~~ Sheep and goats consigned from out-of-state originating from Consistent States (having an active scrapie surveillance and control program); and

(6) ~~[(7)]~~ Exotic fowl from out of state, except ratites.

§51.7. *All Livestock - Special Requirements.*

(a) Scabies.

(1) Livestock originating in scabies quarantined areas outside the State of Texas. Livestock originating in scabies quarantined areas outside the State of Texas must, in addition to other requirements, be accompanied by a certificate of veterinary inspection certifying that

the herd of origin has been inspected and declared free of scabies infestation or exposure. Slaughter livestock originating in a quarantined area and consigned directly to an approved slaughter establishment for immediate slaughter must be accompanied by a certificate of veterinary inspection or a VS Form 1-27 permit issued by state or federal regulatory personnel certifying they are "scabies free."

(2) Any treated livestock. Any treated livestock must be accompanied by a certificate issued by state or federal regulatory personnel identifying the livestock treated and stating the date of treatment. If the livestock enter less than 14 days following treatment, the transporting vehicle must be placarded and billing marked in accordance with the Code of Federal Regulations. The livestock have been officially treated by one of the following methods:

(A) Dipping. The livestock have been dipped in Co-Ral or GX 118 (Prolate) under supervision of state or federal regulatory personnel within 10 days prior to shipment and transported in clean and disinfected vehicles.

(B) Ivermectin.

(i) The livestock have been treated with Ivermectin within 21 days prior to entry under the supervision of state or federal regulatory personnel in accordance with label directions.

(ii) The treated livestock must be kept physically separated from all untreated livestock for 21 days following treatment.

(iii) Ivermectin may not be used with female dairy cattle of breeding age. Livestock treated with Ivermectin must be withheld from slaughter according to label directions.

(C) Dectomax.

(i) The livestock have been treated with Dectomax within 21 days prior to entry under the supervision of state or federal regulatory personnel in accordance with label directions.

(ii) The treated livestock must be kept physically separated from all untreated livestock for 21 days following treatment.

(iii) Dectomax may not be used with female dairy cattle of breeding age, pre-ruminating calves, or calves to be processed for veal. Livestock treated with Dectomax must be withheld from slaughter according to label directions.

(b) Screwworm Requirements. All animals presented for entry into Texas from any area in which the screwworm is known to exist must be free of screwworms and screwworm fly eggs. Wounds (infested or noninfested) must be treated with United States Department of Agriculture approved screwworm killer and fly repellent. Animals other than lactating dairy animals and young animals under two weeks of age must be sprayed with a spray approved by the executive director.

(c) Fever Tick Requirements. All movement of livestock from or into the Texas Fever Tick Eradication Zone shall be in accordance with Chapter 41 of this title ~~[Title]~~.

(d) Vesicular Stomatitis.

~~[(+)]~~ No equine, bovine, porcine, caprine, ovine, or cervidae may enter Texas from a premise or area under quarantine for vesicular stomatitis.

~~[(2) Any equine, bovine, porcine, caprine, ovine, or cervidae entering Texas from a state where vesicular stomatitis has been diagnosed within the last 30 days must be accompanied by a Certificate of Veterinary Inspection with the following statement written by the accredited veterinarian on the Certificate: "The animals represented on this health certificate have not originated from a premise or area under quarantine for vesicular stomatitis."]~~

(e) Regulations on livestock imported from Mexico.

(1) All cattle moved into Texas from Mexico shall be identified with an "M" brand prior to moving to a destination in Texas. Metal eartags applied in Mexico must not be removed from the animals.

(2) A copy of the certificate issued by an authorized inspector of the United States Department of Agriculture, Animal and Plant Health Inspection Service, for the movement of Mexico cattle into Texas must accompany such animals to their final destination in Texas, or so long as they are moving through Texas.

§51.14. *Swine.*

(a) Swine imported into Texas for feeding, breeding, or exhibition purposes shall be accompanied by a certificate of veterinary inspection certifying that:

- (1) swine have not been fed garbage, either raw or cooked;
- (2) swine have not been exposed to [høg ehølera ør] pseudorabies;
- (3) swine have not been vaccinated for pseudorabies; and
- (4) swine have been permanently identified (eartag, eartnotched, or number tattoo).

(b) Swine not known to be infected with or exposed to pseudorabies, and originate from a state not classified as Stage IV or V, may enter provided they:

(1) are tested negative within 30 days prior to entry and then held in isolation and under quarantine on the premise where first unloaded and tested or retested for PRV in not less than 30 nor more than 60 days after arrival. Feeder swine are exempt from the retest provided that the swine enter on an entry permit from the commission and are destined directly to a designated feedlot and remain restricted to the feedlot until they are sent to slaughter; or

(2) originate from a qualified PRV-negative herd; or

(3) are shipped directly from a farm of origin in a Stage IV or free state or area as described in the National PRV Program; or

(4) originate from and are sold at an approved feeder-pig market in a Stage IV or free state or area and enter the state directly from that market.

(c) Additionally, breeding swine shall have a negative brucellosis test within the previous 30 days or originate from a validated brucellosis-free herd or state and shall be vaccinated within the previous 30 days with Leptospirosis vaccine containing the following strains: Canicola, Hardjo, Icterohaemorrhagiae, Grippytyphosa, and Pomona.

(d) Exhibition swine originating in Texas entered in terminal shows are exempt from brucellosis and pseudorabies requirements.

(e) Swine imported into Texas for slaughter purposes shall either be consigned directly to slaughter or to a federally approved livestock market where a VS 1-27 will be issued to accompany them to slaughter following sale.

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 January 31, 2012.

TRD-201200467

Gene Snelson

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 719-0724

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**TITLE 13. CULTURAL RESOURCES**

**PART 9. TEXAS HOLOCAUST AND GENOCIDE COMMISSION**

**CHAPTER 191. COMMISSION PROCEDURES**

**13 TAC §191.4**

The Texas Holocaust and Genocide Commission (Commission) proposes new §191.4, concerning Commission procedures. These procedures are proposed to establish a code of conduct and ethics policy for the Commission's officers and employees. The new section proposes to describe the Commission's response if a conflict of interest arises and establishes an ethics policy and standards of conduct for Commission officers and employees.

Peter Berkowitz, Chair, has determined that for the first five-year period the new rule is in effect there will be no additional cost to the state or local governments as a result of enforcing or administering the new rule and procedure. Mr. Berkowitz has determined that there will be no economic costs to persons as a result of this procedural rule. Mr. Berkowitz has also determined that this proposed procedural rule will have no adverse economic effect on small or micro businesses as the rule will apply only to the Commission.

Mr. Berkowitz has also determined that for the first five-year period the new rule is in effect, the public benefit will be deliverance of genocide and Holocaust-related programs for the public in an ethical manner due to increased accountability for Commission officers and employees. There will not be an effect on small business. There are no anticipated economic costs to persons as a result of this procedural rule.

The Commission will consider all public comments on the proposed new rule and any requests for a public hearing that are received no later than 30 days from the date that this proposed rule is published in the *Texas Register*. Comments and requests may be submitted to Charles Sadnick, Coordinator, Texas Holocaust and Genocide Commission, 1511 Colorado Street, Austin, Texas 78711, or via facsimile (512) 475-3122, or to charles.sadnick@thc.state.tx.us.

The new rule is proposed under Texas Government Code §449.052(c), relating to general powers and duties of the Commission, which authorizes the Commission to adopt rules for its own procedures and Texas Government Code §572.051(c), which requires each state agency to adopt an ethics code.

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

§191.4. Code of Conduct and Ethics Policy.

(a) If a member, agent, or employee of the Texas Holocaust and Genocide Commission has a conflict of interest in any transaction involving the selection, award, or administration of grants, he or she may not participate in a vote, discussion, or decision about the matter.

(b) A person has a conflict of interest in such a transaction if a financial benefit as a result of such a transaction is likely to be received by any of the following:

- (1) the person;
- (2) any member of the person's immediate family, which includes spouse and any minor children;
- (3) a business partner of the person; or
- (4) any organization for profit in which the person or any persons of paragraphs (2) and (3) of this subsection is serving or is about to serve as an officer, director, trustee, partner, or employee.

(c) A financial benefit includes, but is not limited to, grant money, contract, subcontract, royalty, Commission, contingency, brokerage fee, gratuity, favor, or any other thing of monetary value.

(d) Ethics Policy.

(1) Pursuant to §572.051(c) of the Texas Government Code, the Commission promulgates the following ethics policy.

(2) This ethics policy prescribes standards of conduct for all Commission employees, members, or agents.

(3) This ethics policy does not supersede any applicable federal or Texas law or administrative rule.

(4) All Commission employees, members, and agents must familiarize themselves with this ethics policy.

(5) All Commission employees, members and agents must abide by all applicable federal and Texas laws, administrative rules, and Commission conduct policies, including this ethics policy. A Commission employee who violates any provision of the Commission's ethics policies is subject to termination of the employee's state employment or another employment-related sanction. A Commission employee who violates any applicable federal or Texas law or rule may be subject to civil or criminal penalties in addition to any employment-related sanction.

(e) Standards of Conduct.

(1) A Commission employee, member, or agent shall not:

(A) accept or solicit any gift, favor, or service that might reasonably tend to influence the employee in the discharge of official duties, or that the employee knows or should know is being offered with the intent to influence the employee's official conduct;

(B) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised his or her official powers or performed his or her official duties in favor of another;

(C) disclose confidential information, information that is excepted from public disclosure under the Texas Public Information Act (Texas Government Code Annotated Chapter 552), or information that has been ordered sealed by a court, that was acquired by reason of the employee's official position, or accept other employment, including self-employment, or engage in a business, charity, nonprofit organization, or professional activity that the employee might reasonably expect would require or induce the employee to disclose confidential information, information that is excepted from public disclosure under the Texas Public Information Act, or information that has been ordered sealed by a court, that was acquired by reason of the employee's official position;

(D) accept other employment, including self-employment, or compensation or engage in a business, charity, nonprofit organization, or professional activity that could reasonably be expected

to impair the employee's independence of judgment in the performance of the employee's official duties;

(E) make personal investments, or have a personal or financial interest, that could reasonably be expected to create a substantial conflict between the employee's private interest and the public interest;

(F) utilize state time, property, facilities, or equipment for any purpose other than official state business, unless such use is reasonable and incidental and does not result in any direct cost to the state or Commission, interfere with the employee's official duties, and interfere with Commission functions;

(G) utilize his or her official position, or state issued items, such as a badge, indicating such position for financial gain, obtaining privileges, or avoiding consequences of illegal acts;

(H) knowingly make misleading statements, either oral or written, or provide false information, in the course of official state business; or

(I) engage in any political activity while on state time or utilize state resources for any political activity.

(2) A Commission employee, member, or agent shall perform his or her official duties in a lawful, professional, and ethical manner befitting the state and the Commission.

(3) A Commission employee shall report any conduct or activity that the employee believes to be in violation of this ethics policy to the Texas Historical Commission division director supervising him or her, or, if the division director is involved in the conduct or activity, to the executive director of the Texas Historical Commission.

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 February 3, 2012.

TRD-201200566

Peter Berkowitz

Chair

Texas Holocaust and Genocide Commission

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 463-8815



### **13 TAC §191.6**

The Texas Holocaust and Genocide Commission (Commission) proposes new §191.6, concerning Commission procedures. These procedures are proposed to establish rules for the Commission's relationship with affiliated non-profit organizations. The new section proposes to describe and establish standards for governing the relationship between the Commission and an affiliated non-profit organization.

Peter Berkowitz, Chair, has determined that for the first five-year period the new rule is in effect there will be no additional cost to the state or local governments as a result of enforcing or administering the new rule and procedure. Mr. Berkowitz has determined that there will be no economic costs to persons as a result of this procedural rule. Mr. Berkowitz has also determined that this proposed procedural rule will have no adverse economic effect on small or micro businesses as the rule will apply only to the Commission.



Mr. Berkowitz has also determined that for the first five-year period the new rule is in effect, the public benefit will be increased funding for genocide and Holocaust-related programs, resulting in increased public education regarding these topics. There will not be an effect on small business. There are no anticipated economic costs to persons as a result of this procedural rule.

The Commission will consider all public comments on the proposed new rule and any requests for a public hearing that are received no later than 30 days from the date that this proposed rule is published in the *Texas Register*. Comments and requests may be submitted to Charles Sadnick, Coordinator, Texas Holocaust and Genocide Commission, 1511 Colorado Street, Austin, Texas 78711, or via facsimile (512) 475-3122, or to [charles.sadnick@thc.state.tx.us](mailto:charles.sadnick@thc.state.tx.us).

The new rule is proposed under Texas Government Code §449.052(c), relating to general powers and duties of Commission, which authorizes the Commission to adopt rules for its own procedures, and Texas Government Code §2255.001, which requires an agency which is authorized to accept donation to have rules governing the relationship between any donor and the agency and its employees.

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

§191.6. Relationship with Affiliated Non-Profit Organizations.

(a) The Commission is authorized to participate in the establishment and operation of an affiliated non-profit organization whose purpose is to raise funds for or provide services or other benefits to the Commission by Texas Government Code §449.053.

(b) The Commission, by vote of the Commission in a duly posted meeting, may authorize the establishment of a contractual relationship with a non-profit organization for any purpose authorized by law and in compliance with this section.

(c) The contract or other agreement with the affiliated non-profit organization shall set out fully the relationship between the Commission and the affiliated non-profit organization, and shall meet the following requirements:

(1) Administration and investment of funds received by the organization for the benefit of the Commission.

(A) All records of the affiliated non-profit organization shall be available for inspection or audit by the Commission or its designee.

(B) A representative of the affiliated non-profit organization shall regularly report to the Commission on the operations of the affiliated non-profit organization.

(C) Funds or other assets of the affiliated non-profit organization shall be administered and invested in a manner to be provided in the contract or other agreement. At a minimum, funds received by the affiliated non-profit organization shall be handled as follows:

(i) Funds shall be placed in an account at a financial institution within ten business days of receipt.

(ii) Funds shall be placed in an interest-bearing or other investment account in accordance with the investment policy of the affiliated non-profit organization.

(iii) Funds shall be used only to support approved projects of the Commission or to pay administrative expenses of an affiliated non-profit organization.

(iv) Employees of the Commission shall not be signatories on accounts of an affiliated non-profit organization.

(2) Use of an employee or property of the agency by the affiliated non-profit organization.

(A) Staff of the Commission may assist in the operation of the affiliated non-profit organization during regular work hours only with the written approval of the Texas Historical Commission's executive director.

(B) Staff involved in regulatory functions of the Commission shall not participate in the management of the affiliated non-profit organization except on a case-by-case basis with the written approval of the executive director. All staff involved in the development of grant proposals may provide subject-matter expertise for the grant proposals, including, with the written approval of the executive director, participating in the presentation of grant proposals to potential donors.

(C) Property of the Commission may be used in support of an affiliated non-profit organization so long as the use serves a public purpose and is within the limitations of this section and any contract or agreement between the Commission and the affiliated non-profit organization. Any state property entrusted to the affiliated non-profit organization must remain on the inventory of the Commission and be properly accounted for in accordance with state agency requirements.

(D) The Commission may provide office space, pay utilities, and pay other expenses of an affiliated non-profit organization as long as any such expense serves a public purpose and is within the limitations of this section and any contract or agreement between the Commission and the affiliated non-profit organization.

(d) Prohibitions in relationship with affiliated non-profit organization.

(1) An employee of the Commission may not serve as an employee, elected officer or director of an affiliated non-profit organization. An employee of the Commission may serve as an ex-officio, non-voting member of an affiliated non-profit organization.

(2) A Commissioner or employee of the Commission shall not receive monetary enrichment from the affiliated non-profit organization except with the approval of the executive director, or, in the case of the executive director or a Commissioner, with the approval of the Commission.

(e) The Commission may recommend or nominate individuals to serve as officers, directors, or employees of an affiliated non-profit organization.

(f) The Commission shall have a formal liaison committee or other, similar group to monitor the operation of an affiliated non-profit organization.

(g) An affiliated non-profit organization will not knowingly accept donations from organizations or individuals administering grants from the Commission or which have contracts with the Commission. Should such a donation be accepted, it shall be returned upon discovery of such a relationship.

(h) An affiliated non-profit organization may not expend funds for the purpose of influencing legislative action, either directly or indirectly.

(i) The Commission shall review its relationship with an affiliated non-profit organization on a schedule to be established by the Commission, but not less than once every 10 years.

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 February 3, 2012.

TRD-201200567

Peter Berkowitz

Chair

Texas Holocaust and Genocide Commission

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 463-8815



## TITLE 16. ECONOMIC REGULATION

### PART 9. TEXAS LOTTERY COMMISSION

#### CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

##### SUBCHAPTER D. LOTTERY GAME RULES

###### 16 TAC §401.320

The Texas Lottery Commission (Commission) proposes new 16 TAC §401.320 ("All or Nothing" On-Line Game Rule). The purpose of the proposed rule is to establish and share with the public, details of the game design, matrix, prize level structure and operation of the proposed on-line game.

Kathy Pyka, Controller, has determined that the new rule will result in an estimated \$40.5 million for the first five year period. The fiscal impact for each year of the first five years the rule is in effect is as follows: FY 2012, \$1.3M; FY 2013, \$9.8M; FY 2014, \$9.8M; FY 2015 \$9.8M; FY 2016, \$9.8M. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the new rule as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the new rule will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Michael Anger, Lottery Operations Director, has determined that for each year of the first five years the new rule will be in effect, the public benefit anticipated is additional revenue for the Foundation School Fund, additional commissions for retailers, and a wider variety of lottery game offerings and features for players.

The Commission requests comments on the proposed new rule from any interested person. Comments on the proposed new rule may be submitted to Pete Wassdorf, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at [legal.input@lottery.state.tx.us](mailto:legal.input@lottery.state.tx.us). The Commission will hold a public hearing on this proposal at 9:00 a.m. on Wednesday, February 29, 2012, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed under Texas Government Code, §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority

of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

###### §401.320. "All or Nothing" On-Line Game Rule.

(a) "All or Nothing." The executive director is authorized to conduct a game known as "All or Nothing." The executive director may issue further directives for the conduct of "All or Nothing" that are consistent with this rule. In the case of conflict, this rule takes precedence over §401.304 of this title (relating to On-Line Game Rules (General)).

(b) Object of the Game. The object of the game is to either select as many or as few numbers that match the 12 numbers drawn in the drawing. If a player matches more than seven (7) or fewer than five (5) numbers drawn in the drawing, the player wins a prize. (See the prize schedule chart in subsection (g) of this section.) If the player matches all 12 numbers drawn in the drawing, or does not match any numbers drawn in the drawing, the player wins the Top Prize (\$250,000). If more than one ticket has been sold in which a player has matched all or none of the numbers drawn in the drawing, each player possessing such ticket shall win the Top Prize of \$250,000.

(c) Definitions. When used in this rule, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Play--The selection of twelve different numbers from 1 through 24 for one opportunity to win in "All or Nothing" and the purchase of a ticket evidencing that selection.

(2) Playboard--A field of 24 numbers on a playslip for use in selecting numbers for an "All or Nothing" play.

(3) Playslip--An optically readable card issued by the Commission for use in selecting numbers for one or more "All or Nothing" plays.

(d) Plays and tickets.

(1) A ticket may be sold only by an on-line retailer and only at the location listed on the retailer's license. A ticket sold by a person other than an on-line retailer is not valid.

(2) The price of an individual play is \$2.

(3) A player may complete up to five playboards on a single playslip.

(4) A player may use a single playslip to purchase the same play(s) for up to 24 consecutive drawings, to begin with the next drawing after the purchase.

(5) A person may select numbers for a play either:

(A) by using a playslip to select numbers;

(B) by selecting a Quick Pick and allowing a random number generator operated by the terminal to select numbers; or

(C) by requesting a retailer to manually enter numbers.

(6) Playslips must be completed manually. A ticket generated from a playslip that was not completed manually is not valid.

(7) An on-line retailer may accept a request to manually enter selections or to make Quick Pick selections only if the request is made in person. A retailer shall not accept telephone or mail-in or other requests not made in person to manually enter selected numbers.

(8) An on-line retailer shall issue a ticket as evidence of one or more plays. A ticket must show the numbers selected for each play, the number of plays, the draw date(s) and time(s) for which the plays were purchased, the cost of the ticket and the security and transaction serial numbers. Tickets must be printed on official Texas Lottery paper stock.

(9) A playslip, or any document other than a ticket issued as described in paragraph (8) of this subsection, has no monetary value and is not evidence of a play.

(10) It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket.

(11) An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements. Neither the Commission nor its sales agents shall be responsible for lost or stolen tickets.

(12) The executive director may authorize promotions in connection with the "All or Nothing" On-Line game. Current promotions will be posted on the Commission's web site, and published in the "In Addition" section of the *Texas Register*.

(e) Drawings.

(1) "All or Nothing" drawings will be held four times a day, at 10:00 a.m., 12:27 p.m., 6:00 p.m., and 10:12 p.m.) six days a week (Monday through Saturday). The executive director may change the drawing schedule, if, in the executive director's sole discretion, it is deemed necessary or expedient.

(2) Twelve different numbers from 1 through 24 shall be drawn at each "All or Nothing" drawing.

(3) Numbers drawn must be certified by the Commission in accordance with the Commission's drawing procedures.

(4) The numbers selected in a drawing shall be used to determine all winners for that drawing.

(5) A drawing will not be invalidated based on the financial liability of the lottery.

(f) Announcement of incentive or bonus program. The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award.

(g) Prizes.

(1) The Top Prize is \$250,000.

(A) Each person who holds a valid ticket for a play matching (in any order) the twelve numbers drawn in a drawing, or matching none of the twelve numbers drawn in a drawing is entitled to a prize in the amount of \$250,000. All other prizes are in amounts for matching or non-matching selections as shown in the following chart. All prizes are paid in cash.  
Figure: 16 TAC §401.320(g)(1)(A)

(B) All payments shall be made upon completion of Commission validation procedures.

(C) A claim for any prize of \$600 or more must be presented at a Texas Lottery claim center.

(2) A person may win only one prize per play per drawing. A player who holds a valid ticket for a winning play is entitled to the highest prize for that play.

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 February 6, 2012.

TRD-201200590

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 344-5012



## CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES SUBCHAPTER C. BINGO GAMES AND EQUIPMENT

### 16 TAC §402.302

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Lottery Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Lottery Commission (Commission) proposes the repeal of 16 TAC §402.302 (Card-Minding Systems). The purpose of the proposed repeal is to allow for new proposed rules replacing this rule to be broken out in separate rules for each respective entity for ease and clarification of requirements.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed repeal will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed repeal. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the repeal as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed repeal will be in effect, the public benefit anticipated is allowing for new rules that provide greater clarification.

The Commission requests comments on the proposed repeal from any interested person. Comments may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at [legal.input@lottery.state.tx.us](mailto:legal.input@lottery.state.tx.us). The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, February 29, 2012, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The repeal is proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission

to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed repeal implements Texas Occupations Code, Chapter 2001.

*§402.302. Card-Minding Systems.*

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 February 6, 2012.

TRD-201200580

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 344-5012



**16 TAC §402.321**

The Texas Lottery Commission (Commission) proposes new 16 TAC §402.321 (Card-Minding Systems--Definitions). The purpose of the proposed new rule is to provide definitions to terms used relative to bingo card-minding systems. Specifically, the new rule sets forth definitions for the following terms: account number, card-minding system, card-minding device, site system, card number range, checksum, connected, device ID number, device played, end of occasion log, independent testing facility, model number, occasion report, occasion summary report, package number, proprietary software, secondary component, software modifications, transaction log, and version number.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed new rule. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the new rule as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated as a result of the proposed new section is to clarify and make more efficient the requirements for manufacturers, distributors, and licensed authorized organizations that are involved with bingo card-minding systems to ensure that the fairness and integrity of the games will not be compromised.

The Commission requests comments on the proposed new rule from any interested person. Comments on the proposed new rule may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, February 29, 2012, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed new rule implements Texas Occupations Code, Chapter 2001.

*§402.321. Card-Minding Systems--Definitions.*

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

(1) Account Number--The unique identification number, if any, assigned by a card-minding system's point of sale to a transaction during a purchase and used by a customer to logon to a card-minding device in order to play bingo.

(2) Card-Minding System--An electronic or computerized device and related hardware and software, that is interfaced with, or connected to, equipment used to conduct a game of bingo. A card-minding system consists of the following two parts:

(A) Card-Minding Device--A device used by a player to monitor bingo cards played at a licensed authorized organization's bingo occasion and which:

(i) provides a means for the player to input or monitor called bingo numbers;

(ii) compares the numbers entered or received against the numbers on the bingo cards stored in the memory of the device or loaded or otherwise enabled for play on the device; and

(iii) identifies any winning bingo pattern(s) and prize levels.

(B) Site System--Computer hardware, software, and peripheral equipment, that is located at the bingo premises, is controlled by the licensed authorized organization conducting bingo, and interfaces with, connects with, controls, or defines the operational parameters of card-minding devices. Site Systems must include, but are not limited to, the following components: point of sale station, a caller station verifier, printers, remote access capability, proprietary executable software, report generation software and an accounting system and database.

(3) Card number range--The range of unique numbers that are on the card faces that are actually sold to a given player for use in a single card-minding device. (Example: Device #1 is given card number range 2056-2080 and Device #2 is given card number range 2081-2105.)

(4) Checksum--A value of fixed-size computed from a block of digital data for the purpose of detecting changes or modifications. Also referred to as a digital signature or hash sum.

(5) Connected--Communication between the card-minding device and the site system by wired or wireless means during an active bingo occasion.

(6) Device ID number--The unique identification number assigned by a manufacturer to a specific card-minding device.

(7) Device played--A card-minding device utilized within a bingo occasion, after applying void rules, which had cards enabled or loaded and played.

(8) End of occasion log--Information stored in the site system database at the end of each bingo occasion containing pertinent

sales, voids, game, and system accounting information to include the following:

- (A) licensed authorized organization's name;
- (B) licensed authorized organization's license number;
- (C) bingo occasion site (location);
- (D) sequential listings of transactions or receipt numbers, including voided transactions;
- (E) date and time of the bingo occasion and occasion number, if applicable;
- (F) total quantity of card-minding devices loaded;
- (G) the device ID number of each card-minding device loaded;
- (H) total dollar value of sales of card-minding devices;
- (I) total quantity of voided transactions to include the dollar amount;
- (J) total quantity of reloaded bingo cards;
- (K) card numbers or card number range of card faces used with each card-minding device;
- (L) total dollar value of disposable cards sold;
- (M) total dollar value of pull-tab bingo sold;
- (N) total dollar value regular bingo prizes awarded;
- (O) total dollar value pull-tab bingo prizes awarded;
- (P) total dollar value of prize fees collected;
- (Q) listing of the balls called, in the order called, for each game; and
- (R) listing of all card face numbers verified for each game, both the non-winning and the winning card face numbers.

(9) Independent testing facility--A laboratory approved by the Commission that is demonstrably competent and qualified to test card-minding systems scientifically and evaluate them for compliance with statutes and regulations. An independent testing laboratory shall maintain the current applicable standards of the International Organization of Standardization as an accredited laboratory in the field of information technology testing. An independent testing laboratory shall not be owned or controlled by a licensed authorized organization, the state, or any manufacturer, distributor or operator of card-minding systems.

(10) Model number--A number designated by the manufacturer that indicates the unique structural design of a card-minding device or site system.

(11) Occasion Report--A report generated by the site system at the end of each bingo occasion containing pertinent sales, voids, game and system accounting to include the following information:

- (A) licensed authorized organization's name;
- (B) licensed authorized organization's license number;
- (C) bingo occasion site (location);
- (D) total dollar value of sales of card-minding devices;
- (E) total dollar value of voided transactions;
- (F) total dollar value of sales of disposable cards;
- (G) total dollar value of sales of pull-tab bingo;

- (H) total dollar value of regular bingo prizes awarded;
  - (I) total dollar value of pull-tab bingo prizes awarded;
- and
- (J) total dollar value of prize fees collected.

(12) Occasion Summary Report--A report generated by the site system for any specified period which contains the following information:

- (A) licensed authorized organization's name;
  - (B) licensed authorized organization's taxpayer number;
  - (C) bingo occasion site (location);
  - (D) total number of bingo occasions;
  - (E) total dollar value of sales of card-minding devices;
  - (F) total dollar value of voided transactions;
  - (G) total dollar value of sales of disposable cards;
  - (H) total dollar value of sales of pull-tab bingo;
  - (I) total dollar value of regular bingo prizes awarded;
  - (J) total dollar value of pull-tab bingo prizes awarded;
- and
- (K) total dollar value of prize fees collected.

(13) Package number--A number identifying the complete package of bingo cards purchased for a card-minding device.

(14) Proprietary software--Custom computer software developed by a licensed manufacturer that is the primary component of a card-minding system and is required for a card-minding device to be used in a game of bingo.

(15) Secondary component--Additional software or hardware components provided by the manufacturer, that are part of, or are connected to, a card-minding system and that do not affect the conduct of the bingo game. Secondary components may include computer screen backgrounds, battery charge -up software routines, printers, printer software drivers, and charging racks.

(16) Software modifications--Alterations to proprietary software.

(17) Transaction log--A site system report containing a record of transaction information in detail.

(18) Version number--A unique number designated by the manufacturer to signify a specific version of software used on or by the card-minding system.

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 February 6, 2012.

TRD-201200581  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Earliest possible date of adoption: March 18, 2012  
For further information, please call: (512) 344-5012



## 16 TAC §402.322

The Texas Lottery Commission (Commission) proposes new 16 TAC §402.322 (Card-Minding Systems--Site System Standards). The purpose of the proposed new rule is to provide clear and concise requirements and guidelines for bingo card-minding site systems. Specifically, the new rule addresses: (1) at subsection (a) site system design; (2) at subsection (b) site system internal accounting system; (3) at subsection (c) site system verification; (4) at subsection (d) site system storage; (5) at subsection (e) site systems reloading of bingo cards; (6) at subsection (f) site system duplication of cards; (7) at subsection (g) a functioning card-minding device or a programmable memory device relating to the sale, void, or reload transactions; (8) at subsection (h) that the site system must not allow transactional information to be changed within the accounting system or database; (9) at subsections (i) and (j) device ID numbers; (10) at subsection (k) site system database backup and recovery system; (11) at subsection (l) prohibition of player or operator selection of specific cards to be sold or played; (12) at subsection (m) site system recording of sequential transaction or audit tracking numbers for every transaction; (13) at subsection (n) site system receipt requirements; (14) at subsections (o) and (p) site system storing and printing; (15) at subsection (q) that the site system must not allow a card-minding device to enable and play more than 66 card faces for any one ball call for any regular bingo game; (16) at subsection (r) site system record maintenance; and (17) at subsection (s) that the site system must not erase or overwrite data until information is transferred to a secondary storage medium.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed new rule. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the new rule as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated as a result of the proposed new section is to clarify and make more efficient the requirements for bingo card-minding site systems for manufacturers that are involved with bingo card-minding systems to ensure that the fairness and integrity of the bingo games will not be compromised.

The Commission requests comments on the proposed new rule from any interested person. Comments on the proposed new rule may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at [legal.input@lottery.state.tx.us](mailto:legal.input@lottery.state.tx.us). The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, February 29, 2012, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission

to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed new rule implements Texas Occupations Code, Chapter 2001.

### §402.322. Card-Minding Systems--Site System Standards.

(a) The site system must be designed so that the Commission may remotely verify the operation, compliance and internal accounting systems of the site system at any time. The manufacturer shall provide to the Commission all current protocols, usernames, passwords, and any other required information needed to access the system. Any and all reports maintained or available for generation by the card-minding system shall be capable of being downloaded or otherwise accessed via the remote connection.

(b) The site system's internal accounting system must be capable of recording the licensed authorized organization's sale of card-minding devices, disposable bingo cards, pull-tab bingo tickets, regular bingo prizes awarded, pull-tab bingo prizes awarded and prize fee collected.

(c) The site system must be able to verify winning cards and print the cards for posting. For verification purposes, the site system must be capable of storing and printing an ordered list of all balls called for each regular bingo and pull-tab bingo event game.

(d) The site system must be capable of storing:

(1) all transactions affecting a card-minding device;

(2) the device ID number for each transaction affecting the card-minding device; and

(3) the date, time, quantity of bingo cards affected, price per card or package, package number, and transaction number for each of the following transactions:

(A) loading of cards; and

(B) voiding of cards.

(e) The site system may allow the same bingo cards originally sold and loaded on a card-minding device (device #3, for example) to be reloaded on the same device, provided the transaction is recorded as a reload.

(f) The site system shall not allow the exact duplication of cards on two different card-minding devices. However, the site system may allow bingo cards originally sold on one card-minding device (device #4, for example) to be reloaded on a different card-minding device (such as device #10), provided that the original device (#4) was removed from play and the site system recorded the transaction as a reload.

(g) The site system must not engage in any type of sale, void, or reload transaction for a card-minding device unless a functioning card-minding device or a programmable memory device that inserts into a card-minding device is connected with the site system.

(h) Upon completion of each transaction, the site system must not allow any transactional information including date, time, quantity of bingo cards, price per card or package, package number, or other source information to be changed within the accounting system or database.

(i) The site system must identify duplicate device ID numbers.

(j) The site system must recognize the device ID number and store that number on the transaction log for each and every transaction that directly affects that card-minding device.

(k) The site system must have a database backup and recovery system to prevent loss of transactional information in the event of power failures or any disruptive event.

(l) The site system must not allow a player or operator to select specific cards from a perm of bingo cards to be sold or played.

(m) The site system must record a sequential transaction number or audit tracking number for every transaction. The site system must not allow this number to be changed or reset manually.

(n) The site system must be capable of printing a receipt and recording for each sale, void or reload of an electronic or paper card face product that includes, at a minimum, the following information:

- (1) licensed authorized organization's name;
- (2) licensed authorized organization's taxpayer number;
- (3) bingo occasion location name;
- (4) date and time of the transaction, in DD/MM/YYYY HH:MM:SS; format;

- (5) sequential transaction or audit tracking number;

(6) the dollar value of the transaction and quantity of associated products;

(7) a notation to distinguish from which point of sale terminal the receipt was produced when more than one sales terminal is used;

- (8) the total dollar value of the transaction; and

(9) transactions including a card-minding device must include the following information:

(A) device ID number (cannot be manually entered) or account number; and

- (B) range of bingo cards sold.

(o) The site system must be capable of storing and printing:

- (1) a transaction log; and
- (2) end of occasion log for each bingo occasion.

(p) The site system must be capable of storing and printing an Occasion Report and Occasion Summary Report on demand.

(q) The site system must not allow a card-minding device to enable and play more than 66 card faces for any one regular bingo game.

(r) The site system must be capable of maintaining all required information for the end of occasion log and the occasion summary report for a period of 48 months.

(s) The site system must not erase or overwrite any of the required bingo occasion information until both detail and summary information is transferred to a secondary storage medium.

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 February 6, 2012.

TRD-201200582

Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission

Earliest possible date of adoption: March 18, 2012  
For further information, please call: (512) 344-5012



### 16 TAC §402.323

The Texas Lottery Commission (Commission) proposes new 16 TAC §402.323 (Card-Minding Systems--Device Standards). The purpose of the proposed new rule is to provide clear and concise requirements and guidelines for bingo card-minding devices. Specifically, the new rule: (1) at subsections (a) - (c) sets forth card-minding devices' security issues related to transactions with the site system; (2) at subsection (d) addresses card-minding device design with regard to daubing features; (3) at subsection (e) addresses electronic daubing of numbers; (4) at subsection (f) states that the card-minding device must allow the player to cancel or correct any numbers entered in error, if the device requires the player to manually enter ball call numbers; (5) at subsection (g) states that the devices must not allow a player to modify cards that are loaded and enabled for play; (6) at subsection (h) requires the devices to recognize and display all winning bingo patterns achieved; and (7) at subsection (i) sets forth specific programming requirements of card-minding devices.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed new rule. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the new rule as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated as a result of the proposed new section is to clarify and make more efficient the manufacturing requirements for bingo card-minding devices for manufacturers that are involved with card-minding systems to ensure that the fairness and integrity of the games will not be compromised.

The Commission requests comments on the proposed new rule from any interested person. Comments on the proposed new rule may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, February 29, 2012, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed new rule implements Texas Occupations Code, Chapter 2001.

§402.323. Card-Minding Systems--Device Standards.

(a) The card-minding device must have a unique, permanent identification number, or have a unique identification number secured by password or code and accessible only by use of such password or code.

(b) The identification number must be coded into the software of the card-minding device.

(c) The card-minding device must automatically transmit its identification number to the site system or be known by the site system, to be recorded on the transaction log, each time the device is involved in a transaction with the site system.

(d) The card-minding device must be designed in such a manner to allow for one or more of the following daubing features:

(1) Manual ball call: This requires the player to identify uniquely the ball call that has been made. This could be through a number of methods, for example: the selection of the number on a grid containing all 75 numbers; the selection of the letter from BINGO, then the number from a list of 15 numbers; or the entry through a keypad of the digits comprising the number. However, it requires the player to enter the numbers as they are called and therefore allows the player to enter a number in error. This method of daubing must enable the player to correct numbers entered in error.

(2) Ball call confirm: This method requires the broadcast of the ball call information to the card-minding device. When the ball call is received by the card-minding device, the player must perform an action to confirm or enter the ball call. This is typically through the pressing of a key or the touching of the screen. This daub style requires the player to perform an action for each and every ball call that is made. If the player waits, and a number of ball calls are made without the player performing any action, the player must then touch the screen (or press enter) once for each ball called. The ball calls must be processed in the order they were drawn.

(3) Semi-auto daub: This method requires the broadcast of the ball call information to the card-minding device. This method operates in the same manner as ball call confirm, except that, if the player allows multiple balls to be called without interacting with the card-minding device, a single action will daub all outstanding ball calls. The ball call that was most recently made by the caller is processed last and the bingo cards are scored with this number being the "last number" for any last number rule games.

(4) Auto Daub: This method requires the broadcast of the ball call information to the card-minding device. As each ball call is received by the card-minding device, the card-minding device behaves as though the player performed the ball call confirm action. That is to say, the card-minding device will act automatically as each ball call is announced.

(e) The card-minding device must recognize bingo numbers called and after having the numbers entered through one of the methods in subsection (d) of this section, must electronically daub the number on all activated bingo cards enabled or loaded on the card-minding device containing those numbers in the winning pattern.

(f) If a card-minding device requires the player to manually enter ball call numbers, the card-minding device must allow the player to cancel or correct any numbers entered in error.

(g) The card-minding device must not allow a player to modify cards that are loaded and enabled for play.

(h) The card-minding device must recognize and display all winning bingo patterns achieved.

(i) The card-minding device must be programmed to only allow bingo cards purchased and loaded and enabled for play during a bingo occasion, to be in play during that occasion. Therefore, the card-minding system shall provide a means to erase, disable, or render unplayable the bingo cards loaded and enabled on each card-minding device played in a bingo occasion, prior to playing the same device in the next bingo occasion. Suggested means are at least one of the following:

(1) on deactivation of the current bingo occasion;

(2) by inserting the device into a charger;

(3) by a timer within the device;

(4) on activation of the next bingo occasion;

(5) by automatically erasing all bingo cards and/or bingo card face numbers stored in the device after the last bingo game of the occasion; or

(6) any other suitable means to ensure game integrity.

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 February 6, 2012.

TRD-201200583

Kimberly L. Kiplin

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Texas Lottery Commission

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 344-5012



**16 TAC §402.324**

The Texas Lottery Commission (Commission) proposes new 16 TAC §402.324 (Card-Minding Systems--Approval of Card-Minding Systems). The purpose of the proposed new rule is to provide the approval process to the manufacturers of bingo card-minding devices. Specifically, the new rule: (1) at subsection (a) sets forth the testing requirements and standards related to the sale, lease, otherwise furnishing of a card-minding system; (2) at subsection (b) sets forth the elements of utilizing an independent testing lab; (3) at subsection (c) sets forth the elements of utilizing the Commission's testing lab; (4) at subsection (d) relates notification requirements after the Commission approves a card-minding system; (5) at subsection (e) sets forth provisions regarding checksum or digital signatures; (6) at subsection (f) states that the Commission's approval or disapproval of any component of a card-minding system is administratively final; and (7) at subsections (g) and (h) sets forth the manufacturers' financial responsibilities with regard to testing and audits.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed new rule. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the new rule as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis



is not required because the proposed new rule will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated as a result of the proposed new section is to clarify and make more efficient the requirements for manufacturers, distributors, and licensed authorized organizations that are involved with card-minding systems to ensure that the fairness and integrity of the games will not be compromised.

The Commission requests comments on the proposed new rule from any interested person. Comments on the proposed new rule may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at [legal.input@lottery.state.tx.us](mailto:legal.input@lottery.state.tx.us). The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, February 29, 2012, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed new rule implements Texas Occupations Code, Chapter 2001.

§402.324. Card-Minding Systems--Approval of Card-Minding Systems.

(a) A card-minding system must not be sold, leased, or otherwise furnished to any person for use in the conduct of bingo until it has first been tested and certified as compliant with the standards in this subchapter by an independent testing facility or the Commission's own testing lab. The card-minding system shall be submitted for testing at the manufacturer's expense. The testing facility should be required to ensure that the card-minding system conforms to the restrictions and conditions set forth in these standards. The approval process is set forth in subsections (b) - (f) of this section.

(b) Utilizing an Independent Testing Facility:

(1) Manufacturer has card-minding system ready for submission, and informs the Commission in writing prior to the submission;

(2) Manufacturer submits system to lab with letter outlining the card-minding system to be tested for approval in Texas;

(3) Lab performs validation testing to ensure compliance with the Commission's requirements. Testing may include functional testing and/or modification testing, if applicable;

(4) Lab communicates with manufacturer and/or Commission on any questions arising from testing;

(5) Lab creates certification report which includes file verification methodology, software/firmware signatures (checksum) and testing results; and

(6) Manufacturer submits approval request with certification report to the Commission.

(7) Once the Commission has received the certification report from the independent testing facility, the Commission may request a demonstration of the product.

(8) The Commission shall either approve or disapprove the submission based on the test results and inform the manufacturer of the results within thirty (30) calendar days of receipt of the test results.

(c) Utilizing the Commission's testing lab:

(1) Manufacturer has card-minding system ready for submission;

(2) Manufacturer submits system to Commission with letter outlining system specifics;

(3) Testing lab may request a demonstration of the system prior to testing;

(4) Lab performs validation testing to ensure compliance with Commission's requirements. This testing may include functional testing and/or modification testing, if applicable;

(5) Lab communicates with manufacturer on any questions arising from testing; and

(6) Lab recommends approval or denial of the system within forty-five (45) calendar days from submission date.

(7) The Commission issues an approval or denial letter to the manufacturer which includes software/firmware signatures (checksum).

(d) After the Commission approves a card-minding system, the manufacturer shall notify the Commission of the date, time and place of the first installation of the system so that a Commission representative may observe and review the card-minding system.

(e) Checksum or digital signatures will be obtained from the proprietary software submitted for testing to be used to verify that proprietary software at playing locations is the same as the software that was approved.

(f) The decision by the director to approve or disapprove any component of a card-minding system is administratively final.

(g) The manufacturer shall be responsible for the costs related to the testing of card-minding systems to include the fees charged by independent testing facilities or the Commission testing lab.

(h) The manufacturer shall be responsible for the travel costs incurred by the Commission to audit the initial installation of a card-minding system in the state of Texas.

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 February 6, 2012.

TRD-201200584

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 344-5012

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16 TAC §402.325

The Texas Lottery Commission (Commission) proposes new 16 TAC §402.325 (Card-Minding Systems--Licensed Authorized Organizations Requirements). The purpose of the proposed new rule is to provide licensed authorized organizations the requirements and guidelines for utilizing bingo card-minding systems. Specifically, the new rule addresses: (1) site system accessibility via remote connection; (2) verification that receipts for sessions display the correct organization name, location name, time and date; (3) verification that the end of occasion report(s) displays the correction organization name, location name, time, date, and all other required information; (4) how licensed authorized organization's must treat voided transactions; (5) information regarding presales; (6) recordkeeping requirements; (7) devices must be loaded or enabled on the premises where the game will be played; (8) the prohibition of reserving card-minding devices for players; (9) printing or occasion report(s) on the site system; (10) that the bingo player must be physically present during the game on the premises where the game is actually conducted; (11) the prohibition of adding or removing any software program to an approved card-minding system; and (12) that no organization may display, use, or otherwise furnish a card-minding device which has been marked, defaced, tampered with which may deceive the player or affect a player's chances of winning.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed new rule. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the new rule as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated as a result of the proposed new section is to clarify and make more efficient the requirements for manufacturers, distributors, and licensed authorized organizations that are involved with card-minding systems to ensure that the fairness and integrity of the games will not be compromised.

The Commission requests comments on the proposed new rule from any interested person. Comments on the proposed new rule may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at [legal.input@lottery.state.tx.us](mailto:legal.input@lottery.state.tx.us). The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, February 29, 2012, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed new rule implements Texas Occupations Code, Chapter 2001.

§402.325. Card-Minding Systems--Licensed Authorized Organizations Requirements.

(a) The licensed authorized organization must ensure the site system is accessible to the Commission via remote connection at all times.

(b) The licensed authorized organization must ensure that the receipts for its bingo occasion display the correct licensed authorized organization name, location name, time, and date.

(c) The licensed authorized organization must ensure that the occasion report displays the correct licensed authorized organization name, location name, time, date, and all other required information.

(d) The licensed authorized organization must treat void transactions in the following manner:

(1) Void transactions must be processed immediately;

(2) If a void transaction involves a card-minding device, the site system shall ensure all cards are erased or deactivated, or the card-minding device must be manually erased or deactivated, or otherwise taken out of play, if the card-minding device cannot be connected to the site system;

(3) The player must present the original receipt which was issued at the time of the purchase of the card-minding device before the purchase can be voided;

(4) The word "void" shall be clearly printed on the receipt issued once the void has occurred;

(5) The player must write his or her name, address, telephone number, signature, and amount of refund on the back of the void receipt before a partial or full refund may be issued; and

(6) All voided receipts must be attached to the bingo occasion report printed at the end of each bingo occasion and maintained with the records.

(e) If presales are made and the associated cards are not purchased, loaded, and enabled for play on a card-minding device, then those presales must be voided by the start of the second game of the occasion.

(f) Each licensed authorized organization must record all bingo sales, including sales of card-minding devices, disposable cards, instant bingo pull-tab tickets and event bingo pull-tab tickets and all bingo prizes awarded, including both regular bingo and pull-tab bingo, on the card-minding system point of sale station.

(g) Each licensed authorized organization purchasing, leasing, or otherwise utilizing a card-minding system must maintain a log or other records showing the following:

(1) the date the card-minding system was installed or removed; and

(2) the name and license number of the distributor from which the card-minding system was purchased, leased or otherwise obtained.

(h) If multiple licensed authorized organizations hold an interest in a card-minding system, a single record identifying each licensed authorized organization should be retained on the premises where the card-minding system is utilized.

(i) The licensed authorized organization must retain all records, reports, and receipts relating to the card-minding system's transactions, maintenance, and repairs for a period of 48 months for examination by the Commission. Such records shall be kept on the premises where the licensed authorized organization is licensed to

conduct bingo, or at a location designated in writing to the Commission by the licensed authorized organization.

(j) All card-minding devices must be loaded or enabled for play on the premises where the game will be played.

(k) Card-minding devices may not be reserved for players. Each player shall have an equal opportunity to use the available devices on a first come, first served basis.

(l) After the last game of the bingo occasion has been completed, the licensed authorized organization shall print an occasion report from the site system.

(m) The bingo player must be physically present during the game on the premises where the game is actually conducted.

(n) A licensed authorized organization may not add to or remove any software program related to the conduct of bingo to an approved card-minding system. If the Commission detects or discovers a card-minding system at a bingo premises that is using components or software that were not approved by the Commission as required, the card-minding system is deemed to have an unauthorized modification.

(o) No licensed authorized organization may display, use, or otherwise furnish a card-minding device which has in any manner been tampered with, or which otherwise may deceive the player or affect a player's chances of winning.

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 February 6, 2012.

TRD-201200585

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 344-5012



## 16 TAC §402.326

The Texas Lottery Commission (Commission) proposes new 16 TAC §402.326 (Card-Minding Systems--Distributor Requirements). The purpose of the proposed new rule is to provide licensed distributors requirements and guidelines for distributing bingo card-minding devices for use in Texas. Specifically, the new rule addresses: (1) at subsection (a) distributors' installation requirements; (2) at subsection (b) distributors' notification requirements; (3) at subsection (c) separate site system requirements; (4) at subsection (d) recordkeeping requirements; (5) at subsection (e) invoice requirements; (6) at subsection (f) initial contact with respect to requests for installation, service, maintenance or repair of card-minding devices and site systems; (7) at subsection (g) components and software requirements; and (8) at subsection (h) affecting players' chances of winning.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed new rule. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the new rule as proposed. Furthermore, an

Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated as a result of the proposed new section is to clarify and make more efficient the requirements for manufacturers, distributors, and licensed authorized organizations that are involved with card-minding systems to ensure that the fairness and integrity of the games will not be compromised.

The Commission requests comments on the proposed new rule from any interested person. Comments on the proposed new rule may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, February 29, 2012, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed new rule implements Texas Occupations Code, Chapter 2001.

### §402.326. Card-Minding Systems--Distributor Requirements.

(a) Installation. Each distributor that leases, sells, or otherwise furnishes a card-minding system shall install the system based on the manufacturer's approval letter for use in Texas. Each system shall be installed with:

(1) a point of sale, caller station, verifier, and all other software components of the site system as listed in the approval letter;

(2) the software settings as established in the approval letter;

(3) all of the manufacturer requirements and restrictions in place; and

(4) a dedicated modem phone line or internet connectivity.

(b) Before initial use by a licensed authorized organization, each distributor that leases, sells, or otherwise furnishes a card-minding system must provide notice to the Commission in writing on a form prescribed by the Commission, or electronically in a format prescribed by the Commission, that includes the following information:

(1) the modem number or IP address and protocol for remote access;

(2) total number of card-minding devices installed at the bingo premises;

(3) the name of the bingo premises, physical address, telephone number, and licensed commercial lessor's taxpayer identification number, if applicable, where the card-minding system is located;

(4) the expected startup date for use of the card-minding system by the licensed authorized organization;

(5) the name and taxpayer identification number of the licensed authorized organization to whom the card-minding system was sold, leased, or otherwise furnished;

(6) the name and taxpayer identification number of the distributor from whom the card-minding system was leased, purchased, or otherwise obtained;

(7) the name and taxpayer identification number of the manufacturer, model and version number of the card-minding system; and

(8) a certification statement from the manufacturer that the remote connectivity is operating properly.

(c) If a card-minding device is to be used at more than one bingo premises, each bingo premise must have its own separate site system.

(d) Before the complete removal or hardware up-grade of any card-minding system, each distributor must supply one copy of the data files to each licensed authorized organization that utilized the card-minding system and maintain one additional copy for a period of 48 months.

(e) A distributor selling, leasing, or otherwise providing card-minding systems to a licensed authorized organization or another licensed distributor must provide the licensed authorized organization or licensed distributor with an invoice that contains, at a minimum, the following information and must maintain copies of the invoice or documentation for a period of 48 months:

(1) the invoice number;

(2) the date of sale or lease period covered by the invoice;

(3) the manufacturer's name;

(4) the name and version number of the card-minding system;

(5) the quantity of card-minding devices sold or leased; and

(6) the total invoice amount.

(f) The distributor shall serve as the initial contact for the licensed authorized organization with respect to requests for installation, service, maintenance, or repair of card-minding devices and site systems, and for the ordering of the electronic facsimiles of bingo cards to be downloaded to the organization's site system, if applicable. The distributor may, as needed, enlist the aid of the manufacturer in providing service, repair, or maintenance of the card-minding devices or site system.

(g) A distributor may not add to nor remove any software programs related to the conduct of bingo to an approved card-minding system. If the Commission detects or discovers a card-minding system at a bingo premises that is using components or software that were required to have been approved by the Commission but have not been approved, the card-minding system is deemed to have an unauthorized modification.

(h) Upon the Commission's notification to the manufacturer, the manufacturer must immediately disable the system. A distributor may not display, use, or otherwise furnish a card-minding device which has in any manner been tampered with, or which otherwise may deceive the player or affect a player's chances of winning.

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 February 6, 2012.

TRD-201200586

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 344-5012

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**16 TAC §402.327**

The Texas Lottery Commission (Commission) proposes new 16 TAC §402.327 (Card-Minding Systems--Security Standards). The purpose of the proposed new rule is to provide manufacturers the expected security standards to be employed with the bingo card-minding system. Specifically, the new rule states: (1) a card-minding device or site system shall not be a video lottery machine or machine that simulates play of a video game; (2) a card-minding device or site system shall provide password protection; (3) the site system or a card-minding device shall be able to provide the winning game patterns required for an entire bingo occasion; (4) the manufacturer shall provide the Commission with all current protocols, usernames, passwords, etc., to access the system; (5) the manufacturer and distributor shall notify the Commission of any changes to number (4) above within 10 calendar days of any change; (6) the system shall have sufficient safeguards in place; and (7) a manufacturer shall employ sufficient security safeguards in designing and manufacturing the card-minding system.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed new rule. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the new rule as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated as a result of the proposed new section is to clarify and make more efficient the requirements for manufacturers, distributors, and licensed authorized organizations that are involved with card-minding systems to ensure that the fairness and integrity of the games will not be compromised.

The Commission requests comments on the proposed new rule from any interested person. Comments on the proposed new rule may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, February 29, 2012, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to

enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed new rule implements Texas Occupations Code, Chapter 2001.

§402.327. Card-Minding Systems--Security Standards.

(a) A card-minding device or site system shall not be a video lottery machine or machine that, upon insertion of cash, is available to play or simulate the play of a video game, including but not limited to video poker, keno, and blackjack, utilizing a video display and micro-processor in which the player may receive free games or credits that can be redeemed for cash, coins, or tokens or that directly dispenses cash, coins, or tokens.

(b) The card-minding device or site system shall provide password protection for each organization at a location using the device or site system.

(c) The site system or a card-minding device shall be able to provide the winning game patterns required for the entire bingo occasion. A printout or electronic display of the winning patterns must be available at the bingo occasion upon request by patrons or Commission personnel.

(d) The manufacturer shall provide to the Commission all current protocols, usernames, passwords, and any other required information needed to access the system prior to the operation of the system within Texas.

(e) The manufacturer and distributor shall notify the Commission of any changes they have made in the protocols, usernames, passwords, and any other required information needed to access the system within ten (10) calendar days of the change.

(f) The system shall have sufficient security safeguards to ensure that any restrictions or requirements authorized by the Commission or any approved proprietary software are protected from alteration.

(g) A manufacturer of a card-minding system shall employ sufficient security safeguards in designing and manufacturing the card-minding system such that only approved proprietary software used directly in the operation of bingo are accessible by the licensed authorized organization.

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 February 6, 2012.

TRD-201200587

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 344-5012



**16 TAC §402.328**

The Texas Lottery Commission (Commission) proposes new 16 TAC §402.328 (Card-Minding Systems--Inspections and Restrictions). The purpose of the proposed new rule is to provide licensed organizations with the requirements related to the inspection and examination of bingo card-minding systems.

Specifically, the new rule sets forth provisions regarding: (1) the Commission's examination and inspection of card-minding systems; (2) records requested by the Commission; (3) the Commission's actions upon discovering any problem with the card-minding system affecting the security and/or integrity of the bingo game or card-minding system; (4) the required actions of manufacturers, distributors, or licensed authorized organizations upon discovery of any defect, malfunction, or problem with the card-minding system that affects the security and/or integrity of the bingo game or card-minding system; (5) The Commission's potential additional examination or inspection of bingo card-minding systems; and (6) manufacturers' demonstration of a non-approved card-minding system or any secondary component.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed new rule. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the new rule as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated is to clarify and make more efficient the requirements for manufacturers, distributors, and licensed authorized organizations that are involved with card-minding systems to ensure that the fairness and integrity of the games will not be compromised.

The Commission requests comments on the proposed new rule from any interested person. Comments on the proposed new rule may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, February 29, 2012, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed new rule implements Texas Occupations Code, Chapter 2001.

§402.328. Card-Minding Systems--Inspections and Restrictions.

(a) The Commission may examine and inspect any card-minding system that was used, is being used, or is intended for subsequent use, in the conduct of bingo, including any individual card-minding device and related site system. Such examination and inspection includes immediate access to the card-minding device and unlimited inspection of all parts of the card-minding system.

(b) Distributors and manufacturers shall provide records related to approved card-minding systems requested by the Commission, or any of its employees, within fourteen (14) calendar days of the request unless a longer response time is allowed by the request.

(c) If the Commission detects or discovers any problem with the card-minding system that affects the security and/or integrity of the bingo game or card-minding system, the Commission:

(1) may direct the manufacturer, distributor, or licensed authorized organization to cease the sale, lease, or use of the card-minding system, as applicable and/or to remove the card-minding system from use or play until further notice by the Commission; and

(2) may require the manufacturer to correct the problem or recall the card-minding system immediately upon notification by the Commission to the manufacturer.

(d) If the manufacturer, distributor, or licensed authorized organization detects or discovers any defect, malfunction, or problem with the card-minding system that affects the security and/or integrity of the bingo game or card-minding system, the manufacturer, distributor, or licensed authorized organization, as applicable, shall immediately:

(1) remove the card-minding system from use or play; and

(2) notify the Commission of such action.

(e) The Commission, at its discretion, may require additional examination or inspection of bingo card-minding systems at any time. Such additional examinations or inspections may be at the manufacturer's expense and may be a condition of the continued use of such system.

(f) A manufacturer's demonstration of a non-approved card-minding system or any secondary component may take place only after permission is granted by the Commission. The request to demonstrate must be provided to the Commission at least seven (7) calendar days prior to the date of demonstration. The Commission may request a manufacturer to voluntarily demonstrate to the Commission staff a bingo product that the manufacturer markets in another jurisdiction.

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 February 6, 2012.

TRD-201200588

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 344-5012



## **TITLE 22. EXAMINING BOARDS**

### **PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS**

#### **CHAPTER 71. APPLICATIONS AND APPLICANTS**

##### **22 TAC §71.15**

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §71.15, concerning Recognized Specialties, to add the specialty of Acupuncture and to set forth the qualifications and continuing education requirements for the spe-

cialty of Acupuncture. Additionally, the amendment requires licensees to submit proof of eligibility for specialty fields and prohibits licensees from referring to themselves as specialists without Board approval.

Yvette Yarbrough, Executive Director, has determined that, for each year of the first five years that this amendment will be in effect, there will be no additional cost to state or local governments.

Ms. Yarbrough has also determined that, for each year of the first five years that this amendment will be in effect, the public benefit of this amendment will be greater clarity in the qualifications of specialists. Additionally, Ms. Yarbrough has determined that there will be no adverse economic effect to individuals and small or micro businesses during the first five years that this amendment will be in effect. Establishing a specialty in acupuncture or any other Board-recognized chiropractic specialty is optional for a doctor of chiropractic. Any additional costs due to the training requirements described in this rule should be de minimis and incidental to the doctor's decision to specialize.

Comments on the proposed amendment and/or a request for a public hearing on the proposed amendment may be submitted to Yvette Yarbrough, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701, fax: (512) 305-6705, no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

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

##### *§71.15. Recognized Specialties.*

(a) The following chiropractic specialties have been approved by the board:

(1) Chiropractic Orthopedic.

(A) Requirements:

(i) Diplomate, Academy of Chiropractic Orthopedists;

(ii) Diplomate, American Board of Chiropractic Orthopedists; or

(iii) Fellow, Academy of Chiropractic Orthopedists.

(B) Continuing education requirements: Thirty-six hours of continuing education during the three years prior to recertification approved by the Academy of Chiropractic Orthopedists.

(2) Chiropractic Radiology.

(A) Requirements: Diplomate, American Chiropractic Board of Radiology.

(B) Continuing education requirements:

(i) Sixty continuing education credits over a period of five years in the field of diagnostic imaging;

(ii) Successfully completing an American Chiropractic Board of Radiology certification examination; or

(iii) Another manner recognized and approved by the American Chiropractic Board of Radiology.

(3) Acupuncture.

(A) Requirements:

(i) Diplomate in Acupuncture from a recognized CCE-accredited institution/post-graduate entity; or

(ii) Three hundred hours of instruction conducted under the auspices of and taught by the post-graduate faculty of a CCE-accredited institution.

(B) Continuing education requirements: Three hours of continuing education in clean needle technique acupuncture every five years. These hours may be counted as part of the total continuing education hours required each year by the board. The hours must be obtained from board-approved continuing education courses.

(b) Licensees must submit proof of eligibility to the board prior to recognition as a chiropractic specialist in any of the fields listed in subsection (a) of this section. Licensees are prohibited from referring to themselves as specialists without approval from the board.

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 January 31, 2012.

TRD-201200463

Yvette Yarbrough

Executive Director

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 305-6716



## CHAPTER 75. RULES OF PRACTICE

### 22 TAC §75.2

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §75.2, concerning Proper Diligence and Efficient Practice of Chiropractic, to specify the standard upon which this rule is based and to specify that a licensee's failure to refer a patient to an appropriate health care provider under certain circumstances constitutes a violation of this rule.

The Board proposes to add subparagraph (F) to subsection (a)(1) to specify that a violation of this rule includes a licensee's failure to refer a patient to an appropriate health care provider when the licensee determines or should have determined that the patient requires a diagnosis or treatment that is outside the chiropractic scope of practice. This determination must be made within the chiropractic scope of practice.

Additionally, the Board proposes to add subparagraph (G) to specify that a violation of this rule includes a licensee's failure to refer a patient to an appropriate health care provider when the licensee determines or should have determined that the patient suffers from a condition within the chiropractic scope of practice, but requires a diagnosis or treatment exceeding that licensee's education, training, or experience.

Currently, there is no explicit obligation imposed by the Board rules for a licensee to refer a patient to an appropriate health care provider in the above-mentioned situations. The Board believes that creating this explicit obligation is in the best interest of the public and the profession.

Finally, the Board proposes changing the standard listed in subsection (a)(1) to be used in determining whether a violation of this rule has occurred. Previously, this standard was the "minimal acceptable standards of practice of chiropractic." The Board felt that this was inadequate and was not reflective of the standard used in administrative hearings and civil litigation. Therefore, the Board proposes changing this standard to the "generally accepted standards of care within the chiropractic profession in Texas."

Yvette Yarbrough, Executive Director, has determined that, for each year of the first five years this amendment will be in effect, there will be no additional cost to state or local governments. Ms. Yarbrough has also determined that there will be no adverse economic effect to individuals and small or micro business during the first five years this amendment will be in effect.

Ms. Yarbrough has also determined that, for each year of the first five years this amendment will be in effect, the public benefit of this amendment will be clarity in the obligation of chiropractors to refer patients to appropriate health care providers when the licensee determines or should have determined within the limitations of chiropractic scope of practice that the patient may suffer from a condition that requires a diagnosis or treatment that is outside the scope of chiropractic practice or that requires a diagnosis or treatment exceeding the licensee's education, training, or experience. This will allow patients to be referred more consistently to appropriate health care providers in these situations, thus increasing the quality of care provided to members of the public.

Comments on the proposed amendment and/or a request for a public hearing on the proposed amendment may be submitted to Yvette Yarbrough, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701, fax: (512) 305-6705, no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §201.152 and §201.502. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.502 authorizes the Board to discipline licensees for failing to use proper diligence in the practice of chiropractic or for using gross inefficiency in the practice of chiropractic.

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

#### §75.2. *Proper Diligence and Efficient Practice of Chiropractic.*

(a) A lack of proper diligence in the practice of chiropractic or the gross inefficient practice of chiropractic when applied to a licensee or chiropractic facility includes but is not limited to the following:

(1) failing to conform to the generally accepted standards of care within the chiropractic profession in Texas [~~minimal acceptable standards of practice of chiropractic~~], regardless of whether or not actual injury to any person was sustained, including, but not limited to:

(A) - (C) (No change.)

(D) causing, permitting, or allowing physical injury to a patient or impairment of the dignity or the safety of a patient [or];

(E) abandoning patients without reasonable cause and without giving a patient adequate notice and the opportunity to obtain the services of another chiropractor and without providing for the orderly transfer of a patient's records; [-]

(F) failing to timely refer a patient to an appropriate health care provider when the licensee determines or should have determined that the patient may suffer from a condition:

(i) that requires a diagnosis outside the chiropractic scope of practice as authorized by Texas Occupations Code §201.002 or §75.17 of this title (relating to Scope of Practice); or

(ii) that requires treatment outside the chiropractic scope of practice as authorized by Texas Occupations Code §201.002 or §75.17 of this title; or

(G) failing to timely refer a patient to an appropriate health care provider when the licensee determines or should have reasonably determined that the patient suffers from a condition that is within the chiropractic scope of practice, but requires a diagnosis or treatment that exceeds the licensee's education, training or experience.

(2) (No change.)

(b) (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 January 31, 2012.

TRD-201200465

Yvette Yarbrough

Executive Director

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 305-6716



## PART 5. STATE BOARD OF DENTAL EXAMINERS

### CHAPTER 101. DENTAL LICENSURE

#### 22 TAC §101.6

The State Board of Dental Examiners (Board) proposes new §101.6, concerning Licensing for Military Spouses. The section is proposed to enact certain requirements imposed by Senate Bill (SB) 1733, 82nd Legislature, which instructs occupational licensing agencies to adopt rules for the issuance of a license to an applicant who is the spouse of a person serving on active duty as a member of the United States military. This rule must include provisions to allow alternative demonstrations of competency to meet the requirements for obtaining the license.

The proposed new rule is pursuant to SB 1733 to address dental applicants by credential or licensees whose license expired.

Ms. Sherri Meek, Executive Director, has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

Ms. Meek 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 will be enhancement of the professional practice of dentists, dental hygienists and dental assistants, by providing an efficient way of obtaining a license or registration for persons who are spouses of United States mili-

tary personnel. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted in writing to Joy Sparks, General Counsel, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701. Comments may also be submitted electronically to [joy@tsbde.texas.gov](mailto:joy@tsbde.texas.gov) or faxed to (512) 463-7452. To be considered, all written comments must be received by the State Board of Dental Examiners no later than 30 days from the date that this new section is published in the *Texas Register*.

The new section is proposed under Texas Government Code §2001.021 et seq., and Texas Occupations Code §254.001, which authorizes the Board to adopt and enforce rules necessary for it to perform its duties.

The proposal affects Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

#### §101.6. Licensing for Military Spouses.

(a) This section applies to a dental applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States.

(b) The board may issue a license to a dental applicant described under subsection (a) of this section who:

(1) holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the license; or

(2) 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.

(c) The board may allow a dental applicant described under subsection (b) of this section to demonstrate competency by alternative methods in order to meet the requirements for obtaining a dental license issued by the board. For purposes of this section, the standard method of demonstrating competency is the specific exam, education, and/or experience required to obtain a dental license.

(d) In lieu of the standard method(s) of demonstrating competency for a dental license and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the board:

(1) education;

(2) continuing education;

(3) examinations (written and/or practical);

(4) letters of good standing;

(5) letters of recommendation;

(6) work experience; or

(7) other methods required by the executive director.

(e) The executive director may issue a license by credentials in the same manner as the board under Texas Occupations Code Chapter 256 to an applicant described under subsection (b) of this section.

(f) The applicant described under subsection (b) of this section shall submit an application and proof of the requirements under this section and for that dental license on a form and in a manner prescribed by the board.

(g) The applicant described under subsection (b) of this section shall submit the applicable fee(s) required for that dental license.



(h) The applicant described under subsection (b) of this section shall undergo a criminal history background check.

(i) The applicant described under subsection (b) of this section shall not have been the subject of final or pending disciplinary action in any jurisdiction in which the applicant is or has been licensed.

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 January 30, 2012.

TRD-201200454

Sherri Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 475-0972



## CHAPTER 103. DENTAL HYGIENE LICENSURE

### 22 TAC §103.6

The State Board of Dental Examiners (Board) proposes new §103.6, concerning Licensing for Military Spouses. The section is proposed to enact certain requirements imposed by Senate Bill (SB) 1733, 82nd Legislature, which instructs occupational licensing agencies to adopt rules for the issuance of a license to an applicant who is the spouse of a person serving on active duty as a member of the United States military. This rule must include provisions to allow alternative demonstrations of competency to meet the requirements for obtaining the license.

The proposed new rule is pursuant to SB 1733 to address dental applicants by credential or licensees whose license expired.

Ms. Sherri Meek, Executive Director, has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

Ms. Meek 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 will be enhancement of the professional practice of dentists, dental hygienists and dental assistants, by providing an efficient way of obtaining a license or registration for persons who are spouses of United States military personnel. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted in writing to Joy Sparks, General Counsel, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701. Comments may also be submitted electronically to [joy@tsbde.texas.gov](mailto:joy@tsbde.texas.gov) or faxed to (512) 463-7452. To be considered, all written comments must be received by the State Board of Dental Examiners no later than 30 days from the date that this new section is published in the *Texas Register*.

The new section is proposed under Texas Government Code §2001.021 et seq., and Texas Occupations Code §254.001,

which authorizes the Board to adopt and enforce rules necessary for it to perform its duties.

The proposal affects Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

### §103.6. Licensing for Military Spouses.

(a) This section applies to a dental applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States.

(b) The board may issue a license to a dental applicant described under subsection (a) of this section who:

(1) holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the license; or

(2) 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.

(c) The board may allow a dental applicant described under subsection (b) of this section to demonstrate competency by alternative methods in order to meet the requirements for obtaining a dental license issued by the board. For purposes of this section, the standard method of demonstrating competency is the specific exam, education, and/or experience required to obtain a dental license.

(d) In lieu of the standard method(s) of demonstrating competency for a dental license and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the board:

(1) education;

(2) continuing education;

(3) examinations (written and/or practical);

(4) letters of good standing;

(5) letters of recommendation;

(6) work experience; or

(7) other methods required by the executive director.

(e) The executive director may issue a license by credentials in the same manner as the board under Texas Occupations Code Chapter 256 to an applicant described under subsection (b) of this section.

(f) The applicant described under subsection (b) of this section shall submit an application and proof of the requirements under this section and for that dental license on a form and in a manner prescribed by the board.

(g) The applicant described under subsection (b) of this section shall submit the applicable fee(s) required for that dental license.

(h) The applicant described under subsection (b) of this section shall undergo a criminal history background check.

(i) The applicant described under subsection (b) of this section shall not have been the subject of final or pending disciplinary action in any jurisdiction in which the applicant is or has been licensed.

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 January 30, 2012.

TRD-201200453  
Sherri Meek  
Executive Director  
State Board of Dental Examiners  
Earliest possible date of adoption: March 18, 2012  
For further information, please call: (512) 475-0972



## CHAPTER 108. PROFESSIONAL CONDUCT SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

### 22 TAC §108.8

The State Board of Dental Examiners (Board) proposes amendments to §108.8, concerning Records of the Dentist. The section establishes requirements related to patient records held by a dentist. The amendment was suggested by Staff and allows dentists to conduct a tactile and visual oral examination and document that as part of their clinical findings.

The proposed amendment to subsection (c) would require documentation in the patient record of the findings of a thorough tactile and visual examination of soft and hard tissues of the oral cavity.

Ms. Sherri Meek, Executive Director, has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

Ms. Meek 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 will be enhancement of the professional practice of dentists by encouraging dentists to perform and document a visual and tactile examination. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted in writing to Joy Sparks, General Counsel, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701. Comments may also be submitted electronically to [joy@tsbde.texas.gov](mailto:joy@tsbde.texas.gov) or faxed to (512) 463-7452. To be considered, all written comments must be received by the State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the *Texas Register*.

The amendment is proposed under Texas Government Code §2001.021 et seq., and Texas Occupations Code §254.001, which authorizes the Board to adopt and enforce rules necessary for it to perform its duties.

The proposal affects Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

§108.8. *Records of the Dentist.*

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

(c) Further, records must include documentation of the following when services are rendered:

(1) (No change.)

(2) Findings and charting of clinical and radiographic oral examination.[:]

(A) Documentation of radiographs taken and findings deduced from them, including radiograph films or digital reproductions.

(B) Use of radiographs, at a minimum, should be in accordance with ADA guidelines.

(C) Documentation of the findings of a thorough tactile and visual examination of the soft and hard tissues of the oral cavity.

(3) - (12) (No change.)

(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 January 30, 2012.

TRD-201200452  
Sherri Meek  
Executive Director  
State Board of Dental Examiners  
Earliest possible date of adoption: March 18, 2012  
For further information, please call: (512) 475-0972



## PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

### CHAPTER 575. PRACTICE AND PROCEDURE

#### 22 TAC §575.8

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.8, concerning Final Decisions and Orders.

The proposed amendment to §575.8 is intended to make the Board's procedure for final orders in contested cases apply to all Board licensees, veterinarians and equine dental providers alike. The proposed amendment is necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers.

Nicole Oria, Executive Director, Texas Board of Veterinary Medical Examiners, has determined that for each year of the first five years that the proposed rule is in effect, there will be minimal increased cost to state government required to enforce the rule for licensed equine dental providers, but those costs will be offset by the reduction in cost of the amounts the Board previously spent on enforcing the unlicensed practice of veterinary medicine by unlicensed equine dentists. Ms. Oria does not anticipate any fiscal implications for local government as a result of the proposed rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has determined that some equine dental providers, including micro-businesses operating as equine dental provider practices, who become involved in the Board's disciplinary process will experience a minor economic cost increase associated with complying with the proposed rule for each year of the first five years that the rule is in effect, due to the costs associated with the Board's disciplinary process, but the legal employment and advertising opportunities that come with licen-

sure should outweigh these costs. The Board estimates that there are approximately 30 equine dental provider micro-businesses in Texas. The proposed rules regarding equine dental providers are necessary to implement HB 414, which required that equine dental providers be licensed and regulated by the Board. In HB 414, the Texas Legislature itself set many of the parameters that are creating costs for equine dental providers under the proposed rule revisions including, but not limited to, the requirement that equine dental providers uphold the same standard of care as licensed veterinarians. Thus, the Board determined that there are no legal and feasible alternatives or other less expensive methods of regulating and disciplining licensed equine dental providers than through the Board's established disciplinary process. The proposed amendment will not cause any increased costs for licensed veterinarians.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit is that the public will be able to rely on the training and quality of service from the regulation of licensed equine dental providers, and will have a venue and process through which to complain and seek discipline for a licensed equine dental provider who violates the Board's rules.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail [vet.board@tbvme.state.tx.us](mailto:vet.board@tbvme.state.tx.us). Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter, and §801.151(c)(1), which states that the Board shall adopt rules to protect the public.

Occupations Code, Chapter 801, is affected by this proposal.

§575.8. *Final Decision and Orders.*

(a) Board action. A copy of the final decision or order shall be delivered or mailed to any party and to the attorney of record.

(b) Recorded. All final decisions and orders of the Board shall be in writing and shall be signed by the president, vice-president, or secretary and reported in the minutes of the meeting. A final order shall include findings of fact and conclusions of law, separately stated.

(c) Imminent peril. If the Board finds that imminent peril to the public's health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

(d) Changes to findings of fact and conclusions of law.

(1) Reasons to Change Findings of Fact and Conclusions of Law. The Board is charged by the legislature to protect the public interest, is an independent agency of the executive branch of the government of the State of Texas, and is the primary means of licensing, regulating and disciplining veterinarians and equine dental providers. Therefore, to ensure that sound veterinary medical principles govern the decisions of the Board, it is the policy of the Board

to change a finding of fact or conclusion of law or to vacate or modify any proposed order of an ALJ only when the Board determines:

(A) that the ALJ did not properly apply or interpret applicable law, Board rules, written policies, or prior administrative decisions;

(B) that a prior administrative decision on which the ALJ relied is incorrect or should be changed; or

(C) that a technical error in a finding of fact should be changed.

(2) Recommendations regarding the appropriate sanction. Section 801.456(a) of the Veterinary Licensing Act requires that, after receiving the ALJ's findings of fact and conclusions of law, the Board may determine that a violation occurred and impose an administrative penalty. The Board interprets this requirement as imposing on the Board the responsibility of assessing the proper sanction. While the Board welcomes the recommendations of ALJs regarding the appropriate sanction, the Board does not consider the findings of fact and conclusions of law to be appropriate for stating such recommendations. Therefore, sanction recommendations in the form of findings of fact and conclusions of law are considered to be an improper application of applicable law and these rules.

(3) Changes Stated in Final Order. If the Board modifies, amends, or changes the ALJ's proposed findings of fact or conclusions of law, an order shall be prepared reflecting the specific reason and legal basis for each change made.

(e) Administrative finality. A final order or Board decision is administratively final:

(1) upon a finding of imminent peril to the public's health, safety or welfare, as outlined in subsection (c) of this section;

(2) when no motion for rehearing has been filed within 20 days after the date the final order or Board decision is entered; or

(3) when a timely motion for rehearing is filed and the motion for rehearing is denied by Board order or operation of law as outlined in §575.9 of this title (relating to Motions for Rehearing).

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 February 3, 2012.

TRD-201200569

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 305-7563



**22 TAC §575.22**

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.22, concerning Reinstatement of Licenses.

The proposed amendment to §575.22 is intended to make the procedure through which a licensee can seek to reinstate a cancelled or revoked license apply to all licensees, veterinarians and equine dental providers alike. The proposed amendment

is necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers.

Nicole Oria, Executive Director, Texas Board of Veterinary Medical Examiners, has determined that for each year of the first five years that the proposed rule is in effect, there will be a minimal increased cost to state government required to process petitions for license reinstatement for equine dental providers. The increased cost to the state required to enforce the rule for licensed equine dental providers will be offset by the reduction in cost of the amounts the Board previously spent on enforcing the unlicensed practice of veterinary medicine by unlicensed equine dentists. Ms. Oria does not anticipate any fiscal implications for local government as a result of the proposed rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has determined that equine dental providers who have their licenses cancelled or revoked, including micro-businesses operating as equine dental provider practices, will experience a minor economic cost increase associated with complying with the proposed rule for each year of the first five years that the rule is in effect, due to the costs associated with the time required to comply with the license reinstatement procedure, as well as the fees and time required to take the Board's jurisprudence examination for equine dental providers if the Board reinstates the licensee, but the legal employment and advertising opportunities that come with licensure should outweigh these costs. The Board estimates that there are approximately 30 equine dental provider micro-businesses in Texas. The proposed rules regarding equine dental providers are necessary to implement HB 414, which required that equine dental providers be licensed and regulated by the Board. In HB 414, the Texas Legislature itself set many of the parameters that are creating costs for equine dental providers under the proposed rule revisions including, but not limited to, the requirement that equine dental providers take a jurisprudence examination prior to licensure after September 1, 2012. Thus, the Board determined that there are no legal and feasible alternatives or other less expensive methods of regulating equine dental providers without requiring them to take part in the license reinstatement process if their licenses become cancelled or revoked, and to incur the resulting costs. There will not be any additional economic cost for veterinarians as a result of the proposed amended rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be that the public will be able to rely on the training and quality of service from the regulation of licensed equine dental providers.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail [vet.board@tbvme.state.tx.us](mailto:vet.board@tbvme.state.tx.us). Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter, and §801.151(c)(1), which states that the Board shall adopt rules to protect the public.

Occupations Code, Chapter 801, is affected by this proposal.

§575.22. *Reinstatement of [Veterinary] Licenses.*

(a) A person whose veterinary license or equine dental provider license [~~to practice veterinary medicine~~] has been cancelled or revoked, whether by voluntary action or by disciplinary action of the Board, may after five (5) years from the effective date of such cancellation or revocation, petition the Board for reinstatement of the license, unless another time is provided in the cancellation or revocation order, or unless no provision was made in the order for reinstatement. This rule does not apply to licensees who let their licenses lapse for non-payment of renewal fees or licensees against whom a cancellation or revocation proceeding is not pending before the Board or in any other jurisdiction.

(b) The petition shall be in writing and in the form prescribed by the Board.

(c) After consideration of the petition for reinstatement, the Board may:

(1) deny reinstatement of the license;

(2) reinstate and probate the licensee for a specified period of time under specified conditions; or

(3) authorize reinstatement of the licensee.

(d) If the petition is denied by the Board, a subsequent petition may not be considered by the Board until twelve (12) months have lapsed from the date of denial of the previous petition.

(e) The petitioner or their legal representative must appear before the Board to present the request for reinstatement of the license.

(f) The petitioner shall have the burden of showing good cause why the license should be reinstated.

(g) In considering a petition for reinstatement, the Board may consider the petitioner's:

(1) moral character;

(2) employment history;

(3) status of financial support to petitioner's family;

(4) participation in continuing education programs or other methods of staying current with the practice of veterinary medicine or the practice of equine dentistry;

(5) criminal history record, including felonies or misdemeanors relating to the practice of veterinary medicine, the practice of equine dentistry, and/or moral turpitude;

(6) offers of employment as a veterinarian or equine dental practitioner;

(7) involvement in public service activities in the community;

(8) compliance with the provisions of the Board order revoking or canceling the petitioner's license;

(9) compliance with provisions of the Veterinary Licensing Act regarding unauthorized practice;

(10) history of acts or actions by any other state and federal regulatory agencies; and

(11) any physical, chemical, emotional, or mental impairment.

(h) In considering a petition, the Board may also consider:

(1) the gravity of the offense for which the petitioner's license was cancelled, revoked or restricted and the impact the offense had upon the public health, safety, and welfare;

(2) the length of time since the petitioner's license was cancelled, revoked, or restricted, as a factor in determining whether the time period has been sufficient for the petitioner to have been rehabilitated sufficiently to be able to practice [veterinary medicine] in a manner consistent with the public health, safety and welfare;

(3) whether the license was submitted voluntarily for cancellation at the request of the licensee; and

(4) other rehabilitative actions taken by the petitioner.

(i) If the Board grants the petition for reinstatement, the petitioner must successfully complete the Texas State Board Licensing Examination during the regularly scheduled examination times. The Board may also require the petitioner to complete additional testing to assure the petitioner's competency to practice [veterinary medicine].

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 February 3, 2012.

TRD-201200570

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 305-7563



## 22 TAC §575.24

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.24, concerning Reprimands.

The proposed amendment to §575.24 is intended to make the Board's procedures regarding disciplinary reprimands apply to all licensees, veterinarians and equine dental providers alike. The proposed amendment is necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers.

Nicole Oria, Executive Director, Texas Board of Veterinary Medical Examiners, has determined that for each year of the first five years that the proposed rule is in effect, there will be minimal increased cost to state government required to enforce the rule for licensed equine dental providers, but those costs will be offset by the reduction in cost of the amounts the Board previously spent on enforcing the unlicensed practice of veterinary medicine by unlicensed equine dentists. Ms. Oria does not anticipate any fiscal implications for local government as a result of the proposed rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has determined that some equine dental providers, including micro-businesses operating as equine dental provider practices, who become involved in the Board's disciplinary process will experience a minor economic cost increase associated with complying with the proposed rule for each year of the first five years that the rule is in effect, due to the costs associated with the Board's disciplinary process, but the legal

employment and advertising opportunities that come with licensure should outweigh these costs. The Board estimates that there are approximately 30 equine dental provider micro-businesses in Texas. The proposed rules regarding equine dental providers are necessary to implement HB 414, which required that equine dental providers be licensed and regulated by the Board. In HB 414, the Texas Legislature itself set many of the parameters that are creating costs for equine dental providers under the proposed rule revisions including, but not limited to, the requirement that equine dental providers uphold the same standard of care as licensed veterinarians. Thus, the Board determined that there are no legal and feasible alternatives or other less expensive methods of regulating and disciplining licensed equine dental providers than through the Board's established disciplinary process. The proposed amendment will not cause any increased costs for licensed veterinarians.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit is that the public will be able to rely on the training and quality of service from the regulation of licensed equine dental providers, and will be protected from equine dental providers who violate the Board's rule by the Board's disciplinary process. Ms. Oria has determined that there will be no economic cost to individuals required to comply with the rule. Ms. Oria has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail [vet.board@tbvme.state.tx.us](mailto:vet.board@tbvme.state.tx.us). Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter, and §801.151(c)(1), which states that the Board shall adopt rules to protect the public.

Occupations Code, Chapter 801, is affected by this proposal.

§575.24. *Reprimands.*

(a) A licensee [veterinarian] subject to disciplinary action by the Board [board] may be reprimanded. A reprimand:

- (1) may be formal or informal;
- (2) is contained in a written order of the Board [board]; and
- (3) is available upon request as public information.

(b) A formal reprimand will be:

- (1) published in the Board's [board's] newsletter; and
- (2) for a veterinary licensee, routinely reported to the American Association of Veterinary State Boards (AAVSB) for inclusion in the national reporting database of veterinarians.

(c) An informal reprimand will not be published in the Board's [board's] newsletter and will not be routinely reported to the AAVSB for inclusion in the national reporting database of veterinarians. A copy of an informal reprimand of a veterinary licensee will be forwarded to the AAVSB if specifically requested by that organization.

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 February 3, 2012.

TRD-201200571

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 305-7563



## 22 TAC §575.25

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.25, concerning the Recommended Schedule of Sanctions.

The proposed amendment to §575.25 is intended to make the schedule of disciplinary sanctions apply to all licensees, veterinarians and equine dental providers alike. The proposed amendment is necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers.

Nicole Oria, Executive Director, Texas Board of Veterinary Medical Examiners, has determined that for each year of the first five years that the proposed rule is in effect, there will be increased cost to state government required to enforce the rule for licensed equine dental providers, but those costs will be offset by the reduction in cost of the amounts the Board previously spent on enforcing the unlicensed practice of veterinary medicine by unlicensed equine dentists. Ms. Oria does not anticipate any fiscal implications for local government as a result of the proposed rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has determined that some equine dental providers, including micro-businesses operating as equine dental provider practices, who are disciplined by the Board will experience economic cost increases associated with complying with the proposed rule for each year of the first five years that the rule is in effect, due to the costs associated with the Board's disciplinary process and disciplinary fines, but the legal employment and advertising opportunities that come with licensure should outweigh these costs. The Board estimates that there are approximately 30 equine dental provider micro-businesses in Texas. The proposed rules regarding equine dental providers are necessary to implement HB 414, which required that equine dental providers be licensed and regulated by the Board. In HB 414, the Texas Legislature itself set many of the parameters that are creating costs for equine dental providers under the proposed rule revisions including, but not limited to, the requirement that equine dental providers uphold the same standard of care as licensed veterinarians. Thus, the Board determined that there are no legal and feasible alternatives or other less expensive methods of regulating and disciplining licensed equine dental providers than through the Board's established disciplinary methods. The proposed amendments will not cause any increased costs for licensed veterinarians.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be that the public will be able to rely on the training and quality of service from the regulation of licensed equine dental providers, will have a venue and process through which to complain and seek discipline for a licensed equine dental provider who violates the Board's rules, and will be protected through the Board's disciplinary process from equine dental providers who violate the Board's rules.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail [vet.board@tbvme.state.tx.us](mailto:vet.board@tbvme.state.tx.us). Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter; §801.151(c)(1), which states that the Board shall adopt rules to protect the public; and §801.452(c), which states that the Board by rule shall develop a standardized penalty schedule.

Occupations Code, Chapter 801, is affected by this proposal.

§575.25. *Recommended Schedule of Sanctions.*

(a) Class A violations. Licensees considered as presenting imminent peril to the public will be considered Class A violators. In determining whether a violation is a Class A, consideration will be given to the disposition of any previously docketed cases, and to the combination of charges which might involve Class B and/or C violations.

(1) Class A violations may include, but are not limited to:

(A) conviction of a felony, including a felony conviction under the Health and Safety Code, §485.032 (formerly numbered; §485.033) relating to Delivery of an Abusable Volatile Chemical to a Minor, or Chapters 481 relating to Controlled Substances, or Chapter 483 relating to Dangerous Drugs;

(B) gross malpractice with a pattern of acts indicating consistent malpractice, negligence, or incompetence in the practice of veterinary medicine or equine dentistry;

(C) revocation of a [veterinary] license to practice veterinary medicine or equine dentistry in another jurisdiction;

(D) mental incompetence found by a court of competent jurisdiction;

(E) chronic or habitual intoxication or chemical dependency, or addiction to drugs;

(F) issuance of a false certificate relating to the sale for human consumption of animal products;

(G) presentation of dishonest or fraudulent evidence of qualifications or a determination of fraud or deception in the process of examination, or for the purpose of securing a license;

(H) engaging in veterinary practices which are violative of the Rules of Professional Conduct; and/or

(I) fraudulent issuance of health certificates, vaccination certificates, test charts, or other blank forms used in the practice of veterinary medicine that relate to the presence or absence of animal disease.

(2) In assessing sanctions and/or penalties, consideration shall be given to the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public; the economic harm to property or the environment caused by the violation; history of previous violations; what is necessary to deter future violations; and any other matters that justice may require.

(3) Maximum penalties:

(A) revocation of the license;

(B) a penalty not exceeding \$5,000 for each violation per day;

(C) continuing education in a specified field related to the practice of veterinary medicine or equine dentistry that the Board [board] deems relevant to the violation(s). The total number of hours mandated are in addition to the number of hours required to renew the [veterinary] license;

(D) quarterly reporting certifying compliance with board orders; and/or

(E) Licensee sit for, and pass, the SBE or EDPE.

(b) Class B violations. Involves licensees who either have violated rules and/or statutes, and committed a prior Class C violation; or have violated rules and/or statutes and have not committed a prior violation, but the nature and severity of the violation(s) necessitates a greater penalty than that available for a Class C violation, but does not rise to the level of creating an imminent peril to the public. In determining whether a violation is a Class B, consideration will be given to the disposition of the previously docketed cases, and to the combination of charges which might invoke Class A and/or C violations.

(1) Class B violations may include, but are not limited to:

(A) engaging in dishonest or illegal practices in or connected with the practice of veterinary medicine or equine dentistry;

(B) engaging in veterinary practices which are violative of the Rules of Professional Conduct;

(C) permitting or allowing another to use his/her license or certificate to practice veterinary medicine or equine dentistry;

(D) committing fraud in application or reporting of any test of animal disease;

(E) paying or receiving any kickback, rebate, bonus, or other remuneration for treating an animal or for referring a client to another provider of veterinary services or goods;

(F) fraudulent issuance of health certificates, vaccination certificates, test charts, or other blank forms used in the practice of veterinary medicine that relate to the presence or absence of animal disease;

(G) performing or prescribing unnecessary or unauthorized treatment;

(H) ordering prescription drugs or controlled substances for the treatment of an animal without first establishing a valid veterinarian-patient-client relationship;

(I) failure to maintain equipment and business premises in a sanitary condition; and/or

(J) refusal to admit a representative of the Board [board] to inspect the client and patient records and business premises of the licensee during regular business hours.

(2) In assessing sanctions and/or penalties, consideration shall be given to: the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts; the hazard or potential hazard created to the health, safety, or economic welfare of the public; the economic harm to property or the environment caused by the violation; the history of previous violations; what is necessary to deter future violations; and any other matters that justice may require.

(3) Maximum penalties:

(A) one to 10-year license suspension with none, all, or part probated;

(B) a penalty not exceeding \$5,000 for each violation per day;

(C) continuing education in a specified field related to the practice of veterinary medicine or equine dentistry that the Board [board] deems relevant to the violation(s). The total number of hours mandated are in addition to the number of hours required to renew the [veterinary] license;

(D) quarterly reporting certifying compliance with board orders; and/or

(E) Licensee sit for, and pass, the SBE or EDPE.

(c) Class C violations. Involve licensees who have violated the rules and/or statutes, but do not have a history of previous violations. Consideration should be given to the nature and severity of the violation(s).

(1) Class C violations may include, but are not limited to, minor violations included in Class A and/or B in which there is no hazard or potential hazard created to the health, safety, or economic welfare of the public and no economic harm to property or to the environment.

(2) In assessing sanctions, consideration should be given to the good or bad faith exhibited by the cited person; evidence that the violation was willful; extent to which the cited individual has cooperated with the investigation; and the extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused.

(3) Maximum penalties:

(A) six months to one-year suspension with the entire period probated;

(B) an administrative penalty not to exceed \$500 for each violation per day; and/or

(C) Licensee sit for, and pass, the SBE or EDPE.

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 February 3, 2012.

TRD-201200572

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 305-7563



22 TAC §575.27

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.27, concerning Complaints--Receipts.

Proposed §575.27 is amended to make the Board's procedure for receiving complaints and initiating investigations apply to all licensees, veterinarians and equine dental providers alike. The proposed amendment is necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers.

Proposed §575.27 is also amended to limit the length of time a complaint can be filed after the incident that is the subject of the complaint occurs, or could have been discovered, to four years. This limitation is intended to parallel the Board's requirement that licensees keep patient records for five years, because patient records usually play a key role in the Board's investigation of a complaint. The four year limitation will ensure that the Board does not expend its limited resources attempting to investigate complaints for which key evidence--the relevant patient record--no longer exists.

Nicole Oria, Executive Director, Texas Board of Veterinary Medical Examiners, has determined that for each year of the first five years that the proposed rule is in effect, there will be increased cost to state government required to enforce the rule for licensed equine dental providers, but those costs will be offset by the reduction in cost of the amounts the Board previously spent on enforcing the unlicensed practice of veterinary medicine by unlicensed equine dentists. The proposed limitation on how long after an incident a complaint can be filed will reduce cost to state government by eliminating the investigation costs for any complaints filed more than four years after the date the basis of the complaint was discovered or could have been discovered. Although the Board receives on average fewer than five such complaints per year, the investigation of complaints brought after the licensee no longer has an obligation to keep the relevant patient records requires more agency resources per case and yields less conclusive results, due to the "he said, she said" nature of the evidence that remains when patient records are no longer available. Ms. Oria does not anticipate any fiscal implications for local government as a result of the proposed rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has determined that some equine dental providers, including micro-businesses operating as equine dental provider practices, who are disciplined by the Board will experience economic cost increases associated with complying with the proposed rule for each year of the first five years that the rule is in effect, due to the costs associated with the Board's disciplinary process and disciplinary fines, but the legal employment and advertising opportunities that come with licensure should outweigh these costs. The Board estimates that there are approximately 30 equine dental provider micro-businesses in Texas. The proposed rules regarding equine dental providers are necessary to implement HB 414, which required that equine dental providers be licensed and regulated by the Board. In HB 414, the Texas Legislature itself set many of the parameters that are creating costs for equine dental providers under the proposed rule revisions including, but not limited to, the requirement that equine dental providers uphold the same standard of care as licensed veterinarians. Thus, the Board determined that there are no legal and feasible alternatives or other less expensive methods of regulating and disciplining licensed equine dental providers than through the Board's established disciplinary methods. The

proposed amendments will not cause any increased costs for licensed veterinarians.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be that the public will be able to rely on the training and quality of service from the regulation of licensed equine dental providers, will have a venue and process through which to complain and seek discipline for a licensed equine dental provider who violates the Board's rules, and will have their complaints that are filed within four years of the incident in question investigated more efficiently. Moreover, scarce agency resources will be used more efficiently on more recent complaints.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail [vet.board@tbvme.state.tx.us](mailto:vet.board@tbvme.state.tx.us). Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter, §801.151(c)(1), which states that the Board shall adopt rules to protect the public, and §801.205, which states that the Board shall adopt rules relating to the investigation of complaints filed with the Board, including rules to ensure that complaints are not dismissed without appropriate consideration.

Occupations Code, Chapter 801, is affected by this proposal.

*§575.27. Complaints--Receipt.*

(a) Complaints against licensees.

(1) All complaints filed by the public against Board licensees must be in writing on a complaint form provided by the Board [board] and signed by the complainant. The Board-approved complaint form can be obtained free of charge from the Board office or downloaded from the Board's website at <http://www.tbvme.state.tx.us>. If a complaint is transmitted to the Board orally or by means other than in writing and the complaint alleges facts showing a continuing or imminent threat to the public welfare, the requirement of a written complaint may be waived until later in the investigative process.

(2) The Board may file a complaint on its own initiative.

(3) Complaints by the Board's [Board] enforcement section shall be initiated by the opening of a complaint file.

(4) Anonymous written complaints will normally not be investigated, but may be investigated if sufficient information exists for the Board to file a complaint under paragraph (2) of this subsection.

(5) The Board shall utilize violation code numbers to distinguish between categories of complaints.

(6) The Board may not consider a complaint that is filed with the Board after the fourth anniversary of the date:

(A) the act that is the basis of the complaint occurred;

or

(B) the complainant discovered, or in the exercise of reasonable diligence should have discovered, the occurrence of the act that is the basis of the complaint.

(b) Complaints against non-licensees. Complaints against persons alleged to be practicing veterinary medicine or equine dentistry



without a license may be investigated and resolved informally by the executive director with the consent of the non-licensee, or the Board may utilize formal cease and desist procedures specified in §801.508, Occupations Code. Complaints not resolved by the executive director may be referred to a local prosecutor or the attorney general for legal action, as well as addressed in §801.508 of the Occupations Code.

(c) Report to the Board of dismissed complaints. The executive director or the executive director's designee shall advise the Board at each scheduled meeting of the complaints dismissed since the last meeting.

(d) Use of Private Investigators. The executive director may approve the use of private investigators to assist in investigation of complaints where the use of Board investigators is not feasible or economical or where private investigators could provide valuable assistance to the Board investigators. Private investigators may be utilized in cases involving honesty, integrity and fair dealing; reinstatement applications; solicitation; fraud; dangerous drugs and controlled substances; and practicing veterinary medicine or equine dentistry without a license. Private investigators will be utilized in accordance with existing purchasing rules of the Comptroller of Public Accounts.

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 February 3, 2012.

TRD-201200573

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 305-7563



## 22 TAC §575.29

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.29, concerning Informal Conferences.

Proposed §575.29 is amended to allow any member of Board staff to investigate a complaint in order to give the Director of Enforcement more latitude in assigning investigation duties by allowing her to assign complaint investigations to administrative staff, as well as to investigators on staff, depending on the complexity of the case.

Proposed §575.29 is also amended to clarify that the licensee board members that represent the Board at the informal conference are veterinarians, and not equine dental providers. This proposed amendment is necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers. The Legislature did not change the composition of the Board as set by Texas Occupations Code §801.051, which states that the Board is composed of six veterinarians and three members representing the public. Thus, it is necessary to change the phrase "licensee board member" in the rule to "veterinary licensee board member," to ensure that there is no confusion should a equine dental provider licensee become a public member of the Board. This change is not intended to alter the meaning of the rule.

Nicole Oria, Executive Director, Texas Board of Veterinary Medical Examiners, has determined that for each year of the first five years that the proposed rule is in effect, the proposed change to allow the Director of Enforcement to assign uncomplicated complaint investigations to administrative staff will reduce cost to state government by reducing the workload on Board investigators. Ms. Oria does not anticipate any economic impact as a result of the clarification regarding veterinarian board members. Ms. Oria does not anticipate any fiscal implications for local government as a result of the proposed rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be that the Board will be able to investigate complaints from public more quickly, because the ability to assign simple case investigations to administrative staff rather than investigators should allow all cases to progress through the investigation process more efficiently and reduce the agency's backlog of investigations. Ms. Oria has determined that there will be no economic cost to individuals required to comply with the rule. Ms. Oria has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail [vet.board@tbvme.state.tx.us](mailto:vet.board@tbvme.state.tx.us). Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter; §801.151(c)(1), which states that the Board shall adopt rules to protect the public; §801.205, which states that the Board shall adopt rules relating to the investigation of complaints filed with the Board, including rules to ensure that complaints are not dismissed without appropriate consideration; and §801.408, which states that the Board shall by rule adopt procedures governing informal proceedings in contested cases.

Occupations Code, Chapter 801, is affected by this proposal.

### §575.29. Informal Conferences.

(a) The informal conference is the last stage in the investigation of a complaint. The licensee has the right to waive his or her attendance at the conference. The licensee may be represented by counsel.

(b) The Board [board] may be represented at the informal conference by an enforcement committee of the executive director, the veterinarian members and a public member of the board, the director of enforcement, the member of board staff [investigator] assigned to investigate the complaint, and the Board's [board's] general counsel. The complainant and the licensee and the licensee's legal counsel may attend the conference. Any other attendees are allowed at the discretion of the executive director. The executive director or the director of enforcement shall conduct the conference.

(c) Contingency. The Board [board] president shall appoint another veterinary licensee board member to assume the duties of the board secretary in the complaint review and informal conference process in the event the board secretary is unable to serve in the capacity set out in this section.

(d) Procedure. Subject to the discretion of the executive director, the following procedure will be followed at the informal conference. The executive director shall explain the purpose of the conference and the rights of the participants, lead the discussion of the allegations of the complaint, and explain the possible courses of action at the conclusion of the conference. The licensee will be asked to respond to the allegations. The complainant will be allowed to make comments relevant to the allegations. Comments of the licensee and complainant must be addressed to the person conducting the conference and not to each other. In the interest of maintaining decorum, the licensee or complainant may be asked to leave the room while the other is talking with the committee. The enforcement committee members may ask questions of the licensee and complainant in order to fully develop the complaint record.

(e) At the conclusion of the informal conference, the enforcement committee shall determine if a violation has occurred. If the enforcement committee determines that a violation has not occurred, the enforcement committee, or their designee, will dismiss the complaint, and will advise all parties of the decision and the reasons why the complaint was dismissed.

(f) If the enforcement committee determines that a violation has occurred and that disciplinary action is warranted, the executive director, or their designee, will advise the licensee of the alleged violations and offer the licensee a settlement in the form of an agreed order that specifies the disciplinary action and monetary penalty. With the agreement of the licensee, the enforcement committee may recommend that the licensee refund an amount not to exceed the amount the complainant paid to the licensee instead of or in addition to imposing an administrative penalty on the licensee. The executive director, or their designee, must inform the licensee that the licensee has a right to a hearing before an administrative law judge on the finding of the occurrence of the violation, the type of disciplinary action, and/or the amount of the recommended penalty.

(g) Within the time period prescribed, the licensee must submit a written response to the Board:

(1) accepting the settlement offer and recommended disciplinary action, or

(2) requesting a hearing before an administrative law judge.

(h) Additional negotiations may be held between board staff and the licensee or the authorized representative. In consultation with the board representatives, as available, the recommendations of the board representatives may be subsequently modified based on new information, a change of circumstances, or to expedite a resolution in the interest of protecting the public.

(i) The board representative(s) shall be consulted and must concur with any subsequent substantive modifications before any recommendations are sent to the full board for approval.

(j) Board staff may communicate directly with the board representative(s) after the ISC for the purpose of discussing settlement of the case.

(k) If the licensee accepts the settlement offer by signing the agreed order, the agreed order will be docketed for board action at the next regularly scheduled board meeting.

(l) The recommendations may be adopted, modified, or rejected by the Board [board].

(m) If the Board [board] approves the agreed order with amendments, the executive director, or their designee, shall mail the amended agreed order to the licensee and the licensee shall have

fourteen (14) days from receipt to accept the amended agreed order by signing and returning it to the Board [board]. If a licensee does not sign an amended agreed order or does not respond within the fourteen (14) days, the complaint will be scheduled for a hearing before an administrative law judge. If the Board [board] rejects the agreed order, the complaint may be scheduled for a hearing before an administrative law judge, or the Board [board] may direct the executive director to take other appropriate action.

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 February 3, 2012.

TRD-201200574

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 305-7563



## 22 TAC §575.35

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.35, concerning Temporary License Suspension Proceedings.

Proposed §575.35 is amended so that the procedures for temporary license suspension apply to all licensees, veterinarians and equine dental providers alike. The proposed amendment is necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers.

Nicole Oria, Executive Director, Texas Board of Veterinary Medical Examiners, has determined that for each year of the first five years that the proposed rule is in effect, there will be increased cost to state government required to enforce the rule for licensed equine dental providers, but those costs will be offset by the reduction in cost of the amounts the Board previously spent on enforcing the unlicensed practice of veterinary medicine by unlicensed equine dentists. Ms. Oria does not anticipate any fiscal implications for local government as a result of the proposed rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has determined that some equine dental providers, including micro-businesses operating as equine dental provider practices, who become involved in the Board's disciplinary process and subject to a temporary license suspension, will experience a minor economic cost increase associated with complying with the proposed rule for each year of the first five years that the rule is in effect due to the costs associated with the Board's disciplinary process and with the business interruption caused by a license suspension, but the legal employment and advertising opportunities that come with licensure should outweigh these costs. The Board estimates that there are approximately 30 equine dental provider micro-businesses in Texas. The proposed rules regarding equine dental providers are necessary to implement HB 414, which required that equine dental providers be licensed and regulated by the Board. In HB 414, the Texas Legislature itself set many of the parameters

that are creating costs for equine dental providers under the proposed rule revisions including, but not limited to, the requirement that equine dental providers uphold the same standard of care as licensed veterinarians. Thus, the Board determined that there are no legal and feasible alternatives or other less expensive methods of regulating and disciplining licensed equine dental providers than through the Board's established disciplinary process. The proposed amendment will not cause any increased costs for licensed veterinarians.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be that the public will be able to rely on the training and quality of service from the regulation of licensed equine dental providers, and will be protected through the Board's temporary license suspension proceedings from licensees, including equine dental providers, who constitute an imminent or continuing threat to the public welfare.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail [vet.board@tbvme.state.tx.us](mailto:vet.board@tbvme.state.tx.us). Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter; §801.151(c)(1), which states that the Board shall adopt rules to protect the public; and §801.409, which states that the Board by rule shall adopt procedures for the temporary suspension of a license.

Occupations Code, Chapter 801, is affected by this proposal.

§575.35. *Temporary License Suspension Proceedings.*

(a) Annually, the president of the Board shall appoint a three-member executive disciplinary committee (EDC) consisting of the president, the Board secretary, and one public member, to determine whether a person's license to practice veterinary medicine or equine dentistry in this state should be temporarily suspended under the Occupations Code, §801.409. The president shall serve as the chairman of the EDC, except in their absence the Board secretary shall serve as chairman. If a member of the EDC is recused, or a member is unable to attend the EDC's meeting, an alternate Board member may serve in the member's place on the EDC if the alternate was previously appointed by the president of the Board and approved by the Board.

(b) The EDC shall meet to receive information on a complaint indicating that a licensee's continued practice of veterinary medicine or equine dentistry may constitute a continuing or imminent threat to the public welfare. At the conclusion of the meeting, if the EDC concludes that the licensee's continued practice would constitute a continuing or imminent threat to the public welfare, the EDC shall suspend the licensee's license for a temporary, stated period of time.

(c) In accordance with the APA, Section 2001.081, the determination of the EDC may be based not only on evidence admissible under the Texas Rules of Evidence, but may be based on information of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.

(d) In receiving information on which to base its determination of a continuing threat to the public welfare, the EDC may accept the testimony of witnesses by telephone.

(e) The EDC and the EC may receive testimony and evidence in oral or written form. Written statements may be sworn or unsworn. The committee members may question witnesses at the members' discretion. Evidence or information that is clearly irrelevant, unreliable, or unduly inflammatory will not be considered.

(f) The EDC may suspend a license under this section without notice or a hearing on the complaint, provided the Board's enforcement committee (EC) (established pursuant to §575.29(b) of this title (relating to Informal Conferences)) shall meet in an informal conference within 14 days of the date of suspension, to determine if formal disciplinary proceedings should be initiated against the licensee. The licensee must receive notice of the conference at least 72 hours prior to the conference.

(g) Following the informal conference, the EC shall take one of the following actions:

(1) Lift the temporary suspension and reinstate the license without conditions.

(2) Negotiate with the licensee an agreed settlement order that will lift the suspension, continue the suspension, or impose other sanctions as appropriate. The agreed order would be presented to the next available Board meeting for adoption.

(3) Prepare a complaint affidavit setting out the details of the complaint and recommended sanctions, and forward the complaint affidavit to the State Office of Administrative Hearings for setting of an administrative hearing. Following the hearing, the administrative law judge will prepare a proposal for decision for adoption, in the form of an order, by the Board.

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 February 3, 2012.

TRD-201200575

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 305-7563



**22 TAC §575.36**

The Texas Board of Veterinary Medical Examiners (Board) proposes new §575.36, concerning Rescission of Probation.

Proposed new §575.36 is intended to give the Board a more efficient procedure for disciplining licensees who commit a violation of the Veterinary Licensing Act ("Act") or the Board's Rules Pertaining to the Practice of Veterinary Medicine ("Rules") while on probation for a prior violation of the Board's Rules or the Act. The proposed procedure, which is patterned off that used by the Texas Board of Nursing, will allow the Board to take a probationer who violates probation directly to a disciplinary hearing before the State Office of Administrative Hearings without having to first go through an informal conference.

Nicole Oria, Executive Director, Texas Board of Veterinary Medical Examiners, has determined that for each year of the first five years that the proposed rule is in effect, there will be reduced cost to state government as a result of enforcing the proposed

rule, because it will allow the Board to follow a more efficient disciplinary process for recidivist probationer licensees without the need for the Board to expend the resources necessary for an expedited informal conference. Ms. Oria does not anticipate any fiscal implications for local government as a result of the proposed rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be that licensees who violate probation will be disciplined more quickly and efficiently, allowing for better and faster protection of the public. Ms. Oria has determined that there will be no significant change in economic cost for individuals required to comply with the rule. Ms. Oria has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed new rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail [vet.board@tbvme.state.tx.us](mailto:vet.board@tbvme.state.tx.us). Comments will be accepted for 30 days following publication in the *Texas Register*.

The new rule is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter, and §801.151(c)(1), which states that the Board shall adopt rules to protect the public.

Occupations Code, Chapter 801, is affected by this proposal.

§575.36. Rescission of Probation.

(a) At least 20 days prior to a hearing to rescind probation, the probationer shall be served with written notice of the allegations supporting rescission of the probation.

(b) The hearing shall be conducted in accordance with §575.30 of this title (relating to Contested Case Hearing at SOAH).

(c) After giving the probationer notice and an opportunity to be heard, the Board may set aside the stay order and impose the stayed discipline (revocation/suspension) of the probationer's license.

(d) If during the period of probation, an additional allegation, accusation, or petition is reported or filed against the probationer's license, the probationary period shall not expire and shall automatically be extended until the allegation, accusation, or petition has been acted upon by the Board.

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 February 3, 2012.

TRD-201200576

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 305-7563

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**22 TAC §575.40**

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.40, concerning Cease and Desist Procedures.

The proposed amendment to §575.40 is intended to make the Board's procedures for the prosecution of unlicensed practice apply to individuals practicing either equine dentistry or veterinary medicine without a license. The proposed amendment is necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers. The proposed amendment also includes minor corrections to capitalization.

Nicole Oria, Executive Director, Texas Board of Veterinary Medical Examiners, has determined that for each year of the first five years that the proposed rule is in effect, there will be no increased cost to state government required to enforce the proposed rule because the Board has previously been investigating and enforcing the unlicensed practice of equine dentistry. Ms. Oria does not anticipate any fiscal implications for local government as a result of the proposed rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit is that the public will be able to rely on the training and quality of service from the regulation of licensed equine dental providers. Ms. Oria has determined that there will be no change in economic cost to individuals required to comply with the rule. Ms. Oria has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail [vet.board@tbvme.state.tx.us](mailto:vet.board@tbvme.state.tx.us). Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter, and §801.151(c)(1), which states that the Board shall adopt rules to protect the public.

Occupations Code, Chapter 801, is affected by this proposal.

§575.40. Cease and Desist Procedures.

(a) Purpose. The purpose of a cease and desist proceeding is to determine whether a person has engaged in acts or practices that constitute the practice of veterinary medicine or the practice of equine dentistry without a license ("respondent") in violation of Chapter 801 of the Occupations Code ("Veterinary Licensing Act") and whether the Board should issue a cease and desist order in accordance with the Veterinary Licensing Act, §801.508. The purpose of this section is to establish procedures for the handling of complaints regarding the unlicensed practice of medicine and other violations of the Veterinary Licensing Act, a rule adopted by the Board [board], or another statute relating to the practice of veterinary medicine or equine dentistry by a person who is not licensed by the Board [board] in accordance with Chapter 801 of the Veterinary Licensing Act.

(b) Form of Complaint. Notwithstanding §575.27 of this title (relating to Complaints--Receipt) to the contrary, a complaint of someone practicing veterinary medicine or equine dentistry without a license does not have to be submitted on a complaint form utilized by the Board. However, a complainant must submit some form of written documentation to the Board.

(c) Staff Committee Action.

(1) Upon the Board's receipt of a complaint and after a determination that a respondent may have engaged in the unlicensed practice of veterinary medicine or the practice of equine dentistry, a staff committee as defined in §575.27 of this title may propose an agreed cease and desist order ("the order") to be presented to the respondent.

(2) If the respondent signs the order, it shall be effective and enforceable against the respondent upon receipt by the Board, but it shall not become final until approved by the Board.

(d) Informal Conference.

(1) If the Respondent chooses not to sign the order and requests a conference, or if the respondent does not respond after receipt of the order, the complaint shall be referred to an informal conference as defined by §575.27 of this title. If the conference committee determines that a violation of the Veterinary Licensing Act has occurred, it may propose an agreed cease and desist order with such settlement terms as it considers appropriate.

(2) If the respondent declines to sign the order, the Board may refer the complaint and investigative file to the State Office of Administrative Hearings for a contested case proceeding. Following the proceeding and issuance of a proposal for decision by the administrative law judge, the Board may take such action as appropriate.

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 February 3, 2012.

TRD-201200577

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 305-7563



**22 TAC §575.50**

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §575.50, concerning Criminal Convictions.

The proposed amendment to §575.50 is intended to make the Board's procedures regarding discipline of licensees who are convicted of a crime apply to all licensees, veterinarians and equine dental providers alike. The proposed amendment is necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers.

Nicole Oria, Executive Director, Texas Board of Veterinary Medical Examiners, has determined that for each year of the first five years that the proposed rule is in effect, there will be increased cost to state government required to enforce the rules for licensed equine dental providers, but those costs will be offset by

the reduction in cost of the amounts the Board previously spent on enforcing the unlicensed practice of veterinary medicine by unlicensed equine dentists. Ms. Oria does not anticipate any fiscal implications for local government as a result of the proposed rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has determined that some equine dental providers, including micro-businesses operating as equine dental provider practices, who are convicted of a crime and thereby become subject to discipline by the Board, will experience a minor economic cost increase associated with complying with the proposed rule for each year of the first five years that the rule is in effect, due to the costs associated with the Board's disciplinary process, but the legal employment and advertising opportunities that come with licensure should outweigh these costs. The Board estimates that there are approximately 30 equine dental provider micro-businesses in Texas. The proposed rules regarding equine dental providers are necessary to implement HB 414, which required that equine dental providers be licensed and regulated by the Board. In HB 414, the Texas Legislature itself set many of the parameters that are creating costs for equine dental providers under the proposed rule revisions including, but not limited to, the requirement that equine dental providers uphold the same standard of care as licensed veterinarians. Thus, the Board determined that there are no legal and feasible alternatives or other less expensive methods of regulating and disciplining licensed equine dental providers than through the Board's established disciplinary process. The proposed amendment will not cause any increased costs for licensed veterinarians.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit is that the public will be able to rely on the training and quality of service from the regulation of licensed equine dental providers, and will be protected from equine dental providers who violate the Board's rules by the Board's disciplinary process.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail [vet.board@tbvme.state.tx.us](mailto:vet.board@tbvme.state.tx.us). Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter, and §801.151(c)(1), which states that the Board shall adopt rules to protect the public.

Occupations Code, Chapter 801, is affected by this proposal.

*§575.50. Criminal Convictions.*

(a) In a process under Chapter 53, Occupations Code, the Board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a veterinarian. This subsection applies to persons who are not imprisoned at the time the Board considers the conviction.

(b) The Board shall revoke a license upon the imprisonment of a licensee following a felony conviction or revocation or felony community supervision, parole, or mandatory supervision. A person

currently incarcerated because of a felony conviction may not sit for license examination, obtain a license under the Veterinary Licensing Act, Occupations Code, Chapter 801, or renew a previously issued license [to practice veterinary medicine].

(c) The Board shall, in determining whether a criminal conviction directly relates to the duties and responsibilities of a licensee [veterinarian], consider the factors listed in the Occupations Code, §53.022.

(d) In determining the present fitness to perform the duties and discharge the responsibilities of a licensee [veterinarian] who has been convicted of a crime, the Board shall consider, in addition to the factors referenced in subsection (c) of this section, the factors listed in the Occupations Code, §53.023.

(e) Both the [The] practice of veterinary medicine and the practice of equine dentistry place [places] the licensee [veterinarian] in a position of public trust. A licensee [veterinarian] practices in an autonomous role in the treating and safekeeping of animals; [prescribing, administering and safely storing controlled substances;] preparing and safeguarding confidential records and information; and accepting client funds. The following crimes relate to the practices [practice] of veterinary medicine and equine dentistry. The commission of each indicates a violation of the public trust, and a lack of integrity and respect for one's fellow human beings and the community at large.

(1) any felony or misdemeanor conviction of which fraud, dishonesty or deceit is an essential element;

(2) any criminal violation of the Veterinary Licensing Act, or other statutes regulating or pertaining to the practice or profession of veterinary medicine or equine dentistry;

(3) any criminal violation of statutes regulating other professions in the healing arts;

(4) deceptive business practices;

(5) a misdemeanor or felony offense involving:

(A) murder;

(B) assault;

(C) burglary;

(D) robbery;

(E) theft;

(F) sexual assault;

(G) injury to a child or to an elderly person;

(H) child abuse or neglect;

(I) tampering with a government record;

(J) animal cruelty;

(K) forgery;

(L) perjury;

(M) bribery;

(N) mail fraud;

(O) diversion or abuse of controlled substances, dangerous drug, or narcotic; or

(P) other misdemeanors or felonies, including violations of the Penal Code, Titles 4, 5, 7, 9, and 10, which indicate an inability or tendency of the person to be unable to perform as a licensee or to be unfit for licensure, if action by the Board will promote

the intent of the Veterinary Licensing Act, Board rules, including this chapter, and the Occupations Code, Chapter 53.

(f) Notwithstanding the provisions of subsections (a) - [through] (e) of this section, the Board shall suspend or revoke a licensee's [veterinarian's] license in accordance with the Occupations Code, §801.406, where the licensee [veterinarian] has been convicted of a felony under the Health and Safety Code, §485.033, or the Health and Safety Code, Chapter 481 or 483.

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 February 3, 2012.

TRD-201200578

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 305-7563



## 22 TAC §575.61

The Texas Board of Veterinary Medical Examiners (Board) proposes new §575.61, concerning Petitioning for Rulemaking.

The new rule is proposed to codify the Board's policy regarding requests for rulemaking, in accordance with §2001.021 of the Administrative Procedure Act, which requires that state agencies set forth the procedure for requests for rulemaking in a rule.

Nicole Oria, Executive Director, Texas Board of Veterinary Medical Examiners, has determined that for each year of the first five years that the proposed rule is in effect, there will no fiscal implications for either state or local government as a result of the proposed rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit is that the rule makes the Board's policy on the procedure for rulemaking petitions clear and accessible for public reference. Ms. Oria has determined that there will be no economic cost to individuals required to comply with the rule. Ms. Oria has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed new rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail [vet.board@tbvme.state.tx.us](mailto:vet.board@tbvme.state.tx.us). Comments will be accepted for 30 days following publication in the *Texas Register*.

The new rule is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

Occupations Code, Chapter 801, is affected by this proposal.

§575.61. *Petition for Rulemaking.*

Any person may petition for rulemaking in accordance with §2001.021 of the Administrative Procedures Act by submitting a written request to the Board at least 30 days prior to a board meeting identifying the rule the petitioner wants the Board to change, the reasons why the petitioner believes the requested rulemaking is necessary, and attaching a copy of the rule showing the proposed changes with deletions crossed through and additions underlined.

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 February 3, 2012.

TRD-201200579

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Earliest possible date of adoption: March 18, 2012

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## PART 26. TEXAS BOARD OF LICENSURE FOR PROFESSIONAL MEDICAL PHYSICISTS

### CHAPTER 601. MEDICAL PHYSICISTS

#### 22 TAC §§601.1 - 601.24

The Texas Board of Licensure for Professional Medical Physicists (board), proposes amendments to §§601.1 - 601.22; and new §601.23 and §601.24, concerning the licensing and regulation of medical physicists.

#### BACKGROUND AND PURPOSE

Texas Government Code, §2001.039, requires that each state agency review and consider for reoption each rule adopted by that agency pursuant to the Texas Government Code, Chapter 2001 (Administrative Procedure Act). Sections 601.1 - 601.22 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 medical physicists are needed.

In general, each section was reviewed and proposed for amendments in order to ensure appropriate 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 delete repetitive, obsolete, unenforceable, or unnecessary language; to improve draftsmanship; and to make the rules more accessible, understandable, and usable.

Proposed new §601.23 establishes procedures for the issuance of criminal history evaluation letters, as required by House Bill 963, 81st Legislature, Regular Session, 2009, amending Texas Occupations Code, Chapter 53, relating to the eligibility of certain applicants for occupational licenses. Proposed new §601.24 establishes procedures for the issuance of licenses to military spouses, as required by Senate Bill 1733, 82nd Legislature, 2011, amending Texas Occupations Code, Chapter 55.

#### SECTION-BY-SECTION SUMMARY

Section 601.1 is renamed "Purpose" and deletion of repetitive language improves draftsmanship.

Section 601.2 adds a new definition of "supervision."

Sections 601.3 - 601.21 are amended to reflect current operating procedures of the Board.

The amendment to §601.4(1)(G) establishes a \$50 fee for the issuance of a criminal history evaluation letter to comply with House Bill 963. Also, the retired medical physicist biennial renewal fee of \$65 was deleted since it was never implemented.

Regarding §601.8, direct and indirect references to the obsolete state examination are proposed for deletion. The examinations for licensure are the examinations administered by the American Board of Radiology, the American Board of Medical Physics, the American Board of Science in Nuclear Medicine, the American Board of Health Physics, or the Canadian College of Physicists in Medicine.

Regarding §601.9, new requirements relating to supervision of temporary license holders are proposed, including a limitation on the number of persons a license holder may supervise, a board-approved supervision plan, and supervisory approval and sign-off on the supervisee's work product.

Regarding §601.11, obsolete and unenforceable language concerning license renewal when disciplinary action is pending, but not complete, is proposed for deletion.

Regarding §601.14(n)(1)(D), clarifying language regarding testimonials "that is anonymous or is not readily verifiable" is proposed. New §601.14(o), (p), (q), (r), (s), and (t) clarify that a license holder must not practice in an area in which the licensee is not qualified; to ensure the availability of documents and work product in certain circumstances; to ensure effective supervision; to prohibit sexual misconduct; to require cooperation with the board; and to require practice that is in compliance with state and federal laws and rules.

Regarding §601.16(f)(1), unnecessary limitations on the issuance of reprimands are deleted.

Regarding §601.18, formal hearing procedures regulated by the State Office of Administrative Hearings are updated.

Regarding §601.21, unnecessary language referencing the recommendations of the National Council of Radiation Protection and Measurement are proposed for deletion.

New §601.23 and §601.24 implement recent legislation regarding requests for criminal history evaluation letters and procedures for licensing of spouses of members in the Military.

#### FISCAL NOTE

Ann Hammer, Executive Director, has determined that for each fiscal year of the first five years the sections are in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections as proposed. The effect on state government will be an increase in revenue of \$50 each fiscal year. The implementation of the criminal history evaluation procedures and fee is anticipated to result in an increase of one individual choosing to pay \$50 for the criminal history evaluation letter, for a total of \$50 each fiscal year. The elimination of the retired medical physicist fee will not result in a revenue decrease as the board never implemented the assessment of this fee. Implementations

of the proposed sections will not result in fiscal implications for local governments.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Hammer has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

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

There are anticipated economic costs to persons who are required to comply with the sections as proposed. The cost to a person who chooses to request a criminal history evaluation letter is \$50. There is no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

In addition, Ms. Hammer has also determined that for each year of the first five years the sections are in effect, the public will benefit from revision of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the effective licensing and regulation of medical physicists.

#### REGULATORY ANALYSIS

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Comments on the proposed rules may be submitted to Ann Hammer, Executive Director, Texas Board of Licensure for Professional Medical Physicists, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347, or by email to med\_physicist@dshs.state.tx.us. When emailing comments, please indicate "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### LEGAL CERTIFICATION

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

#### STATUTORY AUTHORITY

The amendments and new rules are authorized by the Texas Occupations Code, §602.151, which authorizes the board to adopt rules necessary for the performance of its duties, and to set fees reasonable and necessary to cover the costs of administering this chapter. Review of the rules implements Texas Government Code, §2001.039.

The amendments and new rules affect Texas Occupations Code, Chapter 602.

#### §601.1. Purpose [and Scope].

[(a)] Purpose.

[(+) This chapter implements [These sections in this chapter are intended to implement] the provisions of the Texas Medical Physics Practice Act (Act), Texas Occupations Code, Chapter 602, concerning the regulation and licensure of medical physicists, in that:

(1) [(A)] the Act is intended to protect the health, safety, and welfare of the citizens of this state [are entitled to the protection of their health, safety, and welfare] from the harmful effects of excessive radiation; and

(2) [(B)] the practice of medical physics is a threat to the public if conducted by incompetent persons.

(3) [(2)] This chapter [These sections in this chapter] will protect the public [insure that the public is protected] from the dangers described by paragraphs (1) and (2) of this section [paragraph (1)(A) and (B) of this subsection] by:

(A) establishing minimum standards of education, training, and competency for persons engaged in the practice of medical physics; and

(B) ensuring that the privilege of practicing in the field of medical physics is entrusted only to those persons licensed under the Act.

[(b) Scope. These sections cover definitions of words and terms used in this chapter; establish general policies governing the operation of the Texas Board of Licensure for Professional Medical Physicists (board); establish a schedule of fees, criteria for exemptions, and application procedures for licensure as a medical physicist; establish qualification requirements for licensure by examination; establish eligibility requirements a person must meet for obtaining a temporary license; establish requirements for license issuance and license holder responsibilities; and license renewal; establish the time periods and procedures the board shall follow in processing applications for or renewal of a license; delineate the board's procedures in handling a petition for adoption of a rule; establish a code of ethics; establish guidelines and criteria on eligibility of persons with criminal backgrounds to obtain a license; establish standards for handling violations, complaints and subsequent actions; sets procedures a licensee must follow for surrender of a license; and establish procedures for holding formal hearings; establish standards for suspension of license for failure to pay child support; establish continuing education requirements; establish medical physics specialties and scope of practice; establish standards for issuance of a provisional license; and establish guidelines for retired medical physicist performing voluntary charity.]

#### §601.2. Definitions.

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

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

(11) Medical nuclear physics--The branch of medical physics that deals with the therapeutic and diagnostic application of



radionuclides, except those used in sealed sources for therapeutic purposes, but including therapy with radiolabeled microspheres and with the use of equipment associated with the production and use of radionuclides.

(12) (No change.)

(13) Physician--A person licensed to practice medicine by the Texas Medical Board [Texas State Board of Medical Examiners] under Texas Occupations Code, Chapter 152, or if out-of-state a person who holds a valid license to practice medicine in that state or territory.

(14) - (17) (No change.)

(18) Quality control--A subset of [under] quality assurance that [and] concerns monitoring the performance of imaging, treatment and associated radiological equipment.

(19) - (21) (No change.)

(22) Supervision--To oversee the work of a medical physicist holding a temporary license in the performance of those duties defined as the practice of medical physics. For the purpose of fulfilling the work experience and examination requirement, the supervisor shall be responsible for the temporary licensee's work during this period. The supervisor assumes the responsibility, and must have the authority, to observe and correct the actions of the individual being supervised. There are three levels of supervision as described in subparagraphs (A) - (C) of this paragraph.

(A) General Supervision--The temporary licensee works under the overall control and direction of the supervisor, but the supervisor's presence is not required during the performance of the work.

(B) Direct Supervision--The supervisor is present in the building or institution and immediately available to furnish assistance and direction throughout the work. The supervisor need not be in the room where the work is being performed.

(C) Personal Supervision--The supervisor is physically present in the room where the temporary licensee is working.

~~[(22) Supervision--To oversee the work of a medical physicist holding a temporary license in the performance of those duties defined as the practice of medical physics. For the purpose of fulfilling the work experience and examination requirement the supervisor shall be responsible for the temporary licensee's work during this period. An individual is considered to be supervised if:]~~

~~[(A) the supervisor is routinely and substantially present at the facility during the performance of duties at that facility by the individual being supervised; and]~~

~~[(B) the supervisor assumes the responsibility, and is provided with the authority, to observe and correct the actions of the individual being supervised.]~~

(23) Temporary License--A [a] certificate authorizing an individual to practice medical physics under the supervision of a licensed medical physicist.

(24) (No change.)

(25) Upper division semester hour credits--Third-year level or above (junior, senior or graduate) course work completed from a regionally accredited [an accredited] college or university.

§601.3. *The Board's Operations.*

(a) (No change.)

(b) Officers.

(1) (No change.)

(2) Assistant presiding officer.

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

(C) If [In case] the chair is unable to fulfill his or her term, the vice-chair will serve until the governor designates a member of the board as a successor.

(c) Elections.

(1) At the first regularly scheduled meeting of each calendar year, the board shall elect a vice-chair by a majority vote of those members present and voting[; a vice-chair]. The vice-chair will serve in that capacity until the first regularly scheduled meeting of the next calendar year.

(2) A vacancy that [which] occurs in the office of vice-chair may be filled by a majority vote of those members present and voting at the next board meeting.

(d) Committees.

(1) - (5) (No change.)

(6) Committee chairs shall coordinate with [contact or ask that] the board office [contact other committee members] to determine a meeting date(s) and place(s). The committee chair shall notify the executive secretary and chair of the proposed meeting date(s) and place(s).

(7) - (9) (No change.)

(e) - (f) (No change.)

(g) Transaction of official business.

(1) - (2) (No change.)

(3) The current edition of Roberts Rules of Order [Revised] shall be the basis of parliamentary decisions except where otherwise provided by this chapter.

(h) Agendas.

(1) The executive secretary shall prepare and submit to each member of the board, at least five days prior to each meeting, an agenda, approved by the chair, that [which] includes items requested by members; items requested by the board[; the board] or the executive secretary; items required by law; and other matters of board business.

(2) (No change.)

(i) Minutes.

(1) - (2) (No change.)

(3) The official minutes of each meeting shall be made available to the public on the department's website [kept in the executive secretary office and shall be available to any person desiring to examine them during regular office hours].

(j) Attendance.

(1) The policy of the board is that members will attend board [regular] and committee meetings as scheduled.

(2) (No change.)

~~[(3) The board may report to the Texas Sunset Advisory Commission the attendance records of members.]~~

(k) Reimbursement for expenses.

~~[(1) A board member is entitled to per diem at the rate set by the legislature for state officials for each day the member engages in the business of the board.]~~

(1) ~~[(2)]~~ A board member is entitled to reimbursement for transportation and incidental expenses as provided by the ~~[latest]~~ General Appropriations Act ~~[passed by the legislature]~~.

(2) ~~[(3)]~~ Payment to board members of ~~[per diem and]~~ expenses shall be on official state travel vouchers.

~~[(4) Requests for out of state travel for board activities must be approved in advance by the board.]~~

(3) ~~[(5)]~~ Attendance at conventions, meetings, and seminars must be clearly related to the performance of official board duties if a board member's expenses to attend are to be reimbursed.

(l) (No change.)

#### §601.4. Fees.

This section sets out the fees for licensure as a medical physicist as prescribed by the board.

(1) The schedule of fees for licensure as a medical physicist is as follows:

(A) application processing and initial licensing fee:

(i) - (iii) (No change.)

(iv) upgrade of temporary license per specialty--\$75;

(B) - (F) (No change.)

(G) criminal history evaluation letter fee--\$50; and

~~[(G) examination fee--the fee for the specialty examination as set by contract with the examining body.]~~

(H) child support reinstatement fee--\$50. ~~[: and]~~

~~[(H) retired medical physicist biennial renewal fee--\$65.]~~

(2) The schedule of fees for a temporary license as a medical physicist is as follows:

(A) (No change.)

(B) temporary license annual renewal fee:

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

(C) one to 90-day late renewal penalty fee--one-half of the temporary license renewal fee (plus the temporary license renewal fee that was due at the time of expiration);

(D) 91-day to two-year late renewal penalty fee--the renewal fee (plus the renewal fee that was due at the time of expiration); and

(E) - (F) (No change.)

(3) (No change.)

~~[(4) All fees are nonrefundable and shall be submitted in the form of a check or money order.]~~

(4) ~~[(5)]~~ An applicant whose check for the application processing and initial licensing fee or renewal fee is returned due to insufficient funds, account closed, or payment stopped shall be allowed to reinstate the application or renewal without the late renewal penalty by remitting a money order or cashier's check for guaranteed funds within 30 days of the date of receipt of the board's notice that the check was returned. An application renewal will be considered incomplete until

the fee has been received and cleared through the appropriate financial institution. If the license has already been issued, it shall be invalid.

(5) ~~[(6)]~~ A license holder whose check for the renewal fee is returned due to insufficient funds, account closed, or payment stopped shall remit a money order or cashier's check for guaranteed funds within 30 days of the date of receipt of the board's notice that the check was returned. If the fee is not remitted in a timely manner ~~[timely]~~, the license shall not be renewed. If the renewed license ~~[renewal]~~ has already been issued, it shall be invalid.

~~[(7) The board shall notify the applicant's or licensee's employer that the person has failed to comply with this section.]~~

#### §601.5. Exemptions.

(a) This section sets out persons who are ~~[is]~~ exempt from the Texas Medical Physics Practice Act (Act) and persons who must be licensed under the Act.

(b) (No change.)

(c) The Act and this chapter do not apply to:

(1) (No change.)

(2) a person ~~[certified as a medical radiologic technologist]~~ practicing under the Medical Radiologic Technologist Certification Act~~[:]~~ (Texas Occupations Code, Chapter 601);

(3) - (5) (No change.)

(d) (No change.)

#### §601.6. Application Procedures.

(a) General.

(1) (No change.)

(2) The board shall not consider an application as officially submitted until the applicant has paid ~~[pays]~~ the application fee. ~~[The fee must accompany the application form.]~~

(3) The executive secretary shall send a notice listing the required additional materials to an applicant who does not complete the application in a timely manner. An application that has not been completed within 30 days after the date of the notice may be invalidated.

(b) Required application materials.

(1) Application form. The application form may ~~[shall]~~ include the following:

(A) - (C) (No change.)

(D) a statement that the applicant, if issued a license, shall return the license to the board should the license be revoked or suspended ~~[upon the revocation or suspension of the license];~~

~~[(E) a statement that the applicant understands that fees submitted are nonrefundable.]~~

(E) ~~[(F)]~~ a statement that the applicant understands that materials submitted become the property of the board and are nonreturnable ~~[(unless prior arrangements have been made)];~~

(F) ~~[(G)]~~ a statement that the information in the application is truthful and that the applicant understands that providing false information of any kind may result in the voiding of the application and failure to be granted a license, or the revocation of any license issued;

(G) ~~[(H)]~~ a statement that if issued a license, the applicant shall keep the board apprised ~~[advised]~~ of his or her current mailing address; and

(H) ~~[(4)]~~ the dated signature of the applicant [~~which has been dated~~].

(2) Required documentation. Applicants for a license must submit:

(A) evidence of relevant work experience, including a description of the applicant's responsibilities and of the duties that were performed;

(B) - (D) (No change.)

(E) the [a] fee as prescribed by the board; and

(F) the completion~~[s]~~ of the current open book examination relating to the practice of medical physics in this state. The applicant is responsible for verifying that he or she has taken and submitted the most current version of the open book examination.

(c) Consideration of application. This subsection is intended to address the applications procedures required by the Act, §602.204 and §602.209.

(1) - (2) (No change.)

(3) If an applicant meets all requirements of the Act and this chapter [~~and has completed the examination~~], the executive secretary shall approve the application and issue a [~~medical physieist~~] license. The credentials committee of the board shall review a summary of each application and approve or disapprove the actions of the executive secretary. The credentials committee will report its actions in summary form to the board, which will ratify or disaffirm them. [The executive secretary, with direction from the chair, shall prepare and circulate to the board members a summary of each application approved under this paragraph with a recommendation that the board ratify the approval at its next meeting.]

~~[(4) If an applicant has not completed a specialty examination accepted by the board under this chapter, the executive secretary, with direction from the chair, shall forward a summary of the application and a recommendation for action to the appropriate committee of the board for review and recommendation.]~~

~~[(A) If the committee finds that the applicant meets all requirements of the Act and this chapter, the committee shall approve the applicant to take the required examination for a medical physieist license or to be issued a temporary license if appropriate.]~~

~~[(i) The executive secretary shall issue the medical physieist license once the applicant successfully completes the required examination.]~~

~~[(ii) The executive secretary, with direction from the chair, shall prepare and circulate to the board members a summary of each application approved under this subparagraph with a recommendation that the board ratify the approval at its next meeting.]~~

~~[(B) If the committee finds that the applicant does not meet all requirements of the Act and this chapter, the committee shall instruct the executive secretary to give the applicant written notice of the reason of the proposed disapproval of the application and the areas of deficiency and of the opportunity for a formal hearing. The notice shall be given by the 30th day after the committee makes a decision. Within 30 days after receipt of the written notice, the applicant shall give written notice to the executive secretary if the applicant wants the hearing. If the applicant fails to respond within 30 days after receipt of the notice, the applicant is deemed to have waived the hearing and the board shall finally disapprove the application.]~~

(d) Disapproved applications.

(1) The appropriate committee of the board may propose disapproval and the board may disapprove the application if the person:

(A) (No change.)

(B) has not passed [~~failed to pass~~] the open book portion of the examination with a passing score of 80% or better;

(C) has failed to pass an accepted specialty examination described in §601.8(d) of this title (relating to Licensure Qualifications);

(D) - (F) (No change.)

(G) has been convicted of a felony or misdemeanor that involved moral turpitude or that directly relates to the [a person's] duties and responsibilities of [as] a licensed medical physicist;

(H) - (I) (No change.)

(2) An applicant whose application has been formally denied under paragraph (1)(F) - (H) of this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit with the reapplication, proof satisfactory to the board of compliance with all of the rules of the board and with the provisions of the Act in effect at the time of reapplication.

§601.7. *Reciprocity.*

(a) (No change.)

(b) Endorsement. The board may waive any prerequisite for obtaining a license to practice medical physics to a person who holds a license issued by another state, territory or jurisdiction with which this state has a reciprocity agreement. The board may make an arrangement, subject to the approval of the governor, with another state to allow for licensing by reciprocity.

§601.8. *Licensure Qualifications [by Examination].*

(a) Eligibility. To be eligible for a license [~~take a specialty examination for a medical physieist license for a professional medical physieist~~], a person must:

(1) have an earned master's or doctoral degree:

(A) from a program of study in medical physics that is accredited by the [~~American Association of Physieists in Medicine (AAPM)~~] Commission on Accreditation of Medical Physics Education Programs (CAMPEP);

(B) from a regionally [~~an~~] accredited college or university in physics, medical physics, biophysics, radiological physics, medical health physics or equivalent courses; or

(C) from a regionally [~~an~~] accredited college or university:

(i) (No change.)

(ii) have twenty semester hours (30 quarter hours) of upper division semester hour credit or graduate level physics courses, if offered:

(I) (No change.)

(II) by the faculty of a program accredited in medical physics by the CAMPEP [~~AAPM Commission on Accreditation of Medical Physics Education Program~~]; or

(III) (No change.)

(2) (No change.)

(3) have work experience in more than one specialty to include six additional months of full-time equivalent work experience in each additional specialty; and

(4) (No change.)

(b) (No change.)

(c) Foreign academic credit. Degrees and course work received at foreign universities shall be acceptable only if such course work could be counted as transfer credit by regionally accredited universities [as reported by the American Association of Collegiate Registrars and Admissions Officers]. An applicant having a foreign degree(s) must furnish at the applicant's own expense an evaluation of the foreign degree(s) from a commercial evaluation service. The degree evaluation must be sent directly to the board by the evaluation service. An applicant must submit with the application complete certified copies or documented proof of the degree(s) awarded (masters or doctorate) and the date it was awarded. Documents written in languages other than English shall be accompanied by a certified English translation.

(d) Approved specialty examination.

[(1+)] An applicant under this section must successfully complete one of the following examinations in each specialty for which application is submitted:

[(A) the examination in the specialty developed and administered by the board; or]

(1) [(B)] for the therapeutic radiological physics specialty, the examination offered by:

(A) [(i)] the American Board of Radiology or its successor organization in therapeutic radiological physics, [or] radiological physics or therapeutic medical physics;

(B) [(ii)] the American Board of Medical Physics or its successor organization in radiation oncology physics; or

(C) [(iii)] the Canadian College of Physicists in Medicine or its successor organization in general medical physics or radiation oncology physics;

(2) [(C)] for the medical nuclear physics specialty, the examination offered by:

(A) [(i)] the American Board of Radiology or its successor organization in medical nuclear [medicine] physics, [or] radiological physics or nuclear medical physics;

(B) [(ii)] the American Board of Medical Physics or its successor organization in nuclear medicine physics;

(C) [(iii)] the American Board of Science in Nuclear Medicine or its successor organization in physics and instrumentation or in molecular imaging science; or

(D) [(iv)] the Canadian College of Physicists in Medicine or its successor organization in general medical physics or nuclear medicine physics;

(3) [(D)] for the diagnostic radiological physics specialty, the examination offered by:

(A) [(i)] the American Board of Radiology or its successor organization in diagnostic radiological physics, [or] radiological physics or diagnostic medical physics;

(B) [(ii)] the American Board of Medical Physics or its successor organization in diagnostic imaging physics or diagnostic radiology physics; or

(C) [(iii)] the Canadian College of Physicists in Medicine or its successor organization in general medical physics; or

(4) [(E)] for the medical health physics specialty, the examination offered by:

(A) [(i)] the American Board of Radiology or its successor organization in radiological physics;

(B) [(ii)] the American Board of Health Physics or its successor organization in health physics or comprehensive health physics;

(C) [(iii)] the American Board of Medical Physics or its successor organization in medical health physics;

(D) [(iv)] the American Board of Science in Nuclear Medicine or its successor organization in radiation protection; or

(E) [(v)] the Canadian College of Physicists in Medicine or its successor organization in general medical physics.

[(2) An applicant who has successfully completed one of the examinations set out in paragraph (1)(B) - (E) of this subsection shall not be reexamined in that specialty area.]

[(e) Failure of examination. If the applicant fails a board administered examination, relating to subsection (d)(1)(A) of this section, the applicant will be required to submit a new application for re-examination.]

[(f) Failure of more than one board administered examination. An applicant who fails three board examinations in a specialty area may not reapply for an additional examination in the specialty area until the applicant has demonstrated, to the board's satisfaction, the completion of at least one additional year of full-time work experience after the third failed examination.]

[(1) The work experience must be under the supervision of a licensed medical physicist holding a license in the specialty area.]

[(2) The applicant must hold a temporary license in the specialty area during the work experience if the experience is gained in this state.]

[(A) The applicant may be issued up to two additional temporary licenses only in order to gain the work experience required by this paragraph and to retake the examination once.]

[(B) The applicant must take and pass the next examination offered after completion of the additional work experience.]

[(C) Any temporary license issued under this subsection shall expire upon notification to the board that the applicant failed to apply for or failed to appear for the examination, upon notification to the applicant of his or her failure of the examination, or upon the issuance of his or her medical physicist license if the examination was passed, whichever occurs first.]

[(D) An applicant who completes the work experience within the first year the additional temporary license is issued under this subsection and for whom an examination is given and results released during that year is not entitled to any further temporary licenses in that specialty area.]

[(3) In order to obtain a medical physicist license the applicant must reapply for licensure under subsection (a) of this section and must take and pass an examination as set out in subsection (d) of this section.]

(e) [(g)] Upgrade. Following successful completion of the required [a medical physics specialty] examination as set out in subsection (d) of this section and the relevant work experience, a temporary licensee may upgrade the temporary license to a medical physicist license.

(1) A medical physicist license shall not be issued until the applicant has passed the examination. The application procedures set out in §601.6 of this title (relating to Application Procedures) shall apply except that the applicant need not file a transcript unless additional relevant course work has been completed.

(2) The temporary licensee must also submit three current professional references as follows:

(A) two medical physicists. If the applicant is applying for one specialty, both physicists must be practicing in that specialty area. If the applicant is applying for two or more specialties, one physicist must be practicing in one of those specialties and the other physicist must be practicing in another one of the specialties for which the applicant is making application; and

(B) one licensed physician practicing and certified in at least one of the specialties for which the applicant is making application; however, if the applicant is applying for a license in the specialty area of medical health physics, the physician may be practicing and certified in diagnostic radiology, radiation oncology, or nuclear medicine.

~~(f) [(H)]~~ Expired temporary license. A person whose temporary license has expired may not upgrade the temporary license to a medical physicist license. Application must be made under the provisions set out in §601.6 of this title.

*§601.9. Temporary License.*

(a) To be eligible for a temporary license, a person must meet the educational requirements set out in §601.8 of this title (relating to Licensure Qualifications [Eligibility For Examination]).

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

(d) Subsequent renewals may be granted by the executive secretary if the licensee requests the renewal in writing prior to the expiration of the temporary license; and [;]

(1) provides satisfactory evidence to the board that the renewal applicant has applied for or has been scheduled for examinations in the same specialty area [examination(s)] for which renewal is requested. (The examination must occur during the period in which the renewal would be effective);

(2) - (3) (No change.)

(e) (No change.)

(f) The work experience must be under the supervision of a licensed medical physicist holding a license in the specialty area. The work experience must be completed in accordance with a supervision plan approved by the board, signed by both the supervisor and the temporary license holder. The supervision plan shall describe the duration of personal, direct and general supervision with particular attention to the aspects of the work of the temporary licensee that could have the greatest effect on the safety of patients, personnel or the public. The board may audit supervision plans for compliance with this section. Supervisors and temporary license holders should refer to the board's guidance document on supervision for additional information and examples.

(g) A supervisor shall supervise no more than two temporary license holders, unless approved by the board.

(h) A supervisor shall assume responsibility for all of the work conducted under his or her supervision. A supervisor shall approve and sign all formal work product of the temporary license holder, such as reports of machine calibrations, shielding designs, treatment plan reviews, patient specific quality assurance measurements, treatment record reviews, and equipment evaluations.

~~(i) [(g)]~~ To upgrade a temporary license to a medical physicist license in the same specialty, a licensee must file evidence of relevant work experience meeting the requirements of §601.8 of this title and remit the upgrade fee.

~~(j) [(H)]~~ The application procedures set out in §601.6 of this title (relating to Application Procedures) shall apply.

*§601.10. License Issuance and License Holder Requirements.*

(a) The board may issue a license to an eligible applicant if the applicant meets all ~~[other]~~ license requirements under the Act and this chapter.

(b) (No change.)

(c) A licensee shall display or make available the license in an appropriate ~~[and public]~~ manner.

(d) A licensee shall notify the board of any change in name, preferred mailing address, or place(s) of business or employment within 30 days of any change.

(1) (No change.)

(2) Notification of name changes shall include a copy of a marriage certificate, court decree, or a social security card reflecting the change and the license replacement fee. ~~[The licensee shall return any previously issued license.]~~

*§601.11. License Renewal.*

(a) General.

(1) - (5) (No change.)

~~[(6) The board shall deny the license renewal of a licensee whose license is proposed for revocation, suspension, reprimand or probation in a formal hearing. A formal hearing commences when the notice described in §601.16 of this title (relating to Violations, Complaints, and Subsequent Actions) is mailed by the board.]~~

~~[(A) Licenses which are not revoked or suspended as a result of formal proceedings shall be renewed provided that all other requirements are met.]~~

~~[(B) In the case of delay in the license renewal process because of formal license suspension or revocation proceedings, penalty fees shall not apply if timely and sufficient application for renewal was made.]~~

(b) License renewal.

(1) The board shall notify a licensee of the impending license expiration. [At least 45 days prior to the expiration date of a license, the board will send notice to the licensee of the expiration date of the license, the amount of the renewal fee due, and a license renewal form which the licensee must complete and return to the board with the required fee.]

(2) - (6) (No change.)

(c) Late renewal.

(1) - (2) (No change.)

(3) If a license has been expired two years or more, the license may not be renewed. In order to regain licensure, a person shall comply with the current application requirements of the Act and this chapter. [and shall submit to the board:]

~~[(A) a supplemental work experience record as specified by the board:]~~

~~[(B) a description of professional activities undertaken during the period of non-licensure:]~~

~~{(C) a list of current professional references from other medical physicists and physicians; and}~~

~~{(D) a transcript for any degree or college credit earned since the previous license application.}~~

(d) Active military duty. If a licensee fails to renew his or her license because the licensee is called to or is on active duty with the armed forces of the United States serving outside of the State of Texas, the licensee or the licensee's authorized representative may request that the license be renewed. A request for renewal may be made before or after the expiration date.

(1) (No change.)

(2) The written request shall include a copy of the official ~~[transfer]~~ orders of the licensee or other official military documentation showing that the licensee is called to or on active duty serving outside of the State of Texas.

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

~~{(5) Except in extraordinary circumstances, a licensee on active duty serving outside the State of Texas shall notify the board that the licensee is on active duty. The board shall note in the licensee's file that the licensee may be eligible for renewal under this subsection.}~~

#### *§601.12. Application and Renewal Processing Times.*

(a) Application processing.

(1) The following periods of time shall apply from the date of receipt of an application for a license or renewal of a license until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. The time periods are as follows:

(A) issuance of license or renewal for a license--30 calendar days; or

(B) letter of application or renewal deficiency--30 calendar days.

(2) The following periods of time shall apply from the date of receipt of the last item necessary to complete the application for a license or renewal of a license until the date of issuance of written notice approving or denying the application for a license or renewal of a license. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law, and of the opportunity for a formal hearing. The time periods are as follows:

(A) issuance of a license or renewal of a license--30 calendar days; or

(B) letter of denial of a license or renewal of a license--30 calendar days.

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

#### *§601.13. Petition for Adoption of Rules.*

(a) Submission of the petition.

(1) - (3) (No change.)

(4) The petition shall be mailed or delivered to the board ~~[Texas Board of Licensure for Professional Medical Physicists, 1100 West 49th Street, Austin, Texas 78756].~~

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

#### *§601.14. Code of Ethics.*

(a) (No change.)

(b) A licensee shall maintain confidentiality of medical [physician] records in accordance with the Medical Practice Act, Texas Occupations Code, Chapter 152, and other state or federal statutes or rules where such statutes or rules apply to a licensed medical physicist.

(c) - (f) (No change.)

(g) A licensee shall not use alcohol or any drug in any manner that [which] adversely affects his or her practice of medical physics.

(h) (No change.)

(i) A licensee shall not make any presentation or use any advertisement or announcement of services that [which] contains information that [which] is false, misleading, or deceptive.

(j) A licensee shall not claim or advertise expertise in a specialty area or practice in an area of specialty unless the medical physicist holds a license in that specialty.

(k) - (m) (No change.)

(n) A licensee shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification.

(1) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(A) - (C) (No change.)

(D) contains a testimonial that is anonymous or is not readily verifiable;

(E) - (I) (No change.)

(2) (No change.)

(o) A licensee shall not undertake work or agree to perform activities for which the licensee is not qualified by education, experience, or training. A licensee shall disclose known limitations in the licensee's ability, if applicable or relevant. A licensee shall seek additional education, training, or consultation when appropriate.

(p) A licensee shall ensure, to the extent possible, that documents, data, and work product are accessible to the licensee's employer, client, or other relevant parties in the event the business or employment relationship is terminated, or in case of the disability or death of the licensee.

(q) A licensee who is providing supervision to a temporary licensee shall comply with board rules relating to supervision and with the terms of supervision plans approved by the board. A temporary licensee shall also comply with board rules relating to supervision and with the terms of supervision plans approved by the board.

(r) A licensee shall not engage in sexual contact with a patient or a supervisee. Sexual contact means the activities and behaviors described in Texas Penal Code, §21.01.

(s) A licensee shall cooperate with the board by furnishing documents or information and by responding to a request for information from or a subpoena issued by the board or its authorized representative. A licensee shall not interfere with a board investigation by the willful misrepresentation of facts to the board or its authorized representative or by the use of threats or harassment against any person.

(t) A licensee shall practice in accordance with applicable state and federal statutes and rules.

#### *§601.15. Criminal Backgrounds.*

(a) (No change.)

(b) Criminal convictions which directly relate to the profession of medical physics shall be considered as follows.

(1) The board may suspend or revoke any existing license, disqualify a person from receiving any license, [~~deny to a person the opportunity to be examined for a license;~~] reprimand a licensee, or place a licensee on probation because of a person's conviction of a felony or misdemeanor if the crime:

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

(2) (No change.)

(c) - (e) (No change.)

§601.16. *Violations, Complaints, and Subsequent Actions.*

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

(d) Filing of complaints.

(1) (No change.)

(2) A person wishing to complain against a medical physician or other person shall notify the executive secretary and shall submit the complaint in writing. [~~The initial notification of a complaint may be in writing, by telephone, or by personal visit to the executive secretary's office. (Mailing address: 1100 West 49th Street, Austin, Texas 78756-3183; telephone number: (512) 834-6655.)~~]

[(3) Upon receipt of a complaint the executive secretary shall send or give an acknowledgment letter and the board's complaint form to the complainant which the complainant must complete and return to the executive secretary before further action can be taken.]

(3) [(4)] Anonymous complaints may be accepted if sufficient information for investigation is submitted.

(e) Investigation of complaints.

(1) - (2) (No change.)

(3) If the committee determines that there may be sufficient grounds to support the complaint, the committee may request that the matters in question be investigated by the department [~~executive secretary or the board's designee if not already fully investigated by the executive secretary or other person.~~]

(4) If the committee determines that there are insufficient grounds to support the complaint or that further action is not warranted, the committee shall dismiss the complaint and give written notice of the dismissal to the licensee or person against whom the complaint has been filed and to the complainant.

(5) - (6) (No change.)

(7) If a complaint is investigated [~~an investigation is done~~], the investigator shall always attempt to contact the complainant to discuss the complaint.

(f) Reprimand, suspension, revocation, denial, probation, or administrative penalty, or emergency suspension.

(1) A reprimand is a written notice from the board to the licensee stating that the licensee has violated the Act or this chapter. A reprimand shall include a request that the licensee stop the violation immediately. [~~A reprimand may be issued only if it is the licensee's first violation of the Act or this chapter and represents no immediate or continuing threat to the health and safety of an individual or the general public.~~]

(2) - (5) (No change.)

(g) - (i) (No change.)

§601.17. *Surrender of License.*

(a) (No change.)

(b) Acceptance by the board.

(1) The board shall consider whether or not to formally accept the voluntary surrender of the license.

(2) (No change.)

(c) (No change.)

(d) Reinstatement. A license that [~~which~~] has been surrendered and accepted may not be reinstated or renewed; however, a person may apply a year from the date of surrender for a new license in accordance with the Act and this chapter.

§601.18. *Formal Hearing Procedures.*

[(a)] General. Formal hearings will be governed by the contested case provisions of the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, and will be conducted by the State Office of Administrative Hearings.

[(b) Notice requirements.]

[(1) Notice of the hearing shall be given according to the notice requirements of APA.]

[(2) If a party fails to appear or be represented at a hearing after receiving notice, the Administrative Law Judge may proceed with the hearing or take whatever action is fair and appropriate under the circumstances.]

[(3) All parties shall timely notify the Administrative Law Judge of any changes in their mailing addresses.]

[(c) Parties to the hearing.]

[(1) The parties to the hearing shall be the applicant or licensee and the complaints subcommittee chair and/or executive secretary, as appropriate.]

[(2) A party may appear personally or be represented by counsel or both.]

[(d) Prehearing conferences.]

[(1) In a contested case, the Administrative Law Judge, on his own motion or the motion of a party, may direct the parties to appear at a specified time and place for a conference prior to the hearing for the purpose of:]

[(A) the formulation and simplification of issues;]

[(B) the necessity or desirability of amending the pleading;]

[(C) the possibility of making admissions or stipulations;]

[(D) the procedure at the hearing.]

[(E) specifying the number of witnesses;]

[(F) the mutual exchange of prepared testimony and exhibits;]

[(G) the designation of parties; and]

[(H) other matters which may expedite the hearing.]

[(2) The Administrative Law Judge shall have the minutes of the conference recorded in an appropriate manner and shall issue whatever orders are necessary covering said matters or issues.]

[(3) Any action taken at the prehearing conference may be reduced to writing, signed by the parties, are made a part of the record.]

[(e) Assessing the cost of a court reporter and the record of the hearing.]

[(1) In the event a court reporter is utilized in the making of the record of the proceedings, the board shall bear the cost of the per diem or other appearance fee for such reporter.]

[(2) The board may prepare, or order the preparation of, a transcript (statement of facts) of the hearing upon the written request of any party. The board may pay the cost of the transcript or assess the cost to one or more parties.]

[(3) In the event a final decision of the board is appealed to the district court wherein the board is required to transmit to the reviewing court a copy of the record of the hearing proceeding, or any part thereof, the board may require the appealing party to pay all or part of the cost of preparations of the original or a certified copy of the record of the board proceedings that is required to be transmitted to the reviewing court.]

[(f) Disposition of case. Unless precluded by law, informal disposition may be made of any contested case by agreed settlement order or default order.]

[(g) Agreements in writing. No stipulation or agreement between the parties with regard to any matter involved in any proceeding shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, dictated into the record during the course of a hearing, or incorporated in an order bearing their written approval. This rule does not limit a party's ability to waive, modify, or stipulate away any right or privilege afforded by these sections.]

[(h) Final orders or decisions.]

[(1) The final order or decision will be rendered by the board. The board is not required to adopt the recommendation of the Administrative Law Judge and may take action as it deems appropriate and lawful.]

[(2) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law.]

[(3) All final orders shall be signed by the executive secretary and the chairman of the board; however, interim orders may be issued by the Administrative Law Judge.]

[(4) A copy of all final orders and decisions shall be timely provided to all parties as required by law.]

[(i) Motion for rehearing. A motion for rehearing shall be governed by APA, Texas Government Code, §2001.146, and shall be addressed to the board and filed with the executive secretary.]

[(j) Appeals. All appeals from final board orders or decisions shall be governed by APA, Texas Government Code, Subchapter G, and communications regarding any appeal shall be made to the executive secretary, Texas Board of Licensure for Professional Medical Physicists, MC-1982, 1100 West 49th Street, Austin, Texas 78756.]

*§601.19. Suspension of License for Failure to Pay Child Support or Non-Compliance with Child Custody Order.*

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

(d) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund of [for] any fee paid to the board.

(e) - (h) (No change.)

*§601.20. Continuing Education Requirements.*

(a) Content. This section establishes the continuing education requirements that [which] a licensed medical physicist must complete biennially to maintain licensure. These requirements are intended to

maintain and improve the quality of professional services in medical physics provided to the public, to [and] keep the licensed medical physicist knowledgeable of current research, techniques, and practice, and to provide other resources which will improve skill and competence in the practice of medical physics.

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

(d) Types of acceptable continuing education. Continuing education shall be acceptable if the experience falls into one or more of the following categories, [only in increments of 30 minutes:]

(1) - (7) (No change.)

(e) Reporting of continuing education. The licensee shall maintain documentation of continuing education.

(1) The [At times determined by the board, the] board will select, at the time of license renewal, a random sample of licensed medical physicists to verify compliance with the continuing education requirements. The licensed medical physicists selected in the random sample shall submit to the board documentation of participation in and completion of acceptable continuing education and shall include:

(A) - (E) (No change.)

(2) The department [board] shall review the documentation submitted to verify compliance with the continuing education requirements, and notify the licensed medical physicist of the results.

(3) If the department [board] determines that the licensed medical physicist failed to successfully complete the continuing education requirements or failed to submit the required documentation, disciplinary action may be taken against the licensee in accordance with §601.16(c) of this title (relating to Violations, Complaints, and Subsequent Actions).

(4) (No change.)

(f) (No change.)

(g) Exemptions. The board will consider granting an exemption from the continuing education requirement on a case-by-case basis if:

(1) (No change.)

(2) A licensee is called to or is on active duty with the armed forces of the United States [for the entire renewal period and so long as the licensee does not engage in the practice of medical physics in a setting outside of the active duty responsibilities during the time on active duty]. The licensee must file a copy of orders to active military duty with the board; or

(3) (No change.)

*§601.21. Medical Physics Specialties and Scope of Practice.*

(a) Content. Recognizing that assessing the degree of radiation safety is a complex task of balancing radiation risk with optimizing the benefit of the procedure to the patient, rules are provided that [which] identify certain specific activities or tests as the practice of medical physics. The purpose of the Act and the rules is to ensure the radiation safety of the citizens of Texas by restricting the practice of medical physics to qualified medical physicists. [The Act and these rules are fully consistent with, and implement, the recommendations of the National Council of Radiation Protection and Measurement (NCRP) as they pertain to the conduct of certain activities related to medical radiation safety and the efficacy of the use of radiation in medicine as well as the recommendations of the NCRP for the qualifications of individuals who conduct or supervise those activities. They are also consistent with published standards of practice of relevant professional and scientific organizations.]



(b) Role of the service engineers. Service engineers, when installing or maintaining medical equipment, conduct tests or perform activities that [which] are similar or identical to tests or activities identified in these rules. Such tests and activities do [activity does] not constitute the practice of medical physics provided that:

(1) neither the service engineer nor [or] his employer represents [does not represent] that the outcome of the test or activity or the intent of performing the test or activity ensures the radiation safety of the use of the medical equipment for either the user, the patient, or a member of the public; and [or]

(2) neither the service engineer nor [or] his employer concludes [does not conclude] that the medical equipment is radiologically safe, effective or suitable for use on humans based on the tests or activities performed by the service engineer; and [or]

(3) neither the service engineer nor [or] his employer certifies [does not certify] that the medical equipment is radiologically safe and consequently compliant with any state or federal regulation for the control of radiation; and

(4) (No change.)

(c) Scope of practice.

(1) The diagnostic radiological physics specialty services include, but are not limited to, the following:

(A) (No change.)

(B) acceptance testing or monitoring of diagnostic imaging equipment;

(C) - (I) (No change.)

(2) The therapeutic radiological physics specialty services include, but are not limited to, the following:

(A) - (H) (No change.)

(I) implementation and management of dosimetric and beam delivery aspects of external beam and [source] brachytherapy irradiation. External beam delivery aspects include treatment aids, beam modifiers, and geometrical arrangements. Special procedures are included for both external beam (e.g. radiosurgery, total body irradiation, total skin irradiation, intraoperative therapy) and brachytherapy (e.g. high dose rate, pulsed dose rate and radiolabeled microspheres);

(J) (No change.)

(K) development and management of quality control program for a radiation treatment facility that [which] includes applicable facility accreditation requirements, and the review of policies and procedures pertaining to therapeutic radiation and its safe and appropriate use;

(L) - (M) (No change.)

(3) The medical nuclear physics specialty services include, but are not limited to, the following:

(A) - (J) (No change.)

(K) verification of calculated radiation absorbed doses from unsealed radioactive sources and radiolabeled microspheres and the provision of consultation to the physician in assuring accurate delivery of prescribed radiation dosage to a specific human patient and the associated risk in therapeutic nuclear medicine procedures.

(4) (No change.)

§601.22. *Provisional Licenses.*

(a) A provisional license may be issued to a person who is currently licensed or certified in another jurisdiction and who:

(1) - (2) (No change.)

(3) is sponsored [supervised] by a person licensed as a medical physicist in Texas with whom the provisional license holder will practice under this section.

(b) (No change.)

(c) The board shall issue a provisional license if:

(1) (No change.)

(2) the provisional license holder passes the [part of the] examination [under §601.8 of this title (relating to Licensure by Examination)] that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of medical physics in this state and;

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

(d) (No change.)

§601.23. *Request for Criminal History Evaluation Letter.*

(a) In accordance with Texas Occupations Code, §53.102, a person may request the board to issue a criminal history evaluation letter regarding the person's eligibility for a license if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and

(2) has reason to believe that the person is ineligible for the license due to a conviction for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the board, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(c) The board has the same authority to investigate a request submitted under this section and the requestor's eligibility that the board has to investigate a person applying for a license.

(d) If the board determines that a ground for ineligibility does not exist, the board shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the board received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If the board determines that the requestor is ineligible for a license, the board shall issue a letter setting out each basis for potential ineligibility and the board's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the board received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the board at the time the letter is issued, the board's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

§601.24. *Licensing of Spouses of Members of the Military.*

(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 secretary 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.

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 February 3, 2012.

TRD-201200565

Richard Wendt  
Chair

Texas Board of Licensure for Professional Medical Physicists  
Earliest possible date of adoption: March 18, 2012  
For further information, please call: (512) 776-6990



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 53. FINANCE

##### SUBCHAPTER A. FEES

##### DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

###### 31 TAC §53.2

The Texas Parks and Wildlife Department proposes an amendment to §53.2, concerning License Issuance Procedures, Fees, Possession, and Exemption Rules.

The proposed amendment would alter the provisions of subsection (d)(4) to specify that residents of the State of Oklahoma who are 65 years of age or older are exempt from the fishing license requirements of the State of Texas. Oklahoma recently raised the minimum age at which Texas residents are exempt from the licensing requirements of Oklahoma, from 64 to 65. In order to be consistent with the requirements of Parks and Wildlife Code, §41.008, which authorizes the department to agree with any other state to license sport fishing by residents of the other state at the same fee as Texas residents are licensed in that state, the department is altering the minimum age under Texas rules for fishing license exemption.

Mr. Ken Kurzawski, Program Director, has determined that for each year of the first five years that the rule as proposed is in

effect, there will be fiscal implications to state government as a result of enforcing or administering the rule. Those implications will be positive, since the effect of the rule is to raise the age at which Oklahoma residents qualify for exemption from fishing license requirements in Texas. The department has no way to predict a value for such a revenue increase, since it is impossible to know how many persons in the state of Oklahoma are 64 years of age and intend to fish in Texas in any of each of the next five years.

Mr. Kurzawski also has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be accurate department regulations.

There will be no adverse economic effect on persons required to comply with the rule as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect affect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose record-keeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. Since the proposed rule does not affect small businesses or microbusinesses, the department has determined that the proposed amendment will not impose any direct adverse economic effects on small businesses or microbusinesses. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006. There will be no fiscal implications for persons required to comply with the rule as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Ken Kurzawski, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4591 (e-mail: ken.kurzawski@tpwd.state.tx.us).

The amendment is proposed under the authority of Parks and Wildlife Code, §41.0086, which authorizes the department to agree with any other state to license sport fishing by residents of the other state at the same fee as Texas residents are licensed in that state.

The proposed amendment affects Parks and Wildlife Code, Chapter 41.

§53.2. *License Issuance Procedures, Fees, Possession, and Exemption Rules.*

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

(d) The following categories of persons are exempt from fishing license requirements and fees:

(1) - (3) (No change.)

(4) non-residents 65 [64] years of age or older who are residents of Oklahoma;

(5) - (6) (No change.)

(e) - (f) (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 February 6, 2012.

TRD-201200592

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 389-4775



## CHAPTER 57. FISHERIES

### SUBCHAPTER K. SCIENTIFIC AREAS

#### 31 TAC §57.910

The Texas Parks and Wildlife Department proposes new §57.910, concerning the San Marcos River State Scientific Area (SMRSSA). The intent of the proposed new rule is to provide additional protection to Texas wild-rice (*Zizania texana*). The San Marcos River in Hays County is home to the world's only naturally occurring populations of Texas wild-rice (*Zizania texana*), which are located primarily along a two-mile stretch of the headwaters of the San Marcos River adjacent to the City of San Marcos and the main campus of Texas State University. Texas wild-rice is habitat-specific, requiring complete submergence in a minimum of one foot of clear, clean, flowing water in order to survive and remain viable. Construction activities, urbanization and increased water-related recreational activities in the San Marcos River have increased the risk potential for wild-rice populations, mainly as a result of physical disturbance, exacerbated during drought-induced low-flow conditions when reduced water depths bring humans and animals into very close proximity with wild-rice plants that are already under stress.

In 1978, Texas wild-rice was listed by the U.S. Fish and Wildlife Service as an endangered species and therefore has certain protections under federal law. However, in 2007 the Texas Legislature enacted Senate Bill 3, which required the Edwards Aquifer Authority, the groundwater district that manages and regulates the San Antonio segment of the Edwards Aquifer, to cooperate with the Texas Commission on Environmental Quality, the Texas Parks and Wildlife Department, the Texas Department of Agriculture, the Texas Water Development Board, and other stakeholders to develop a recovery implementation program with the U.S. Fish and Wildlife Service for species associated with the aquifer that are listed as threatened or endangered under federal law. As a consequence, the group of stakeholders comprising the Edwards Aquifer Recovery Implementation Program (EARIP) developed and adopted a Habitat Conservation Plan (HCP) to protect those species that depend on a healthy aquatic

ecosystem for survival. The designation of the SMRSSA is a mechanism within the HCP for offering additional state protection for the remaining populations of Texas wild-rice. The concept for the SMRSSA was developed by the department in cooperation with the City of San Marcos, Texas State University, the Edwards Aquifer Authority, and many other stakeholders on the EARIP.

The proposed new rule would designate an approximately two-mile segment of the public waters of the San Marcos River in Hays County as a state scientific area, within which it would be unlawful to uproot wild-rice. In addition, the proposed new rule would allow the designation of restricted areas of the river associated with Texas wild-rice stands that would be temporarily off-limits to entry when the river's streamflow falls below 120 cfs (cubic feet per second). The 120 cfs limit was developed by the Chief Science Officer at the River Systems Institute at Texas State University in consultation with the department, City of San Marcos, and other resource managers. The U.S. Fish and Wildlife Service has established a minimum flow of 100 cfs as the trigger for federal actions to protect habitat of the various threatened and endangered species in the San Marcos river system. By establishing a threshold that is slightly higher than the 100 cfs trigger, the department intends to afford protection to wild-rice populations when environmental conditions are approaching, but not at, absolute critical levels that would trigger federal actions. The department and other cooperators will clearly mark restricted areas with equipment such as booms or buoys, will install signage at river access points to inform the public, and will conduct extensive public education and outreach efforts to ensure that, to the greatest extent possible, the recreational public is made aware of regulations to protect wild-rice populations. The proposed new rule affects only activities in public waters and does not affect the use of any private property. When conditions necessitate the temporary designation of restricted areas, the river will not at any point within the area be completely blocked to public access or use.

Ms. Cindy Loeffler, Water Resources Branch Chief, has determined that for each year of the first five years that the proposed new rule is in effect there will be no fiscal implications for the department as a result of enforcing or administering proposed new rule. There could be minimal fiscal implications to other units of state and local governments related to implementation costs; however, there is no prearranged commitment on the part of any entity to contribute any specific amount to implementation, nor is such a commitment required by the proposed new rule.

Ms. Loeffler also has determined that for each year of the first five years that the proposed new rule is in effect, the public benefit anticipated as a result of enforcing or administering the proposed new rule will be the protection of an important ecosystem enjoyed by the public. Implementation of the EARIP Habitat Conservation Plan will also ensure local control of the Edwards Aquifer as a public water source.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect affect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that

purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that there will be no adverse economic impacts on small businesses or microbusinesses as a result of the proposed new rule, since it does not directly regulate any businesses and does not prohibit river access or use, only the specific acts of uprooting wild-rice or entering a restricted area of the river when such entry is prohibited. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The proposed new rule will not result in negative economic impacts to persons required to comply, since the rule prohibits only the uprooting of wild-rice and entry into restricted areas at certain times. The activities that may be most impacted by the proposed rule are recreational activities. However, even recreational activities will not be completely prohibited since the proposed rule will not completely block access or public use of the river.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Texas Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule, as the rule would not affect private real property.

Comments on the proposed new rule may be submitted to Cindy Loeffler, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8715; e-mail: cindy.loeffler@tpwd.state.tx.us.

The new rule is proposed under Parks and Wildlife Code, §81.501, which authorizes the commission to create state scientific areas for the purposes of education, scientific research, and preservation of flora and fauna of scientific or educational value; §13.101, which authorizes the commission to promulgate regulations, governing the health, safety, and protection of persons and property in state scientific areas, including regulations governing the conservation of natural features and destructive conduct; and, §88.006, which authorizes the department to adopt regulations governing the provisions of Chapter 88, which governs endangered plants.

The proposed new rule affects Parks and Wildlife Code, Chapter 13, Subchapter B; Chapter 81, Subchapter F; and Chapter 88.

§57.910. San Marcos River State Scientific Area.

(a) Purpose. The San Marcos River State Scientific Area is established for the purpose of education, scientific research, and preservation of flora and fauna of scientific or educational value, specifically, the preservation of Texas wild-rice (*Zizania texana*).

(b) Boundaries. The San Marcos State Scientific Area consists of the public waters of the San Marcos River from midstream to the boundary of public waters in the area within the following boundaries:

(1) 29 53 26.04 Lat N, 97 55 55.29 Long W (northeast boundary near Spring Lake Dam);

(2) 29 53 22.71 Lat N, 97 56 19.01 Long W (southeast boundary near the San Marcos Water Treatment Plant);

(3) 29 51 52.63 Lat N, 97 55 56.07 Long W (southwest boundary near the San Marcos Water Treatment Plant); and

(4) 29 51 53.92 Lat N, 97 55 31.94 Long W (northwest boundary near Spring Lake Dam).

(c) Restricted Areas. When the streamflow of the San Marcos River is measured at 120 cubic feet per second at the San Marcos River gaging station (United States Geological Survey gage 081705000 San Marcos River at San Marcos), the department may restrict areas by means of clearly marked booms, buoys, and/or signage to reflect the fact that the area is restricted to unauthorized entry.

(d) Prohibited Acts. It is an offense for any person to:

(1) move, remove, deface, alter, or destroy any sign, buoy, boom, or other such marking delineating the boundaries of the San Marcos River State Scientific Area or a restricted area within the area;

(2) uproot Texas wild-rice within the San Marcos State Scientific Area; or

(3) enter an area that is marked by signage, booms, buoys, or other apparatus clearly identifying the area as a restricted area, except as may be permitted by the department or the U.S. Fish and Wildlife Service.

(e) Penalties. The penalty for violation of this section is prescribed by Parks and Wildlife Code, §13.112.

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 February 6, 2012.

TRD-201200593

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 389-4775



## SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

The Texas Parks and Wildlife Department proposes amendments to §§57.971 - 57.973, 57.975, and 57.981, concerning the Statewide Recreational and Commercial Fishing Proclamations.

The proposed amendment to §57.971, concerning Definitions, would alter the definition of "gear tag" to clarify that provisions governing the dating of gear tags do not apply to commercial crab traps. The provisions governing the use of crab traps under a commercial license require the use of gear tags, but there is no requirement that a gear tag be dated, since commercial licensees must document and report their catch.

The proposed amendment to §57.972, concerning General Rules, would add provisions governing the use of the license log and the alternative license system. In 2010 the department restructured hunting and fishing regulations to separate hunting

rules from fishing rules and recreational fishing rules from commercial fishing rules. In the process, the department overlooked two regulations that remained in Chapter 65, Subchapter A that affect red drum and tarpon with respect to license log requirements and procedures to be followed in the event that the department is ever in the position of implementing an alternative licensing system. The proposed amendment to §57.972 would migrate the applicable portions of those rules (i.e., those affecting fisheries) to Chapter 57 to allow intuitive reference.

The proposed amendment to §57.972 also would implement provisions to address the spread of exotic aquatic species such as zebra mussels and silver and bighead carp. At the current time, these species are present in Texas in limited numbers or are confined to few locations. Although possession and transport of these species is prohibited under Chapter 57, Subchapter A, additional regulations are needed to prevent the accidental or incidental movement of these species from one water body to another. The proposed amendment consists of two provisions. The first would prohibit any person from leaving specified water bodies in the possession of live, nongame fishes. This would prevent the accidental capture and movement of silver and bighead carp as a result of bait-collecting activities for other nongame fishes, especially gizzard or threadfin shad, which are quite similar in appearance. These species can be easily misidentified at smaller sizes and within a large quantity of fish. Collection and use of nongame fishes for bait on those water bodies would be legal. The proposed provision would affect the Red River from the I-44 bridge in Wichita County to the Arkansas/Texas state line, including the Texas waters of Lake Texoma; Big Cypress Bayou downstream of Ferrell's Bridge Dam on Lake O' the Pines, including the Texas waters of Caddo Lake; and the Sulphur River downstream of the Lake Wright Patman dam to the Texas/Arkansas border.

The second provision would impact waterbodies where zebra mussels have been found or have a high potential of occurrence. Zebra mussels have a free-swimming, microscopic larval stage called a veliger. Any water collected from water bodies where zebra mussels are present could contain veligers; thus, water transported from water bodies with known zebra mussel populations is a vector for the spread of zebra mussels. Under ordinary circumstances, the department would consider any person in possession of zebra mussel veligers to be in violation of Chapter 57, Subchapter A, which prohibits the possession of zebra mussels. Under the amendment as proposed, the department would not consider a person in possession of veligers to be in violation, provided live wells, bilges, and other receptacles or systems capable of retaining or holding water as a consequence of being immersed in a water body have been drained prior to the use of a public roadway. A person traveling on a public roadway via the most direct route to another access point located on the same body of water would not be required to drain or empty water. The proposed provision would affect Lake Lavon and the Red River from the I-44 bridge in Wichita County to the Arkansas/Texas border, including the Texas waters of Lake Texoma.

The proposed amendment to §57.973, concerning Devices, Means, and Methods, would require the use of gear tags on throwlines and minnow traps in fresh water, and would reduce the length of time required for gear-tag replacement on employed devices from 30 days to 10 days. Under current rules, gear tags are required to be affixed to most fishing devices that are typically left unattended, such as trotlines. In fresh water, only throwlines and minnow traps are not required to have a gear tag affixed to them when in use. The department has determined

that because such devices continue to fish and represent a danger to birds and mammals when they are abandoned, it is necessary to require a gear tag to be employed when they are used. Under Parks and Wildlife Code, §12.1105, the department is authorized to seize a device that is in or on water in violation of a regulation of the commission. By requiring throwlines and minnow traps to be affixed with a gear tag in order to be lawfully used, the department will be able to prevent abandoned throwlines and minnow traps to continue to be dangerous to fish and wildlife populations. In the course of investigating the need for the gear tag requirement for throwlines and minnow traps, the department also considered the current rule requiring gear tags to be replaced or re-dated at least every 30 days. In researching similar regulations in other states, the department determined that the Texas gear tag rules allowed the longest time period in the country between mandatory datings. Therefore, the proposed amendment to §57.973 would reduce from 30 days to 10 days the time period that any device for which a gear tag is required could be left in the water without being re-dated or re-tagged with a new gear tag. The department considers that 10 days would allow any person at least two weekends of fishing effort before having to re-tag or re-date a device.

The proposed amendment to §57.973 also would restrict the use of passive taking devices (trotlines, juglines, and throwlines) on Lake Naconiche in Nacogdoches County. Like Naconiche will be opened to the public in 2012. Angling effort is expected to be high, especially during the first several years. Since the largemouth bass population is still developing, it is important to prevent harvest of smaller bass to ensure that a quality population is established. Restrictions on the use of passive taking devices (trotlines, juglines, and throwlines) will provide additional protection for the expanding fish populations and is more compatible with other uses planned for this small reservoir (i.e., swimming and water skiing).

The proposed amendment to §57.973 also would implement a two-device restriction on the number of pole-and-line fishing devices that a person may use simultaneously while fishing from a dock, pier, jetty, or other man-made structure on a state park. Because of easy access, proximity to population centers, and waiver of fishing license requirements, state parks are popular fishing destinations. State parks are important angling destinations because they are good places to introduce people to the angling experience, particularly youth and families. The department has received complaints that some persons are monopolizing pier/jetty/dock space at state parks by using multiple fishing devices, usually fishing poles. Therefore, the proposed amendment would restrict the number of devices that a person could employ while fishing in a state park from a pier, jetty, dock, or other man-made structure. Each person would be allowed to use two fishing poles; no other fishing devices would be allowed. The proposed amendment is necessary to ensure equitable distribution of angling opportunity and prevent user conflicts.

The proposed amendment to §57.975, concerning Freeze Event Closures, would clarify that no person may take, or attempt to take, aquatic life in an affected area during a freeze closure. The current rule specifically prohibits the take of fish by hook and line, pole and line, or throwline in an area closed during a freeze event. There has been some confusion on the part of anglers who interpret the current rule to allow the harvest of fish by hand, dip net, or other means that are not specifically prohibited under §57.975. This interpretation is erroneous. Under current §57.973, it is unlawful to take, attempt to take, or possess fish caught in public waters of this state by any device, means, or

method other than as authorized, and devices that are unlawful under §57.973 would still be unlawful in an area that has been closed due to a freeze event. The cumulative effect of §57.973 and §57.975 is to prohibit the take of fish by any means in an area closed during a freeze event. To eliminate confusion about the legality of other fishing methods, the department seeks to make this clear.

The proposed amendment to §57.981, concerning Bag, Possession, and Length Limits, would change minimum length limit for largemouth bass back to the statewide 14-inch limit on three reservoirs: Aquilla Reservoir (Hill County); Lake Fort Phantom Hill (Jones County); and Lake Proctor (Comanche County).

Aquilla Reservoir is a 2,366-acre reservoir with scarce amounts of native aquatic vegetation. Nearly 35% of the reservoir is covered in standing timber, and this habitat has declined drastically since impoundment (1986). A recent study indicated the reservoir could be losing as much as 218 acre-feet of volume each year through erosion and sedimentation from within its watershed. An 18-inch minimum length limit was implemented in 1994 to increase the density of largemouth bass and provide greater availability of largemouth bass greater than 18 inches for angler catch. Largemouth bass densities and population indices spiked between 1998 and 2002; however, these indices are currently below pre-regulation values. Largemouth bass densities remain improved over pre-regulation numbers but are also well below the spike observed in 2000 and 2002. Creel survey information indicates that few anglers are fishing for bass. The department has determined that the largemouth bass fishery is habitat-limited, and the 18-inch minimum length limit is no longer effective or needed. Therefore, the proposed amendment would restore the statewide 14-inch minimum length limit.

Fort Phantom Hill is a 4,213-acre reservoir that was impounded in 1938 and is operated by the city of Abilene. A 16-inch minimum length limit for largemouth bass was implemented in September 1994. The goals of the regulation were to increase relative abundance of 14 to 16-inch largemouth bass and to increase angler catch rates. Mean electrofishing catch rates of 14 and 16-inch bass were similar under the two length limits. Population indices were slightly higher but statistically similar. Angler catch rates varied little under the two regulations. Water level elevation likely has a large influence on the largemouth bass population in this reservoir. A model using water level elevations from April-July, and the difference in elevation from the previous October to the next July accounted for 92% of the variation in catch rates of small (less than 8 inches) largemouth bass from 1996-2009. Similar to other West Texas reservoirs where a 16-inch minimum length limit was attempted, there appears to be no additional benefit to anglers compared with a 14-inch limit. Therefore, the proposed amendment would restore the statewide 14-inch minimum length limit.

Lake Proctor is a 4,537-acre reservoir that was impounded in 1963. A 16-inch minimum length limit for largemouth bass was implemented in September 2002 to prolong a "boom" phase following severe drought conditions that lasted from 1998-2001. Increased water levels in 2001 resulted in an extremely large 2001 year class of largemouth bass. The increase to a 16-inch minimum length limit was designed to improve size structure for a longer period of time than could be achieved under the 14-inch limit. The post-drought changes that occurred in the largemouth bass population at Lake Proctor were similar to changes that occurred in other largemouth bass populations from area reservoirs that experienced the same drought-related problems but had a

14-inch minimum length limit. Essentially, either limit provided the same protection to a recovering largemouth bass population. Additionally, the 16-inch limit failed to provide long-term improvements beyond what a 14-inch limit would provide. Therefore, the proposed amendment would restore the statewide 14-inch minimum length limit.

The proposed amendment to §57.981 also would change the daily bag limit for striped bass back to the statewide five-fish limit on Possum Kingdom Reservoir (Palo Pinto County). Possum Kingdom is a 15,588-acre reservoir that was impounded in 1941. In 2001, golden alga caused a fish kill that greatly reduced the abundance of striped bass. In response to this fish kill, striped bass were stocked to rebuild the population. Also, the daily bag limit for striped bass was decreased from five to two in September 2002. Fish kills continue to negatively affect the rebuilding the striped bass population. Catch rate of striped bass in gill-nets has decreased from 9.3 fish per net night in 1999 to 0.2 per net night in 2011. Striped bass take between two and four years for at Possum Kingdom to attain the legal length limit of 18 inches. The periodic fish kills prevent many fish from attaining legal size. Increasing the daily bag to allow angler to take additional fish when they are infrequently present would better utilize the resource.

The proposed amendment to §57.981 also would implement an 18-inch minimum length limit and five-fish daily bag for largemouth bass and prohibit use of juglines, trotlines, and throwlines on Lake Naconiche (Nacogdoches County), a reservoir that will open to angling September 1, 2012. The department plans to intensively manage this water body to enhance and protect the largemouth bass population. Lake Naconiche was impounded in 2009 and will be 692 acres at full pool. Lack of rainfall has prevented the lake level from reaching full pool. The lake will open to angling September 1, 2012. Threadfin shad, bluegill, channel catfish, white and black crappie, and Florida largemouth bass were stocked in 2010 and 2011. Angling effort is expected to be high, especially during the first several years. Since the largemouth bass population is still developing, it is important to protect fish to 18 inches in order to prevent harvest of 14- to 18-inch bass and ensure that a quality population is established. Additionally, restricting the use of passive taking devices (trotlines, juglines, and throwlines) will provide additional protection for the expanding fish populations and is more compatible with other uses planned for this small reservoir (i.e., swimming and water skiing).

The proposed amendment to §57.981 also would remove a reference to Town Lake in Travis County. In 2008, Town Lake was renamed Lady Bird Lake.

Mr. Ken Kurzawski, Program Director, Inland Fisheries Division, has determined that for each year of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Kurzawski also has determined that for each year of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be the dispensation of the agency's statutory duty to protect and conserve the fisheries resources of this state, the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens, and the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules will not directly affect small businesses and/or micro-businesses. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposal may be submitted to Ken Kurzawski (Inland Fisheries) at (512) 389-4591, e-mail: ken.kurzawski@tpwd.state.tx.us; Jeremy Leitz (Coastal Fisheries) at (361) 825-3356, e-mail: jeremy.leitz@tpwd.state.tx.us; or David Sinclair (Law Enforcement) at (512) 389-4854, e-mail david.sinclair@tpwd.state.tx.us. Comments also may be submitted via the department's website at [http://www.tpwd.state.tx.us/business/feedback/public\\_comment/](http://www.tpwd.state.tx.us/business/feedback/public_comment/).

## DIVISION 1. GENERAL PROVISIONS

### 31 TAC §§57.971 - 57.973, 57.975

The amendments are proposed under the authority of Parks and Wildlife Code, §42.010, which authorizes the department to prescribe the form and manner of issuance of the licenses and tags authorized by Chapter 42; §46.0085, which authorizes the department to prescribe the form and manner of issuance of the licenses and tags authorized by Chapter 46; Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed;

§66.007, which prohibits the possession or placement into public waters of exotic fish or shellfish except as authorized by rule or permit issued by the department; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed amendments affect Parks and Wildlife Code, Chapters 42, 46, 66, 61 and 67.

#### §57.971. *Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this subchapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

(1) - (21) (No change.)

(22) Gear tag--A tag constructed of material as durable as the device to which it is attached. The gear tag must be legible, contain the name and address of the person using the device, and, except for saltwater trotlines and crab traps fished under a commercial license, the date the device was set out.

(23) - (46) (No change.)

#### §57.972. *General Rules.*

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

(h) Harvest Log.

(1) The provisions of this subsection apply to any person in possession of a license lawfully purchased by any means other than through an automated point-of-sale system.

(2) A person who takes a red drum in excess of the maximum length limit, or a tarpon shall complete, in ink, the harvest log on the back of the hunting or fishing license, as applicable, immediately upon kill, or, in the case of fish, upon retention.

(i) Alternative Licensing System.

(1) The requirements of this title that require the attachment of license tags to wildlife resources do not apply to any person in lawful possession of a license that was sold by the department without tags for red drum or tarpon. A properly executed wildlife resource document must accompany any red drum in excess of maximum size limits, or tarpon, until the provisions of this title and Parks and Wildlife Code governing the possession of the particular wildlife resource cease to apply.

(2) The provisions of this section do not exempt any person from any provision of this subchapter that requires or prescribes the use of a wildlife resource document.

(j) No person may leave a body of water listed in this subsection while in possession of a live nongame fish:

(1) the Red River below Lake Texoma downstream to the Texas/Arkansas border;

(2) Big Cypress Bayou downstream of Ferrell's Bridge Dam on Lake O' the Pines, including the Texas waters of Caddo Lake; and

(3) the Sulphur River downstream of the Lake Wright Patman dam to the Texas/Arkansas border.

(k) A person who leaves a water body listed in this subsection while in possession of a harmful or potentially harmful species listed in §57.111 of this title (relating to Definitions) that is invisible to the

unaided human eye is not in violation of §57.112 of this title (relating to General Rules), provided that:

(1) all live wells, bilges, and other similar receptacles and systems that are capable of retaining or holding water as a consequence of being immersed in a water body have been drained prior to the use of a public roadway; or

(2) the person is travelling on a public roadway via the most direct route to another access point located on the same body of water.

(3) This subsection applies to the following bodies of water:

(A) the Red River from the I-44 bridge in Wichita County to the Texas/Arkansas border, including the Texas waters of Lake Texoma; and

(B) Lake Lavon.

§57.973. *Devices, Means and Methods.*

(a) (No change.)

(b) Game and non-game fish may be taken by pole and line only in:

(1) community fishing lakes; however, on community fishing lakes that are not within or part of a state park, no person may employ more than two pole-and-line devices [*i.e.*, *pōles* or *lines*] at the same time;

(2) sections of rivers lying totally within the boundaries of state parks, and no person may employ more than two pole-and-line devices at one time on any dock, pier, jetty, or other manmade structure within a state park;

(3) - (6) (No change.)

(c) - (e) (No change.)

(f) Device restrictions. Devices legally used for taking fresh or saltwater fish or shrimp may be used to take crab as authorized by this subchapter.

(1) - (2) (No change.)

(3) Crab trap. It is unlawful to:

(A) - (H) (No change.)

(I) fish a crab trap in public salt waters for non-commercial purposes without a valid gear tag. Gear tags must be attached within 6 inches of the buoy and are valid for 10 [30] days after date set out;

(J) - (N) (No change.)

(4) - (7) (No change.)

(8) Jugline. For use in fresh water only. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a jugline. It is unlawful to use a jugline:

(A) with invalid gear tags. Gear tags must be attached within six inches of the free-floating device, are valid for 10 [30] days after the date set out, and must include the number of the permit to sell non-game fish taken from fresh water, if applicable;

(B) - (C) (No change.)

(D) in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek

Reservoir in Grimes County, Lake Naconiche in Nacogdoches County, and Tankersley Reservoir in Titus County.

(9) (No change.)

(10) Minnow trap (fresh water and salt water). It is unlawful to use a minnow trap [~~in salt water~~] that is not equipped with a gear tag. A gear tag is valid for 10 [30] days after the date it is set out.

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

(11) Perch traps. For use in salt water only.

(A) (No change.)

(B) It is unlawful to fish a perch trap that:

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

(iii) that is not marked with a floating visible orange buoy not less than six inches in height and six inches in width. The buoy must have a gear tag attached. Gear tags are valid for 10 [30] days after date set out.

(12) - (19) (No change.)

(20) Throwline. For use in fresh water only.

(A) (No change.)

(B) It is unlawful to use a throwline in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, Lake Naconiche in Nacogdoches County, and Tankersley Reservoir in Titus County.

(C) It is unlawful to use a throwline that is not equipped with a gear tag. A gear tag is valid for 10 days after the date it is set out.

(21) Trotline.

(A) (No change.)

(B) It is unlawful to use a trotline:

(i) (No change.)

(ii) with invalid gear tags. Gear tags must be attached within three feet of the first hook at each end of the trotline and are valid for 10 [30] days after date set out, except on saltwater trotlines, a gear tag is not required to be dated;

(iii) - (v) (No change.)

(C) In fresh water, it is unlawful to use a trotline:

(i) (No change.)

(ii) in Gibbons Creek Reservoir in Grimes County, Lake Bastrop in Bastrop County, Lakes Coffee Mill and Davy Crockett in Fannin County, Fayette County Reservoir in Fayette County, Pinkston Reservoir in Shelby County, Lake Bryan in Brazos County, Bellwood Lake in Smith County, Dixieland Reservoir in Cameron County, Boerne City Park Lake in Kendall County, Lake Naconiche in Nacogdoches County, and Tankersley Reservoir in Titus County.

(D) (No change.)

(22) (No change.)

§57.975. *Freeze Event Closures.*

(a) Definitions. For purposes of this section, the following terms shall have the following meanings:



(1) Affected area--an area of coastal water where fishing from the bank is possible and where game fish are known or expected to take refuge from cold weather conditions.

(2) Freeze--a period of cold weather that begins when the air temperature drops to or below 32 degrees Fahrenheit and creates a risk of depletion of one or more game fish species.

(b) The Executive Director shall provide appropriate notice to the public that a freeze has occurred and fishing in the affected area or areas is prohibited. The Executive Director shall provide appropriate public notice as to when fishing in the affected area or areas is allowed to resume.

(c) No person shall take or attempt to take any aquatic life by any means [fish with a hook and line, pole and line, or throwline] in an affected area during a freeze after the Executive Director has given notice to the public that a freeze has occurred and fishing in the affected area is prohibited and before the Executive Director gives notice that fishing may resume.

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 February 6, 2012.

TRD-201200594

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 389-4775



## DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

### 31 TAC §57.981

The amendment is proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed amendment affects Parks and Wildlife Code, Chapters 61 and 67.

§57.981. *Bag, Possession, and Length Limits.*

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

(c) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(1) Freshwater species.

Figure: 31 TAC §57.981(c)(1)

(2) (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 February 6, 2012.

TRD-201200595

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 389-4775



## CHAPTER 65. WILDLIFE SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION

The Texas Parks and Wildlife Department (the department, or TPWD) proposes amendments to §§65.7, 65.8, 65.11, 65.25, 65.42, and 65.60, concerning the Statewide Hunting Proclamation.

The proposed amendments to §65.7, concerning Harvest Log, and §65.8, concerning Alternative Licensing System, would remove references to tarpon and red drum. In 2010 the department restructured hunting and fishing regulations to separate hunting rules from fishing rules. In the process, the department overlooked references to tarpon and red drum in regulations addressing the license log and the alternative licensing system. Those references are not germane to hunting. The proposed amendment corrects that oversight.

The proposed amendment to §65.11, concerning Lawful Means, would allow the use of firearm silencers to hunt alligators, game animals and game birds. Under current rule, the use of sound-suppressing devices to hunt alligators, game animals or game birds is unlawful. The department has determined that there is no resource- or enforcement-related reason to prohibit the use of firearm silencers for the take of alligators, game animals or game birds, and therefore proposes to eliminate the current prohibition. The proposed rule also would specifically state that the rule does not relieve any person of the obligation to comply with any applicable state, federal, or local law governing the possession or use of firearm silencers. The proposed amendment also alters §65.11(3) to include additional counties to the applicability of the provisions governing the use of crossbows and eliminates references to specific season dates. This change is necessary to ensure consistency with the changes to §65.42 discussed elsewhere in this preamble.

The proposed amendment to §65.25, concerning Wildlife Management Plan (WMP) would remove provisions concerning WMP issuance for the hunting of lesser prairie chicken. In response to declines in lesser prairie chicken populations, the department in 2005 prohibited the take of lesser prairie chicken except on properties managed under a WMP for lesser prairie chicken. In response to continuing population declines the department in 2009 completely closed the season on lesser prairie chicken statewide. The provisions of §65.25(b) were

retained at that time with the intent that if lesser prairie chicken populations recovered within the near future, the department would be able to reinstitute limited hunting opportunity on managed lands; however, the department has determined that population recovery is now a long-term conservation goal and the presence of the regulations is confusing to the public, since it would appear that there is hunting opportunity available, in spite of the closed season. The department therefore proposes to eliminate current §65.25(b).

The proposed amendment to §65.42, concerning Deer, would alter the current season structure in Grayson County by allowing full-season, either-sex harvest, implementing the Grayson County deer season structure in Dallas, Collin, and Rockwall counties, and implementing the Harris County season structure in Galveston County.

In 2010 the department received a petition for rulemaking requesting the implementation of a full-length open season for white-tailed deer in Collin and Rockwall counties, during which the lawful means would be restricted to archery equipment. The deer season in Collin and Rockwall counties has been closed since 1976. The original tallgrass prairie ecosystem in the area was virtually eliminated by agricultural development in the early part of the 20th century, resulting in the near-obliteration of white-tailed deer habitat, primarily in wooded bottomlands that were ideal for crop cultivation and timber exploitation. Since that time, agriculture has been gradually displaced by the extensive urban, suburban, and exurban growth of the Metroplex, which has resulted in highly fragmented habitat and minimal populations of white-tailed deer, mostly in riparian areas surrounding lakes and streams. The department believes that there is no biological reason to prohibit hunting and this is an opportunity to increase hunting opportunity. Opening a season would also provide an additional method for addressing nuisance deer issues. Given the continued urbanization of these counties, the sparse deer habitat that currently exists is expected to continue to decline in the future. Although areas of non-deer habitat, such as residential landscapes in subdivisions may artificially support deer within these counties, it is not biologically responsible to encourage the growth of deer herds within these non-native habitats. Supporting deer populations beyond what native habitat is able to support will lead to further habitat degradation, ultimately affecting habitat quantity and quality for all wildlife species that utilize those native habitats. Since the counties in question, along with Dallas County, are ecologically similar to Grayson County, where there is an archery season (during which crossbows are lawful only by hunters with an upper-limb disability) and a general season restricted to archery equipment including crossbows, the department proposes to implement the Grayson County season structure (with proposed changes noted as follows) in Collin, Dallas, and Rockwall counties, primarily to establish identical harvest regulations in the contiguous counties to reduce potential hunter confusion and differential enforcement issues.

Under current regulations in Grayson County, the take of antlerless deer is by permit only. The department has determined that because harvest in Grayson County is restricted to archery equipment only, the implementation of full-season, either-sex hunting will not result in depletion or waste of the resource because of the comparatively low hunter success rate of archery equipment compared to firearms. The proposed amendment would implement full-season, either-sex hunting in Grayson County.

Under current regulations there is no open deer season in Galveston County. The season has been closed in Galveston County for many years. The department has determined that much like Collin, Dallas, and Rockwall counties, Galveston County contains fragmented native habitat that supports small deer populations. Currently, all surrounding counties including Harris County have an open general season for deer. These counties have characteristics similar to Galveston in that Fort Bend, Harris, and Brazoria have isolated pockets of suitable deer habitat and small but huntable deer populations. The department has determined that additional hunting opportunity can be provided under the regulatory structure currently in effect in adjoining counties. The department has determined that there is no biological reason to prohibit hunting and the regulation should provide a tool to help manage deer populations. The hunting opportunity would consist of an archery-only season, a general season, and a special late muzzleloader season, with an aggregate annual bag limit of four deer (no more than two bucks and two antlerless deer), with antlerless harvest by permit only after Thanksgiving.

The proposed amendment to §65.60, concerning Pheasant: Open Seasons, Bag, and Possession Limits, would close the season for pheasant in Chambers, Jefferson, and Liberty counties. In 1976 the department stocked pheasant in seven counties along the upper Texas coast in an effort to create hunting opportunity. By 2002, surveys indicated no pheasant populations in four of those counties, and the seasons in those counties were closed. Surveys now indicate that there are no pheasants remaining in Chambers, Jefferson, or Liberty counties, either. Therefore, the department proposes to close the season in those counties because there are no birds left to hunt.

Mr. Clayton Wolf, Wildlife Division Director, has determined that for each year of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules.

Mr. Wolf also has determined that for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the dispensation of the agency's statutory duty to protect and conserve the wildlife resources of this state, the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens, and the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules will not directly affect small businesses or micro-businesses. The pro-

posed amendments would not directly regulate any business and would not impose recordkeeping or reporting requirements; impose taxes or fees; affect sales, profits, or market competition; or require the purchase or modification of equipment or services by small businesses or microbusinesses. Therefore, the department therefore has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006. There will be no fiscal implications for persons required to comply with the rules as proposed.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rules.

Comments on the proposed rules may be submitted by phone or e-mail to Robert Macdonald (512) 389-4775; e-mail: robert.macdonald@tpwd.state.tx.us, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744. Comments also may be submitted via the department's website at [http://www.tpwd.state.tx.us/business/feedback/public\\_comment/](http://www.tpwd.state.tx.us/business/feedback/public_comment/).

## DIVISION 1. GENERAL PROVISIONS

### 31 TAC §§65.7, 65.8, 65.11, 65.25

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 42, which allows the department to issue tags for animals during each year or season and to prescribe the form and issuance of licenses and tags; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendments affect Parks and Wildlife Code, Chapters 42 and 61.

#### §65.7. *Harvest Log.*

(a) (No change.)

(b) The provisions of this subsection apply to any person in possession of a license lawfully purchased by any means other than through an automated point-of-sale system.

(1) A person who takes a white-tailed deer, mule deer, Rio Grande turkey, or Eastern turkey [~~red drum in excess of the maximum length limit, or tarpon~~] shall complete, in ink, the harvest log on the back of the hunting or fishing license, as applicable, immediately upon kill [~~or, in the case of fish, upon retention~~].

(2) (No change.)

#### §65.8. *Alternative Licensing System.*

(a) The tagging requirements of Parks and Wildlife Code, §§42.018, 42.0185, 42.020, and 46.0086 do not apply to any person in lawful possession of a license that was sold by the department without tags for white-tailed deer, mule deer, or turkey [~~red drum, or tarpon~~].

(b) The requirements of this subchapter that require the attachment of license tags to wildlife resources do not apply to any person in

lawful possession of a license that was sold by the department without tags for white-tailed deer, mule deer, or turkey [~~red drum, or tarpon~~]. A properly executed wildlife resource document must accompany any white-tailed deer, mule deer, or turkey [~~red drum in excess of maximum size limits, or tarpon~~] until the provisions of this title and Parks and Wildlife Code governing the possession of the particular wildlife resource cease to apply.

(c) (No change.)

#### §65.11. *Lawful Means.*

It is unlawful to hunt any of the wildlife resources of this state except by the means authorized by this section and as provided in §65.19 of this title (relating to Hunting Deer with Dogs).

(1) Firearms.

(A) It is lawful to hunt alligators, game animals, and game birds with any legal firearm, including muzzleloading firearms, and including a firearm equipped with a silencer [~~weapons~~], except as specifically restricted in this section.

(B) Nothing in this paragraph shall be construed to relieve any person of compliance with any other federal, state, or local laws governing the possession or use of firearm silencers.

(C) [~~B~~] Special muzzleloader-only deer seasons are restricted to muzzleloading firearms only.

(D) [~~C~~] It is unlawful to use rimfire ammunition to hunt alligator, deer, antelope, or desert bighorn sheep.

(E) [~~D~~] It is unlawful to hunt alligators, game animals, or game birds with a fully automatic firearm [~~or any firearm equipped with a silencer or sound-suppressing device~~].

(F) [~~E~~] In Angelina, Brazoria, Calhoun, Chambers, Galveston, Hardin, Jackson, Jasper, Jefferson, Liberty, Matagorda, Nacogdoches, Newton, Orange, Polk, Refugio, Sabine, San Augustine, San Jacinto, Trinity, Tyler and Victoria counties, alligators may not be hunted by means of firearms. In all other counties, alligators may be hunted by means of firearms on private property, including private waters, but may not be hunted by means of firearms from, on, in, across, or over public water.

(G) [~~F~~] Alligators lawfully caught on a taking device may be dispatched by means of firearms in all counties.

(2) (No change.)

(3) Crossbow--Special Provisions.

(A) In Collin, Dallas, Grayson, and Rockwall counties [~~County~~]:

(i) no person may use a crossbow to hunt deer during the archery-only season [~~(October 3 - November 6)~~] unless the person has an upper-limb disability and has in immediate possession a physician's statement that certifies the extent of the disability; and

(ii) any person may hunt deer by means of crossbow during the general open season [~~(November 7 - January 3)~~] and the requirements of clause (i) of this subparagraph do not apply.

(B) (No change.)

(4) - (7) (No change.)

#### §65.25. *Wildlife Management Plan (WMP).*

(a) (No change.)

[~~(b) Lesser Prairie Chicken. No person may hunt a lesser prairie chicken in this state except on a property for which the de-~~

partment has approved a WMP as set forth under this subsection that contains a recommended harvest for lesser prairie chicken.]

[(1) The WMP required by this subsection shall include:

[(A) a lesser prairie chicken population estimate for the current year (April breeding-ground counts);]

[(B) accurate harvest data from the property for the initial hunting season and each season thereafter that the landowner seeks to hunt lesser prairie chicken on the property;]

[(C) a biological evaluation of the quality of existing prairie chicken habitat and the potential for enhancing existing habitat or creating additional habitat;]

[(D) at least three department-recommended habitat management practices designed to increase, enhance, or connect lesser prairie chicken habitat; and]

[(E) a recommended harvest quota not to exceed 10 percent of the estimated lesser prairie chicken population on the property.]

[(2) The landowner agrees, by signing the WMP, to perform data collection for the purposes of meeting the requirements of paragraph (1) of this subsection.]

[(3) A WMP under this subsection is not valid unless it has been signed by a department employee authorized to approve management plans. A WMP under this subsection is valid for one year following such signature. The department may refuse to approve a WMP if the landowner has not complied with the provisions of this subsection.]

[(4) The department may authorize a recommended harvest in the absence of population or harvest data only for the year 2005; thereafter, a property must meet the requirements of paragraph (1) of this subsection.]

[(5) The bag and possession limits for the harvest of lesser prairie chicken shall be as provided in §65.56 of this title (relating to Lesser Prairie Chicken: Open Seasons, Bag, and Possession Limits).]

[(6) No person may possess a harvested lesser prairie chicken anywhere other than the property on which the lesser prairie chicken was harvested unless that person also possesses a completed, department-supplied affidavit signed by the landowner of the property where the person harvested the lesser prairie chicken.]

[(7) Each lesser prairie chicken harvested on a property for which the department has issued a quota under this subsection shall be recorded in a harvest log. The harvest log shall contain the name of each person who killed a lesser prairie chicken, the date, and the number of lesser prairie chicken the person killed. The harvest log shall be maintained on the property, shall be kept current, and shall be made available for inspection at the request of a department employee acting within the scope of official duties.]

(b) [(e)] Javelina.

(1) An approved WMP, specifying an annual harvest quota for javelina, is required for the issuance of an annual harvest quota for javelina on a property. The WMP shall include:

(A) javelina population data for both the current year and the immediately preceding year;

(B) javelina harvest data from the immediately preceding year; and

(C) at least two recommended habitat management practices. Recommended habitat management practices already being performed under an existing department-approved WMP may be used to satisfy the requirements of this subparagraph on a one-for-one basis.

(2) A WMP is not valid unless it is:

(A) consistent with Parks and Wildlife Code, §61.053; and

(B) signed by a Wildlife Division biologist or technician authorized to approve management plans. A WMP is valid for one year following the date of such signature.

(3) The landowner agrees, by signing the WMP, to perform data collection for the purposes of meeting the requirements of paragraph (1) of this subsection.

(4) The department may refuse to approve a WMP if the landowner has not complied with the provisions of this subsection.

(5) No person may possess a javelina harvested under a quota issued under this section anywhere other than the property on which the javelina was harvested unless that person also possesses a completed, department-supplied affidavit signed by the landowner of the property where the person harvested the javelina.

(6) Each javelina harvested on a property for which the department has issued a quota under this subsection shall be recorded in a harvest log. The harvest log shall contain the name of each person who killed a javelina, the date, and the number of javelina the person killed. The harvest log shall be maintained on the property, shall be kept current, and shall be made available for inspection at the request of a department employee acting within the scope of official duties.

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 February 6, 2012.

TRD-201200596

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 389-4775



## DIVISION 2. OPEN SEASONS AND BAG LIMITS

### 31 TAC §65.42, §65.60

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendments affect Parks and Wildlife Code, Chapter 61.

§65.42. *Deer.*

(a) (No change.)

(b) White-tailed deer. The open seasons, annual bag limits, and special provisions for white-tailed deer shall be as follows. If Managed Lands Deer Permits (MLDPs) have been issued for a tract of land in any county, they must be attached to all deer harvested on the tract of land, regardless of season. An MLDP buck permit may not be used to harvest or tag an antlerless deer. An MLDP antlerless permit may not be used to tag a buck deer.

(1) - (7) (No change.)

(8) In Angelina, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Goliad (south of U.S. Highway 59), Hardin, Harris, Houston, Jackson (south of U.S. Highway 59), Jasper, Jefferson, Liberty, Matagorda, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, Victoria (south of U.S. Highway 59), Walker, and Wharton (south of U.S. Highway 59) counties, there is a general open season.

(A) - (C) (No change.)

(9) - (10) (No change.)

(11) In Collin, Dallas, Grayson, and Rockwall counties [County] there is a general open season.

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

(C) Special provisions. Lawful means are restricted to lawful archery equipment and crossbows only, including MLDP properties.

(i) (No change.)

(ii) Antlerless deer. No permit is required to hunt antlerless deer unless MLD antlerless permits have been issued for the tract of land. [Antlerless deer may be taken by MLD antlerless permits only. If permits have been issued for the harvest of antlerless deer, they must be attached to all antlerless deer harvested on the tract of land.]

(12) - (16) (No change.)

(17) Muzzleloader-only open seasons, and bag and possession limits shall be as follows. In Angelina, Austin, Bastrop, Bowie, Brazoria, Brewster, Caldwell, Camp, Cass Chambers, Cherokee, Colorado, Culberson, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Gregg, Guadalupe, Hardin, Harris, Harrison, Houston, Jackson, Jasper, Jeff Davis, Jefferson, Karnes, Lavaca, Lee, Liberty, Marion, Matagorda, Montgomery, Morris, Nacogdoches, Newton, Orange, Panola, Polk, Presidio, Reeves, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, Upshur, Victoria, Walker, Waller, Washington, Wharton, and Wilson counties, there is an open season during which deer may be taken only with a muzzleloader.

(A) - (C) (No change.)

(18) (No change.)

(c) (No change.)

§65.60. Pheasant: Open Seasons, Bag, and Possession Limits.

(a) In Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Donley, Floyd, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, Lamb, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, and Wilbarger counties, there is an open season for pheasants.

(1) Open season: First Saturday of December for 30 consecutive days.

(2) Daily Bag limit: Three cock pheasants.

(3) Possession limit: Six cock pheasants.

~~{(b) In Chambers, Jefferson, and Liberty, counties, there is an open season for pheasants.}~~

~~{(1) Open season: Saturday nearest November 1 through the last Sunday in February.}~~

~~{(2) Daily bag limit: Three cock pheasants.}~~

~~{(3) Possession limit: Six cock pheasants.}~~

~~(b) [(e)] In all other counties, there is no open season on pheasants.~~

~~(c) [(d)] It is unlawful to hunt pheasant with the aid of a cable, chain, rope, or other device connected to or between a moving object or objects.~~

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 February 6, 2012.

TRD-201200597

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 389-4775

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**PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD**

**CHAPTER 517. FINANCIAL ASSISTANCE  
SUBCHAPTER B. COST-SHARE ASSISTANCE  
FOR WATER SUPPLY ENHANCEMENT**

**31 TAC §§517.22 - 517.37**

The Texas State Soil and Water Conservation Board (State Board or agency) proposes amendments to Chapter 517, Subchapter B, §§517.22 - 517.37, concerning Cost-Share Assistance for Brush Control to incorporate program changes enacted by the 82nd Legislature in House Bill (HB) 1808 and changes that the State Board believes necessary to comply with legislative intent, hereinafter referred to as HB 1808.

The State Board proposes to amend Chapter 517, Subchapter B title by renaming it Cost-Share Assistance for Water Supply Enhancement as HB 1808 specified the program be renamed.

Section 517.22 is amended by redefining the purpose of the program. The purpose of the water supply enhancement program is to increase available surface and underground water through control of noxious brush species detrimental to water conservation and revegetation of areas where brush have been removed and the old purpose of providing incentives to landowners for implementing brush control for conserving water is deleted.

Section 517.23 is amended by adding paragraph (3) to define Area as a sub-basin or other portion of land within a project. Existing paragraphs (3) - (5) are renumbered as (4) - (6). Existing §517.23(6) - (8) is deleted as they refer to Brush Control area; area working group; and contract, which no longer exist due to HB 1808 changes. Existing §517.23(9) - (11) are renumbered

as §517.23(7) - (9) due to the deletions. Existing paragraph (12) is renumbered as paragraph (10) and amended to delete the first reference to brush control and replace it with designated critical (area) and in the second usage with Water Supply Enhancement Program. Existing paragraph (13) is renumbered as paragraph (11) and reference to an eligible person being a soil and water conservation district cooperator is deleted as this is no longer a requirement of the program. Existing §517.23(14) - (16) are renumbered as §517.23(12) - (14) respectively. Existing §517.23(17) is renumbered as §517.23(15) and amended by deleting the term brush control and inserting the word critical and by deleting Soil and Water Conservation District as a signature party to final contracts with applicants. Existing paragraph (18) is renumbered as paragraph (16) and amended to remove brush control and insert Water Supply Enhancement Program. Existing paragraph (19) is renumbered as paragraph (17) and amended to delete the brush control area working group as a party to devising a priority system for ranking brush control applications as it will now be done under guidelines developed by the State Board. Existing paragraph (20) is renumbered as paragraph (18). A new paragraph (19) is proposed to define Project Area which is explained as an area of critical need designated by the State Board according to §517.25 as proposed for amendment in this notice. A new paragraph (20) is proposed to define Project which will mean a watershed or portion of a watershed in which water supply enhancement activities are performed. A new paragraph (21) is proposed to define Proposal which will mean a request submitted by a political subdivision of the state for state funds to be used for water supply enhancement activities. Existing §517.23(21) - (22) are renumbered as paragraphs (22) - (23), respectively. Existing paragraph (23) which defines Texas Department of Agriculture is deleted and is now referenced in §517.37(3). Existing paragraph (25) which defines Texas Water Development Board is deleted and is now referenced in §517.37(2). Existing paragraph (26) is renumbered as paragraph (25) and amended to delete Program in reference to Brush Control so that it would just mean only an activity. Brush Control is also lowercase since it is now used as an activity rather than a program. A new paragraph (26) is proposed to define Water Supply Enhancement Contract as a legally binding 10-year agreement between the State Board and the applicant to implement brush control practices for which cost-share will be provided in accordance with standards established by the State Board and are in an approved plan. A new paragraph (27) is proposed to define Water Supply Enhancement as including brush control and subsequently the enhancement of available water resources.

The section title of §517.24 is renamed Water Supply Enhancement Plan. Section 517.24(a) and (b) are both amended by adding water supply enhancement plan and deleting brush control plan in the text. Section 517.24(b) is amended by deleting the colon and §517.24(b)(1) will continue the subsection to make it a sentence and not exist as paragraph (1). Section 517.24(b)(2) relating to ranking areas of the state in need of a brush control program considering the criteria in the following section is deleted as it is no longer needed. Section 517.24(c) is inserted to establish that a plan adopted under this section must list goals that the board establishes under §203.051, Agriculture Code, for the program and the goals must include what is added as new §517.24(c)(1) and (2) which are respectively a goal describing the intended use of any water supply enhanced or conserved by the program; such as agricultural or drinking and a goal describing the populations that the water supply enhancement program will target. Existing §517.24(c) is relettered as §517.24(d).

Section 517.25 is renamed Criteria for Accepting and Prioritizing Water Supply Enhancement Projects. Section 517.25(a) is amended by inserting language to indicate the state board shall adopt rules establishing criteria for accepting projects proposals as now spelled out in new §517.25(a)(1) and a system to prioritize projects for each funding cycle, giving priority to projects that balance the most critical water conservation need and the highest projected water yield as spelled out in new §517.25(a)(2) and deleting the language relating to the state board in cooperation with affected SWCDs, other agencies, universities, and appropriate local interests shall evaluate and rank brush control areas, as that process is changed and re-established in new language in this section. Existing §517.25(b) - (f) are deleted as those old brush control program evaluations and criteria have been replaced with new evaluation and criteria standards in the water supply enhancement program. A new §517.25(b) is inserted to specify that the criteria required by subsection (a)(1) must include a requirement that each proposal state the projected water yield of the proposed project, as modeled by a person with expertise in hydrology, water resources or another technical area pertinent to the evaluation of water supply. A new 517.25(c) is inserted to specify the board shall consult with stakeholders, including hydrologist and representatives from soil and water conservation district. A new §517.25(d) is inserted along with paragraphs (1) - (8) to establish that in prioritizing projects under subsection (a)(2), the board shall consider: the need for conservation of water resources within the territory of the project based on the state water plan adopted under §16.051, Water Code; projected water yield of areas of the project, based on soil, slope, land use types and distribution of trees, brush and other vegetative matter and proximity of trees, brush and other vegetative matter to rivers, streams and channels; any method the project may use to control brush; cost-sharing contract rates within the territory of the project; the location and size of the project; the budget of the project and any associated requests for grand funds submitted under this title; the implementation schedule of the project; and the administrative capacities of the board and the entity that will manage the project. A new §517.25(e), with paragraphs (1) and (2) is inserted to establish that in prioritizing projects under subsection (a)(2) the board may consider: scientific research on the effects of brush removal on water supply; and any other criteria that the board considers relevant to assure that the water supply enhancement program can be effectively, efficiently and economically implemented.

Section 517.26 title is changed to Feasibility Studies. The existing §517.26(a) - (e) is deleted and the existing language describing brush control project development, project proposals prioritizing projects and the process of allocating funds for brush control are rewritten as Application for Cost-Sharing in §517.27. The new §517.26(a) establishes that the board shall establish a process for providing assistance, to applicants submitting project proposals, in locating a person with expertise in hydrology, water resources or another technical area pertinent to the evaluation of water supply to conduct a feasibility study for a project using a water yield model as described by §203.053(b), Agriculture Code. Section 517.26(b) provides that the board may: dedicate a portion of the money appropriated to the board, that it considers appropriate, to fund part or all of a feasibility study under this section and establish procedures to distribute the money under subsection (b)(1). Section 517.26(c) provides that to receive funding for a feasibility study under subsection (b), a person must submit to the board an application for funding that includes a statement of the project's anticipated impact on water resources.

Section 517.27 is renamed Application for Cost-Sharing. The existing §517.27(a) - (d) is deleted and methods of brush control is now placed under proposed §517.31. The new language of §517.27 establishes that a person, including a political subdivision of this state, that desires to participate with the state in the water supply enhancement program and to obtain cost-share participation by the state shall file an application for a cost-sharing contract with the district board in the district in which the land on which the contract is to be performed is located. The application must be in the form provided by board rules.

Section 517.28 is renamed Considerations in Passing on Application. Section 517.28(a) - (d) is deleted and redefined in proposed §517.32. The proposed new language of §517.28 define the considerations in passing on a water supply enhancement application for cost-sharing, by specifying that the board shall consider: the location of the land that is subject to the cost-sharing contract; the method of control the applicant will use; the plans for revegetation; the total cost of the contract; the amount of land to be included in the contract; whether the applicant is financially able to provide the applicant's share of the money for the project; the cost-sharing percentage, if an applicant agrees to a higher degree of financial commitment; any comments and recommendations submitted by a local district, the Texas Department of Agriculture, the Texas Water Development Board or the Texas Parks and Wildlife Department; and any other pertinent information considered necessary by the board.

Section 517.29 is renamed Approval of Application. Cost-share of water supply enhancement is rewritten and proposed in §517.30. Section 517.29(a) and (b) are deleted and replaced with new language that specifies that the board may approve an application for cost-sharing if, after considering the factors listed in §203.157, Agriculture Code, and any other relevant factors, the board finds: the owner of the land fully agrees to cooperate in the cost-sharing contract; and the method of eradication is a method approved by the board under §203.055, Agriculture Code.

Section 517.30 is proposed to be renamed Administration of Expenditures. Section 517.30(a) - (i) are proposed for deletion as the rewritten content is covered in proposed §517.33. Proposed §517.30(a) is language describing how a District board may administer expenditures of the state's share of the money required by a cost-sharing contract and shall report periodically to the board on the expenditure of those funds in the manner required by the board. Section 517.30(b) specifies that if the demand for funds under the cost-sharing program is greater than funds available, the board shall establish priorities favoring the areas with the most critical water conservation needs and projects that will be most likely to produce substantial water conservation. Section 517.30(c) directs that the board shall give more favorable consideration to a particular project if the applicants individually or collectively agree to increase the percentage share of costs under the cost-share agreement. Proposed §517.30(d) specifies that the board shall consider quantity of stream flows, the quantity of groundwater and the amount of water conservation from eradication of brush each to be a priority. Section 517.30(e) specifies that the quantity of stream flows or groundwater or water conservation from the eradication of brush is a consideration in assigning priority.

Section 517.31 is renamed Approval of Brush Control Methods. Section 517.31(a) - (g) are proposed for deletion and the rewritten content is covered in proposed §517.36. Proposed new §517.31(a) and (b) specify that: the board shall study and must

approve all methods used to control brush under this chapter considering the overall impact of the project; and the board may approve a method for use under the cost-sharing program provided by Chapter 203, Subchapter E, Agriculture Code, if the board finds that the proposed method: has proven to be an effective and efficient method for controlling brush; is cost efficient; will have a beneficial impact on the development of water sources and wildlife habitat; will maintain topsoil to prevent erosion or silting of any river or stream; and will allow the revegetation of the area after the brush is removed with plants that are beneficial to stream flows, groundwater levels and livestock and wildlife.

Section 517.32 is renamed Powers and Duties of SWCD's. The existing §517.32(a) - (d) are proposed to be deleted and their content is proposed in §517.27. Proposed new §517.32(a) - (h) specify that each district may administer the aspects of the water supply enhancement program within the jurisdiction of that district and that: each district may accept for transmission to the board applications for cost-sharing under Chapter 203, Subchapter E, Agriculture Code, and may examine and assist the applicant in assembling the application in proper form before the application is submitted to the board; before a district submits an application to the board, it shall examine the application to assure that it complies with rules of the board and that it includes all information and exhibits necessary for the board to pass on the application; at the time that the district examines the application, it shall prepare comments and recommendations relating to the application and the district board may provide comments and recommendations before they are submitted to the board; after reviewing the application, the district board shall submit to the board the application and the comments and recommendations; each district on behalf of the board may inspect and supervise cost-sharing contracts within its jurisdiction in which state money is provided under Chapter 203, Subchapter E, Agriculture Code; each district board exercising the duties under §517.32(b) shall periodically report to the board relating to this inspection and supervision in the manner provided by board rules; and the board may direct a district to manage any problem that arises under a cost-sharing contract for water supply enhancement in that district and to report to the board.

Section 517.33 is renamed Eligibility for Cost-Share Assistance. The current text of §517.33(a) - (g) is deleted and rewritten in proposed §517.35. Section 517.33(a) - (g) establishes the following definitions and explanations: (a) Eligible person: any individual, partnership, administrator for a trust, family-owned corporation or other legal entity who is an owner, lessee, tenant or sharecropper; (b) Ineligible person: a person is not eligible to participate in the state brush control program or to receive money from the state brush control program if the person is simultaneous receiving any cost-share money for brush control on the same acreage from a federal government program; the State Board may grant an exception if the State Board finds that joint participation of the state brush control and any federal brush control program will enhance the efficiency and effectiveness of a project and lessen the state's financial commitment to the project; (c) Eligible land: to be eligible for cost-share assistance, the land must be within a designated project area and fall into any of the following categories: land within the state that is privately owned by an eligible person; land leased by an eligible person over which the applicant has adequate control extending through the term of the contract period and written permission of the landowner; or land owned by the state, a political subdivision of the state or a non-profit organization that holds land in trust for the state; (d) Ineli-

gible lands: allocated funds shall not be used on land outside of a designated area; (e) Eligible purposes: cost-share assistance shall be available only for brush control included in an approved brush control plan and contract and determined to be needed by the local SWCD to conserve water; (f) Eligible practices: brush control methods, which the State Board has approved and which are included in the applicant's approved brush control plan and contract, shall be eligible for cost-share assistance; (g) Requirement to file an application: in order to qualify for cost-share assistance, an eligible person shall file an application with the local SWCD.

Section 517.34 is renamed Limit on Cost-Sharing Participation. The existing §517.34(a) - (d) is deleted and revised into this section and in proposed §517.35. The proposed §517.34 will be: (a) Not more than 70 percent of the total cost of a single cost-sharing contract may be made available as the state's share in cost-sharing; (b) A person is not eligible to participate in or to receive money from the state water supply enhancement program if the person is simultaneously receiving any cost-share money for brush control on the same acreage from the federal government; (c) The board may grant an exception to §517.34(b) if the board finds that joint participation of the state water supply enhancement program and any federal brush control program will: enhance the efficiency and effectiveness of the water supply enhancement program; lessen the state's financial commitment to the person receiving money from the water supply enhancement program through a cost-sharing contract; and not exceed 80 percent of the total cost of the cost-sharing contract; (d) A political subdivision of this state is eligible for cost-sharing under the water supply enhancement program, provided that the state's share may not exceed 50 percent of the total cost of a single cost-sharing contract; (e) Notwithstanding any other provision of this section, 100 percent of the total cost of a single cost-sharing contract on public lands may be made available as the state's share in cost-sharing.

Section 517.35 is renamed Contract for Cost-Sharing. The existing §517.35(a) - (c) is deleted and readdressed in §517.36. The proposed §517.35 will be: (a) On approval of an application for cost-sharing by the board, the board or the governing board of the designated SWCD board shall negotiate cost-sharing contracts with the successful applicants in the project territory; (b) The board or the designated SWCD board shall negotiate a contract with the successful applicant subject to: the conditions established by the board in approving the application; any specified instructions provided by the board; and board rules; (c) On completion of the negotiations by the SWCD board, it shall submit the proposed contract to the board for approval; (d) The board shall examine the contract and if the board finds that the contract meets all the conditions of the board's resolution, instructions and rules it shall approve the contract and provide to the individual on faithful performance of the terms of the contract the money that constitutes the state's share of the project; (e) The board may develop guidelines to allow partial payment of the state's share of a cost-sharing contract as certain portions or percentages of contracted work are completed, but the state money may not be provided in advance for work remaining to be done.

Section 517.36 is renamed Water Supply Enhancement Plans. The current language of this section is deleted and new subsections are proposed as: (a) The board shall consult with each successful applicant for a cost-sharing contract to create a 10-year plan for the land that is subject to the contract to enhance the water supply in the area; (b) A plan created under this section

must include: (1) provisions for brush control or other water supply enhancement activities; (2) a provision for follow-up brush control; (3) a provision requiring the landowner to limit the average brush coverage on the land that is subject to the contract to not more than five percent throughout the course of the 10-year plan; and (4) periodic dates throughout the course of the 10-year plan on which the board will inspect the status of brush control on the land that is subject to the contract; (c) Signature of a performance agreement. As a condition for receipt of cost-share assistance for brush control, the eligible person receiving the benefit of such assistance shall agree to perform the brush control in accordance with standards established by the State Board and the terms of the cost-share agreement. Completion of the performance agreement and the signature of the eligible person are required prior to payment; (d) The SWCD may require refund of any or all of the cost-share paid to an eligible person when acres where brush control was applied has not been managed in compliance with applicable standards and specifications for the practice in accordance with the terms of the cost-share contract as agreed to by the eligible person; (e) In cases of hardship, death of the participant or at the time of transfer of ownership of land where brush control has been applied using cost-share assistance and terms of the contract has not expired, the participant, heir(s) or buyer(s) respectively, must agree to properly manage the treated area or the participant, heir(s), or the buyer(s) by agreement with the seller must refund all or a portion of the cost-share funds received for the practice as determined by the SWCD. The State Board, on a case-by-case basis, in consultation with the SWCD, may grant a waiver to this requirement.

Section 517.37 section title is amended to read Consultation. It is proposed to lead off the section with new language that states: "The State Soil and Water Conservation Board shall consult with:". Subsection (a) is renumbered as paragraph (1); amended to delete "State Board shall consult with the", and following (TPWD) the following language is proposed: "in regard to the effects of the water supply enhancement program on fish and wildlife"; and then the remaining language is deleted. Subsection (b) is renumbered as paragraph (2); is amended by deleting Texas Parks and Wildlife Department and Texas Department of Agriculture and all other language not dealing with the Water Development Board; and adding language to specify that we will consult with the Texas Water Development Board in regard to the effects of the water supply enhancement program on water supply. New paragraph (3) is proposed as: The Texas Department of Agriculture in regard to the effects of the water supply enhancement program on agriculture. The existing subsections (c) and (d) are deleted.

Kenny Zajicek, Fiscal Officer, State Board, has determined that for the first five year period there will be no fiscal implications for state or local government as a result of administering the amendments as proposed.

Mr. Zajicek has also determined that for the first five year period the amendments are in effect, the public benefit anticipated as a result of administering the amended sections will be effective follow-up management of brush control work contracted with the state.

There is no anticipated cost to small businesses resulting from the amended sections. The anticipated cost to eligible individuals contracting with the program will be contingent upon their land management following the initial brush control work.



Comments on the proposed amendments may be submitted in writing to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503; (254) 773-2250, extension 231.

The amendments are proposed under the Agriculture Code, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code, which authorizes the agency to adopt reasonable rules that are necessary to carry out the provisions of that chapter; and Chapter 203, §203.012, Agriculture Code, which authorizes the State Board to adopt reasonable rules necessary to carry out the provisions of that chapter.

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

§517.22. *Purpose.*

The purpose of the water supply enhancement program is to increase available surface water and groundwater through: [this program is to provide the needed incentive to landowners or operators for the implementation of brush control consistent with the purpose of conserving water.]

(1) selective control, removal or reduction of noxious brush species that are detrimental to water conservation; and

(2) revegetation of land on which noxious brush has been controlled, removed or reduced.

§517.23. *Definitions.*

For the purposes of this subchapter [these rules] the following definitions shall apply.

(1) Allocated funds--Funds budgeted through the State Board for cost-share assistance.

(2) Applicant--An eligible person who applies for cost-share assistance.

(3) Area--A sub-basin or other portion of land within a project.

(4) [(3)] Available funds--Allocated funds that have not been obligated.

(5) [(4)] Average costs--The constructed cost, which is based on actual costs and current cost estimates, considered necessary to carry out a conservation practice.

(6) [(5)] Brush control--The selective control, removal, or reduction of noxious brush such as mesquite, juniper, salt cedar, or other phreatophytes that, as determined by the State Board, consumes water to a degree that is detrimental to water conservation; and the revegetation of land on which this brush has been controlled.

[(6) Brush control area--An area evaluated according to criteria established in §517.25 of this title and allocated cost-share funds by the Texas State Soil and Water Conservation Board.]

[(7) Brush control area working group--The working group established in each brush control area to carry out the roles and responsibilities listed in §517.28(e) of this title. Membership is made up of Soil and Water Conservation District directors from each Soil and water Conservation District in a brush control area.]

[(8) Brush control contract --A legally binding 10-year agreement between the applicant, Soil and Water Conservation District, and Texas State Soil and Water Conservation Board whereby the applicant agrees to implement all brush control practice(s) for which cost-share is to be provided in accordance with standards established by the Texas State Soil and Water Conservation Board.

Only practice(s) that the Texas State Soil and Water Conservation Board has approved and are included in an approved brush control plan are eligible for inclusion in the brush control contract.]

(7) [(9)] Brush control plan--A site-specific plan for implementation of brush control, sound range management practices, and other soil and water conservation land improvement measures. It includes a record of the eligible person's decisions made during planning and the resource information needed for implementation and maintenance of the plan that has been reviewed and approved by the Soil and Water Conservation District.

(8) [(10)] Cost-share assistance--An award of money made to an eligible person for brush control pursuant to the purpose(s) for which the funds were appropriated.

(9) [(11)] Cost-share rate--The percent of the cost of brush control to be awarded an eligible person based on actual cost not to exceed average cost.

(10) [(12)] Eligible land--Those lands within a designated critical [brush control] area that are eligible for application of Water Supply Enhancement Program [brush control using] cost-share assistance.

(11) [(13)] Eligible person--Any individual, partnership, administrator for a trust or estate, family-owned corporation, or other legal entity who as an owner, lessee, tenant, or sharecropper participates in an agricultural or wildlife operation within a brush control area [and is a cooperator with the local Soil and Water Conservation District] shall be eligible for cost-share assistance.

(12) [(14)] Field Office Technical Guide, herein referred to as FOTG--The official Natural Resources Conservation Service guidelines criteria, and standards for planning and applying conservation practices, management measures, and works of improvement that have the purpose of solving or reducing the severity of natural resource use problems or taking advantage of resource opportunities.

(13) [(15)] Natural Resources Conservation Service, herein referred to as NRCS--An agency of the United States Department of Agriculture.

(14) [(16)] Operator--Any person(s), firm or corporation with a contractual arrangement with the owner of the land that grants operational control of an agricultural enterprise.

(15) [(17)] Obligated funds--Monies from a critical [brush control] area's allocated funds that have been committed to an applicant after final approval of the brush control contract by the [Soil and Water Conservation District and] Texas State Soil and Water Conservation Board.

(16) [(18)] Performance agreement--A component of the Water Supply Enhancement Program [brush control] contract whereby the eligible person receiving the benefit of cost-share assistance provides written agreement to the Soil and Water Conservation District to perform brush control in accordance with standards established by the Texas State Soil and Water Conservation Board and the terms of the brush control contract.

(17) [(19)] Priority system--The system devised [collectively by the brush control area working group.] under guidelines of the State Board, for ranking brush control applications and for facilitating the disbursement of allocated funds in line with the brush control area's priorities.

(18) [(20)] Program year--The period from September 1 through August 31.

(19) Project Area--An area of critical need designated by the Texas State Soil and Water Conservation Board according to the criteria established in §517.25 of this subchapter.

(20) Project--A watershed or portion of a watershed in which water supply enhancement activities are performed.

(21) Proposal--A request submitted by a soil and water conservation district or other political subdivision of the state for state funds to be used in a watershed or portion of a watershed for water supply enhancement activities.

(22) [(21)] Soil and Water Conservation District, herein referred to as SWCD--A government subdivision of this state and a public body corporate and politic, organized pursuant to the Agriculture Code of Texas, Chapter 201.

(23) [(22)] State Board--The Texas State Soil and Water Conservation Board organized pursuant to the provisions of the Agriculture Code of Texas, Chapter 201.

[(23) Texas Department of Agriculture, herein referred to as TDA--The government agency of this state organized pursuant to the Agriculture Code of Texas, Title 2, Chapter 11.]

(24) Texas Parks and Wildlife Department, herein referred to as TPWD--The government agency of this state organized pursuant to the Parks and Wildlife Code of Texas, Title 2, Chapter 11.

[(25) Texas Water Development Board, herein referred to as TWDB--The government agency of this state organized pursuant to the Water Code of Texas, Title 2, Subtitle A, Chapter 6.]

(25) [(26)] Water Conservation--The process of reducing water consumption and/or preventing future increases in water consumption. As related to brush control [the Brush Control Program], the process of reducing water consuming brush and subsequently, the enhancement of available water resources.

(26) Water Supply Enhancement Contract--A legally binding 10-year agreement between the applicant and the Texas Soil and Water Conservation Board whereby the applicant agrees to implement all brush control practice(s) for which cost-share is to be provided in accordance with standards established by the Texas State Soil and Water Conservation Board. Only practice(s) that the Texas State Soil and Water Conservation Board has approved and are included in an approved brush control plan are eligible for inclusion in the brush control contract.

(27) Water Supply Enhancement--Includes brush control and subsequently the enhancement of available water resources.

§517.24. *Water Supply Enhancement Plan* [State Brush Control Plan].

(a) The State Board shall prepare and adopt a state water supply enhancement plan [brush control plan]. The State Board shall review and may amend the plan at least every two years to take into consideration changed conditions.

(b) The Water Supply Enhancement Plan [State Brush Control Plan] shall[:]

[(4)] include a comprehensive strategy for managing brush in all areas of the state where brush is contributing to a substantial water conservation problem.[; and]

[(2) rank areas of the state in need of a brush control program considering the criteria established in §517.25.]

(c) The plan adopted under this section must list goals the board establishes under §203.051, Agriculture Code, for the water supply enhancement program. These goals must include:

(1) a goal describing the intended use of any water supply enhanced or conserved by the program; such as agricultural purposes or drinking water purposes; and

(2) a goal describing the populations that the water supply enhancement program will target.

(d) [(e)] Before the State Board adopts the plan, the State Board shall call and hold a public hearing to consider a proposed plan.

(1) In addition to providing notice in the *Texas Register*, the State Board shall mail written notice of the hearing to each SWCD in the state not less than 30 days before the date the hearing is to be held. The notice must include the date and place for holding the hearing state the purpose for holding the hearing and include instructions for each district to submit written comments on the proposed plan.

(2) At the hearing, representatives of a SWCD and any other person may appear and present testimony including information and suggestions for any changes in the proposed plan. The State Board shall enter into the record any written comments received on the proposed plan and shall consider all written comments and testimony before taking final action on the plan.

(3) After the conclusion of the hearing, the State Board shall consider the testimony including the information and suggestions made at the hearing and in written comments, and after making any changes in the proposed plan that it finds necessary, the State Board shall adopt the plan.

§517.25. *Criteria for Accepting and Prioritizing Water Supply Enhancement Projects* [Evaluating Brush Control Areas].

(a) The State Board shall adopt rules establishing: [; in cooperation with affected SWCDs, other agencies, universities, and appropriate local interests, shall evaluate and rank brush control areas:]

(1) criteria for accepting project proposals; and

(2) a system to prioritize projects for each funding cycle, giving priority to projects that balance the most critical water conservation need and the highest projected water yield.

(b) The criteria required by subsection (a)(1) of this section must include a requirement that each proposal state the projected water yield of the proposed project, as modeled by a person with expertise in hydrology, water resources or another technical area pertinent to the evaluation of water supply.

(c) The board shall consult with stakeholders, including hydrologist and representatives from soil and water conservation district.

(d) In prioritizing projects under subsection (a)(2) of this section, the board shall consider:

(1) the need for conservation of water resources within the territory of the project based on the state water plan adopted under §16.051, Water Code;

(2) projected water yield of areas of the project, based on soil, slope, land use types and distribution of trees, brush and other vegetative matter and proximity of trees, brush and other vegetative matter to rivers, streams and channels;

(3) any method the project may use to control brush;

(4) cost-sharing contract rates within the territory of the project;

(5) the location and size of the project;

(6) the budget of the project and any associated requests for grand funds submitted under this title;

(7) the implementation schedule of the project; and  
(8) the administrative capacities of the board and the entity that will manage the project.

(e) In prioritizing projects under subsection (a)(2) of this section the board may consider:

(1) scientific research on the effects of brush removal on water supply; and

(2) any other criteria that the board considers relevant to assure that the water supply enhancement program can be effectively, efficiently and economically implemented.

[(b) Evaluations shall, where appropriate, assess brush type, density, and location; management methods; revegetation options; geology and soils data; water needs or potential needs; hydrology; potential water yield; wildlife concerns; economics; and landowner interest. The TPWD shall be consulted when evaluating wildlife concerns. The TWDB shall be consulted in regards to the effects of the brush control program on water quantity. The TDA shall be consulted in regards to the effects of the brush control program on agriculture.]

[(e) Specific areas for evaluation will be determined by the State Board in consultation with SWCDs, other agencies, and universities. SWCDs may submit written requests to the State Board for evaluation of areas for brush control.]

[(d) The State Board shall consider water needs of the area and potential for water yield when selecting areas for evaluation.]

[(e) Following evaluation, the State Board shall rank brush control areas considering:]

[(1) the location of various brush infestations;]

[(2) the type and severity of brush infestations;]

[(3) the various management methods that may be used to control brush;]

[(4) the amount of water produced by a project and the severity of water shortage in the project area;]

[(5) the cost effectiveness of utilizing brush control to conserve water;]

[(6) the potential water quality impacts;]

[(7) the availability of funding; and]

[(8) any other criteria that the State Board considers relevant to assure that the brush control program can be most effectively, efficiently, and economically implemented.]

[(f) In ranking brush control areas, the State Board shall give priority to areas with the most critical water conservation needs and in which brush control and revegetation projects will be most likely to produce substantial water conservation.]

*§517.26. Feasibility Studies [Administration of Funds].*

(a) The board shall establish a process for providing assistance, to applicants submitting project proposals, in locating a person with expertise in hydrology, water resources or another technical area pertinent to the evaluation of water supply to conduct a feasibility study for a project using a water yield model as described by §203.053(b), Agriculture Code.

(b) The board may:

(1) dedicate a portion of the money appropriated to the board, that it considers appropriate, to fund part or all of a feasibility study under this section; and

(2) establish procedures to distribute the money under paragraph (1) of this subsection.

(c) To receive funding for a feasibility study under subsection (b) of this section, a person must submit to the board an application for funding that includes a statement of the project's anticipated impact on water resources.

[(a) Project Development.]

[(1) SWCDs or other agencies in cooperation with SWCDs may develop project proposals in accordance with criteria established in the State Brush Control Plan.]

[(2) Project proposals shall be submitted to the State Board for its prioritization and approval.]

[(3) The State Board may initiate project development in cooperation with SWCDs.]

[(b) Priority of Projects.]

[(1) When prioritizing and approving projects, the State Board shall consider criteria established in the State Brush Control Plan.]

[(2) If the demand for funds under the cost-sharing program is greater than funds available, the State Board shall establish priorities favoring the areas with the most critical water conservation needs and projects that will be most likely to produce substantial water conservation.]

[(3) The State Board shall give more favorable consideration to a particular project if the participants agree to a lesser cost-share rate than that established by the State Board.]

[(4) The quantity of stream flows or groundwater or water conservation from the control of brush is a consideration in assigning priority.]

[(e) Allocation of funds. Allocations of resources shall be based on priority considerations and may be adjusted throughout the year as available funds and brush control area needs and priorities change in order to achieve the most efficient use of state funds.]

[(d) Requests for allocations. Brush control area working groups may submit written requests for cost-share allocations to the State Board.]

[(e) Approval of allocations. The State Board shall consider and approve, reject, or adjust allocations giving consideration to relative need for funding, workload and fund balances, as well as other information deemed necessary by the State Board.]

*§517.27. Application for Cost-Sharing [Approval of Brush Control Methods].*

[(a)] A person, including a political subdivision of this state, that desires to participate with the state in the water supply enhancement program and to obtain cost-share participation by the state shall file an application for a cost-sharing contract with the district board in the district in which the land on which the contract is to be performed is located. The application must be in the form provided by board rules. [The State Board, in consultation with SWCDs, shall study and must approve all methods used to control brush considering the overall impact of the project.]

[(b) The State Board may approve a method for cost-sharing if the State Board finds that the proposed method:]

[(1) has proven to be an effective and efficient method for controlling brush;]

[(2) is cost efficient;]

~~[(3) will have a beneficial impact on the development of water sources and wildlife habitat;]~~

~~[(4) will conserve topsoil to prevent erosion or silting of any river or stream; and/or]~~

~~[(5) will allow the revegetation of the area after the brush is removed with plants that are beneficial to stream flows, groundwater levels, and livestock and wildlife.]~~

~~[(e) Approved methods shall be designated in program guidance established by the State Board.]~~

~~[(d) Request for approval of brush control methods. Brush control area working groups, as established by §517.28(b), may submit requests to the State Board for approval of brush control methods for a brush control area.]~~

~~§517.28. Considerations in Passing on Application [Powers and Duties of SWCDs].~~

~~[(a) In passing on an application for cost-sharing, the board shall consider: [The State Board has delegated the responsibilities in this section to the SWCDs.]~~

~~(1) the location of the land that is subject to the cost-sharing contract;~~

~~(2) the method of control the applicant will use;~~

~~(3) the plans for revegetation;~~

~~(4) the total cost of the contract;~~

~~(5) the amount of land to be included in the contract;~~

~~(6) whether the applicant is financially able to provide the applicant's share of the money for the project;~~

~~(7) the cost-sharing percentage, if an applicant agrees to a higher degree of financial commitment;~~

~~(8) any comments and recommendations submitted by a local district, the Texas Department of Agriculture, the Texas Water Development Board or the Texas Parks and Wildlife Department; and~~

~~(9) any other pertinent information considered necessary by the board.~~

~~[(b) Establishment and composition of critical area working group.]~~

~~[(1) In each brush control area allocated funding by the State Board, a brush control area working group shall be established, composed of SWCD directors from each SWCD in the brush control area.]~~

~~[(2) The State Board shall serve as the facilitator for the brush control area working group.]~~

~~[(3) Agencies, universities, landowners and appropriate local interests may serve in an advisory capacity to the brush control area working group, but shall not have voting privileges.]~~

~~[(4) The brush control area working group shall hold an organizational meeting to:]~~

~~[(A) establish final membership]~~

~~[(i) SWCDs may elect to not participate by providing written notification of their decision.]~~

~~[(ii) In establishing the membership, each participating SWCD shall have one vote.]~~

~~[(iii) As approved by participating SWCDs within a brush control area, SWCDs may be allowed to have more than one SWCD director serve on the brush control area working group.]~~

~~[(iv) Once final membership is established, each member shall have one vote only.]~~

~~[(B) establish operating procedures]~~

~~[(i) The brush control area working group shall elect a chairman.]~~

~~[(ii) The brush control area working group shall establish the quorum necessary for decision-making. Only those members present shall be eligible to vote. Voting by proxy shall not be allowed.]~~

~~[(iii) The brush control area working group may establish attendance requirements and other necessary procedures.]~~

~~[(e) The brush control area working group shall:]~~

~~[(1) designate, from the State Board approved list, those brush control methods that will be eligible for cost-share;]~~

~~[(2) establish maximum cost-share rates not to exceed maximums set by the State Board in §517.29(d);]~~

~~[(3) develop average cost annually for each practice designated not to exceed costs established by the State Board;]~~

~~[(4) establish annually the maximum amount of cost-share available to each applicant not to exceed the maximum set by the State Board;]~~

~~[(5) administer the cost-share program within the funds allocated by the State Board;]~~

~~[(6) establish, under guidelines of the State Board, the priority system to be used for evaluation of applications;]~~

~~[(7) establish the period(s) of time for accepting applications;]~~

~~[(8) announce the cost-share program;]~~

~~[(9) establish the minimum amount of brush acreage that must be enrolled within sub-basins of the brush control area in order to qualify for funding;]~~

~~[(10) prioritize applications under the working group approved priority system; and]~~

~~[(11) submit meeting minutes, membership, and established operating procedures to the State Board.]~~

~~[(d) Each SWCD in the brush control areas allocated funding shall:]~~

~~[(1) accept and process cost-share applications;]~~

~~[(2) keep accurate records and logs of applications;]~~

~~[(3) determine eligibility for cost-share assistance according to the criteria listed in §517.30. If an applicant's land is in more than one SWCD, the respective SWCDs will review the application and agree to oversee all works and administer all contracts from one SWCD or prorate between the SWCDs;]~~

~~[(4) provide or arrange for technical assistance for eligible applicants according to priority established by the brush control area working group;]~~

~~[(5) examine brush control plans and contracts to assure inclusion of all necessary information and exhibits and that the criteria established in §517.33 are met;]~~

{(6) prepare comments and recommendations relating to the brush control plan and contract for submittal to the State Board;}

{(7) approve brush control plans and contracts that meet FOTG requirements on management units included in the brush control plan;}

{(8) forward SWCD approved brush control plans and contracts to the State Board for quality control and execution of contract;}

{(9) once approved by the State Board, notify the applicant that his/her contract has been approved for cost-share and to proceed with implementation as outlined in the applicant's brush control plan;}

{(10) file a copy of the approved contract;}

{(11) certify to the State Board that conservation land treatment measures have been completed according to standards and specifications prior to payment;}

{(12) submit required reports to the State Board; and}

{(13) as directed by the State Board, manage any problem that arises under a cost-sharing contract for brush control in that SWCD and report to the State Board.}

*§517.29. Approval of Application [Cost-share for Brush Control].*

{(a)} The board may approve an application for cost-sharing if, after considering the factors listed in §203.157, Agriculture Code, and any other relevant factors, the board finds: [Basis for cost-share. Cost-share shall be based on actual cost not to exceed average cost.]

(1) the owner of the land fully agrees to cooperate in the cost-sharing contract; and

(2) the method of eradication is a method approved by the board under §203.055, Agriculture Code.

{(b) Average costs.}

{(1) The State Board, in consultation with SWCDs in the brush control area, shall establish average costs for each practice considering the results of completed evaluations.}

{(2) The brush control area working group shall develop average costs annually for each approved practice not to exceed the average costs established by the State Board.}

{(3) The brush control area working group may submit a written request to the State Board to increase the average costs established for each practice.}

{(c) Maximum cost-share amount available.}

{(1) The maximum cost-share assistance that an eligible person may receive under the program in any one year, and the lifetime maximum cost-share assistance that an eligible person may receive is unrestricted by the State Board.}

{(2) The brush control area working group may establish the maximum cost-share assistance that an eligible person may receive under the program in any one year, and the lifetime maximum cost-share assistance that an eligible person may receive.}

{(d) Cost-share rates.}

{(1) The State Board shall establish, in program guidance, the cost-share rate for each practice approved for the brush control area considering the results of the completed evaluations.}

{(2) Not more than 70% of the total cost of a single brush control project may be made available as the state's share in cost sharing.}

{(3) 100% of the total cost of a single project on public lands may be made available as the state's share in cost sharing.}

{(4) The brush control area working group shall establish cost-share rates, not to exceed those established by the State Board.}

*§517.30. Administration of Expenditures [Eligibility for Cost-share Assistance].*

(a) The District board may administer expenditures of the state's share of the money required by a cost-sharing contract and shall report periodically to the board on the expenditure of those funds in the manner required by the board.

(b) If the demand for funds under the cost-sharing program is greater than funds available, the board shall establish priorities favoring the areas with the most critical water conservation needs and projects that will be most likely to produce substantial water conservation.

(c) The board shall give more favorable consideration to a particular project if the applicants individually or collectively agree to increase the percentage share of costs under the cost-share agreement.

(d) The board shall consider quantity of stream flows, the quantity of groundwater and the amount of water conservation from eradication of brush each to be a priority.

(e) The quantity of stream flows or groundwater or water conservation from the eradication of brush is a consideration in assigning priority.

{(a) Eligible person.}

{(1) Any individual, partnership, administrator for a trust or estate, family-owned corporation, or other legal entity who as an owner, lessee, tenant, or sharecropper participates in an agricultural or wildlife operation within a brush control area and is a cooperater with the local SWCD shall be eligible for cost-share assistance.}

{(2) A political subdivision is eligible for cost sharing under the brush control program; provided that the state's share may not exceed 50% of the total cost of a single project.}

{(b) Ineligible person.}

{(1) A person is not eligible to participate in the state brush control program or to receive money from the state brush control program if the person is simultaneously receiving any cost-share money for brush control on the same acreage from a federal government program.}

{(2) The State Board may grant an exception if the State Board finds that joint participation of the state brush control program and any federal brush control program will enhance the efficiency and effectiveness of a project, lessen the state's financial commitment to the project, and not exceed 80% of the total cost of the project.}

{(c) Eligible land. To be eligible for cost-share assistance, the land must be within a brush control area and fall into any of the following categories:}

{(1) land within the state that is privately owned by an eligible person;}

{(2) land leased by an eligible person over which the applicant has adequate control extending through the term of the contract period and written permission of the landowner; or}

{(3) land owned by the state, a political subdivision of the state, or a nonprofit organization that holds land in trust for the state.}

{(d) Ineligible lands. Allocated funds shall not be used on land outside of a brush control area or land not used for agricultural or wildlife production.}

{(e) Eligible purposes. Cost-share assistance shall be available only for brush control included in an approved brush control plan and contract and determined to be needed by SWCDs to conserve water.}

{(f) Eligible practices. Brush control methods, which the State Board has approved and which are included in the applicant's approved brush control plan and contract, shall be eligible for cost-share assistance. The brush control area working group shall designate their list of eligible methods from those approved by the State Board.}

{(g) Requirement to file an application. In order to qualify for cost-share assistance, an eligible person, including political subdivisions, shall file an application with the local SWCD.}

{(h) Requirement to develop a brush control plan. In order to qualify for cost-share assistance, an eligible person, including political subdivisions, shall develop a brush control plan. Brush control plans shall meet resource management system requirements on acres planned, as set forth in the FOTG. The State Board may grant an exception to the RMS requirement if it finds an alternate plan adequate.}

{(i) Persons authorized to sign applications and contracts. All applications, contracts, and performance certifications shall be signed by:}

{(1) the eligible person;}

{(2) any person designated to represent the eligible person, provided an appropriate notarized durable power of attorney has been filed with the SWCD office; or}

{(3) the responsible person or administrator, in cases of trusts or estates, provided that letters of administration or letters of testamentary have been submitted to the SWCD in lieu of a power of attorney.}

*§517.31. Approval of Brush Control Methods [Responsibility of Applicants].*

(a) The board shall study and must approve all methods used to control brush under this chapter considering the overall impact of the project.

(b) The board may approve a method for use under the cost-sharing program provided by Chapter 203, Subchapter E, Agriculture Code, if the board finds that the proposed method:

(1) has proven to be an effective and efficient method for controlling brush;

(2) is cost efficient;

(3) will have a beneficial impact on the development of water sources and wildlife habitat;

(4) will maintain topsoil to prevent erosion or silting of any river or stream; and

(5) will allow the revegetation of the area after the brush is removed with plants that are beneficial to stream flows, groundwater levels and livestock and wildlife.

{(a) Applicants shall complete and submit an application form as provided by the State Board;}

{(b) Applicants shall complete a SWCD cooperative agreement if the applicant is not already a SWCD cooperator;}

{(c) Where an applicant does not have an approved brush control plan and has not determined the anticipated total cost of the proposed measure(s), he/she shall obtain a brush control plan approved by the local SWCD.}

{(d) Applicants shall complete, sign, and submit a cost-share contract based on the approved brush control plan to the SWCD along with any amendments to the contract.}

{(e) After being notified of approval, applicants may request technical assistance through the SWCD to design and lay out the approved brush control or request approval of alternate sources of technical assistance.}

{(f) Applicants shall perform the approved brush control or secure any approved contractor(s) needed and all contractual or other agreements necessary to perform the approved brush control. Cost-share will not be allowed for work begun before the application is approved; and}

{(g) Applicants shall supply the documents necessary to verify completion of the approved brush control along with copies of receipts for work to be cost-shared.}

*§517.32. Powers and Duties of SWCD's [Applications for cost-share].*

(a) Each district may administer the aspects of the water supply enhancement program within the jurisdiction of that district.

(b) Each district may accept for transmission to the board applications for cost-sharing under Chapter 203, Subchapter E, Agriculture Code, and may examine and assist the applicant in assembling the application in proper form before the application is submitted to the board.

(c) Before a district submits an application to the board, it shall examine the application to assure that it complies with rules of the board and that it includes all information and exhibits necessary for the board to pass on the application.

(d) At the time that the district examines the application, it shall prepare comments and recommendations relating to the application and the district board may provide comments and recommendations before they are submitted to the board.

(e) After reviewing the application, the district board shall submit to the board the application and the comments and recommendations.

(f) Each district on behalf of the board may inspect and supervise cost-sharing contracts within its jurisdiction in which state money is provided under Chapter 203, Subchapter E, Agriculture Code.

(g) Each district board exercising the duties under subsection (b) of this section shall periodically report to the board relating to this inspection and supervision in the manner provided by board rules.

(h) The board may direct a district to manage any problem that arises under a cost-sharing contract for water supply enhancement in that district and to report to the board.

{(a) A person who desires to participate with the state in a brush control project and to obtain cost-sharing participation by the state shall file an application with the SWCD in the SWCD in which the land on which the project is to be accomplished is located.}

{(b) Applications held in abeyance because of lack of funds. In those cases where funds are not available, the applications will be held by the SWCD until allocated funds become available or until the end of the program year. The SWCD may shift all unfunded applications held in abeyance because of lack of funds that are on hand at the end of a program to the new program year or require all new applications, as it deems appropriate.}

{(c) Applications denied for reasons other than lack of funds. Applications for funds, which are denied by the SWCD directors for

other than lack of funds, shall be retained in the records of the SWCD in accordance with the SWCD's established record retention policy. Written notification of the denial shall be provided to the applicant along with the reason(s) that the application was denied.}]

[(d) Applications withdrawn. An application may be withdrawn by the applicant at any time prior to receipt of cost-share assistance by notifying the SWCD in writing that withdrawal is desired. Applications withdrawn by the applicant shall be retained in the records of the SWCD in accordance with the SWCD's established record retention policy.}]

§517.33. Eligibility for Cost-Share Assistance [Contracts for Cost-share].

(a) Eligible person. Any individual, partnership, administrator for a trust, family-owned corporation or other legal entity who is an owner, lessee, tenant or sharecropper.

(b) Ineligible person.

(1) A person is not eligible to participate in the state brush control program or to receive money from the state brush control program if the person is simultaneously receiving any cost-share money for brush control on the same acreage from a federal government program.

(2) The State Board may grant an exception if the State Board finds that joint participation of the state brush control and any federal brush control program will enhance the efficiency and effectiveness of a project and lessen the state's financial commitment to the project.

(c) Eligible land. To be eligible for cost-share assistance, the land must be within a designated project area and fall into any of the following categories:

(1) land within the state that is privately owned by an eligible person;

(2) land leased by an eligible person over which the applicant has adequate control extending through the term of the contract period and written permission of the landowner; or

(3) land owned by the state, a political subdivision of the state or a nonprofit organization that holds land in trust for the state.

(d) Ineligible lands. Allocated funds shall not be used on land outside of a designated area.

(e) Eligible purposes. Cost-share assistance shall be available only for brush control included in an approved brush control plan and contract and determined to be needed by the local SWCD to conserve water.

(f) Eligible practices. Brush control methods, which the State Board has approved and which are included in the applicant's approved brush control plan and contract, shall be eligible for cost-share assistance.

(g) Requirement to file an application. In order to qualify for cost-share assistance, an eligible person shall file an application with the local SWCD.

[(a) According to the priority of an application, the SWCD shall negotiate a ten-year brush control contract with the successful applicant in the brush control area subject to:}]

[(1) Guidelines established by the State Board.}]

[(2) Development of a brush control plan. As a condition for receipt of cost-share assistance for brush control, the eligible person receiving the benefit of such assistance shall agree to develop a brush control plan.}]

[(3) Signature of a performance agreement. As a condition for receipt of cost-share assistance for brush control, the eligible person receiving the benefit of such assistance shall agree to perform the brush control in accordance with standards established by the State Board and the terms of the cost-share agreement. Completion of the performance agreement and the signature of the eligible person are required prior to payment.}]

[(4) Management of treated areas.}]

[(A) Requirements for follow-up brush control will be included in the cost-share contract with management recommendations outlined in the eligible person's brush control plan. These will be reviewed with the eligible person prior to signature and initiation of the cost-share contract. Requirements for follow-up brush control will be carried out as agreed to in the eligible person's brush control plan.}]

[(B) The SWCD may require refund of any or all of the cost-share paid to an eligible person when acres where brush control was applied has not been managed in compliance with applicable standards and specifications for the practice in accordance with the terms of the cost-share contract as agreed to by the eligible person.}]

[(C) In cases of hardship, death of the participant, or at the time of transfer of ownership of land where brush control has been applied using cost-share assistance and the term of the contract has not expired, the participant, heir(s), or buyer(s) respectively, must agree to properly manage the treated area or the participant, heir(s) or the buyer by agreement with seller must refund all or a portion of the cost-share funds received for the practice as determined by the SWCD. The State Board, on a case-by-case basis in consultation with the SWCD, may grant a waiver to this requirement.}]

[(b) Criteria to consider. In approving a contract for cost sharing, the SWCD, in accordance with criteria established by the brush control area working group, shall consider:}]

[(1) the location of the project;}]

[(2) the method of control that is to be used by the applicant;}]

[(3) the plans for revegetation;}]

[(4) the total cost of the brush control;}]

[(5) the amount of land to be included;}]

[(6) whether the applicant is financially able to provide the applicant's share of the money for the brush control;}]

[(7) the cost-share percentage, if an applicant agrees to a higher degree of financial commitment;}]

[(8) any comments and recommendations submitted by the TDA, TWDB, or TPWD; and}]

[(9) any other pertinent information considered necessary by the SWCD.}]

[(c) Approval of contracts. The SWCD may approve a contract if, after considering the factors listed in §517.33(e) and any other relevant factors, the SWCD finds:}]

[(1) the owner of the land fully agrees to cooperate in the project;}]

[(2) the method of control is a method approved by the brush control area working group; and}]

[(3) the brush control is to be carried out in an area eligible for funding as prioritized under the State Brush Control Plan.}]

[(d) On completion of the negotiations by the SWCD, it shall submit the proposed contract to the State Board for execution.]

[(e) The State Board shall examine the contract and if the State Board finds that the contract meets all the conditions established in this section and the guidelines, it shall execute the contract and provide to the individual on completion of the project the money that constitutes the state's share of the project.]

[(f) Amending contracts.]

[(1) In the event that an adjustment to the estimated cost of brush control is necessitated by the final design, the applicant shall either agree to assume the additional cost or complete and submit an amendment to his/her contract for cost-share to the SWCD for approval or denial by the SWCD.]

[(2) The amount of funds obligated for brush control may be adjusted, provided funds are available and the adjustment is considered a priority according to the brush control area working group priority system.]

[(3) In the event additional funds are not available, the brush control may be redesigned, if possible, to a level commensurate with available funds; provided the redesign still meets standards established by the State Board; or the applicant can agree to assume full financial responsibility for the portion of the cost of brush control in excess of the amount authorized.]

[(g) Audits. It is the policy of the State Board to develop and implement audit guidelines that adequately safeguard assets administered within the purview of this agency in a cost effective manner.]

[(1) All parties to the contract are subject to audit by the State Board and/or SWCD for a period of two years after termination of the contract.]

[(2) The State Board and/or SWCD shall have access to all relevant applicant records, including all records of contractors and/or subcontractors that are pertinent to the contract, for the purpose of verifying compliance of contracts with the provisions of this subchapter and other state requirements. All parties shall maintain copies of performance certifications, contractor billing, and cancelled checks for a period of two years after termination as applicable to each party.]

[(3) The State Board and/or SWCD may withhold funds under this subchapter from applicants found to be in violation of the terms of the contract, this subchapter or other state requirements and may require applicants to reimburse the State Board for funds claimed and received in violation of this subsection or other state requirements.]

[(4) The State Board and/or SWCD may terminate a contract, in whole or in part, or negotiate a contract amendment in the event of a failure to comply with the terms of the contract provided that no such action may be effected unless the applicant is given not less than ten days written notice (delivered by certified mail, return receipt requested).]

[(A) Upon receipt of a termination action, applicant will promptly discontinue all services affected, and deliver all materials and deliverables as may have been accumulated by applicant in performing this contract whether completed or in the process.]

[(B) If the State Board terminates this contract then, without prejudice to any other right or remedy of the State Board, applicant will be reimbursed for actual incurred costs that are allowable and eligible limited to the total maximum amount of the contract.]

§517.34. Limit on Cost-Sharing Participation [Payment to Recipients].

(a) Not more than 70 percent of the total cost of a single cost-sharing contract may be made available as the state's share in cost-sharing.

(b) A person is not eligible to participate in or to receive money from the state water supply enhancement program if the person is simultaneously receiving any cost-share money for brush control on the same acreage from the federal government.

(c) The board may grant an exception to subsection (b) of this section if the board finds that joint participation of the state water supply enhancement program and any federal brush control program will:

(1) enhance the efficiency and effectiveness of the water supply enhancement program;

(2) lessen the state's financial commitment to the person receiving money from the water supply enhancement program through a cost-sharing contract; and

(3) not exceed 80 percent of the total cost of the cost-sharing contract.

(d) A political subdivision of this state is eligible for cost-sharing under the water supply enhancement program, provided that the state's share may not exceed 50 percent of the total cost of a single cost-sharing contract.

(e) Notwithstanding any other provision of this section, 100 percent of the total cost of a single cost-sharing contract on public lands may be made available as the state's share in cost-sharing.

[(a) The SWCD shall determine eligibility of the applicant to receive payment of cost-share assistance, and provide certification to the State Board that measure(s) have been installed consistent with the FOTG.]

[(b) Upon satisfactory receipt of performance certifications, invoices, and other required documentation the State Board shall cause payment for cost-share assistance to be issued to the applicant.]

[(e) Partial payment can be requested for brush control methods completed on identifiable land units as they are completed, provided required management can be applied.]

[(d) State money may not be provided in advance for work remaining to be done.]

§517.35. Contract for Cost-Sharing [Determining status of brush control during transfer of land ownership]

(a) On approval of an application for cost-sharing by the board, the board or the governing board of the designated SWCD board shall negotiate cost-sharing contracts with the successful applicants in the project territory.

(b) The board or the designated SWCD board shall negotiate a contract with the successful applicant subject to:

(1) the conditions established by the board in approving the application;

(2) any specified instructions provided by the board; and

(3) board rules.

(c) On completion of the negotiations by the SWCD board, it shall submit the proposed contract to the board for approval.

(d) The board shall examine the contract and if the board finds that the contract meets all the conditions of the board's resolution, instructions and rules it shall approve the contract and provide to the individual on faithful performance of the terms of the contract the money that constitutes the state's share of the project.



(e) The board may develop guidelines to allow partial payment of the state's share of a cost-sharing contract as certain portions or percentages of contracted work are completed, but the state money may not be provided in advance for work remaining to be done.

[(a) A seller of agricultural land with respect to which a performance agreement is in effect may request the SWCD to inspect the practice. If the practice has been properly managed the SWCD shall issue a written statement that the seller has satisfactorily managed the treated area as of the date of the statement.]

[(b) The buyer of lands covered by a performance agreement may also request that the SWCD inspect the lands to determine whether the treated area has been properly managed as of the date of the inspection. If so, the SWCD will provide the buyer with a statement specifying the extent of compliance or noncompliance as of the date of the statement.]

[(e) The seller and the buyer, if known, shall be given notice of the time of inspection so that they may be present during the inspection to express their views as to compliance.]

§517.36. Water Supply Enhancement Plans [Reporting and Accounting].

(a) The board shall consult with each successful applicant for a cost-sharing contract to create a 10-year plan for the land that is subject to the contract to enhance the water supply in the area. [The State Board shall receive and maintain required reports showing the unobligated balance of funds for each brush control area as shown on each ledger at the close of the last day of each month.]

(b) A plan created under this section must include:

(1) provisions for brush control or other water supply enhancement activities;

(2) a provision for follow-up brush control;

(3) a provision requiring the landowner to limit the average brush coverage on the land that is subject to the contract to not more than five percent throughout the course of the 10-year plan; and

(4) periodic dates throughout the course of the 10-year plan on which the board will inspect the status of brush control on the land that is subject to the contract.

(c) Signature of a performance agreement. As a condition for receipt of cost-share assistance for brush control, the eligible person receiving the benefit of such assistance shall agree to perform the brush control in accordance with standards established by the State Board and the terms of the cost-share agreement. Completion of the performance agreement and the signature of the eligible person are required prior to payment.

(d) The SWCD may require refund of any or all of the cost-share paid to an eligible person when acres where brush control was applied has not been managed in compliance with applicable standards and specifications for the practice in accordance with the terms of the cost-share contract as agreed to by the eligible person.

(e) In cases of hardship, death of the participant or at the time of transfer of ownership of land where brush control has been applied using cost-share assistance and terms of the contract has not expired, the participant, heir(s) or buyer(s) respectively, must agree to properly manage the treated area or the participant, heir(s), or the buyer(s) by agreement with the seller must refund all or a portion of the cost-share funds received for the practice as determined by the SWCD. The State Board, on a case-by-case basis, in consultation with the SWCD, may grant a waiver to this requirement.

§517.37. Consultation [with Other Agencies].

The State Soil and Water Conservation Board shall consult with:

(1) [(a)] The [State Board shall consult with the] Texas Parks and Wildlife Department (TPWD) in regard to the effects of the water supply enhancement program on fish and wildlife; [; the Texas Water Development Board and the Texas Department of Agriculture as set forth in §203-016, Agriculture Code.]

(2) [(b)] The [Texas Parks and Wildlife Department, the] Texas Water Development Board in regard to the effects of the water supply enhancement program on water supply; and[; the Texas Department of Agriculture and other agricultural interests in the affected area shall be notified of all critical area working group meetings. The TPWD will provide technical assistance to the critical area working group in the development and implementation of the brush control plans.]

(3) The Texas Department of Agriculture in regard to the effects of the water supply enhancement program on agriculture.

[(e) Comments and recommendations from the TPWD shall be considered when passing on applications for cost-share.]

[(d) Applicants shall be notified that the TPWD provides free technical guidance to landowners regarding the management of wildlife resources and habitats on their lands.]

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 February 3, 2012.

TRD-201200564

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Earliest possible date of adoption: March 18, 2012

For further information, please call: (254) 773-2250 x252



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 13. TEXAS COMMISSION ON FIRE PROTECTION**

#### **CHAPTER 421. STANDARDS FOR CERTIFICATION**

##### **37 TAC §421.9**

The Texas Commission on Fire Protection (the Commission) proposes an amendment to Chapter 421, Standards for Certification, concerning §421.9, Designation of Fire Protection Duties.

The purpose of the proposed amendment is to require regulated entities to report the appointment of an individual to a certain discipline if it is part of their regularly assigned duties. It also informs the regulated entities that the report is to be submitted through the Commission's new online management program.

Don Wilson, Executive Director, has determined that for each year of the first five-year period the proposed amendment is in effect, there will be no fiscal impact on state or local governments.

Mr. Wilson has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit from the passage is that it will assure that individuals are properly assigned to the discipline in which they are working. It will also enhance and streamline the reporting mechanism for regulated entities when reporting the various appointments of personnel to the various disciplines. There will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to [info@tcfp.texas.gov](mailto:info@tcfp.texas.gov). Comments will be reviewed and discussed at a future Commission meeting.

The amendment is proposed under Texas Government Code, Chapter 419, §419.008, which provides the Commission the authority to propose rules for the administration of its powers and duties; §419.022, which provides the Commission the authority to establish minimum training standards for admission to employment as fire protection personnel; and §419.032, which provides the Commission the authority to propose rules to establish qualifications for fire protection personnel.

The proposed amendment implements Texas Government Code §§419.008, 419.022, and 419.032.

§421.9. *Designation of Fire Protection Duties.*

(a) An individual who performs one or more fire protection duties, listed in the Texas Government Code, §419.021(3)(C), for a fire department of local government entity shall be designated to only one of the following categories:

- (1) fire protection personnel;
- (2) a part-time fire protection employee; or
- (3) a volunteer fire fighter or other auxiliary fire fighter.

(b) A fire department regulated by the Commission may not designate the same person under more than one category under this section. The designation shall be made on the records of the department and the designation shall be made available for inspection by the Commission or sent to the Commission on request.

(c) A fire department regulated by the Commission shall report the appointment of [submit on the proper form a request to appoint] fire protection personnel [or part-time fire protection employees] to a regulated discipline via the Commission's online management program, or the appropriate form if available. Fire protection personnel who are assigned to a regulated discipline as part of their regularly assigned duties shall be appointed to that discipline with the Commission. No individual may be appointed to a discipline without approval by the Commission. The Commission shall not approve an initial appointment to a regulated discipline until it has reviewed and approved a person's fingerprint-based criminal history record. Termination of fire protection personnel or part-time fire protection employees shall be reported to the Commission via the Commission's online management program, or the appropriate form if available [on the Removal from Appointment form] within 14 calendar days of the action. In the case of termination, the employing entity shall report an individual's last known home address to the Commission. A Removal from Appointment form may be submitted without the employee's signature.

(d) A fire department may not in a calendar year compensate, reimburse, or provide benefits to a person the department has desig-

nated as a volunteer or other auxiliary fire fighter in an amount that is equal to or more than what a person receives working 2,080 hours at the federal minimum wage.

(e) A person certified as fire protection personnel in one fire department may be employed and designated as a part-time fire protection employee in another fire department without additional certification as a part-time fire protection employee.

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 February 1, 2012.

TRD-201200518

Don Wilson

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 936-3813



## CHAPTER 435. FIRE FIGHTER SAFETY

### 37 TAC §435.1

The Texas Commission on Fire Protection (the Commission) proposes an amendment to Chapter 435, Fire Fighter Safety, concerning §435.1, Protective Clothing.

The purpose of the proposed amendment is to delete obsolete language contained in subsections (b) and (c) which is necessary due to the language being superseded by the adoption of the National Fire Protection Association standard 1851.

Don Wilson, Executive Director, has determined that for each year of the first five-year period the proposed amendment is in effect, there will be no fiscal impact on state or local governments.

Mr. Wilson has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit from the passage is that it will provide a clear and concise set of Commission rules. There will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to [info@tcfp.texas.gov](mailto:info@tcfp.texas.gov). Comments will be reviewed and discussed at a future Commission meeting.

The amendment is proposed under Texas Government Code, Chapter 419, §419.008, which provides the Commission the authority to propose rules for the administration of its powers and duties; §419.0082, which provides the Commission rulemaking authority; §419.040, which provides the Commission the authority to require fire departments to provide a complete ensemble of appropriate protective clothing for its fire protection personnel; and §419.043, which provides the commission the authority to require that all protective clothing meet applicable standards of the National Fire Protection Association.

The proposed amendment implements Texas Government Code §§419.008, 419.0082, 419.040, and 419.043.

§435.1. *Protective Clothing.*

[(a)] A regulated fire department shall:

(1) purchase, provide, and maintain a complete set of protective clothing for all fire protection personnel who would be exposed to hazardous conditions from fire or other emergencies or where the potential for such exposure exists. A complete set of protective clothing shall consist of garments including bunker coats, bunker pants, boots, gloves, helmets, and protective hoods, worn by fire protection personnel in the course of performing fire-fighting operations;

(2) ensure that all protective clothing which are used by fire protection personnel assigned to fire suppression duties comply with the minimum standards of the National Fire Protection Association suitable for the tasks the individual is expected to perform. The National Fire Protection Association standard applicable to protective clothing is the standard in effect at the time the entity contracts for new, rebuilt, or used protective clothing; and

(3) maintain and provide upon request by the Commission, a departmental standard operating procedure regarding the use, selection, care, and maintenance of protective clothing which complies with NFPA 1851, Standard on Selection, Care, and Maintenance of Structural Fire Fighting Protective Ensembles.

[(b) An entity may continue to use protective clothing in use or contracted for before a change in the National Fire Protection Association standard, unless the Commission determines that the protective clothing constitutes an undue risk to the wearer, in which case the Commission shall order that the use be discontinued and shall set an appropriate date for compliance with the revised standard.]

[(c) Protective clothing in use or contracted for prior to January 1, 2002, shall be exempted from the record keeping requirements contained in Section 2.3, Records, of NFPA 1851.]

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 February 1, 2012.

TRD-201200519

Don Wilson

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 936-3813



**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**PART 15. TEXAS VETERANS COMMISSION**

**CHAPTER 452. ADMINISTRATION GENERAL PROVISIONS**

**40 TAC §452.2**

The Texas Veterans Commission (commission) proposes to amend §452.2 relating to Advisory Committees, which is located in Title 40, Part 15 of the Texas Administrative Code.

**PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

**PART II. EXPLANATION OF SECTION**

**PART III. IMPACT STATEMENTS**

**PART IV. COORDINATION ACTIVITIES**

**PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

The purpose of the proposed amendment is to add new §452.2(e) to create a new advisory committee, the Veterans County Service Officer Advisory Committee. It is the mission of the Texas Veterans Commission to provide superior service through the agency programs of claims assistance, employment services, education, and grants to significantly improve the quality of life of Texas veterans and their families. It is the role of the agency's advisory committees to advise and make recommendations to the commission on its programs, rules and policies affecting the delivery of service to veterans and their families. This proposed rule amendment meets this mission by implementing a new advisory committee focused on the critical relationship between the Veterans County Service Officers and the Texas Veterans Commission relating to the support and training of Veterans County Service Officers, as well as strengthening the statewide network of services being provided to veterans.

The proposed amendment is authorized under Texas Government Code §434.010, granting the commission the authority to establish rules, and Texas Government Code §434.0101, granting the commission the authority to establish rules governing the agency's advisory committees.

**PART II. EXPLANATION OF SECTION**

**§452.2. Advisory Committees.**

This section sets out the authorization of the agency to establish advisory committees. It outlines the purpose, role and goals of the agency's advisory committees and establishes the requirements and responsibilities of the advisory committees and their members. The commission proposes adding §452.2(e) to create a new advisory committee for Veterans County Service Officers.

**PART III. IMPACT STATEMENTS**

Irma Rodriguez, Chief Financial Officer, Texas Veterans Commission, has determined that for each year of the first five years the rule will be in effect, the following statements will apply:

There will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the proposed amended rule.

There are no anticipated economic costs to persons required to comply with the proposed amended rule.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amended rule will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Shawn Deabay, Director, Veterans Employment Services, Texas Veterans Commission, has determined that there is no significant negative impact upon employment conditions in the state as a result of the proposed amended rule.

H. Karen Fastenau, General Counsel, Texas Veterans Commission, has determined that for each year of the first five years the rule is in effect, the public benefit anticipated will be that the amended rule will improve the agency's ability to meet the needs of more Texas veterans and their families.

#### PART IV. COORDINATION ACTIVITIES

Comments on the proposed amended rule may be submitted to Texas Veterans Commission, Attn: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 463-3288; or emailed to [karen.fastenau@tvc.state.tx.us](mailto:karen.fastenau@tvc.state.tx.us). For comments submitted electronically, please include "Advisory Committee Rule" in the subject line. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The amended rule is proposed under Texas Government Code §434.010 and §434.0101, which provide the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency, and for governing the agency's advisory committees.

No other statutes, articles or codes are affected by this proposed amended rule.

##### §452.2. *Advisory Committees.*

(a) The commission may establish advisory committees in accordance with Texas Government Code, Chapter 2110. The following shall apply to each advisory committee:

(1) Agency role. The Executive Director may direct one or more staff members of the agency to assist each advisory committee. These positions shall be non-voting.

(2) Committee size and appointment of members. Each advisory committee shall be composed of nine members appointed by the commission. Members of each committee serve at the pleasure of the commission, and may be removed from a committee by a majority vote of the commission.

(3) Committee chair. The chair of each advisory committee is designated by and serves at the pleasure of the commission. The committee chair determines the agenda for each meeting.

(4) Conditions of membership.

(A) Terms of service. The term of office for each member appointed by the commission shall be staggered for a two-year term. In the event that a member appointed by the commission cannot complete his or her term, or is removed by the commission, the commission shall appoint a qualified replacement to serve the remainder of the term.

(B) Participation. Participation on an advisory committee is voluntary.

(C) Compensation. Advisory committee members appointed by the commission shall serve without compensation. Travel reimbursement and per diem incurred in the performance of official duties will be paid only if authorized by the Texas Legislature in the General Appropriations Act.

(5) Training. Each committee member shall receive initial training to ensure compliance with the Open Meetings Act. Training should also include an overview of the agency's mission and organizational structure, the overall purpose or goals of the committee, as well as other information that will assist members accomplish committee goals.

(6) Responsibilities. Each advisory committee will review issues and provide advice to the commission, as charged by the commission.

(7) Meetings. Each advisory committee shall meet at least quarterly unless otherwise directed by the commission. Advisory committee meetings may be conducted by telephone conference. Each advisory committee shall be subject to meeting at the call of the committee chair or designee. A quorum shall consist of a majority of the committee membership. The committees shall comply with Open Meetings requirements as provided in Texas Government Code, Chapter 551.

(8) Reports. The committee chair or designee of each advisory committee shall regularly report to the commission regarding its activities and recommendations, and, when requested by the commission, shall file with the commission a report containing:

(A) the minutes of meetings;

(B) a memo summarizing the meetings; and

(C) a list of the committee's recommendations, if any.

(9) Evaluation and duration. Each advisory committee shall remain in existence as long as deemed necessary by the commission based on a regular evaluation of the continuing need for each advisory committee. The Executive Director or staff may assist with this evaluation at the direction of the commission.

(b) Veterans Employment and Training Advisory Committee.

(1) Purpose. The purpose of the Veterans Employment and Training Advisory Committee is to seek the input of employers to better assist veterans in gaining successful employment and/or training.

(2) Committee member qualifications. Members may include individuals who are recognized authorities in the fields of business, employment, training, rehabilitation or labor or are nominated by veterans' organizations that have a national employment program.

(c) Fund for Veterans' Assistance Advisory Committee.

(1) Purpose. The purpose of the Fund for Veterans' Assistance Advisory Committee is to evaluate grant applications and make recommendations to the commission.

(2) Committee member qualifications. Members may include representatives from veterans' organizations, non-profit or philanthropic organizations, veterans or family members of veterans, and other individuals with the experience and knowledge to assist the committee with achievement of its purpose.

(3) Meetings. The Fund for Veterans' Assistance Advisory Committee shall meet as needed to make grant recommendations to the commission.

(d) Veterans Communication Advisory Committee.

(1) Purpose. The purpose of the Veterans Communication Advisory Committee is to develop recommendations to improve communications with veterans, their families, and the general public regarding the services provided by the Texas Veterans Commission and information on benefits and assistance available to veterans from federal, state, and private entities.

(2) Committee member qualifications. Members may include representatives from the communications industry, state agencies, the Texas National Guard, U.S. Armed Forces reserve components, and other individuals with the experience and knowledge to assist the committee with achievement of its purpose.

(e) Veterans County Service Officer Advisory Committee.

(1) Purpose. The purpose of the Veterans County Service Officer Advisory Committee is to develop recommendations to improve the support and training of Veterans County Service Officers and to increase coordination between Veterans County Service Officers and the Texas Veterans Commission related to the statewide network of services being provided to veterans.

(2) Committee member qualifications. The majority of members shall be current, former, or retired Veterans County Service Officers, but may also include representatives from veterans' organizations or other individuals with the experience and knowledge to assist the committee with achievement of its purpose.

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 February 3, 2012.

TRD-201200568

H. Karen Fastenau

General Counsel

Texas Veterans Commission

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 463-1981



## PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

### CHAPTER 700. CHILD PROTECTIVE SERVICES

#### SUBCHAPTER A. ADMINISTRATION

##### 40 TAC §700.108

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §700.108, concerning waiver provision for implementation of foster care redesign, in its chapter governing Child Protective Services. As directed by the 82nd Legislature in Section 11 of Senate Bill 218, and in Rider 25, Article II-42, House Bill 1 (the General Appropriations Act), DFPS is in the process of implementing the initial phase of a redesign of the Foster Care System, as outlined in a January 2011 report submitted to the Legislature entitled "Improving Child and Youth Placement Outcomes: A System Redesign". This initiative, referred to herein as "Foster Care Redesign", will change the way DFPS procures, contracts with, and reimburses providers of foster care and related services. The rules in this chapter were developed to support the current model of procuring, paying, and contracting for foster care and related services. Some of these rules will require modification to support the Foster Care Redesign system. However, it is not possible to identify and adjust all rules to support both the evolving new system and the concurrent operation of the old system during the multi-year transition. Accordingly, to address DFPS's need for maximum flexibility throughout the transition, DFPS is proposing new §700.108 to give the Commissioner of the Department of Family and Protective Services, or that person's designee, authority to waive any rule provision in Chapter 700 that does not accurately describe or support the new system design model, provided such waiver does not result in a violation of other state or

federal laws. Following final statewide implementation of Foster Care Redesign, DFPS will amend its rules to reflect the fully redesigned system.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has 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 will be that DFPS will have maximum flexibility to implement Foster Care Redesign, within the limits of state and federal law. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

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

Questions about the content of the proposal may be directed to Kaysie Reinhardt at (512) 438-5112 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-454, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register*.

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements Human Resources Code §40.002 and Family Code §264.007, which designate the department as the state agency with primary responsibility for operating a child protection program, and Section 11 of Senate Bill 218 of the 82nd Legislature, Regular Session, 2011, and Rider 25, Article II-42, House Bill 1 (the General Appropriations Act), which directs the department to implement Foster Care Redesign.

§700.108. Waiver Provision for Implementation of Foster Care Redesign.

(a) As used in this section, the term "Foster Care Redesign" means the initiative for the redesign of the foster care system to meet the goals set forth in the January 2011 report titled "Improving Child and Youth Placement Outcomes: A System Redesign," which the Department of Family and Protective Services (DFPS) was directed to implement by the 82nd Texas Legislature, pursuant to Senate Bill 218 (Acts 2011, 82nd R.S., ch. 598, §11, eff. Sept. 1, 2011).

(b) Notwithstanding any other provision in this chapter, to the extent necessary for the implementation of Foster Care Redesign,

DFPS may waive a provision in any section in this chapter as provided under subsection (c) of this section.

(c) The waiver of any rule provision contained in this chapter must be approved by the Commissioner of the Department of Family and Protective Services, or that person's designee, after consultation with agency legal counsel to ensure that the waiver does not conflict with other state or federal law.

(d) Nothing in this section shall be construed to authorize DFPS to waive a provision of any section in this chapter if such waiver violates other state or federal law.

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 February 1, 2012.

TRD-201200503

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 438-3437



## CHAPTER 700. CHILD PROTECTIVE SERVICES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §700.850 and §700.1043, concerning How do I get reimbursement of nonrecurring expenses? and How and when is a permanent custodian reimbursed for the costs of the nonrecurring expenses associated with obtaining managing conservatorship and how are these expenses calculated?, in its chapter governing Child Protective Services. The purpose of the amendments is to reduce the maximum amount of reimbursement that may be paid for nonrecurring adoption expenses and nonrecurring permanency care assistance (PCA) expenses to \$1,200 per child. Currently, a person who adopts a child who is the subject of an adoption assistance agreement may be reimbursed up to \$1,500 for the reasonable and necessary nonrecurring expenses associated with the adoption of the child. Currently, a person who obtains permanent managing conservatorship of a child who is the subject of a PCA agreement may be reimbursed up to \$2,000 for the reasonable and necessary expenses associated with obtaining conservatorship of the child. Expenses that can be reimbursed under both programs include legal fees, court costs, costs for home studies and health and psychological examinations, and reasonable costs for lodging, food, and transportation in order to attend court hearings associated with the adoption or award of managing conservatorship.

The proposed amendment to §700.850 is necessary to ensure that DFPS does not exceed amounts appropriated for the purpose of nonrecurring adoption expenses under the General Appropriations Act for the 2012-2013 fiscal biennium (House Bill 1, 82nd Legislature, Regular Session), as explained in greater detail in the fiscal impact portion of this preamble. Further, by making the maximum reimbursable amounts for nonrecurring expenses consistent between the adoption assistance and PCA

programs (also see proposed changes to §700.1043), DFPS will achieve greater consistency between the two programs and will remove a potential monetary disincentive to choosing adoption of a child over permanent managing conservatorship of a child when both options are legally viable. The proposed effective date for these rules is June 1, 2012; however, the reduced amounts will be applicable to adoption assistance and permanency care assistance agreements signed on or after August 1, 2012. The delayed implementation date for the reduced amount will allow staff a two-month interval following the effective date of the new rules in which to convey this new information to families in the process of negotiating an adoption assistance or PCA agreement.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be a decrease in both State and Federal funds, in comparison to what would be spent on reimbursements for nonrecurring adoption expenses without any change to §700.850. Because the effective date for the rule falls within a fiscal year, the projection is provided by fiscal year for the fiscal year in which the rule takes effect, and for each of the next five fiscal years after the rule takes effect. The projected decrease in funds expended for nonrecurring adoption assistance in each of the six fiscal years that this rule will be in effect, is as follows: \$136,740 in fiscal year (FY) 2012 (including \$68,370 in savings to state funds); \$1,380,138 in FY 2013 (including \$690,069 in state funds); \$1,413,106 in FY 2014 (including \$706,553 in state funds); \$1,471,915 in FY 2015 (including \$735,598 in state funds); \$1,501,353 in FY 2016 (including \$750,677 in state funds); and \$1,501,353 in FY 2017 (including \$750,677 in state funds). The decreased expenditures in the FY 2012 - 2013 biennium are necessary to ensure compliance with HB 1, 82nd Legislature, Regular Session (the Appropriations Act), including Rider 31, Article II-43, H.B. 1. Rider 31 provides that from the amounts appropriated under Strategy B.1.12, Adoption Assistance and Permanency Care Assistance, DFPS may spend no more than \$6,146,790 in FY 2012 and \$6,146,790 in FY 2013, on nonrecurring adoption expenses without prior approval of the Legislative Budget Board and Governor. Further, Rider 31 directs that any request to spend amounts in excess of those listed in Rider 31 include a detailed explanation of the need for additional funding and the steps that have been taken by DFPS to address the need without exceeding the amounts appropriated. The changes to §700.850 are a necessary step to ensure that DFPS does not spend more than the appropriated amounts set forth in Rider 31. With regard to the change to §700.1043, there is no expense history for nonrecurring reimbursement contained in the PCA program due to the relative newness of this program. As a result, the savings associated with this section are unknown. There will be no implications for local government as a result of enforcing or administering the sections.

Ms. Brown also has 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 sections will be that DFPS does not exceed its budget allocation, consistent with legislative appropriations and intent. Further, by making the maximum reimbursable amounts for nonrecurring expenses consistent in both the adoption assistance and PCA programs, the rule amendments will serve to ensure that families have no financial incentive to choose permanent managing conservatorship over adoption for children who are legally eligible for adoption. This is an important public benefit because adoption is a more favorable

permanency outcome for most children. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. The rules will have a potential fiscal impact to persons whose nonrecurring expenses associated with adopting a child or obtaining conservatorship of a child exceed the new maximum reimbursable amounts. The potential impact is a maximum loss of \$300 per child who is the subject of an adoption assistance agreement and a maximum loss of \$800 per child who is the subject of a PCA agreement.

HHSC 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 §2007.043, Government Code.

Questions about the content of the proposal may be directed to Audrey L. Jackson at (512) 438-4136 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-450, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register*.

## SUBCHAPTER H. ADOPTION ASSISTANCE PROGRAM

### DIVISION 3. APPLICATION PROCESS, AGREEMENTS, AND BENEFITS

#### 40 TAC §700.850

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Family Code §162.304, which directs the Department to enter into adoption assistance agreements for eligible children and provides that the "need for and amounts of the subsidy shall be determined by the department under its rules."

§700.850. *How do I get reimbursement of nonrecurring expenses?*

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

(d) You must submit your receipts or other proof of payment, such as cancelled checks, and a certified copy of the Decree of Adoption. You are reimbursed only for expenses actually incurred that are not reimbursable by a third party. For adoption assistance agreements signed prior to August 1, 2012, the [The] maximum amount that you can receive as reimbursement for nonrecurring expenses is \$1500 per child. For adoption assistance agreements signed on or after August 1, 2012, the maximum amount that you can receive as reimbursement for nonrecurring expenses is \$1200 per child.

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 February 1, 2012.

TRD-201200501

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: March 18, 2012

For further information, please call: (512) 438-3437



## SUBCHAPTER J. ASSISTANCE PROGRAMS FOR RELATIVES AND OTHER CAREGIVERS

### DIVISION 2. PERMANENCY CARE ASSISTANCE PROGRAM

#### 40 TAC §700.1043

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Family Code §264.853, which directs the HHSC executive commissioner to adopt rules necessary to implement the PCA program.

§700.1043. *How and when is a permanent custodian reimbursed for the costs of the nonrecurring [~~non-recurring~~] expenses associated with obtaining managing conservatorship and how are these expenses calculated?*

(a) - (d) (No change.)

(e) For permanency care agreements signed prior to August 1, 2012, the [The] maximum amount that you may be reimbursed for nonrecurring expenses is \$2,000 per child covered by a permanency care agreement. For permanency care agreements signed on or after August 1, 2012, the maximum amount that you may be reimbursed for nonrecurring expenses is \$1,200 per child covered by a permanency care agreement.

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 February 1, 2012.

TRD-201200502

Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Earliest possible date of adoption: March 18, 2012  
For further information, please call: (512) 438-3437





# 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 13. CULTURAL RESOURCES

### PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

#### CHAPTER 6. STATE RECORDS

##### SUBCHAPTER A. RECORDS RETENTION SCHEDULING

###### 13 TAC §6.10

The Texas State Library and Archives Commission withdraws the proposed amendment to §6.10 which appeared in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6407).

Filed with the Office of the Secretary of State on February 3, 2012.

TRD-201200559  
Edward Seidenberg  
Deputy Director  
Texas State Library and Archives Commission  
Effective date: February 3, 2012  
For further information, please call: (512) 463-5459



#### CHAPTER 7. LOCAL RECORDS

##### SUBCHAPTER D. RECORDS RETENTION SCHEDULES

###### 13 TAC §7.125

The Texas State Library and Archives Commission withdraws the proposed amendment to §7.125 which appeared in the

September 30, 2011, issue of the *Texas Register* (36 TexReg 6408).

Filed with the Office of the Secretary of State on February 3, 2012.

TRD-201200558  
Edward Seidenberg  
Deputy Director  
Texas State Library and Archives Commission  
Effective date: February 3, 2012  
For further information, please call: (512) 463-5459



##### SUBCHAPTER F. RECORDS STORAGE STANDARDS

###### 13 TAC §§7.161 - 7.166

The Texas State Library and Archives Commission withdraws the proposed new §§7.161 - 7.166 which appeared in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7455).

Filed with the Office of the Secretary of State on February 3, 2012.

TRD-201200560  
Edward Seidenberg  
Deputy Director  
Texas State Library and Archives Commission  
Effective date: February 3, 2012  
For further information, please call: (512) 463-5459



# 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 F. PHARMACY SERVICES DIVISION 4. LIMITATIONS

###### 1 TAC §354.1865

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §354.1865, concerning the number-of-prescriptions limit for eligible Medicaid recipients, without changes to the proposal as published in the December 2, 2011, issue of the *Texas Register* (36 TexReg 8124) and will not be republished.

###### Background and Justification

HHSC is repealing the rule as the information is obsolete. The rule language indicates that the number of prescriptions for which a Medicaid recipient is eligible is included on the recipient's medical care (Medicaid) identification card; however, this information has not been included on the card for several years. The Uniform Managed Care Manual for providers and the "Your Health Care Guide" for recipients will include information about the Medicaid prescription drug benefit and contact information for questions. Adults enrolled in Medicaid fee-for-service are the only clients who currently are limited to a certain number of prescriptions.

###### Comments

The 30-day comment period ended January 1, 2012. During this period, HHSC did not receive comments regarding the proposed repeal.

The repeal is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority 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 February 2, 2012.

TRD-201200522

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: February 22, 2012

Proposal publication date: December 2, 2011

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

## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 28. TEXAS AGRICULTURAL FINANCE AUTHORITY

##### SUBCHAPTER C. AGRICULTURAL LOAN GUARANTEE PROGRAM

###### 4 TAC §28.24

The Texas Department of Agriculture (department), on behalf of the Texas Agricultural Finance Authority (Authority), adopts amendments to §28.24, concerning requirements for participation in the Authority's Agricultural Loan Guarantee (ALG) Program, without changes to the proposed text as published in the August 19, 2011, issue of the *Texas Register* (36 TexReg 5170).

The amendment is adopted to allow business entities and agricultural cooperatives to qualify for assistance under the ALG program. The amendment expands the ALG program by allowing business entities and agricultural cooperatives to participate in the program.

No comments were received on the proposal.

The amendment is adopted under §58.023(a) of the Agriculture Code, which requires the Authority by rule to adopt rules to establish criteria for determining which eligible agricultural businesses may participate in programs that may be established by the board.

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 February 3, 2012.

TRD-201200563

◆ ◆ ◆  
**PART 2. TEXAS ANIMAL HEALTH  
COMMISSION**

**CHAPTER 33. FEES**

**4 TAC §33.4**

The Texas Animal Health Commission (Commission) adopts new §33.4, concerning Laboratory Fees, with changes to the proposed text as published in the October 7, 2011, issue of the *Texas Register* (36 TexReg 6590). The rule will be republished.

The new section is for the purpose of assessing fees related to testing performed by the State-Federal Laboratory System in Texas, which is operated by the Commission.

The Commission operates two regional veterinary diagnostic reference laboratories for Brucellosis testing. There were previously four laboratories which operated in Lubbock, Palestine, Fort Worth and Austin, but Palestine and Lubbock were closed on August 1, 2011. Effective August 1, 2011, government subsidized Brucellosis testing at all Texas livestock markets was discontinued due to a lack of funding available to help subsidize future testing. The Commission no longer enforces the requirement that all test eligible (adult) cattle be Brucellosis tested for a change of ownership within Texas and is currently in the rule-making process to formally change the requirement.

Approximately half of the livestock markets in Texas, however, have indicated that they intend to continue testing all or some of the adult cattle sold through their markets. Commission officials strongly encourage voluntary testing of Texas cattle to remain vigilant in keeping Texas Brucellosis free. It is imperative to remember that Brucellosis was found in two cattle herds in Texas earlier this year. Further, approximately 25 card positive (usually false positive) animals per month are detected throughout Texas markets.

There were several legislative bills introduced during the 82nd Texas Legislative Session which all contained specific fee authorization language for the Commission. House Bill 1992 was passed and enacted into law which provides the Commission with the full and necessary authority to assess any appropriate and equitable fee for the different types of services or actions provided to the various agricultural animal industries. This legislation was necessary as a result of the current Legislative Budget Board recommendation to fundamentally change the agency funding structure from primarily General Revenue sourced funding to a partial fee-for-services funding model. The change will require the Commission to generate new revenue streams through fees for up to approximately 50% of future budgets to maintain all essential services. The Commission will now assess a fee for the services being provided by the Laboratories in order to cover the costs associated with the testing. Testing will be performed at one of the two Commission State-Federal Laboratories located in Fort Worth and Austin.

The Commission labs seek to provide economical, convenient, and timely laboratory services. The state lab fees are inclusive of lab analysis, interpretation, consultation if needed, specimen maintenance, and record retention maintenance. Each diagnostic procedure provided by the Commission labs has been cost-accounted based on the total expense of labor required to perform the test and the cost of reagents, consumables, and overhead. Testing for USDA/APHIS slaughter surveillance regulatory program diseases and foreign animal disease investigations is not subject to charge.

The Commission received one comment. Texas Farm Bureau (TFB) expressed disappointment that current budget constraints have resorted to the agency needing to assess fees. TFB's current policy prevents it from supporting the agency's fee structure, but indicated a willingness to work with the Commission and the Texas Legislature to reinstate adequate funding.

**STATUTORY AUTHORITY**

The new section is adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. Under §161.060, "[t]he commission may charge a fee, as provided by commission rule, for an inspection made by the commission". During the 82nd Texas Legislative Session, House Bill 1992 was passed which provides the Commission with broader based fee assessment authority. HB 1992 amends §161.060 which will allow the Commission to set and collect a fee for most services provided, including: 1) inspecting animals or facilities; 2) obtaining samples from animals for disease diagnostic test; 3) testing animals for disease; 4) disease prevention, control/eradication and treatment efforts; 5) services related to the transport of livestock; 6) control and eradication of ticks and other pests; and 7) any other service for which the Commission may incur a cost.

The Commission is also vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061.

As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. Pursuant to §161.054, the Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.048. A person is presumed to control the animal if the person is the owner or lessee of the pen, pasture, or other place in which the animal is located and has control of that place; or exercises care or control over the animal. That is under §161.002.

*§33.4. Laboratory Fees.*

(a) Any test request must be submitted to the Commission on a form approved by the Commission with all the required fields completed. In order to run any test you must have a valid account.

(b) When faxed reporting of test results is requested, an additional \$1.00 charge shall be added to the invoice.

(c) An accession (processing) fee of \$5.00 for tests will be charged for each accession number assigned. This fee is for each accession/case number assigned, not each specimen submitted.

(d) Expedited processing may be provided for an additional fee of \$25.00 upon approval of the Director of Labs or State Epidemiologist.

(e) Full payment is due 30 days from the date of invoice for all lab services. Test results may be withheld if an account is not paid in full in a timely manner.

(f) The Fee Schedule is as follows for Test Services:

(1) Brucellosis Testing:

- (A) RAP Test - \$1.50
- (B) CARD - \$2.00
- (C) Rivanol - \$4.00
- (D) BAPA - \$2.00
- (E) Plate SPT - \$2.00
- (F) Tube STT - \$3.00
- (G) CF - \$4.00
- (H) FPA - \$3.00
- (I) Ring BRT - \$2.00
- (J) HRIT - \$4.00
- (K) Culture - \$15.00

(2) Pseudorabies Testing:

- (A) ALX - \$3.00
- (B) G1 - \$3.00

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 January 30, 2012.

TRD-201200455  
Gene Snelson  
General Counsel  
Texas Animal Health Commission  
Effective date: February 19, 2012  
Proposal publication date: October 7, 2011  
For further information, please call: (512) 719-0724



## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS SUBCHAPTER F. REGULATION OF TELECOMMUNICATIONS SERVICE

## 16 TAC §26.130

The Public Utility Commission of Texas (commission) adopts an amendment to §26.130, relating to Selection of Telecommunications Utilities, without changes to the proposed text as published in the November 25, 2011, issue of the *Texas Register* (36 TexReg 7954).

The purpose of the amendment is to clarify how a customer's identity can be verified for purposes of changing telecommunication utility.

The commission received comments from Momentum Telecom, Inc. (Momentum) and Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T Texas).

Momentum and AT&T Texas supported the amendment as proposed. Momentum and AT&T Texas stated that the amendment brings the rule into conformity with rules of the Federal Communications Commission and all other states. Momentum commented that it will allow telecommunications service providers to use a single method of customer verification nationwide, and that this uniformity will allow telecommunication service providers to simplify operations and may reduce costs for training and marketing while having no negative impact on Texas consumers. AT&T Texas stated that this method of customer verification is no less accurate than what was required under the old rule and has not resulted in higher rates of slamming in other states where it is used.

#### *Commission Response*

The commission adopts the amendment as proposed.

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011), which provides authority to the commission to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and, specifically, §§17.102, 55.302, and 64.102, which require the commission to ensure that customers are protected from deceptive practices employed in obtaining authorizations of service and in the verification of change orders.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.102, 55.302, and 64.102.

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 February 1, 2012.

TRD-201200507  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Effective date: February 21, 2012  
Proposal publication date: November 25, 2011  
For further information, please call: (512) 936-7223



## TITLE 22. EXAMINING BOARDS PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

## CHAPTER 71. APPLICATIONS AND APPLICANTS

### 22 TAC §71.13

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §71.13, concerning Chiropractic Specialties, without changes to the proposed text as published in the September 16, 2011, issue of the *Texas Register* (36 TexReg 6107), and will not be republished.

The amendment deletes the reference to a fee in an application for recognition of a specialty area. Because some specialties have multiple groups to whom the specialty would apply, the Board feels that one particular group should not have to pay the fee, when the others benefiting from the specialty recognition do not have to pay. Therefore, the Board eliminated the fee required for application for recognition of a chiropractic specialty.

No comments were received by the Board on the proposed amendment.

The amendment is adopted under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

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 January 31, 2012.

TRD-201200464

Yvette Yarbrough  
Executive Director

Texas Board of Chiropractic Examiners

Effective date: February 20, 2012

Proposal publication date: September 16, 2011

For further information, please call: (512) 305-6716



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 10. TEXAS WATER DEVELOPMENT BOARD

#### CHAPTER 356. GROUNDWATER MANAGEMENT

##### SUBCHAPTER B. DESIGNATION OF GROUNDWATER MANAGEMENT AREAS

### 31 TAC §356.23

The Texas Water Development Board (TWDB) adopts an amendment to §356.23, concerning Designation of Groundwater Management Areas. This section designates and delineates groundwater management areas (GMAs) as required by Water Code §35.004. The amendment is adopted with a minor, non-substantive change to the proposed text as published in the December 30, 2011, issue of the *Texas Register* (36 TexReg 9198).

## DISCUSSION OF THE ADOPTED AMENDMENT

The TWDB adopts the amendment to §356.23 in response to a request to change the boundary lines between GMA 9 and GMA 10 for portions of the Hays Trinity Groundwater Conservation District and the Trinity-Glen Rose Groundwater Conservation District.

The TWDB also adopts minor corrections to the seven digital files identified in §356.23 that collectively constitute a data set delineating the GMA boundary lines. Over time, the files become corrupt and no longer accurately reflect the boundaries of counties, districts, the GMAs, and natural features described in the files. This rulemaking corrects those errors which, though not significant individually, do affect the overall accuracy of the data and the maps generated from that data.

A CD-ROM containing the data set is located in the TWDB offices. The updated CD-ROM contains all of the geographic information system data used to create the boundaries as well as software and instructions on how to locate a specific area by coordinates or other means on a digital map. The same information also can be found on the TWDB web site at <http://www.twdb.texas.gov>. Maps may be generated from the data sets maintained and updated by the TWDB and used for purposes of creating visual representations of the GMA boundaries.

The web site reference published in the proposed rule has been changed from <http://www.twdb.state.tx.us> to <http://www.twdb.texas.gov> to reflect the new naming convention required by the State of Texas' Internet and eMail Domain Name Management policy.

## PUBLIC COMMENTS

No comments were received regarding the proposed amendment.

## STATUTORY AUTHORITY

The amendment is adopted under the authority of Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §35.004, which provides that the TWDB shall designate groundwater management areas covering all major and minor aquifers in the state.

This rulemaking affects Water Code, Chapter 35.

### §356.23. *Designation of Groundwater Management Areas.*

The boundaries of the groundwater management areas have been delineated using a geographic information system maintained and updated by the Texas Water Development Board. The digital files and a graphic representation of the groundwater management area boundaries entitled "Groundwater Management Areas\_12\_15\_12.jpg" are available on a CD-ROM located in the offices of the Texas Water Development Board and on the agency's web site at <http://www.twdb.texas.gov>. The graphic representation includes groundwater management area boundaries superimposed on a map that includes Texas county lines and may be used for creating graphic representations of the groundwater management area boundaries and other associated geographic features. The following digital files collectively constitute the data set delineating boundary lines for the designated groundwater management areas for the State of Texas. These files are controlling in the event of a conflict with any graphic representation.

(1) Groundwater\_Management\_Areas\_12\_15\_12.dbf  
DBF File (database file);

(2) Groundwater\_Management\_Areas\_12\_15\_12.prj PRJ File (projections file);

(3) Groundwater\_Management\_Areas\_12\_15\_12.sbx SBX File;

(4) Groundwater\_Management\_Areas\_12\_15\_12.sbn SBN File;

(5) Groundwater\_Management\_Areas\_12\_15\_12.shp SHP File (shape, i.e. point, polygon or line);

(6) Groundwater\_Management\_Areas\_12\_15\_12.shx SHX File; and

(7) Groundwater\_Management\_Areas\_12\_15\_12.shp.xml XML Document (metadata file).

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 February 1, 2012.

TRD-201200511

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Effective date: February 21, 2012

Proposal publication date: December 30, 2011

For further information, please call: (512) 463-8061



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 13. TEXAS COMMISSION ON FIRE PROTECTION

#### CHAPTER 425. FIRE SERVICE INSTRUCTORS

##### 37 TAC §425.1

The Texas Commission on Fire Protection (the Commission) adopts amendments to Chapter 425, Fire Service Instructors, concerning §425.1, Minimum Standards for Fire Service Instructor Certification. The amendments are adopted without changes to the proposed text as published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7489) and will not be republished.

The purpose of adopting the amendments is to make a grammatical correction and to identify another option for individuals who seek to obtain Fire Service Instructor Certification.

The adopted amendments will give individuals another pathway to obtain the necessary skills in order to obtain Fire Service Instructor Certification from the Commission.

No comments were received from the public regarding the proposed amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the Commission the authority to adopt rules for the administration of its powers and duties; §419.022, which provides the Commission the authority to establish minimum training standards for admission to employ-

ment as fire protection personnel; and §419.032, which provides the Commission the authority to adopt rules to establish qualifications for fire protection personnel.

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 February 1, 2012.

TRD-201200513

Don Wilson

Executive Director

Texas Commission on Fire Protection

Effective date: February 21, 2012

Proposal publication date: November 4, 2011

For further information, please call: (512) 936-3813



## CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTORS

### SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION

#### 37 TAC §§429.201, 429.203, 429.205, 429.207, 429.209, 429.211

The Texas Commission on Fire Protection (the Commission) adopts amendments to Chapter 429, Minimum Standards for Fire Inspectors, concerning §429.201, Minimum Standards for Fire Inspector Personnel--New Track; §429.203 Minimum Standards for Basic Fire Inspector Certification--New Track; §429.205, Minimum Standards for Intermediate Fire Inspector Certification--New Track; §429.207, Minimum Standards for Advanced Fire Inspector Certification--New Track; §429.209, Minimum Standards for Master Fire Inspector Certification--New Track; and §429.211, International Fire Service Accreditation Congress (IFSAC) Seal--New Track. The amendments are adopted without changes to the proposed text as published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7490) and will not be republished.

The purpose of adopting the amendments is to provide individuals an obtainable avenue to Fire Inspector Certification by eliminating a required course that is not available in all areas of the state as well as redefining the minimum requirements for obtaining higher levels of certification as a Fire Inspector. Also with the adopted repeal of Chapter 429, Subchapter A as published in the August 26, 2011, issue of the *Texas Register* (36 TexReg 5383) and of which subject matter is reflected herein, the Commission is adopting the amendments contained in Subchapter B as Chapter 429, Minimum Standards for Fire Inspectors.

The adopted amendments will clarify the required courses and minimum requirements necessary for individuals seeking a Fire Inspector Certification as well as those seeking higher levels of certification as a Fire Inspector.

No comments were received from the public regarding the proposed amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the Commission the authority to adopt rules for the administration of its powers and du-

ties; §419.022, which provides the Commission the authority to establish minimum training standards for admission to employment as fire protection personnel; and §419.032, which provides the Commission the authority to adopt rules to establish qualifications for fire protection personnel.

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 February 1, 2012.

TRD-201200514

Don Wilson

Executive Director

Texas Commission on Fire Protection

Effective date: February 21, 2012

Proposal publication date: November 4, 2011

For further information, please call: (512) 936-3813



## CHAPTER 431. FIRE INVESTIGATION

### SUBCHAPTER A. MINIMUM STANDARDS FOR ARSON INVESTIGATOR CERTIFICATION

#### 37 TAC §431.3

The Texas Commission on Fire Protection (the Commission) adopts an amendment to Chapter 431, Fire Investigation, Subchapter A, Minimum Standards for Arson Investigator Certification, concerning §431.3, Minimum Standards for Basic Arson Investigator Certification. The amendment is adopted without changes to the proposed text as published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7492) and will not be republished.

The purpose of adopting the amendment is to identify college courses that were changed by the Workforce Education Course Manual (WECM). WECM sets the standards for workforce educational courses. This will ensure individuals complete the correct course needed to obtain certification.

The adopted amendment will clarify for individuals the correct college course name that needs to be completed when seeking certification from the Commission.

No comments were received from the public regarding the proposed amendment.

The amendment is adopted under Texas Government Code, Chapter 419, §419.008, which provides the Commission the authority to adopt rules for the administration of its powers and duties; §419.022, which provides the Commission the authority to establish minimum training standards for admission to employment as fire protection personnel; and §419.032, which provides the Commission the authority to adopt rules to establish qualifications for fire protection personnel.

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 February 1, 2012.

TRD-201200515

Don Wilson

Executive Director

Texas Commission on Fire Protection

Effective date: February 21, 2012

Proposal publication date: November 4, 2011

For further information, please call: (512) 936-3813



## CHAPTER 451. FIRE OFFICER

### SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE OFFICER I

#### 37 TAC §451.3

The Texas Commission on Fire Protection (the Commission) adopts an amendment to Chapter 451, Fire Officer, Subchapter A, Minimum Standards for Fire Officer I, concerning §451.3, Minimum Standards for Fire Officer I Certification. The amendment is adopted without changes to the proposed text as published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7493) and will not be republished.

The purpose of adopting the amendment is to comply with changes made in the Workforce Education Course Manual (WECM) involving the material required for completion of the Fire Officer program. WECM sets the standards for workforce educational courses. It will reduce the required semester hours from 15 to 12.

The adopted amendment will ensure that individuals know all required material necessary and the total number of semester hours necessary for successful completion of the Fire Officer program in order to obtain certification as a Fire Officer.

No comments were received from the public regarding the proposed amendment.

The amendment is adopted under Texas Government Code, Chapter 419, §419.008, which provides the Commission the authority to adopt rules for the administration of its powers and duties; §419.022, which provides the Commission the authority to establish minimum training standards for admission to employment as fire protection personnel; and §419.032, which provides the Commission the authority to adopt rules to establish qualifications for fire protection personnel.

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 February 1, 2012.

TRD-201200516

Don Wilson

Executive Director

Texas Commission on Fire Protection

Effective date: February 21, 2012

Proposal publication date: November 4, 2011

For further information, please call: (512) 936-3813



## SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE OFFICER II

### 37 TAC §451.203

The Texas Commission on Fire Protection (the Commission) adopts an amendment to Chapter 451, Fire Officer, Subchapter B, Minimum Standards for Fire Officer II, concerning §451.203, Minimum Standards for Fire Officer II Certification. The amendment is adopted without changes to the proposed text as published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7494) and will not be republished.

The purpose of adopting the amendment is to comply with changes made in the Workforce Education Course Manual (WECM) involving the material required for completion of the Fire Officer program. WECM sets the standards for workforce educational courses. It will reduce the required semester hours from 18 to 15.

The adopted amendment will ensure that individuals know all required material necessary and the total number of semester hours necessary for successful completion of the Fire Officer program in order to obtain certification as a Fire Officer.

No comments were received from the public regarding the proposed amendment.

The amendment is adopted under Texas Government Code, Chapter 419, §419.008, which provides the Commission the authority to adopt rules for the administration of its powers and duties; §419.022, which provides the Commission the authority to establish minimum training standards for admission to employment as fire protection personnel; and §419.032, which provides the Commission the authority to adopt rules to establish qualifications for fire protection personnel.

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 February 1, 2012.

TRD-201200517

Don Wilson

Executive Director

Texas Commission on Fire Protection

Effective date: February 21, 2012

Proposal publication date: November 4, 2011

For further information, please call: (512) 936-3813



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

#### CHAPTER 743. MINIMUM STANDARDS FOR SHELTER CARE

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§743.3, 743.7, 743.105, 743.107, and

743.201; new §743.109; and the repeal of §§743.301, 743.303, 743.305, 743.307, 743.309, 743.401, 743.403, 743.405, 743.407, 743.409, 743.411, 743.501, 743.503, 743.505, 743.507, 743.509, 743.511, 743.513, 743.515, 743.517, 743.519, 743.601, 743.603, 743.605, 743.607, 743.701, and 743.703, without changes to the proposal as published in the November 18, 2011, issue of the *Texas Register* (36 TexReg 7815).

The justification for the adoption is to implement legislation passed in the 82nd Legislative Session. Senate Bill 1178 adds Subchapter G, relating to Shelter Care, to Chapter 42 of the Human Resources Code, so that shelter care can be regulated separately from other types of child day care. The result is a certificate of compliance for shelter care facilities rather than a license, limited inspection and investigations, and fewer minimum standards. This new subchapter in the law largely reflects the subchapter already in place for the regulation of employer-based day care. DFPS is adopting significant changes to Chapter 743 to mirror the law. A summary of the changes is described below.

The amendment to §743.3 changes a cross-reference because the rule currently referenced is being repealed and adopted as a new rule.

The amendment to §743.7 deletes requirements that are not reflective of the new law for shelter care facilities. Deleted requirements include posting the last inspection or investigation results, posting emergency evacuation plans, and maintaining liability insurance. Another change clarifies that Child Care Licensing expects shelter care facilities to comply with all applicable laws and rules.

The amendment to §743.105 deletes the requirement for primary caregivers to obtain fingerprint-based criminal history checks.

The amendment to §743.107 deletes the requirement for shelter care facility employees to sign the affidavit required by Human Resources Code §42.059.

New §743.109 relocates the information in current §743.301, which is repealed. This moves the rule into a new subchapter within Chapter 743, since the other rules in the subchapter with §743.301 are being repealed.

The amendment to §743.201 makes the rule consistent with Human Resources Code §42.063, which is specifically referenced in the new subchapter of Human Resources Code Chapter 42 that focuses on the regulation of shelter care facilities.

Subchapter D, consisting of §§743.301, 743.303, 743.305, 743.307, and 743.309, is repealed. The new subchapter in Human Resources Code Chapter 42 specifically for shelter care facilities limits Child Care Licensing's authority to promulgate minimum standards for shelter care. Most of the requirements in Subchapter D, such as activities and discipline, do not fit within the new law's parameters for shelter care minimum standards, so the subchapter is repealed. The one rule currently in this subchapter that still applies is adopted as new §743.109.

Subchapter E, consisting of §§743.401, 743.403, 743.405, 743.407, 743.409, and 743.411, is repealed. The new subchapter in Human Resources Code Chapter 42 specifically for shelter care facilities limits Child Care Licensing's authority to promulgate minimum standards for shelter care. None of the requirements in Subchapter E, such as nutrition and environmental health, fit within the new law's parameters for shelter care minimum standards, so the subchapter is repealed.



Subchapter F, consisting of §§743.501, 743.503, 743.505, 743.507, 743.509, 743.511, 743.513, 743.515, 743.517, and 743.519, is repealed. The new subchapter in Human Resources Code Chapter 42 specifically for shelter care facilities limits Child Care Licensing's authority to promulgate minimum standards for shelter care. None of the requirements in Subchapter F, such as fire safety, fit within the new law's parameters for shelter care minimum standards, so the subchapter is repealed.

Subchapter G, consisting of §§743.601, 743.603, 743.605, and 743.607, is repealed. The new subchapter in Human Resources Code Chapter 42 specifically for shelter care facilities limits Child Care Licensing's authority to promulgate minimum standards for shelter care. None of the requirements in Subchapter G, such as furnishings and activity space, fit within the new law's parameters for shelter care minimum standards, so the subchapter is repealed.

Subchapter H, consisting of §743.701 and §743.703, is repealed. The new subchapter in Human Resources Code Chapter 42 specifically for shelter care facilities limits Child Care Licensing's authority to promulgate minimum standards for shelter care. None of the requirements in Subchapter H, such as diaper changing and feeding infants, fit within the new law's parameters for shelter care minimum standards, so the subchapter is repealed.

The sections will function by allowing shelters to have more flexibility to provide needed services to their clients.

No comments were received regarding adoption of the amendments, new section, or repeals.

## SUBCHAPTER A. DEFINITIONS AND SERVICES

### 40 TAC §743.3, §743.7

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC Chapter 42, Subchapter G, which addresses Licensing's regulation of temporary shelter day care facilities.

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 February 2, 2012.

TRD-201200523

Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437

## SUBCHAPTER B. PERSONNEL AND TRAINING

### 40 TAC §§743.105, 743.107, 743.109

The amendments and new section are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC Chapter 42, Subchapter G, which addresses Licensing's regulation of temporary shelter day care facilities.

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 February 2, 2012.

TRD-201200524  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437

## SUBCHAPTER C. SERIOUS INCIDENT REPORTING

### 40 TAC §743.201

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC Chapter 42, Subchapter G, which addresses Licensing's regulation of temporary shelter day care facilities.

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 February 2, 2012.

TRD-201200525

Gerry Williams

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Department of Family and Protective Services

Effective date: March 1, 2012

Proposal publication date: November 18, 2011

For further information, please call: (512) 438-3437



## SUBCHAPTER D. PROGRAM REQUIREMENTS

### 40 TAC §§743.301, 743.303, 743.305, 743.307, 743.309

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC Chapter 42, Subchapter G, which addresses Licensing's regulation of temporary shelter day care facilities.

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 February 2, 2012.

TRD-201200526

Gerry Williams

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Department of Family and Protective Services

Effective date: March 1, 2012

Proposal publication date: November 18, 2011

For further information, please call: (512) 438-3437



## SUBCHAPTER E. HEALTH

### 40 TAC §§743.401, 743.403, 743.405, 743.407, 743.409, 743.411

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC Chapter 42, Subchapter G, which addresses Licensing's regulation of temporary shelter day care facilities.

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 February 2, 2012.

TRD-201200527

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: March 1, 2012

Proposal publication date: November 18, 2011

For further information, please call: (512) 438-3437



## SUBCHAPTER F. SAFETY

### 40 TAC §§743.501, 743.503, 743.505, 743.507, 743.509, 743.511, 743.513, 743.515, 743.517, 743.519

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC Chapter 42, Subchapter G, which addresses Licensing's regulation of temporary shelter day care facilities.

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 February 2, 2012.

TRD-201200528

Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



## SUBCHAPTER G. SPACE AND EQUIPMENT

### 40 TAC §§743.601, 743.603, 743.605, 743.607

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC Chapter 42, Subchapter G, which addresses Licensing's regulation of temporary shelter day care facilities.

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 February 2, 2012.

TRD-201200529  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



## SUBCHAPTER H. INFANT AND TODDLER CARE

### 40 TAC §743.701, §743.703

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC Chapter 42,

Subchapter G, which addresses Licensing's regulation of temporary shelter day care facilities.

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 February 2, 2012.

TRD-201200530  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



## CHAPTER 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§744.105, 744.201, 744.305, 744.603, 744.1309, 744.1311, 744.1319, 744.1327, and 744.1331; the repeal of §§744.1329, 744.2651, 744.2653, and 744.2655; and new §§744.2651, 744.2653, 744.2655, 744.2663, and 744.2665, in its Minimum Standards for School-Age and Before or After-School Programs chapter. The amendments to §744.1309 and §744.1311 are adopted with changes to the proposed text published in the November 18, 2011, issue of the *Texas Register* (36 TexReg 7819). The amendments to §§744.105, 744.201, 744.305, 744.603, 744.1319, 744.1327, and 744.1331; the repeal of §§744.1329, 744.2651, 744.2653, and 744.2655; and new §§744.2651, 744.2653, 744.2655, 744.2663, and 744.2665 are adopted without changes to the proposed text and will not be republished.

The justification for the changes is to implement legislation passed in the 82nd Legislative Session. House Bill (HB) 434 requires a child-care facility or registered family home to: (1) follow the directions of a child's health-care professional when providing to a child in care specialized medical assistance; and (2) maintain a copy of any written directions from the health-care professional for a reasonable period of time. HB 1615 restricts under what circumstances medication may be given to a child. Except in a medical emergency, a child day care operation must have parental consent before giving a child a prescription or over-the-counter medication. Senate Bill (SB) 260 increases orientation, pre-service, and annual training requirements for day care centers. SB 265 requires training in certain child-care operations to be relevant to the age of children for whom care is provided and adds trainer minimum qualifications. All training outlined in this section of the law must be conducted by a person who meets one of seven options for minimum qualifications. SB 471 requires day care centers to have specific policies and one hour of training related to child abuse and neglect. A summary of the changes is described below.

The amendment to §744.105 broadens the definition of health-care professional beyond its current purpose of only describ-

ing those professionals that can provide vaccinations. This will make it more germane to HB 1615.

The amendment to §744.201 specifies that all provisions for training must comply with the training requirements in these minimum standards.

The amendment to §744.305 requires the operation to notify Child Care Licensing when a new individual becomes a controlling person at the operation or an individual that was previously a controlling person ceases to be a controlling person at the operation.

The amendment to §744.603 adds to the list of contents required for a child's record: (1) medication administration records; and (2) health-care professional orders or recommendations for specialized medical assistance. The amendment also states how long the records must be kept. These changes are a result of HB 434 and HB 1615.

The amendment to §744.1309 clarifies that annual training for caregivers and site directors must be relevant to the age of the children for whom the person provides care. This is required by SB 265. The amendment also adds a requirement from repealed §744.1329 regarding limits on self-instructional training.

The amendment to §744.1311 clarifies that annual training for operation and program directors must be relevant to the age of the children for whom the operation provides care. Another change revises a limit on self-instructional training, reflecting a percentage rather than a number of hours so that this rule will be consistent with companion rules in this chapter, Chapter 746 of this title (relating to Minimum Standards for Child-Care Centers), and Chapter 747 of this title (relating to Minimum Standards for Child-Care Homes).

The amendment to §744.1319 adds the trainer minimum qualifications outlined in SB 265, which states that training must be conducted by a person who meets one of seven options for minimum qualifications. The amendment also clarifies that self-instructional training must be developed by a person who meets one of the listed trainer qualifications.

The amendment to §744.1327 revises the cross-reference to §744.1319.

Section 744.1329 is repealed.

The amendment to §744.1331 requires that the trainer qualifications be included in training documentation, so that Child Care Licensing staff can monitor for compliance with the law.

The name of Subchapter L, Safety Practices, Division 2, Medication, is changed. The new name of Division 2 reflects additions to the division related to specialized medical assistance.

Section 744.2651 is repealed and adopted as new. New §744.2651 defines "medication" to include non-prescription medication. The circumstances under which a program may administer medication to a child, which were previously included in this rule, is incorporated into adopted §744.2653 and §744.2655.

Section 744.2653 is repealed and adopted as new. New §744.2653 lists the authorization requirements for all medications, which include: (1) written permission from a parent, or telephone permission for a one-time dose; (2) re-authorization at least annually; and (3) prohibition against a parent authorizing more medication than what is prescribed or than what is included in the medication's label instructions.

Section 744.2655 is repealed and adopted as new. In addition to the record keeping requirements for medications, the new rule expands the requirements moved from current §744.2651 and §744.2653 to include that medication can only be given according to label instructions or as directed by a health-care professional.

New §744.2663 defines specialized medical assistance.

New §744.2665 requires the operation to follow the recommendations or orders of the child's health-care professional when providing specialized medical assistance to a child in care and requires the operation to maintain any written orders or recommendations in the child's record for at least three months after the health-care professional has indicated that the specialized medical assistance is no longer needed. These changes are required by HB 434.

The sections will function by ensuring that caregivers and directors in School-Age and Before or After-School Programs will have a better understanding of when medications may be given to children, how specialized medical assistance must be provided, and who must provide the needed training, and therefore provide better care to Texas children.

During the comment period, DFPS received comments from the Texas Association for the Education of Young Children, Texas Partnership for Out of School Time, and Extend-A-Care for Kids. A summary of comments and DFPS's responses follow:

Comments concerning §744.1319. DFPS received three comments.

(1) Two commenters noted that trainer certification for providers of school-age care should be done through a source other than the Texas Early Childhood Education Coalition (TECEC), as TECEC focuses on early childhood. The commenters suggested other changes that offered options more focused on school-age care.

(2) One other commenter suggested that such a drastic change requires more time for child-care providers to comply, suggesting that the rule change go into effect in August or December of 2012.

Response: DFPS is adopting this section without change. SB 265 adds trainer minimum qualifications to Human Resources Code §42.0421. All training outlined in this section of the law must be conducted by a person who meets one of seven options for minimum qualifications listed in the law. TECEC is just one option available to individuals that can provide training. For example, school-age and before or after-school programs should be able to access adequate training based on the trainer minimum qualification of "A person who holds a generally recognized credential or possesses documented knowledge relevant to the training the person will provide."

Although SB 265 does not apply to school-age and before or after-school programs, Child Care Licensing is adopting this rule without change in order to create consistent expectations across the child-care industry. This helps individual caregivers change jobs without worrying that their previous training is not transferable and assists both training providers and child care operations in developing and/or accessing child care training based on one set of criteria.

SB 265 became effective on September 1, 2011; an e-mail was sent on August 15, 2011 to all providers with e-mail addresses regarding the laws passed in the 82nd Legislative Session; in-

formation was placed on the DFPS website specifying the new trainer requirements and that training received after January 1, 2012 will need to be provided by a trainer that meets the new training criteria; and Licensing always provides an "implementation period", which in this instance includes looking at this issue from a one year standpoint (e.g., 9/11 - 9/12) and providing technical assistance.

Comment concerning §744.1329: DFPS received one comment on this rule and 42 comments on the companion rule in Chapter 746, Minimum Standards for Child-Care Centers, §746.1327 (relating to How many annual training clock hours may caregivers obtain from self-instructional materials?). One commenter stated that effective professional development experiences use an active, hands-on approach and stress an interactive approach that encourages students to learn from one another, while also offering opportunities for application and reflection on the material learned. The commenter stated that, "considering that entry level is a high school diploma, we must ensure that the training received is factual, hands on and meets the various learning style of all providers."

Response: DFPS is repealing this rule, which limits the amount of self-instructional training that can be used to count toward annual training requirements. The original rationale for repealing the rule was that since all self-instructional training must be developed by a person who meets one of the qualifications outlined in SB 265, it is no longer necessary to limit self-instructional training. However, in response to public comment, DFPS will retain the requirements in this rule. Rather than withdrawing the repeal of this rule, DFPS is revising §744.1309 and §744.1311 to include requirements limiting self-instructional training to 50%, which mirrors the limits for annual training previously reflected in this rule. These changes create consistency in rulemaking between this chapter and Chapters 746 and 747, which minimizes confusion regarding training requirements for child care providers and DFPS staff.

Comments concerning §744.1331: One commenter asked how training received at conferences would be accepted as annual training, since the training certificates would not include each trainer's qualifications. They requested that the conference organizers keep documentation on how each trainer qualifies, so that Child Care Licensing could accept the conference certificate alone as acceptable documentation and investigate any conference training that came into question.

Response: DFPS is adopting this section without change. SB 265 adds trainer minimum qualifications to Human Resources Code §42.0421. All training outlined in this section of the law must be conducted by a person who meets one of seven options for minimum qualifications.

This rule outlines the documentation requirements for training. The change to this rule requires that the trainer qualifications be included in training documentation, so that Child Care Licensing staff can monitor compliance with the law.

However, Child Care Licensing will add a "Helpful Information" section to the minimum standards publication, directly below this rule, indicating that conference sponsors may be responsible for ensuring the appropriateness of all presenter minimum qualifications (rather than listing all presenters and their qualifications on a training certificate).

In response to comments received on §744.1329, DFPS is adding subsection (e) to §744.1309, which states "A caregiver or site director may obtain no more than 50% of annual training

through self-instructional training." The wording change is a percentage rather than a number of hours, which mirrors the limits previously reflected in this rule.

Also in response to comments received on §744.1329, DFPS is revising §744.1311. One of the proposed changes deleted subsection (g)(2), which is now being retained and renumbered as subsection (i) in response to public comment. However, the subsection is being changed to reflect a percentage rather than a number of hours, which mirrors the limits previously reflected in this rule. In addition, the rule language will also be consistent with companion rules in this chapter, Chapter 746, and Chapter 747. Consistent language minimizes confusion regarding training requirements for child care providers and department staff.

## SUBCHAPTER A. PURPOSE AND DEFINITIONS

### 40 TAC §744.105

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC §42.042(e)(8)(A), which provides that a "health care provider" can provide directions for specialized medical assistance required by a child.

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 February 2, 2012.

TRD-201200531

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: March 1, 2012

Proposal publication date: November 18, 2011

For further information, please call: (512) 438-3437



## SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

### DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

#### 40 TAC §744.201

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Com-

missioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC §42.0421 and §42.0426, which provide training and orientation requirements.

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 February 2, 2012.

TRD-201200532  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



## DIVISION 2. REQUIRED NOTIFICATIONS

### 40 TAC §744.305

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC §42.072(g), which now extends the controlling persons concept to all child-care operations.

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 February 2, 2012.

TRD-201200533

Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



## SUBCHAPTER C. RECORD KEEPING DIVISION 1. RECORDS OF CHILDREN

### 40 TAC §744.603

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; HRC §42.042(e)(8)(B), which requires a child-care facility or registered child-care home to maintain directions from a health-care provider for a "reasonable time;" and HRC §42.065, which provides guidelines for administering medication in a licensed, registered, or listed child-care home or center.

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 February 2, 2012.

TRD-201200534  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



## SUBCHAPTER D. PERSONNEL DIVISION 4. PROFESSIONAL DEVELOPMENT

### 40 TAC §§744.1309, 744.1311, 744.1319, 744.1327, 744.1331

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Ser-

vices Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC §42.0421 and §42.0426, which provide training and orientation requirements.

*§744.1309. How many clock hours of annual training must be obtained by caregivers and site directors?*

(a) Each caregiver and site director must obtain at least 15 clock hours of training each year relevant to the age of the children for whom the person provides care. The 15 clock hours of annual training are exclusive of orientation, pre-service training requirements, CPR and first aid, transportation safety training, and high school child-care work-study classes.

(b) At least six clock hours of annual training must be in one or more of the following topics:

- (1) Child growth and development;
- (2) Guidance and discipline;
- (3) Age-appropriate curriculum; and
- (4) Teacher-child interaction.

(c) The remaining clock hours of annual training must be in one or more of the following topics:

- (1) Care of children with special needs;
- (2) Child health (for example, nutrition or physical activity);
- (3) Safety;
- (4) Risk management;
- (5) Identification and care of ill children;
- (6) Cultural diversity for children and families;
- (7) Professional development (for example, effective communication with families, time and stress management);
- (8) Preventing the spread of communicable diseases;
- (9) Topics relevant to the particular age group the caregiver is assigned;
- (10) Planning developmentally appropriate learning activities; and
- (11) Minimum standards and how they apply to the caregiver.

(d) A caregiver who transports a child whose chronological or developmental age is younger than nine years old must meet additional training requirements as outlined in §744.1317 of this title (relating to What additional training must a person have in order to transport a child in care?).

(e) A caregiver or site director may obtain no more than 50% of annual training through self-instructional training.

*§744.1311. How many clock hours of training must an operation director or a program director obtain each year?*

(a) An operation director and/or a program director must obtain at least 20 clock hours of training each year relevant to the age of the children for whom the operation provides care. The 20 clock

hours of annual training are exclusive of CPR and first aid, orientation, pre-service, and transportation safety training requirements.

(b) At least six clock hours of the annual training must be in one or more of the following topics:

- (1) Child growth and development;
- (2) Guidance and discipline;
- (3) Age-appropriate curriculum;
- (4) Teacher-child interaction; and
- (5) Serving children with special care needs.

(c) An operation director or program director with five or fewer years of experience as a designated director of an operation or as a program director must also complete at least six clock hours of the annual training in management techniques, leadership, or staff supervision.

(d) A director with more than five years of experience as a designated director of an operation or as a program director must complete at least three clock hours of the annual training in management techniques, leadership, or staff supervision.

(e) The remainder of the 20 clock hours of annual training must be selected from the training topics specified in §744.1309(c) of this title (relating to How many clock hours of annual training must be obtained by caregivers and site directors?).

(f) If the operation transports a child whose chronological or developmental age is younger than nine years old, the director must complete two hours of annual training on transportation safety, as outlined in §744.1317 of this title (relating to What additional training must a person have in order to transport a child in care?).

(g) The director may obtain clock hours or CEUs from the same sources as caregivers.

(h) Training hours may not be earned for presenting training to others, with the exception of up to two hours of training on transportation safety.

(i) No more than 50% of annual training may be obtained through self-instructional training.

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 February 2, 2012.

TRD-201200535

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: March 1, 2012

Proposal publication date: November 18, 2011

For further information, please call: (512) 438-3437



#### **40 TAC §744.1329**

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department

of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC §42.0421 and §42.0426, which provide training and orientation requirements.

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 February 2, 2012.

TRD-201200536  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



## SUBCHAPTER L. SAFETY PRACTICES DIVISION 2. MEDICATION

### 40 TAC §§744.2651, 744.2653, 744.2655

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; HRC §42.042(e)(8), which contains requirements regarding directions from a child's health care provider concerning specialized medical treatment for a child in care; and HRC §42.065, which provides guidelines for administering medication in a licensed, registered, or listed child-care home or center.

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 February 2, 2012.

TRD-201200537

Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



## DIVISION 2. MEDICATION AND MEDICAL ASSISTANCE

### 40 TAC §§744.2651, 744.2653, 744.2655, 744.2663, 744.2665

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; HRC §42.042(e)(8), which contains requirements regarding directions from a child's health-care provider concerning specialized medical treatment for a child in care; and HRC §42.065, which provides guidelines for administering medication in a licensed, registered, or listed child-care home or center.

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 February 2, 2012.

TRD-201200538  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



## CHAPTER 745. LICENSING

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§745.21, 745.33, 745.37, 745.115, 745.117, 745.243, 745.503, 745.505, 745.509, 745.601, 745.615, 745.901, 745.903, 745.905, 745.907, 745.911, 745.913, 745.8407, 745.8605, 745.8805, 745.8835, 745.8875, and 745.9037; and new §745.696 and §745.8427, without changes to the proposed text published in the November 18, 2011, issue of the *Texas Register* (36 TexReg 7825). The justification for the adoption is to implement legislation passed during the 82nd Legislative Session.



House Bill (H.B.) 1615 adds new §42.065 to Chapter 42 of the Human Resources Code. This new section restricts under what circumstances medication may be given to a child. Except in a medical emergency, a child day-care operation must have parental consent before giving a child a prescription or over-the-counter medication.

H.B. 3051 adds new §42.041(f) to Chapter 42 of the Human Resources Code, which extends the "parents on the premises" exemption for child day-care operations. A child day-care operation, located in a county with a population of 800,000 or more that is adjacent to an international border, is now exempt if it provides care for each child no more than 15 hours a week so that a person may attend an educational class provided by a nonprofit entity.

Senate Bill (S.B.) 76 adds Chapter 313 to the Labor Code and Human Resources Code §42.0523. This new chapter addresses relative child care under a listed family home permit. The child care can now occur in the child's own home under specific circumstances, although the address on the permit must still be the child-care provider's home address.

S.B. 78 adds Subchapter W, Adverse Licensing, Listing, or Registration Decisions, to Chapter 531 of the Government Code. This new law compels state health and human services agencies to maintain and share information regarding facility permits that have been denied, revoked, or suspended. The new law allows the health and human services agencies to use the shared records to deny a permit to an applicant who has already been denied, revoked, or suspended by another agency. Records must be kept for at least 10 years.

S.B. 1178 includes many changes to Child Care Licensing. The changes to Chapter 42 of the Human Resources Code: (1) increase flexibility for a municipality to maintain their exempt status; (2) expand the "controlling person" concept to all child-care facilities and family homes, not just residential operations. (The "controlling person" designation allows Child Care Licensing, and with S.B. 78 other Health and Human Services Agencies, to track and take action against individual persons who have been an administrative or governing body official in an operation that had a license denied, revoked, or suspended.); (3) expand the circumstances under which Child Care Licensing can conduct investigations in listed family homes to include a reported risk of immediate health or safety danger to children in care; (4) allow Child Care Licensing to automatically suspend a listed family home for not submitting required background checks, then automatically revoke the listing if not corrected within six months. These actions are not subject to due process; (5) allow Child Care Licensing to automatically suspend any permit for not paying required annual fees, then automatically revoke the permit if not corrected within six months. These actions are not subject to due process; (6) add school-age and before or after-school programs to the child-care facilities that must have fingerprint-based background checks on all staff; (7) add substitute employees to the list of persons at a regulated child-care operation that must undergo a background check; (8) expand monetary penalties to listed family homes; (9) amend §42.072(e) so that an applicant denied a permit for a child-care operation may not continue to operate during appeal of the decision; (10) add Subchapter G, relating to shelter care, so that shelter care can be regulated separately from other types of child day care. The result is a certificate of compliance rather than a license, limited inspection and investigations, and fewer minimum standards. This new subchapter largely reflects the subchapter

already in place for the regulation of employer-based day care; (11) amends Chapter 43 of the Human Resources Code to allow adverse action against a residential child care licensed administrator based on a criminal history relevant to the duties of a licensed administrator, such as fraud or embezzlement; and (12) amends the Government Code to allow easier access to a person's fingerprints on file with the Department of Public Safety for the purpose of conducting background checks.

A summary of the changes is described below.

The amendment to §745.21: (1) changes a cross-reference to §745.901, as the title of this rule is revised; and (2) updates the definition of "minimum standards" to include Chapter 743, Shelter Care, Chapter 744, School-Age and Before or After-School Programs, and the minimum standards in this chapter related to Employer-Based Child Care.

The amendment to §745.33 adds a subsection to describe the circumstances under which a listed family home may now provide care in the child's own home.

The amendment to §745.37 changes the permit type for shelter care from a license to a compliance certificate.

The amendment to §745.115: (1) incorporates the flexibility added to the law for municipal recreation programs. Under certain conditions, these programs can now accept public comment through their web site rather than having a previously required annual public hearing; and (2) updates a reference to the Texas Commission on Alcohol and Drug Abuse, so that the rule now refers to the Department of State Health Services.

The amendment to §745.117 adds the exemption for "parents on the premises." As required in H.B. 3051, a child day-care operation, located in a county with a population of 800,000 or more that is adjacent to an international border, is now exempt if it provides care for a child no more than 15 hours a week so that a person may attend an educational class provided by a nonprofit entity. Also, a cross-reference to another subsection of this rule is corrected.

The amendment to §745.243: (1) adds the Controlling Person Form as a required part of the application packet for all permit types; (2) clarifies that care provided in the child's own home under a listed family home permit is not subject to a listing fee; (3) reflects that shelter care facilities will now have their own application form, specific to the permit type; and (4) deletes portions of the shelter care application packet that will no longer apply, such as proof of liability insurance. These changes are the result of S.B. 76 and S.B. 1178.

The amendment to §745.503 clarifies that a listed family home in which a relative child-care provider cares for the child in the child's own home is exempt from fees, as required by S.B. 76.

The amendment to §745.505: (1) clarifies that a listed family home in which a relative child-care provider cares for the child in the child's own home is exempt from fees; and (2) adds the automatic suspension and revocation of a license for non-payment of annual license fees. These changes are required by S.B. 76 and S.B. 1178 respectively.

The amendment to §745.509, which outlines fees for licensed operations, notes that a license may be automatically suspended or revoked if required annual fees are not paid.

The amendment to §745.601 adds a definition for substitute employee. The definition for substitute employee is a person on the premises of a child-care operation for the purpose of fulfilling an

employee or caregiver role in the absence of an employee or caregiver usually present at the operation.

The amendment to §745.615, which outlines who must have a background check: (1) adds substitute employees/caregivers to the list of persons who must have a background check; and (2) adds staff of a school-age or before or after-school program to the list of persons who must have a fingerprint-based background check. This change is the result of S.B. 1178.

New §745.696 states that any specific crimes that may affect a person's ability to be a licensed administrator and whether that person is eligible for a risk evaluation will be available on the DFPS public website. This list will include additional crimes that relate to the duties of a licensed administrator but may not prevent a person from being employed at a child-care operation, like money laundering and Medicaid fraud. This change is the result of S.B. 1178.

The title of Subchapter G is revised. The new title deletes the word "residential" because controlling persons are no longer limited to residential child-care operations. The revised title is "Controlling Person and Certain Employment Prohibited."

The amendment to §745.901, which defines controlling persons: (1) removes the word "residential" to broaden the applicability of this rule to all child-care operations; (2) clarifies that the spouse of a sole proprietor is considered a controlling person; (3) clarifies that the primary caregiver at a child-care home and the primary caregiver's spouse are considered controlling persons; and (4) lists day-care directors and licensed administrators as examples of persons who manage a child-care operation.

The amendments to §745.903 and §745.905 remove "residential" from the rules to broaden the applicability of these rules to all child-care operations.

The amendment to §745.907, which outlines the consequences for being designated by Child Care Licensing as a controlling person: (1) removes the word "residential" from the rule to broaden the applicability of this rule to all child-care operations; and (2) deletes a paragraph prohibiting employment of a person sustained as a controlling person. A change in the law, through S.B. 1178, now allows a sustained controlling person to seek employment in a regulated child-care operation, but not as a controlling person for the operation (only as a caregiver or other non-controlling employee).

The amendment to §745.911: (1) allows a sustained controlling person to seek employment in a regulated child-care operation, but not as a controlling person for the operation; (2) deletes the word "residential" from the rule to broaden the applicability of this rule to all child-care operations; and (3) clarifies that DFPS may now use information regarding a person who was a controlling person for a facility that had its license revoked, suspended, or terminated by another health and human services agency when determining whether the person may be a controlling person at an operation, as required by S.B. 78.

The amendment to §745.913, which describes how Child Care Licensing determines whether a person is eligible to be a controlling person: (1) adds checking to see if the person was a controlling person for a facility that had its license revoked, suspended, or terminated by another health and human services agency; and (2) deletes the word "residential" to broaden the applicability of this rule to all child-care operations.

The amendment to §745.8407, which lists when Child Care Licensing may conduct an inspection or investigation in each op-

eration type, revises listed family homes as follows: (1) adds inspection to ensure that care is being provided within the limits of the permit issued; (2) adds that Child Care Licensing may investigate due to an allegation of an immediate health or safety risk to children in care; (3) adds that Child Care Licensing may investigate due to an allegation that the home administered medication to a child in violation of new Human Resources Code §42.065 (regarding parental consent for medications); and (4) clarifies that an investigation may occur due to an allegation that the home is caring for four or more unrelated children or receiving compensation for four or more unrelated children. Another change adds shelter care as a separate category, with inspections only prior to issuance or as part of an investigation, and investigations only related to alleged abuse/neglect or alleged deficiency related to a Licensing statute or rule.

New §745.8427 lists the compliance expectations for listed family homes. Listed family homes do not have minimum standards. However, there are now multiple requirements in law with which listed family homes must comply. Therefore, Child Care Licensing adopts this rule to summarize and clarify the compliance expectations for listed family homes.

The amendment to §745.8605, which lists circumstances under which Child Care Licensing can take remedial action: (1) deletes references to residential child care from sections related to controlling persons and/or a history of remedial action, since these now apply to all operation types; (2) clarifies that remedial action may be taken if controlling person information is not submitted to Child Care Licensing as required in §745.903; and (3) adds a paragraph to reference denying a permit based on the person having a revoked, suspended, or terminated permit through another state agency.

The amendment to §745.8805 clarifies that automatic suspension or revocation for non-payment of fees is not subject to administrative review, per S.B. 1178.

The amendment to §745.8835 clarifies that automatic suspension or revocation for non-payment of fees is not subject to due process hearings, per S.B. 1178.

The amendment to §745.8875 clarifies that an operation may not continue to operate while appealing the denial of a license.

The amendment to §745.9037, which lists the circumstances under which Child Care Licensing may take remedial action against a licensed administrator or licensed administrator applicant, adds a criminal conviction relevant to the duties of a licensed administrator and references new proposed §745.696.

The sections will function by ensuring that children in regulated day care will have better safety protections because (1) medications will only be given with parental consent; (2) persons that have previously had permits denied, revoked, or suspended will no longer be able to obtain similar permits in other licensed areas and agencies; (3) applicants denied a permit may no longer operate pending an appeal of the denial; (4) adverse actions may be taken against a licensed administrator based on criminal history relevant to his duties; and (5) background checks will be conducted in all School-Age and Before or After-School Programs. A revision to §745.615, which outlines who must submit to background checks, adds staff of a School-Age and Before or After-School program to the list of persons who must have a fingerprint-based criminal history check.

No comments were received regarding adoption of the sections.

SUBCHAPTER A. PRECEDENCE AND DEFINITIONS  
DIVISION 3. DEFINITIONS FOR LICENSING

**40 TAC §745.21**

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes DFPS to adopt rules related to the regulation of child-care operations.

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 February 1, 2012.

TRD-201200482  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



SUBCHAPTER B. CHILD CARE AND OTHER OPERATIONS THAT WE REGULATE

**40 TAC §745.33, §745.37**

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042, which authorizes DFPS to adopt rules related to the regulation of child-care operations; HRC §42.0523, which explicitly addresses Licensing's ability to list relative child-care providers; and HRC Chapter 42, Subchapter G, which addresses Licensing's regulation of temporary shelter day-care facilities.

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 February 1, 2012.

TRD-201200483  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



SUBCHAPTER C. OPERATIONS THAT ARE EXEMPT FROM REGULATION  
DIVISION 2. EXEMPTIONS FROM REGULATION

**40 TAC §745.115, §745.117**

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042, which authorizes DFPS to adopt rules related to the regulation of child-care operations; HRC §42.041(f), which provides certain municipalities with the ability to receive public comments related to a recreation program through the municipality's public website; and another HRC §42.041(f), which limits the number of hours that certain parents on the premises programs can provide care and remain exempt.

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 February 1, 2012.

TRD-201200484  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



SUBCHAPTER D. APPLICATION PROCESS  
DIVISION 3. SUBMITTING THE APPLICATION MATERIALS

**40 TAC §745.243**

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes DFPS to adopt rules related to the regulation of child-care operations; HRC §42.072(g), which now extends the controlling persons concept to all childcare operations; and HRC Chapter 42, Subchapter G, which addresses Licensing's regulation of temporary shelter day-care facilities.

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 February 1, 2012.

TRD-201200485  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



## SUBCHAPTER E. FEES

### 40 TAC §§745.503, 745.505, 745.509

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042, which authorizes DFPS to adopt rules related to the regulation of child-care operations; HRC §42.0523, which explicitly addresses Licensing's ability to list relative child-care providers; and HRC §42.054(f), which provides for an automatic suspension and revocation of a permit for provider's failure to pay fees.

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 February 1, 2012.

TRD-201200486

Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



## SUBCHAPTER F. BACKGROUND CHECKS

### DIVISION 1. DEFINITIONS

#### 40 TAC §745.601

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes DFPS to adopt rules related to the regulation of child-care operations; and HRC §42.056(l), which addresses background checks for substitute employees.

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 February 1, 2012.

TRD-201200487  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



### DIVISION 2. REQUESTING BACKGROUND CHECKS

#### 40 TAC §745.615

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes DFPS to adopt rules related to the regulation of child-care operations; HRC §42.056(a-2), which provides that certain types of operations must submit fingerprints for background checks; and HRC §42.056(l), which addresses background checks for substitute employees.

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 February 1, 2012.

TRD-201200488

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Effective date: March 1, 2012

Proposal publication date: November 18, 2011

For further information, please call: (512) 438-3437



#### DIVISION 4. EVALUATION OF RISK BECAUSE OF A CRIMINAL CONVICTION OR A CENTRAL REGISTRY FINDING OF CHILD ABUSE OR NEGLECT

##### 40 TAC §745.696

The new section is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §43.005, which provides DFPS with the authority to adopt rules for the regulation of administrators; and HRC §43.010(a)(6)(B), which allows DFPS to take remedial action against an administrator's license for criminal history relevant to an administrator's 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.

Filed with the Office of the Secretary of State on February 1, 2012.

TRD-201200489

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Effective date: March 1, 2012

Proposal publication date: November 18, 2011

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#### SUBCHAPTER G. CONTROLLING PERSON AND CERTAIN EMPLOYMENT PROHIBITED

##### 40 TAC §§745.901, 745.903, 745.905, 745.907, 745.911, 745.913

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042, which authorizes DFPS to adopt rules related to the regulation of child-care operations; HRC §42.072(g), which now extends the controlling persons concept to all child-care operations; HRC §42.062, concerning prohibited employment and service for sustained controlling persons; and Chapter 531, Government Code, which requires state Health and Human Services agencies to share certain information.

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 February 1, 2012.

TRD-201200490

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: March 1, 2012

Proposal publication date: November 18, 2011

For further information, please call: (512) 438-3437



#### SUBCHAPTER K. INSPECTIONS AND INVESTIGATIONS

##### DIVISION 1. OVERVIEW OF INSPECTIONS AND INVESTIGATIONS

##### 40 TAC §745.8407, §745.8427

The amendment and new section are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new section implement HRC §42.042, which authorizes DFPS to adopt rules related to the regulation

of child-care operations; HRC §42.044(c-1), which expands Licensing's investigation authority for listed child-care homes; HRC §42.065, concerning the administration of medication in child-care operations that operate for less than 24 hours; and HRC §42.209, concerning Licensing's authority to inspect temporary shelter day-care facilities.

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 February 1, 2012.

TRD-201200491  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



## SUBCHAPTER L. REMEDIAL ACTIONS DIVISION 1. OVERVIEW OF REMEDIAL ACTIONS

### 40 TAC §745.8605

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes DFPS to adopt rules related to the regulation of child-care operations; HRC §42.072(g), concerning controlling persons; and Chapter 531, Government Code, which requires state Health and Human Services agencies to share certain information.

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 February 1, 2012.

TRD-201200492  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



## SUBCHAPTER M. ADMINISTRATIVE REVIEWS AND DUE PROCESS HEARINGS DIVISION 1. ADMINISTRATIVE REVIEWS

### 40 TAC §745.8805

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes DFPS to adopt rules related to the regulation of child-care operations; HRC §42.054(f), which provides for an automatic suspension and revocation of a permit for provider's failure to pay fees; and HRC §42.052(j-1), which says that an automatic suspension or revocation of a listing because the provider failed to request background checks.

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 February 1, 2012.

TRD-201200493  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



## DIVISION 2. DUE PROCESS HEARINGS

### 40 TAC §745.8835

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes DFPS to adopt rules related to the regulation of child-care operations; HRC §42.054(f), which provides for an automatic suspension and revocation of a permit for provider's failure to pay fees; and HRC §42.052(j-1), which says that an automatic suspension or revocation of a listing because the provider failed to request background checks.

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 February 1, 2012.

TRD-201200494

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Department of Family and Protective Services

Effective date: March 1, 2012

Proposal publication date: November 18, 2011

For further information, please call: (512) 438-3437



### DIVISION 3. OPERATIONS PENDING THE ADMINISTRATIVE REVIEW AND DUE PROCESS HEARING

#### 40 TAC §745.8875

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes DFPS to adopt rules related to the regulation of child-care operations; and HRC §42.072(e), which no longer allows an operation to operate pending the appeal of a denial.

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 February 1, 2012.

TRD-201200495

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: March 1, 2012

Proposal publication date: November 18, 2011

For further information, please call: (512) 438-3437



### SUBCHAPTER N. ADMINISTRATOR LICENSING

#### DIVISION 5. REMEDIAL ACTIONS

#### 40 TAC §745.9037

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which

provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §43.005, which provides DFPS with the authority to adopt rules for the regulation of administrators; and HRC §43.010(a)(6)(B), which allows DFPS to take remedial action against an administrator's license for criminal history relevant to an administrator's 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.

Filed with the Office of the Secretary of State on February 1, 2012.

TRD-201200496

Gerry Williams

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Department of Family and Protective Services

Effective date: March 1, 2012

Proposal publication date: November 18, 2011

For further information, please call: (512) 438-3437



### CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§746.105, 746.201, 746.305, 746.501, 746.603, 746.1301, 746.1303, 746.1305, 746.1307, 746.1309, 746.1311, 746.1317, 746.1325, and 746.1329; the repeal of §§746.1327, 746.3801, 746.3803, and 746.3805; and new §§746.3801, 746.3803, 746.3805, 746.3813, and 746.3815, in its Minimum Standards for Child-Care Centers chapter. The amendments to §746.1309 and §746.1311 are adopted with changes to the proposed text published in the November 18, 2011, issue of the *Texas Register* (36 TexReg 7837). The amendments to §§746.105, 746.201, 746.305, 746.501, 746.603, 746.1301, 746.1303, 746.1305, 746.1307, 746.1317, 746.1325, and 746.1329; the repeal of §§746.1327, 746.3801, 746.3803, and 746.3805; and new §§746.3801, 746.3803, 746.3805, 746.3813, and 746.3815 are adopted without changes to the proposed text and will not be republished. The justification for the changes is to implement legislation passed in the 82nd Legislative Session. House Bill (H.B.) 434 requires a child-care facility or registered family home to:

(1) follow the directions of a child's health-care professional when providing to a child in care specialized medical assistance; and (2) maintain a copy of any written directions from the health-care professional for a reasonable period of time. H.B. 1615 restricts under what circumstances medication may be given to a child. Except in a medical emergency, a child day care operation must have parental consent before giving a child a prescription or over-the-counter medication. Senate Bill (S.B.) 260 increases orientation, pre-service, and annual

training requirements for day care centers. S.B. 265 requires training in certain child-care operations to be relevant to the age of children for whom care is provided, and adds trainer minimum qualifications. All training outlined in this section of the law must be conducted by a person who meets one of seven options for minimum qualifications. S.B. 471 requires day care centers to have specific policies and training related to child abuse and neglect. S.B. 1178 adds the requirement that a day care center must make a notification to Licensing when a new individual becomes a "controlling person" at the center, or an individual that was previously a controlling person ceases to be a controlling person at the center. A summary of the changes is described below.

The amendment to §746.105 broadens the definition of health-care professional beyond its current purpose of only describing those professionals that can provide vaccinations. This will make the definition more germane to H.B. 1615.

The amendment to §746.201 specifies that all provisions for training must comply with the training requirements in these minimum standards.

The amendment to §746.305 implements S.B. 1178, which adds the requirement that a day care center must make a notification to Licensing when a new individual becomes a "controlling person" at the center, or an individual that was previously a controlling person ceases to be a controlling person at the center.

The amendment to §746.501 adds the requirement to have an operational policy on preventing and responding to abuse and neglect of children. Specific policy content is required, which mirrors the new law, as required by S.B. 471.

The amendment to §746.603 adds to the list of contents required for a child's record: (1) medication administration records; and (2) health-care professional orders or recommendations for specialized medical assistance. The amendment also states how long the records must be kept. These changes are a result of H.B. 434 and H.B. 1615.

The amendment to §746.1301 updates the rule to reflect the changes in S.B. 260, which require orientation within seven days of hire and increased hours of pre-service and annual training.

The amendment to §746.1303 references orienting employees to the policy now required on preventing and responding to abuse and neglect of children (see description of §746.501 in this preamble). This ensures a thorough orientation for employees and makes the rules more consistent. This is required by S.B. 471.

The amendment to §746.1305 deletes the references to a specific number of training hours, as the number of hours is already specified in §746.1301.

The amendment to §746.1307 changes the caregiver exemption for pre-service training from six months of prior experience or equivalent training to two years, and clarifies that the previous training must be 24 clock hours of training at another regulated child-care center. This is required by S.B. 260.

The amendment to §746.1309 outlines annual training requirements for caregivers, and is revised as follows: (1) The rule currently specifies 15 hours of annual training, but 24 hours is now required in the law. Therefore, the rule is updated to reflect this increased requirement. (2) New law requires one hour of annual training on prevention, recognition, and reporting of child abuse/neglect. This is added to the rule, including the spe-

cific training content outlined in law. (3) A phrase is added to clarify that training must be relevant to the age of children for whom the caregiver is providing care. (4) A phrase from repealed §746.1327 regarding limits on self-instructional training is added.

The amendment to §746.1311 outlines annual training requirements for day care center directors and is revised as follows: (1) The rule currently specifies 20 hours of annual training, but 30 hours is now required in the law. Therefore, the rule is updated to reflect this increased requirement. (2) New law requires one hour of annual training on prevention, recognition, and reporting of child abuse/neglect. This is added to the rule, including the specific training content outlined in law. (3) A phrase is added to clarify that training must be relevant to the age of children for whom the center is providing care. (4) A limit on self-instructional training is changed to a percentage rather than a number of hours, which mirrors the limits previously reflected in this rule.

The amendment to §746.1317 adds the trainer minimum qualifications outlined in S.B. 265, which states that training must be conducted by a person who meets one of seven options for minimum qualifications. The amendment also clarifies that self-instructional training must be developed by a person who meets one of the listed trainer qualifications.

The amendment to §746.1325 revises the cross-reference to §746.1317.

Section 746.1327 is repealed.

The amendment to §746.1329 requires that trainer qualifications be included in training documentation, so that Child Care Licensing staff can monitor for compliance with the law.

Subchapter S, Safety Practices, Division 2, Medications and Medical Assistance, is renamed. The new name of Division 2 reflects additions to the division related to specialized medical assistance.

Section 746.3801 is repealed and adopted as new. New §746.3801 defines "medication" to include non-prescription medication. The circumstances under which a day care center may administer medication to a child, which were previously included in this rule, are incorporated into changes to §746.3803 and §746.3805.

Section 746.3803 is repealed and adopted as new. New §746.3803 lists the authorization requirements for all medications, which include: (1) written permission from a parent, or telephone permission for a one-time dose; (2) re-authorization at least annually; and (3) prohibition against a parent authorizing more medication than what is prescribed or than what is included in the medication's label instructions.

Section 746.3805 is repealed and adopted as new. In addition to the record keeping requirements for medications, the new rule expands the requirements moved from current §746.3801 and §746.3803 to include that medication can only be given according to label instructions or as directed by a health-care professional.

New §746.3813 defines specialized medical assistance.

New §746.3815 requires the operation to follow the recommendations or orders of the child's health-care professional when providing to a child in care specialized medical assistance, and requires the operation to maintain any written orders or recommendations in the child's record for at least three months after the health-care professional has indicated that the specialized



medical assistance is no longer needed. These changes are required by H.B. 434.

The sections will function by ensuring that providers will have a better understanding of when medications may be given to children, how specialized medical assistance must be provided, and caregivers and directors in day care centers will receive more training, and therefore provide better care to Texas children.

During the comment period, DFPS received comments from six advocates, 19 child-care providers (17 of whom identified themselves as day care directors), one parent, one trainer, and 35 people who did not identify their roles. A summary of the comments and DFPS's responses follows:

Comments concerning §746.1301: DFPS received nine comments.

(1) Two commenters stated that 24 hours of pre-service training is excessive, and that 16 would be more reasonable.

(2) Three commenters stated that it would be harder to hire qualified staff, due to the changes in pre-service training exemptions.

(3) Six commenters stated that the increased training hours will be a financial burden.

(4) Four commenters stated that it is a challenge to find enough training resources and enough staff time to fulfill additional training requirements.

(5) One commenter suggested waiting until August 2012 to make the increased training requirements effective, so that day care centers had more time to plan for compliance.

Response: DFPS is adopting this section without change. S.B. 260 changes orientation, pre-service, and annual training requirements. The law now requires orientation within seven days of hire and increased hours of pre-service and annual training. The changes update the rule to reflect changes in the law.

Child Care Licensing will provide technical assistance to help child care providers who report challenges with the financial impact of increased training requirements and lack of training resources.

S.B. 265 became effective on September 1, 2011; an e-mail was sent on August 15, 2011 to all providers with e-mail addresses regarding the laws passed in the 82nd Legislative Session; information was placed on the DFPS website specifying the new trainer requirements and that training received after January 1, 2012 will need to be provided by a trainer that meets the new training criteria; and Licensing always provides an "implementation period", which in this instance includes looking at this issue from a one-year standpoint (e.g. 9/11 - 9/12) and providing technical assistance.

Comment concerning §746.1307: DFPS received two comments.

(1) One commenter emphasized the financial burden of changing the pre-service training exemption for caregivers.

(2) The other commenter also stated that they would probably have to stop hiring staff who do not meet the pre-service training exemption, due to the cost of providing the additional pre-service training.

Response: DFPS is adopting this section without change. This section implements S.B. 260, which exempts caregivers from pre-service training if he or she has two years of previous experience or equivalent training. The rule change also clarifies that

an exemption based on previous training must be 24 clock hours of training at another regulated child-care center. The changes update the rule to reflect changes in the law.

Comments concerning §746.1309: DFPS received nine comments:

(1) Two commenters stated that the increased training requirements are excessive, noting that many other professions have lower annual training requirements. Two commenters also cited the additional burden of CPR/First Aid training and transportation safety training, which are not counted toward annual training hours.

(2) One commenter stated that the additional training would not be worth the cost, while three other commenters supported additional training.

(3) One commenter suggested fewer training requirements for certified teachers, and different training requirements for preschools versus other child-care centers.

(4) Eight commenters indicated that additional training requirements will be a financial burden on child care centers, both in terms of paying for training and paying staff for the time they spend in training.

(5) Three commenters expressed concern about having access to enough training.

(6) Two commenters requested additional time to come into compliance with the increased training requirements.

Response: DFPS does not recommend any changes in response to public comments specific to this rule, but DFPS is recommending a change related to a public comment regarding §746.1327.

The section implements changes in the law. S.B. 260 increases the number of hours of training that are needed annually for day care center caregivers. S.B. 471 requires day care centers to have specific policies and one hour of training related to child abuse and neglect. S.B. 265 requires training in day care centers to be relevant to the age of children for whom care is provided.

Child Care Licensing will provide technical assistance to help child care providers who report challenges with the financial impact of increased training requirements and lack of training resources.

S.B. 265 became effective on September 1, 2011; an e-mail was sent on August 15, 2011 to all providers with e-mail addresses regarding the laws passed in the 82nd Legislative Session; information was placed on the DFPS website specifying the new trainer requirements and that training received after January 1, 2012 will need to be provided by a trainer that meets the new training criteria; and Licensing always provides an "implementation period", which in this instance includes looking at this issue from a one-year standpoint (e.g. 9/11 - 9/12) and providing technical assistance.

In response to comments received on §746.1327, DFPS is adding subsection (g) to §746.1309, which states "A caregiver may obtain no more than 50% of annual training through self-instructional training." The wording change is a percentage rather than a number of hours, which mirrors the limits previously reflected in §746.1327.

Comments concerning §746.1311: DFPS received six comments:

(1) One commenter indicated that increased training for directors means that they will have to be away from the center more often, particularly since current rules do not allow them to count preparation for in-house training toward their own annual training hours.

(2) One commenter expressed concern about staff having enough time in their schedule to attend additional training.

(3) Five of the commenters indicated that additional training requirements will be a financial burden on child-care centers, both in terms of paying for training and paying staff for the time they spend in training. One commenter indicated that the increased requirements may put smaller programs out of business, or force them to decrease services in order to be exempt from regulation.

Response: DFPS does not recommend any changes in response to public comments specific to this rule, but DFPS is recommending a change related to a public comment regarding §746.1327.

The section implements changes in the law. S.B. 260 increases the numbers of hours of training that are needed annually for day care center directors. S.B. 471 requires day care centers to have specific policies and one hour of training related to child abuse and neglect. S.B. 265 requires training in day care centers to be relevant to the age of children for whom care is provided.

Child Care Licensing will provide technical assistance to help child care providers who report challenges with the financial impact of increased training requirements.

In response to comments received on §746.1327, DFPS is revising §746.1311. One of the proposed changes deleted subsection (j)(2), which is now being retained and renumbered as subsection (k) in response to public comment. However, the subsection is being changed to a percentage rather than a number of hours, which mirrors the limits previously reflected in §746.1311.

Comments concerning §746.1317: DFPS received three comments.

(1) One commenter expressed concern about the proposed changes to this rule, stating that the changes are "going to the extreme."

(2) One commenter suggested waiting until August or December 2012 to make the additional training requirements effective, so that day care centers had more time to plan for compliance.

Response: DFPS is adopting this section without change. S.B. 265 adds trainer minimum qualifications to Human Resources Code §42.0421. All training outlined in this section of the law must be conducted by a person who meets one of seven options for minimum qualifications listed in the law.

S.B. 265 became effective on September 1, 2011; an e-mail was sent on August 15, 2011 to all providers with e-mail addresses regarding the laws passed in the 82nd Legislative Session; information was placed on the DFPS website specifying the new trainer requirements and that training received after January 1, 2012 will need to be provided by a trainer that meets the new training criteria; and Licensing always provides an "implementation period", which in this instance includes looking at this issue from a one-year standpoint (e.g. 9/11 - 9/12) and providing technical assistance.

Comments concerning §746.1327: DFPS received 42 comments.

(1) One commenter supported the repeal of this rule.

(2) Three commenters requested that the current rule, which requires at least 1/2 of annual training to be instructor-led, not be repealed.

(3) One commenter suggested that at least 1/3 of annual training be instructor-led.

(4) 30 commenters opposed repeal of the rule and all stated, "Experts speak to the success of interactive curriculum and research-based, responsive, testable training. Instructor-led training furthers social connections and allows for sharing and reflection of the content and learning. It ensures active learning and participation and offers personal adjustment and feedback."

(5) Six commenters opposed the repeal of the rule, citing the benefit of classroom instruction.

(6) One commenter opposed the repeal of the rule, listing 19 "key issues" and research-related information to support her stance.

(7) One commenter stated that putting no limit on self-instructional training was in direct contradiction to established best practices and research in professional development for child care providers, citing three professional articles that supported her comment.

(8) One commenter stated that effective professional development experiences use an active, hands-on approach and stress an interactive approach that encourages students to learn from one another, while also offering opportunities for application and reflection on the material learned. The commenter also stated that, "considering that entry level is a high school diploma, we must ensure that the training received is factual, hands on and meets the various learning style of all providers."

Response: DFPS is repealing this rule, which limits the amount of self-instructional training that can be used to count toward annual training requirements. The original rationale for repealing the rule was that since all self-instructional training must be developed by a person who meets one of the qualifications outlined in S.B. 265, it is no longer necessary to limit self-instructional training. However, in response to public comment, DFPS will retain the requirements in this rule. This rule specifies a number of annual training hours that would be contradictory to changes adopted in other rules, and this rule cannot be amended after being proposed for repeal. Therefore, DFPS is revising §746.1309 and §746.1311 to include requirements limiting self-instructional training to the 50% of annual training, which mirrors the limits previously reflected in the rules.

Comment concerning §746.1329: The Texas Trainer Registry Council asked how training received at conferences would be accepted as annual training, since the training certificates would not include each trainer's qualifications. They requested that the conference organizers keep documentation on how each trainer qualifies, so that Child Care Licensing could accept the conference certificate alone as acceptable documentation and investigate any conference training that came into question.

Response: DFPS is adopting this section without change. S.B. 265 adds trainer minimum qualifications to Human Resources Code §42.0421. All training outlined in this section of the law must be conducted by a person who meets one of seven options for minimum qualifications.

This rule outlines the documentation requirements for training. The change to this rule requires that the trainer qualifications be included in training documentation, so that Child Care Licensing staff can monitor compliance with the law.

Child Care Licensing will add a "Helpful Information" section to the minimum standards publication, directly below this rule, indicating that conference sponsors may be responsible for ensuring the appropriateness of all presenter minimum qualifications (rather than listing all presenters and their qualifications on a training certificate).

## SUBCHAPTER A. PURPOSE AND DEFINITIONS

### 40 TAC §746.105

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC §42.042(e)(8)(A), which provides that a "health-care provider" can provide directions for specialized medical assistance required by a child.

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 February 2, 2012.

TRD-201200539

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Department of Family and Protective Services  
Effective date: March 1, 2012

Proposal publication date: November 18, 2011

For further information, please call: (512) 438-3437



## SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

### DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

#### 40 TAC §746.201

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC §42.0421 and §42.0426, which provide training and orientation requirements.

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 February 2, 2012.

TRD-201200540

Gerry Williams  
General Counsel

Department of Family and Protective Services  
Effective date: March 1, 2012

Proposal publication date: November 18, 2011

For further information, please call: (512) 438-3437



### DIVISION 2. REQUIRED NOTIFICATION

#### 40 TAC §746.305

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC §42.072(g), which now extends the controlling persons concept to all child-care operations.

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 February 2, 2012.

TRD-201200541

Gerry Williams  
General Counsel

Department of Family and Protective Services  
Effective date: March 1, 2012

Proposal publication date: November 18, 2011

For further information, please call: (512) 438-3437



### DIVISION 4. OPERATIONAL POLICIES

#### 40 TAC §746.501

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC §42.04261, which requires training related to the recognition and prevention of the abuse or neglect of children.

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 February 2, 2012.

TRD-201200542  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



#### SUBCHAPTER C. RECORD KEEPING DIVISION 1. RECORDS OF CHILDREN

#### 40 TAC §746.603

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; HRC §42.042(e)(8)(B), which requires a child-care facility or registered child-care home to maintain directions from a health-care provider for a "reasonable time;" and HRC §42.065, which provides guidelines for administering medication in a licensed, registered, or listed child-care home or center.

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 February 2, 2012.

TRD-201200543  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



#### SUBCHAPTER D. PERSONNEL DIVISION 4. PROFESSIONAL DEVELOPMENT

#### 40 TAC §§746.1301, 746.1303, 746.1305, 746.1307, 746.1309, 746.1311, 746.1317, 746.1325, 746.1329

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; HRC §42.0421 and §42.0426, which provide training and orientation requirements; and HRC §42.04261, which requires training related to the recognition and prevention of the abuse or neglect of children.

*§746.1309. How many clock hours of annual training must be obtained by caregivers?*

(a) Each caregiver must obtain at least 24 clock hours of training each year relevant to the age of the children for whom the caregiver provides care. The 24 clock hours of annual training are exclusive of orientation, pre-service training requirements, CPR and first aid, transportation safety training, and high school child-care work-study classes.

(b) At least six clock hours of annual training must be in one or more of the following topics:

- (1) Child growth and development;
- (2) Guidance and discipline;
- (3) Age-appropriate curriculum; and
- (4) Teacher-child interaction.

(c) At least one clock hour of annual training must focus on prevention, recognition, and reporting of child abuse and neglect, including:

- (1) Factors indicating a child is at risk for abuse or neglect;
- (2) Warning signs indicating a child may be a victim of abuse or neglect;

(3) Internal procedures for reporting child abuse or neglect;  
and

(4) Community organizations that have training programs available to child-care center staff members, children, and parents.

(d) The remaining clock hours of annual training must be in one or more of the following topics:

- (1) Care of children with special needs;
- (2) Child health (for example, nutrition and activity);
- (3) Safety;
- (4) Risk management;
- (5) Identification and care of ill children;
- (6) Cultural diversity for children and families;
- (7) Professional development (for example, effective communication with families, time and stress management);
- (8) Preventing the spread of communicable diseases;
- (9) Topics relevant to the particular age group the caregiver is assigned (for example, caregivers assigned to an infant or toddler group should receive training on biting and toilet training);
- (10) Planning developmentally appropriate learning activities;
- (11) Observation and assessment;
- (12) Attachment and responsive care giving; and
- (13) Minimum standards and how they apply to the caregiver.

(e) If a caregiver provides care for children younger than 24 months of age, one hour of that caregiver's annual training must cover the following topics:

- (1) Recognizing and preventing shaken baby syndrome;
- (2) Preventing sudden infant death syndrome; and
- (3) Understanding early childhood brain development.

(f) A caregiver who transports a child whose chronological or developmental age is younger than nine years old must meet additional training requirements, as outlined in §746.1316 of this title (relating to What additional training must a person have in order to transport a child in care?).

(g) A caregiver may obtain no more than 50% of annual training through self-instructional training.

*§746.1311. How many clock hours of training must my child-care center director obtain each year?*

(a) The child-care center director must obtain at least 30 clock hours of training each year relevant to the age of the children for whom the child-care center provides care. The 30 clock hours of annual training are exclusive of CPR and first aid, orientation, pre-service training requirements, and transportation safety.

(b) At least six clock hours of the annual training must be in one or more of the following topics:

- (1) Child growth and development;
- (2) Guidance and discipline;
- (3) Age-appropriate curriculum;
- (4) Teacher-child interaction; and

(5) Serving children with special care needs.

(c) At least one clock hour of annual training must focus on prevention, recognition, and reporting of child abuse and neglect, including:

- (1) Factors indicating a child is at risk for abuse or neglect;
  - (2) Warning signs indicating a child may be a victim of abuse or neglect;
  - (3) Internal procedures for reporting child abuse or neglect;
- and

(4) Community organizations that have training programs available to child-care center staff members, children, and parents.

(d) A director with five or fewer years of experience as a designated director of a child-care center must also complete at least six clock hours of the annual training in management techniques, leadership, or staff supervision.

(e) A director with more than five years of experience as a designated director of a child-care center must complete at least three clock hours of the annual training in management techniques, leadership, or staff supervision.

(f) If the center provides care for children younger than 24 months of age, one hour of the annual training must cover the following topics:

- (1) Recognizing and preventing shaken baby syndrome;
- (2) Preventing sudden infant death syndrome; and
- (3) Understanding early childhood brain development.

(g) The remainder of the 30 clock hours of annual training must be selected from the training topics specified in §746.1309(d) of this title (relating to How many clock hours of annual training must be obtained by caregivers?).

(h) If the center transports a child younger than nine years old, the director must complete two hours of annual training on transportation safety in addition to the other training requirements.

(i) The director may obtain clock hours or CEUs from the same sources as caregivers.

(j) Training hours may not be earned for presenting training to others, with the exception of up to two hours of training on transportation safety.

(k) No more than 50% of annual training may be obtained through self-instructional training.

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 February 2, 2012.

TRD-201200544

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: March 1, 2012

Proposal publication date: November 18, 2011

For further information, please call: (512) 438-3437



#### 40 TAC §746.1327

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042, which authorizes Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC §42.0421 and §42.0426, which provide training and orientation requirements.

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 February 2, 2012.

TRD-201200545  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



### SUBCHAPTER S. SAFETY PRACTICES

#### DIVISION 2. MEDICATIONS

##### 40 TAC §§746.3801, 746.3803, 746.3805

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; HRC §42.042(e)(8), which contains requirements regarding directions from a child's health-care provider concerning specialized medical treatment for a child in care; and HRC §42.065, which provides guidelines for administering medication in a licensed, registered, or listed child-care home or center.

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 February 2, 2012.

TRD-201200546  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



#### DIVISION 2. MEDICATIONS AND MEDICAL ASSISTANCE

##### 40 TAC §§746.3801, 746.3803, 746.3805, 746.3813, 746.3815

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; HRC §42.042(e)(8), which contains requirements regarding directions from a child's health-care provider concerning specialized medical treatment for a child in care; and HRC §42.065, which provides guidelines for administering medication in a licensed, registered, or listed child-care home or center.

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 February 2, 2012.

TRD-201200547  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



#### CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§747.105, 747.303, 747.603, 747.1301, 747.1303, 747.1307, 747.1309, 747.1315, 747.1323, and 747.1327; the repeal of §§747.1325, 747.3601, 747.3603, and 747.3605; and new §§747.3601, 747.3603, 747.3605, 747.3613, and 747.3615, in its Minimum Standards for Child-Care Homes chapter. The amendments to §747.1307 and §747.1309 are adopted with changes to the proposed text

as published in the November 18, 2011, issue of the *Texas Register* (36 TexReg 7846). The amendments to §§747.105, 747.303, 747.603, 747.1301, 747.1303, 747.1315, 747.1323, and 747.1327; the repeal of §§747.1325, 747.3601, 747.3603, and 747.3605; and new §§747.3601, 747.3603, 747.3605, 747.3613, and 747.3615 are adopted without changes to the proposed text and will not be republished. The justification for the changes is to implement legislation passed in the 82nd Legislative Session.

House Bill (HB) 434 requires a child-care facility or registered family home to: (1) follow the directions of a child's health-care professional when providing a child in care specialized medical assistance; and (2) maintain a copy of any written directions from the health-care professional for a reasonable period of time. HB 1615 restricts under what circumstances medication may be given to a child. Except in a medical emergency, a child day care operation must have parental consent before giving a child a prescription or over-the-counter medication. SB 260 increases orientation and annual training requirements for home-based day cares. SB 265 requires training in certain child-care operations to be relevant to the age of children for whom care is provided and adds trainer minimum qualifications to Human Resources Code §42.0421. All training outlined in this section of the law must be conducted by a person who meets one of seven options for minimum qualifications. SB 1178 expands the "controlling person" concept to all child-care facilities and family homes, not just residential operations. A summary of the changes is described below.

The amendment to §747.105 broadens the definition of health-care professional beyond its current purpose of only describing those professionals that can provide vaccinations. This will make the definition more germane to HB 1615.

The amendment to §747.303 implements SB 1178, which adds the requirement that a child-care home must notify Child-Care Licensing within two days when a new individual becomes a "controlling person" at the home or an individual that was previously a controlling person ceases to be a controlling person.

The amendment to §747.603 adds to the list of contents required for a child's record: (1) medication administration records; and (2) health-care professional orders or recommendations for specialized medical assistance. The amendment also states how long the records must be kept. These changes are a result of HB 434 and HB 1615.

The amendment to §747.1301 updates the training requirement for caregivers in home-based day cares. SB 260 requires that orientation must be completed within seven days of hire and increases annual training hours for licensed child-care homes to 24 hours. Previously, it was 15 hours.

The amendment to §747.1303 increases to 30 clock hours the annual training requirements for the owner/primary caregiver of a home-based day care.

The amendment to §747.1307 deletes references to a specific number of annual training hours, since the hours are already specified in changes to §§747.1301, 747.1303, and 747.1309, and adds a requirement from repealed §747.1325 regarding limits on self-instructional training. Also, a phrase is added to clarify that training must be relevant to the age of children for whom the caregiver is providing care.

The amendment to §747.1309 requires 30 hours of annual training requirements for the primary caregiver of a home-based day

care. Previously the amount was 20 hours. A requirement from repealed §747.1325 regarding limits on self-instructional training is added. Also, a phrase is added to clarify that training must be relevant to the age of children for whom the caregiver is providing care. These changes are the result of SB 260 and SB 265. Also, a cross-reference to the title of §747.1307 is changed in this rule.

The amendment to §747.1315 adds the trainer minimum qualifications outlined in SB 265, which states that training must be conducted by a person who meets one of seven options for minimum qualifications. The amendment also clarifies that self-instructional training must be developed by a person who meets one of the listed trainer qualifications.

The amendment to §747.1323 changes the cross-reference to §747.1315.

Section 747.1325 is repealed.

The amendment to §747.1327 requires that the trainer qualifications be included in training documentation, so that Child Care Licensing staff can monitor for compliance with the law.

The remaining changes are made in Subchapter S, Safety Practices, Division 2, Medication. The name of Division 2 is changed to Medication and Medical Assistance. The new name reflects additions to the division related to specialized medical assistance.

Section 747.3601 is repealed and adopted as new. New §747.3601 defines "medication" to include non-prescription medication. The circumstances under which a home-based day care may administer medication to a child, which were previously included in this rule, are incorporated into adopted new §747.3603 and §747.3605.

Section 747.3603 is repealed and adopted as new. New §747.3603 lists the authorization requirements for all medications, which include: (1) written permission from a parent or telephone permission for a one-time dose; (2) re-authorization at least annually; and (3) prohibition against a parent authorizing more medication than what is prescribed or than what is included in the medication's label instructions.

Section 747.3605 is repealed and adopted as new. In addition to the record keeping requirements for medications, the new rule expands the requirements moved from current §747.3601 and §747.3603 to include that medication can only be given according to label instructions or as directed by a health-care professional.

New §747.3613 defines specialized medical assistance.

New §747.3615 requires the operation to follow the recommendations or orders of the child's health-care professional when providing to a child in care specialized medical assistance and requires the operation to maintain any written orders or recommendations in the child's record for at least three months after the health-care professional has indicated that the specialized medical assistance is no longer needed. These changes are required by HB 434.

The sections will function by ensuring that caregivers in home-based day cares will have a better understanding of when medications may be given to children and how specialized medical assistance must be provided, receive more training, and therefore provide better care to Texas children.

During the comment period, DFPS received comments from the Texas Trainer Registry Council, the Texas Association for the Education of Young Children (TAEYC), a child care provider, and a person who did not identify her organization or role. A summary of the comments and DFPS's responses follows:

Comments concerning §747.1301: Two commenters disagree with increasing training hours for home-based child care providers.

Response: DFPS is adopting this section without change. SB 260 changed orientation and annual training requirements for home-based day care. The law now requires caregivers for licensed child-care homes to have orientation within seven days of hire and increased hours of annual training (from 15 to 24 hours). The changes update the rule to reflect changes in the law.

Comments concerning §747.1303: Two commenters disagree with increasing training hours for home-based child care providers.

Response: DFPS is adopting this section without change. SB 260 changed orientation and annual training requirements for home-based day care. The law now requires the permit holder that is a primary caregiver in licensed child-care homes to have 30 hours of annual training instead of the previous 20 hours. The changes update the rule to reflect changes in the law.

Comments concerning §747.1307: Two commenters disagree with increasing training hours for home-based child care providers.

Response: SB 260 changed orientation and annual training requirements, including an increase in annual training hours, for home-based day care. However, the relevant change to this rule only deletes the outdated references to the previously required "15 clock hours" of training. Sections 747.1301, 747.1303, and 747.1309 are the rules that actually increase the number of training hours.

DFPS is adopting §747.1307 with a change. A requirement from §747.1325, which is being repealed with this adoption, is added to this rule. In response to public comment, DFPS is retaining the requirements from §747.1325, but must update them to match annual training requirement increases reflected in other rules. Therefore, subsection (g) is added to this rule stating "A caregiver may obtain no more than 80% of annual training from self-instructional materials."

Comments concerning §747.1309: Two commenters disagree with increasing training hours for home-based child care providers.

Response: SB 260 changed orientation and annual training requirements for home-based day care. The law now requires a primary caregiver in licensed child-care homes to have 30 hours of annual training instead of the previous 20 hours. The changes update the rule to reflect changes in the law.

DFPS is adopting §747.1309 with a change. A requirement from §747.1325, which is being repealed with this adoption, is added to this rule. In response to public comment, DFPS is retaining the requirements from §747.1325, but must update them to match annual training requirement increases reflected in other rules. Therefore, subsection (h) is added to this rule stating "A primary caregiver may obtain no more than 80% of annual training from self-instructional materials."

Comment concerning §747.1325: DFPS received one comment on this rule and 42 comments on the companion rule in Chapter 746, Minimum Standards for Child-Care Centers, §746.1327 (relating to How many annual training clock hours may caregivers obtain from self-instructional materials?). The commenter expressed concern about repealing the limits on self-instructional training in all day care minimum standards, suggesting that the current limit of 50% for day care centers be maintained. The commenter also stated that effective professional development experiences use an active hands-on approach and stress an interactive approach that encourages students to learn from one another, while also offering opportunities for application and reflection on the material learned. The commenter also stated that, "considering that entry level is a high school diploma, we must ensure that the training received is factual, hands on and meets the various learning style of all providers."

Response: DFPS is repealing this rule, which limits the amount of self-instructional training that can be used to count toward annual training requirements. The original rationale for repealing the rule was that since all self-instructional training must be developed by a person who meets one of the qualifications outlined in SB 265, it is no longer necessary to limit self-instructional training. However, in response to public comment, DFPS will retain the requirements in this rule as well as use technical assistance to help child-care providers who report challenges with the financial impact of increased training requirements. This rule specifies a number of annual training hours that would be contradictory to changes adopted in other rules, and this rule cannot be amended after being proposed for repeal. Therefore, DFPS is revising §747.1307 and §747.1309 to include requirements limiting self-instructional training to the same percentage of annual training previously reflected in this rule, which was 80%.

Comment concerning §747.1327: The Texas Trainer Registry Council asked how training received at conferences would be accepted as annual training, since the training certificates would not include each trainer's qualifications. They requested that the conference organizers keep documentation on how each trainer qualifies, so that Child Care Licensing could accept the conference certificate alone as acceptable documentation and investigate any conference training that came into question.

Response: DFPS is adopting this section without change. SB 265 adds trainer minimum qualifications to Human Resources Code §42.0421. All training outlined in this section of the law must be conducted by a person who meets one of seven options for minimum qualifications.

This rule outlines the documentation requirements for training. The change to this rule requires that the trainer qualifications be included in training documentation, so that Child Care Licensing staff can monitor compliance with the law.

Child Care Licensing will add a "Helpful Information" section to the minimum standards publication, directly below this rule, indicating that conference sponsors may be responsible for ensuring the appropriateness of all presenter minimum qualifications (rather than listing all presenters and their qualifications on a training certificate).

## SUBCHAPTER A. PURPOSE AND DEFINITIONS

### 40 TAC §747.105

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which



provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC §42.042(e)(8)(A), which provides that a "health care provider" can provide directions for specialized medical assistance required by a child.

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 February 2, 2012.

TRD-201200548

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: March 1, 2012

Proposal publication date: November 18, 2011

For further information, please call: (512) 438-3437



## SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

### DIVISION 2. REQUIRED NOTIFICATIONS

#### 40 TAC §747.303

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC §42.072(g), which now extends the controlling persons concept to all child-care operations.

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 February 2, 2012.

TRD-201200549

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: March 1, 2012

Proposal publication date: November 18, 2011

For further information, please call: (512) 438-3437



## SUBCHAPTER C. RECORD KEEPING DIVISION 1. RECORDS OF CHILDREN

#### 40 TAC §747.603

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; HRC §42.042(e)(8)(B), which requires a child-care facility or registered child-care home to maintain directions from a healthcare provider for a "reasonable time;" and HRC §42.065, which provides guidelines for administering medication in a licensed, registered, or listed child-care home or center.

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 February 2, 2012.

TRD-201200550

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: March 1, 2012

Proposal publication date: November 18, 2011

For further information, please call: (512) 438-3437



## SUBCHAPTER D. PERSONNEL DIVISION 4. PROFESSIONAL DEVELOPMENT

#### 40 TAC §§747.1301, 747.1303, 747.1307, 747.1309, 747.1315, 747.1323, 747.1327

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC

§40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC §42.0421 and §42.0426, which provide training and orientation requirements.

§747.1307. *What topics must the annual training for caregivers include?*

(a) Each caregiver counted in the child/caregiver ratio on more than ten separate occasions in one training year, as specified in §747.1311 of this title (relating to When must the annual training be obtained?) must obtain annual training relevant to the age of the children for whom the caregiver provides care.

(b) Annual training is exclusive of CPR, first aid, orientation, transportation safety, and any training received through a high school child-care work-study program.

(c) At least six clock hours of annual training must be in one or more of the following topics:

- (1) Child growth and development;
- (2) Guidance and discipline;
- (3) Age-appropriate curriculum; and
- (4) Teacher-child interaction.

(d) The remaining clock hours of annual training must be in one or more of the following topics:

- (1) Care of children with special needs;
- (2) Child health (for example, nutrition and physical activity);
- (3) Safety;
- (4) Risk management;
- (5) Identification and care of ill children;
- (6) Cultural diversity of children and families;
- (7) Professional development (for example, effective communication with families, time and stress management);
- (8) Preventing the spread of communicable diseases;
- (9) Topics relevant to the particular ages of children in care (for example, caregivers working with infants or toddlers should receive training on biting and toilet training);
- (10) Planning developmentally appropriate learning activities;
- (11) Observation and assessment;
- (12) Attachment and responsive care giving; and
- (13) Minimum standards and how they apply to the caregiver.

(e) If the home provides care for a child younger than 24 months, one hour of annual training must cover the following topics:

- (1) Recognizing and preventing shaken baby syndrome;
- (2) Preventing sudden infant death syndrome; and

(3) Understanding early childhood brain development.

(f) A caregiver who transports a child whose chronological or developmental age is younger than nine years old must meet additional training requirements as outlined in §747.1314 of this title (relating to What additional training must a person have in order to transport a child in care?).

(g) A caregiver may obtain no more than 80% of annual training from self-instructional materials.

§747.1309. *What training topics must be included in my annual training as the primary caregiver?*

(a) You must obtain at least 30 clock hours of training annually that is:

- (1) Relevant to the age of the children for whom you provide care;
- (2) Exclusive of the Licensing pre-application interview, CPR and first-aid training, and transportation safety training; and
- (3) Not earned for presenting training to others.

(b) At least six clock hours of annual training must be in one or more of the following topics:

- (1) Child growth and development;
- (2) Guidance and discipline;
- (3) Age-appropriate curriculum; and
- (4) Teacher-child interaction.

(c) A primary caregiver with five or fewer years of experience as a primary caregiver in a licensed or registered child-care home must complete at least six of the 30 clock hours in management techniques, leadership, or staff supervision.

(d) A primary caregiver with more than five years of experience as a primary caregiver in a licensed or registered child-care home must complete at least three of the 30 clock hours in management techniques, leadership, or staff supervision.

(e) If the home provides care for children younger than 24 months, one hour of annual training must cover the following topics:

- (1) Recognizing and preventing shaken baby syndrome;
- (2) Preventing sudden infant death syndrome; and
- (3) Understanding early childhood brain development.

(f) The remainder of annual training hours must be selected from the training topics specified in §747.1307(d) of this title (relating to What topics must the annual training for caregivers include?).

(g) If the home transports children whose chronological or developmental age is younger than nine years old, the primary caregiver must complete two hours of annual training on transportation safety in addition to the other training hours.

(h) A primary caregiver may obtain no more than 80% of annual training from self-instructional materials.

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 February 2, 2012.

TRD-201200551

Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



#### **40 TAC §747.1325**

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC §42.0421 and §42.0426, which provide training and orientation requirements.

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 February 2, 2012.

TRD-201200552  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



### **SUBCHAPTER S. SAFETY PRACTICES**

#### **DIVISION 2. MEDICATION**

##### **40 TAC §§747.3601, 747.3603, 747.3605**

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; HRC §42.042(e)(8), which contains requirements regarding directions from a child's health care provider concerning specialized medical treatment for a child in care; and HRC §42.065, which provides guidelines

for administering medication in a licensed, registered, or listed child-care home or center.

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 February 2, 2012.

TRD-201200553  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



#### **DIVISION 2. MEDICATION AND MEDICAL ASSISTANCE**

##### **40 TAC §§747.3601, 747.3603, 747.3605, 747.3613, 747.3615**

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; HRC §42.042(e)(8), which contains requirements regarding directions from a child's health care provider concerning specialized medical treatment for a child in care; and HRC §42.065, which provides guidelines for administering medication in a licensed, registered, or listed child-care home or center.

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 February 2, 2012.

TRD-201200554  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



#### **CHAPTER 748. GENERAL RESIDENTIAL OPERATIONS**

SUBCHAPTER F. TRAINING AND  
PROFESSIONAL DEVELOPMENT  
DIVISION 6. ANNUAL TRAINING

40 TAC §748.941

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §748.941 without changes to the proposed text published in the November 18, 2011, issue of the *Texas Register* (36 TexReg 7852). The justification for the amendment is to implement legislation passed during the 82nd Legislative Session. Senate Bill (S.B.) 265 adds minimum qualifications for instructors that provide training required by Human Resources Code §42.0421. Transportation safety training is required by Human Resources Code §42.0421(e).

The amendment to §748.941 clarifies that transportation safety training for General Residential Operations must be conducted by an instructor that meets one of seven options for minimum training qualifications, which are consistent with the new law.

The amendment will function by ensuring that staff of operations will receive transportation safety training from qualified instructors.

During the comment period, DFPS received a comment from a residential child-care provider requesting that a licensed child-care administrator with a valid license and good driving record be able to conduct transportation safety training, stating that the current proposed requirements are too restrictive. DFPS is adopting §748.941 without change. This rule addresses instructor requirements for annual training. Since transportation safety training is required by Human Resources Code §42.0421, the instructor for transportation safety training must meet one of the qualifications now specified in law as added by S.B. 265 passed during the 82nd Legislative Session. However, a child-care administrator will in many instances be able to conduct transportation safety training because the administrator will already meet one or more of the qualifications.

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC §42.0421(f), which provides qualifications for certain trainers.

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 February 1, 2012.

TRD-201200497

Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



CHAPTER 749. CHILD-PLACING AGENCIES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§749.339, 749.931, 749.939, and 749.2967 of Chapter 749, Child-Placing Agencies. The amendment to §749.339 is adopted with a change to the proposed text as published in the November 18, 2011, issue of the *Texas Register* (36 TexReg 7853). The amendments to §§749.931, 749.939, and 749.2967 are adopted without changes to the proposed text and will not be republished.

The justification for the amendments is to implement legislation passed during the 82nd Legislative Session. Senate Bill (SB) 471 requires child-placing agencies to have specific policies and training related to child abuse and neglect. Senate Bill (SB) 265 adds minimum qualifications for instructors that provide training required by Human Resources Code §42.0421. Transportation safety training for child placing agencies is required by Human Resources Code §42.0421(e). House Bill (HB) 2560 prohibits Child Care Licensing from banning handguns in foster parent vehicles if the handgun is in the possession and control of the foster parent and the foster parent is licensed to carry the handgun. A summary of the changes is described below.

The amendment to §749.339 adds the requirement that a child-placing agency must have a policy on preventing, recognizing, and responding to abuse and neglect of children, as required by SB 471. Specific policy content is also required, which mirrors the new law.

The amendment to §749.931 requires one hour of annual training for child-placing agency employees on preventing, recognizing, and responding to abuse and neglect of children. Specific policy content is required, which mirrors the new law.

The amendment to §749.939 clarifies that transportation safety training for child placing agencies must be conducted by an instructor that meets one of seven listed options for minimum training qualifications, which are consistent with the new law.

The amendment to §749.2967 clarifies that caregivers may transport a child in a vehicle where a handgun is present if: (1) the handgun is in the possession and control of the caregiver; and (2) the caregiver is licensed to carry the handgun under Chapter 411, Subchapter H, of the Government Code.

The amendments will function by ensuring that staff of child-placing agencies will receive more training and information related to preventing, recognizing, and responding to child abuse/neglect, and transportation training will be of a higher quality because it will be provided by more highly qualified training staff as required by law.

During the comment period, DFPS received comments from two residential child-care providers and an individual. A summary of the comments and DFPS's responses follow:

Comment concerning §749.339: One commenter noted an error and requested clarification on a proposed new policy content

requirement related to child abuse/neglect: "Strategies for coordination between the center and appropriate community organizations."

Response: DFPS is adopting this section with a change to paragraph (18)(D), replacing "center" with "child-placing agency." The proposed rule incorrectly referred to a day care center instead of a child-placing agency.

DFPS is not revising the requirement to be more prescriptive at this time. Instead, Child Care Licensing staff will offer technical assistance as needed, individualized to the services offered by the operation and the resources available in the community.

Comment concerning §749.931: One commenter requested clarification on a proposed new training requirement related to child abuse/neglect: "Community organizations that have training programs available to child-placing agency staff members, children, and parents."

Response: DFPS is adopting this section without change. Instead of revising the requirement to be more prescriptive, Child Care Licensing staff will offer technical assistance as needed, individualized to the services offered by the operation and the resources available in the community.

Comments concerning §749.2967: Two commenters expressed concern about any type of weapon being in a vehicle when a foster child is being transported.

Response: DFPS is adopting this section without change. HB 2560 prohibits Child Care Licensing from banning handguns in foster parent vehicles if the handgun is in the possession and control of the foster parent and the foster parent is licensed to carry the handgun. The adopted rule conforms to the law.

## SUBCHAPTER C. ORGANIZATION AND

### ADMINISTRATION

## DIVISION 8. POLICIES AND PROCEDURES

### 40 TAC §749.339

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes the Department of Family and Protective Services to adopt rules related to the regulation of child-care operations; and HRC §42.0421(f), which provides qualifications for certain trainers.

*§749.339. What child-care policies must I develop?*

You must develop policies that describe:

- (1) Visitation rights between the child and family members and the child and friends;
- (2) The child's rights to correspond by mail with family members and friends, including any policies regarding mail restrictions and receipt of electronic mail;

- (3) The child's rights to correspond by telephone with family members and friends;

- (4) The child's rights to receive and give gifts to family, friends, staff or caregivers, or other children in care, including any restrictions on gifts;

- (5) Personal possessions a child is or is not allowed to have;

- (6) Emergency behavior intervention techniques if the use of emergency behavior intervention is permitted in your agency. If its use is not permitted, you must have a policy disallowing its use;

- (7) Discipline policies including techniques and methods for ensuring the appropriateness of discipline techniques used with a child. These policies and procedures must:

- (A) Guide employees and caregivers in methods used for discipline of a child in care;

- (B) Include measures for positive responses to appropriate behavior;

- (C) Make clear that discipline of any type is inappropriate and not permitted for infants; and

- (D) Emphasize the importance of nurturing behavior, stimulation, and promptly meeting the child's needs;

- (8) Any religious program or activity that you offer, including whether children are required to participate in religious activities with caregivers or staff;

- (9) The plans for meeting the educational needs of each child;

- (10) When trips with caregivers away from the home are allowed and what protocols will be used;

- (11) Program expectations and rules that apply to all children;

- (12) Child grievance procedures;

- (13) The types and frequency of reports to parents;

- (14) Procedures for routine and emergency diagnosis and treatment of medical and dental problems;

- (15) Routine health care relating to pregnancy and child-birth, if you admit and/or care for a pregnant child;

- (16) Your plan for providing health-care services to a child with primary medical needs;

- (17) Transitional living policies, if applicable;

- (18) Preventing, recognizing, and responding to abuse and neglect of children, including:

- (A) Required annual training for employees;

- (B) Methods for increasing employee and parent awareness of issues regarding child abuse and neglect, including warning signs that a child may be a victim of abuse or neglect;

- (C) Methods for increasing employee and parent awareness of prevention techniques for child abuse and neglect;

- (D) Strategies for coordination between the child-placing agency and appropriate community organizations; and

- (E) Actions that the parent of a child who is a victim of abuse or neglect should take to obtain assistance and intervention; and

(19) If applicable, the policy required by §749.2961(a)(2) of this title (relating to Are weapons, firearms, explosive materials, and projectiles permitted in a foster home?).

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 February 1, 2012.

TRD-201200498  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



## SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT DIVISION 6. ANNUAL TRAINING

### 40 TAC §749.931, §749.939

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042, which authorizes the Department of Family and Protective Services to make rules related to the regulation of child-care operations; HRC §42.04261, which requires training related to the recognition and prevention of the abuse or neglect of children; and HRC §42.0421(f), which provides qualifications for certain trainers.

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 February 1, 2012.

TRD-201200499

Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



## SUBCHAPTER O. FOSTER HOMES: HEALTH AND SAFETY REQUIREMENTS, ENVIRONMENT, SPACE AND EQUIPMENT DIVISION 3. WEAPONS, FIREARMS, EXPLOSIVE MATERIALS, AND PROJECTILES

### 40 TAC §749.2967

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042, which authorizes DFPS to adopt rules related to the regulation of child-care operations; and HRC §42.042(e-1), which allows a foster parent licensed to carry a concealed handgun to carry the gun with him or her when transporting a foster child.

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 February 1, 2012.

TRD-201200500  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: March 1, 2012  
Proposal publication date: November 18, 2011  
For further information, please call: (512) 438-3437



# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

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## Agency Rule Review Plan

Texas Commission on Fire Protection

Title 37, Part 13

TRD-201200520

Filed: February 1, 2012



## Proposed Rule Reviews

Employees Retirement System of Texas

Title 34, Part 4

The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 69, Membership and Refunds. This review is being conducted pursuant to Texas Government Code §2001.039.

The Board will assess whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at [paula.jones@ers.state.tx.us](mailto:paula.jones@ers.state.tx.us). The deadline for receiving comments is Monday, March 26, 2012, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal or amendment.

TRD-201200639

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Filed: February 8, 2012



The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 73, Benefits. This review is being conducted pursuant to Texas Government Code §2001.039.

The Board will assess whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at [paula.jones@ers.state.tx.us](mailto:paula.jones@ers.state.tx.us). The deadline for receiving comments is Monday, March 26, 2012, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal or amendment.

TRD-201200640

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Filed: February 8, 2012



The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 75, Hazardous Profession Death Benefits. This review is being conducted pursuant to Texas Government Code §2001.039.

The Board will assess whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at [paula.jones@ers.state.tx.us](mailto:paula.jones@ers.state.tx.us). The deadline for receiving comments is Monday, March 26, 2012, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal or amendment.

TRD-201200641  
Paula A. Jones  
General Counsel and Chief Compliance Officer  
Employees Retirement System of Texas  
Filed: February 8, 2012



The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 77, Judicial Retirement. This review is being conducted pursuant to Texas Government Code §2001.039.

The Board will assess whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is Monday, March 26, 2012, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal or amendment.

TRD-201200642  
Paula A. Jones  
General Counsel and Chief Compliance Officer  
Employees Retirement System of Texas  
Filed: February 8, 2012



Texas Department of Insurance, Division of Workers' Compensation

**Title 28, Part 2**

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Texas Government Code §2001.039: Chapter 142, Dispute Resolution--Benefit Contested Case Hearing.

- §142.1. Application of the Administrative Procedure Act.
- §142.2. Authority of the Hearing Officer.
- §142.3. Ex Parte Communications.
- §142.4. Delivery of Copies to All Parties.
- §142.5. Sequence of Proceedings to Resolve Benefit Disputes.
- §142.6. Setting a Benefit Contested Case Hearing.
- §142.7. Statement of Disputes.
- §142.8. Summary Procedures.
- §142.9. Stipulations, Agreements, and Settlements.
- §142.10. Continuance.
- §142.11. Failure To Attend a Benefit Contested Case Hearing.

- §142.12. Subpoena.
- §142.13. Discovery.
- §142.14. Permission To Use Court Reporter.
- §142.16. Decision.
- §142.17. Transcript or Duplicate of the Hearing Audiotape.
- §142.18. Special Provisions for Cases on Remand from the Appeals Panel.
- §142.19. Form Interrogatories.
- §142.20. Interlocutory Orders.

The Division will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code Chapter 2001.

To be considered, written comments relating to whether these rules should be repealed, readopted, or readopted with amendments must be submitted by 5:00 p.m. CST March 19, 2012. Comments may be submitted by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201200648  
Dirk Johnson  
General Counsel  
Texas Department of Insurance, Division of Workers' Compensation  
Filed: February 8, 2012



The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Texas Government Code §2001.039: Chapter 147, Dispute Resolution--Agreements, Settlements, Commutations.

- §147.1. Definitions.
- §147.2. Form.
- §147.3. Execution.
- §147.4. Filing Agreements with the Commission; Effective Dates.
- §147.5. Filing Settlements with the Commission; Effective Dates.
- §147.6. Settlement Conference.
- §147.7. Effect on Previously Entered Decisions and Orders.
- §147.8. Withdrawal from Settlement.
- §147.9. Requirements for Agreements and Settlements.
- §147.10. Commutation of Impairment Income Benefits.
- §147.11. Notification of Commission of Proposed Judgments and Settlements.

The Division will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed,



readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code Chapter 2001.

To be considered, written comments relating to whether these rules should be repealed, readopted, or readopted with amendments must be submitted by 5:00 p.m. CST March 19, 2012. Comments may be submitted by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201200649

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: February 8, 2012



## Adopted Rule Reviews

Texas Department of Insurance, Division of Workers' Compensation

### Title 28, Part 2

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) has completed its review required by the Texas Government Code §2001.039 of the following chapter of the Texas Administrative Code, Title 28, Part 2: Chapter 102, Practices and Procedures--General Provisions. The reviewed sections in this chapter are subsequently referred to collectively in this Notice of Adopted Review as "the sections."

The notice of proposed rule review was published in the September 9, 2011, issue of the *Texas Register* (36 TexReg 5957). As provided in this notice, the Division reviewed and considered the sections for readoption, revision, or repeal.

The Division considered whether the reasons for adoption of the sections continue to exist. The Division received no written comments regarding the review of the sections.

The Division has determined that the reasons for adopting the sections continue to exist and the sections are retained. The Division has determined certain sections could require amendment through future rule-making. Any revisions in the future will be accomplished in accordance with the Administrative Procedure Act.

§102.2. Gifts, Grants, and Donations.

§102.3. Computation of Time.

§102.4. General Rules for Non-Commission Communications.

§102.5. General Rules for Written Communications to and from the Commission.

§102.7. Abbreviations.

§102.9. Submission of Information Requested by the Commission.

§102.10. Interest, General.

§102.11. Electronic Formats for Electronic Claim Data Request and Report.

As a result of the review, the Division has determined that the reason for adoption of the following rule does not continue to exist. The Division declines to readopt this section. Any future repeal of this section will be accomplished in accordance with the Administrative Procedure Act.

§102.8. Information Requested on Written Communications to the Commission.

This concludes and completes the Division's review of Chapter 102; the chapter will be reviewed again in the future in accordance with Texas Government Code §2001.039.

TRD-201200647

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: February 8, 2012



The Texas Department of Insurance, Division of Workers' Compensation (Division) has completed its review required by the Texas Government Code §2001.039 of the following chapter of the Texas Administrative Code, Title 28, Part 2: Chapter 144, Dispute Resolution. The reviewed sections in this chapter are subsequently referred to collectively in this Notice of Adopted Review as "the sections."

The notice of proposed rule review was published in the August 26, 2011, issue of the *Texas Register* (36 TexReg 5416). As provided in this notice, the Division reviewed and considered the sections for readoption, revision, or repeal.

The Division considered whether the reasons for adoption of the sections continue to exist. The Division received no written comments regarding the review of the sections.

The Division has determined that the reasons for adopting the sections continue to exist and the sections are retained. Any revisions in the future will be accomplished in accordance with the Administrative Procedure Act.

This concludes and completes the Division's review of Chapter 144; the chapter will be reviewed again in the future in accordance with Texas Government Code §2001.039.

TRD-201200654

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: February 8, 2012



# TABLES & GRAPHICS

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

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

Figure: 16 TAC §401.320(g)(1)(A)

Match	Odds	Prize
0	1 in 2,704,156	\$250,000
1	1 in 18,779	\$500
2	1 in 621	\$50
3	1 in 56	\$10
4	1 in 11	\$2
5	Not a winner	Not a winner
6	Not a winner	Not a winner
7	Not a winner	Not a winner
8	1 in 11	\$2
9	1 in 56	\$10
10	1 in 621	\$50
11	1 in 18,779	\$500
12	1 in 2,704,156	\$250,000
	Overall odds of winning any prize: 1 in 4.54	

Figure: 31 TAC §57.981(c)(1)

Species and Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Bass: largemouth, smallmouth, spotted and Guadalupe bass, their hybrids, and subspecies.			
In all waters in the Lost Maples State Natural Area (Bandera).	0	No limit	Catch and release only.
Bass: largemouth and spotted.			
Lake Alan Henry.	5	No limit	It is unlawful to retain more than two bass of less than 18 inches in length.
Caddo Lake (Marion and Harrison).	8 (in any combination with spotted bass)	14 - 18 inch Slot limit (largemouth bass); no limit for spotted bass.	It is unlawful to retain largemouth bass between 14 and 18 inches. No more than 4 largemouth bass 18 inches or longer may be retained. Possession limit is 10.
Sabine River (Newton and Orange) from Toledo Bend dam to I.H. 10 bridge and Toledo Bend Reservoir (Newton, Sabine, and Shelby).	8 (in any combination with spotted bass)	14 (largemouth bass); no limit for spotted bass.	Possession limit is 10.
Bass: largemouth.			
Conroe (Montgomery and Walker), Granbury (Hood), Possum Kingdom (Palo Pinto, Stephens, Young), and Ratcliff (Houston).	5	16	
Lake Nacogdoches (Nacogdoches).	5		It is unlawful to retain largemouth bass of 16 inches or greater in length. Largemouth bass 24 inches or greater in length may be retained in a live well or other aerated holding device for purposes of weighing, but may not

			be removed from the immediate vicinity of the lake. After weighing, the bass must be released immediately back into the lake unless the department has instructed that the bass be kept for donation to the ShareLunker Program.
Lakes Bellwood (Smith), Braunig (Bexar), Bright (Williamson), Brushy Creek (Williamson), Bryan (Brazos), Calaveras (Bexar), Casa Blanca (Webb), Cleburne State Park (Johnson), Cooper (Delta and Hopkins), Fairfield (Freestone), Gilmer (Upshur), Jacksonville (Cherokee), Marine Creek Reservoir (Tarrant), Meridian State Park (Bosque), Naconiche (Nacogdoches), Old Mount Pleasant City (Titus), Pflugerville (Travis), Rusk State Park (Cherokee), and Welsh (Titus).	5	18	
Nelson Park Lake (Taylor) and Buck Lake (Kimbie).	0	No limit	Catch and release and only.
O.H. Ivie Reservoir (Coleman, Concho, and Runnels).	5	No limit	It is unlawful to retain more than two bass of less than 18 inches in length.
Purtis Creek State Park Lake (Henderson and Van Zandt), and Raven (Walker).	0	No limit	Catch and release only except that any bass 24 inches or greater in length may be retained in a live well or other aerated holding device for purposes of weighing, but may not be removed from the immediate vicinity of the lake. After weighing, the

			bass must be released immediately back into the lake unless the department has instructed that the bass be kept for donation to the ShareLunker Program.
Lakes Bridgeport (Jack and Wise), Burke-Crenshaw (Harris), Davy Crockett (Fannin), Grapevine (Denton and Tarrant), Georgetown (Williamson), Madisonville (Madison), San Augustine City (San Augustine), and Sweetwater (Nolan).	5	14 - 18 inch Slot limit	It is unlawful to retain largemouth bass between 14 and 18 inches in length.
Lakes Athens (Henderson), Bastrop (Bastrop), Buescher State Park (Bastrop), Houston County (Houston), Joe Pool (Dallas, Ellis, and Tarrant), Kyle (Hays), Lady Bird (Travis) Mill Creek (Van Zandt), Murvaul (Panola), Pinkston (Shelby), Timpson (Shelby), Walter E. Long (Travis) and Wheeler Branch (Somervell).	5	14 - 21 inch Slot limit	It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.
Lakes Fayette County (Fayette), Gibbons Creek Reservoir (Grimes), and Monticello (Titus).	5	14 - 24 inch Slot limit	It is unlawful to retain largemouth bass between 14 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.
Lake Fork (Wood, Rains and Hopkins).	5	16 - 24 inch Slot limit	It is unlawful to retain largemouth bass between 16 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.

Bass: smallmouth.			
Lakes O. H. Ivie (Coleman, Concho, and Runnels), Devil's River (Val Verde) from State Highway 163 bridge crossing near Juno downstream to Dolan Falls and Wheeler Branch (Somervell).	3	18	
Lake Meredith (Hutchinson, Moore, and Potter).	3	12 - 15 inch Slot limit	It is unlawful to retain smallmouth bass between 12 and 15 inches in length.
Bass: striped and white bass, their hybrids, and subspecies.			
Sabine River (Newton and Orange) from Toledo Bend dam to I.H. 10 bridge and Toledo Bend Reservoir (Newton, Sabine, and Shelby).	5	No limit	No more than 2 striped bass 30 inches or greater in length may be retained each day.
Lake Texoma (Cooke and Grayson).	10 (in any combination)	No limit	No more than 2 striped or hybrid striped bass 20 inches or greater in length may be retained each day. Striped or hybrid striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released. Possession limit is 20.
Red River (Grayson) from Denison Dam downstream to and including Shawnee Creek (Grayson).	5 (in any combination)	No limit	Striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released.
Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.	2 (in any combination)	18	
Bass: white.			

Lakes Caddo (Harrison and Marion), Texoma (Cooke and Grayson) and Toledo Bend (Newton, Sabine, and Shelby), and Sabine River (Newton and Orange) from Toledo Bend dam to I.H. 10 bridge.	25	No limit	
Carp: common.			
Lady Bird Lake (Travis).	No limit	No limit	It is unlawful to retain more than one common carp of 33 inches or longer per day.
Catfish: blue.			
Lakes Lewisville (Denton), Richland-Chambers (Freestone and Navarro), and Waco (McLennan).	25 (in any combination with channel catfish)	30-45-inch slot limit	It is unlawful to retain blue catfish between 30 and 45 inches in length. No more than one blue catfish 45 inches or greater in length may be retained each day.
Catfish: channel and blue catfish, their hybrids, and subspecies.			
Lake Livingston (Polk, San Jacinto, Trinity, and Walker).	50 (in any combination)	12	
Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.	10 (in any combination)	12	No more than 2 channel or blue catfish 24 inches or greater in length may be retained each day.
Lakes Caddo (Harrison and Marion), Kirby (Taylor), Palestine (Cherokee, Anderson, Henderson, and Smith), and Toledo Bend (Newton, Sabine, and Shelby), Sabine River (Newton and Orange) from Toledo Bend dam to I.H. 10 bridge.	50 (in any combination)	No Limit	No more than five catfish 20 inches or greater in length may be retained each day. Possession limit is 50.

Lake Texoma (Cooke and Grayson).	15 (in any combination)	12	No more than one blue catfish 30 inches or greater in length may be retained each day.
North Concho River (Tom Green) from O.C. Fisher Dam to Bell Street Dam, South Concho River (Tom Green) from Lone Wolf Dam to Bell Street Dam.	5 (in any combination)	No limit	
Community fishing lakes.	5 (in any combination)	No limit	
Bellwood (Smith), Dixieland (Cameron), and Tankersley (Titus).	5 (in any combination)	12	
Catfish: flathead.			
Lake Texoma (Cooke and Grayson) and the Red River (Grayson) from Denison Dam to and including Shawnee Creek (Grayson).	5	20	
Lakes Caddo (Harrison and Marion), Toledo Bend (Newton, Sabine, and Shelby), and Sabine River (Newton and Orange) from Toledo Bend dam to the I.H. 10 bridge.	10	18	Possession limit is 10.
Crappie: black and white crappie, their hybrids and subspecies.			
Caddo Lake (Harrison and Marion), Toledo Bend Reservoir (Newton, Sabine, and Shelby), and Sabine River (Newton and Orange) from Toledo Bend dam to the I.H. 10 bridge.	25 (in any combination)	No limit	



Lake Fork (Wood, Rains, and Hopkins) and Lake O' The Pines (Camp, Harrison, Marion, Morris, and Upshur).	25 (in any combination)	10	From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
Lake Texoma (Cooke and Grayson).	37 (in any combination)	10	Possession limit is 50.
Drum, red.			
Lakes Braunig and Calaveras (Bexar), Coleta Creek Reservoir (Goliad and Victoria), Fairfield (Freestone), and Tradinghouse Creek (McLennan).	3	20	No maximum length limit.
Shad, gizzard and threadfin.			
The Trinity River below Lake Livingston in Polk and San Jacinto Counties.	500 (in any combination)	No limit	Possession limit 1,000 in any combination.
Trout: rainbow and brown trout, their hybrids, and subspecies.			
Guadalupe River (Comal) from the second bridge crossing on the River Road upstream to the easternmost bridge crossing on F.M. Road 306.	1	18	
Walleye.			
Lake Texoma (Cooke and Grayson).	5	18	

## Texas Department of Agriculture

Request for Applications: 2012-2013 Urban Schools  
Agricultural Grant Program

**Statement of Purpose.** Pursuant to the Texas Agriculture Code, §§48.001 - 48.005 and Texas Administrative Code, Title 4, Part 1, Chapter 1, §§1.800 - 1.804, the Texas Department of Agriculture (TDA) hereby requests applications for agricultural projects designed to foster an understanding and awareness of agriculture in elementary and middle school students for the period of September 1, 2012 through August 31, 2013, from certain Texas urban school districts.

Agriculture is defined as the science, art, or practice of cultivating the soil, producing crops, raising livestock, and in varying degrees the preparation and marketing of the resulting products. TDA encourages schools to consider partnerships with organizations such as a local Master Gardner program, 4-H or FFA clubs. Projects funded must be dedicated to education and/or awareness of agriculture in elementary and middle school students in certain urban school districts in Texas and should be designed to improve students' understanding and appreciation of agriculture.

*A non-comprehensive list of project ideas and resources can be found in Attachment 1 to this Request for Applications (RFA).*

**Eligibility.** Proposals must be submitted that benefit Texas public elementary or middle schools from an urban school district with an enrollment of at least 49,000 students.

A school district can only submit one application per project; however, a district may submit multiple applications if multiple unique projects are being submitted for funding.

A non-profit organization may also submit a proposal with the support of an eligible Texas public or middle school where the project will be administered. As with school districts, only one application per project may be submitted for funding; however, a non-profit can submit multiple applications if multiple unique projects are being requested for funding.

According to Texas Education Agency's (TEA) October 2011 records, the eligible school districts are:

Aldine Independent School District;  
Arlington Independent School District;  
Austin Independent School District;  
Brownsville Independent School District;  
Conroe Independent School District;  
Cypress-Fairbanks Independent School District;  
Dallas Independent School District;  
El Paso Independent School District;  
Fort Bend Independent School District;  
Fort Worth Independent School District;  
Garland Independent School District;

Houston Independent School District;  
Katy Independent School District;  
Lewisville Independent School District;  
North East Independent School District;  
Northside Independent School District;  
Pasadena Independent School District;  
Plano Independent School District; and  
San Antonio Independent School District.

If your school district is not listed above and you feel it meets the minimum student enrollment of 49,000 you will need to attach a TEA verification of enrollment to your application.

**Funding Parameters.** Awards are subject to the availability of funds. If no funds are appropriated or collected for this purpose, applicants will be informed accordingly.

TDA reserves the right to fund projects partially or fully. TDA reserves the right to negotiate individual elements of any proposal and to reject any and all proposals. Where more than one proposal is acceptable for funding, TDA may request cooperation between grantees or revisions/adjustments to a proposal in order to avoid duplication and to realize the maximum benefit to the state. Selected projects will receive funding on a cost- reimbursement basis.

All costs, directly or indirectly related to preparation of a response to this RFA or any oral presentation required to supplement and/or clarify the RFA, which may be required by TDA, shall be the sole responsibility of, and shall be borne by the applicant.

School districts and non-profit organizations are limited to a maximum grant award of \$10,000, with no single campus receiving more than \$2,500.

### Application Requirements.

#### *Form Requirements:*

Applications must be submitted on Form ER-150 for consideration. Responses, including Form ER-150, may not exceed six pages. The required forms are available by accessing TDA's website at: [www.TexasAgriculture.gov](http://www.TexasAgriculture.gov).

A complete, hard copy application with signature must be mailed and postmarked by Thursday April 19, 2012. The Project Narrative must also be submitted by email in a Microsoft Word document.

Proposals must include all of the following information:

- 1. Applicant Contact Information:** Include name of applicant organization; and name, title, and contact information for both primary program contact and name of authorized representative (usually the superintendent, if applicant is an ISD).
- 2. Project Title:** Title must be brief, descriptive and capture the primary focus of the project.
- 3. Project Summary:** In 200 words or less include the summary of the project to be completed.

**4. Educational Statement:** A statement of the educational benefits of the project, including how the project will improve the students' understanding of agriculture and the role agriculture plays in their daily lives.

**5. Scope of Work.** In this section, list the activities that will be completed, how and what the project will accomplish and who will participate in this project. This detailed description should include the role of the students. If more than one grade level is participating, please explain the role of each. Make sure a correlation between each activity and its purpose in meeting the goal(s) of the project is clear.

**6. Anticipated Project Results:** Provide a detailed description of how quantifiable results have, or will be, demonstrated by the program/activity.

**7. Project Sustainability:** Provide a statement on how this project will be sustainable or otherwise supports continuation of the students' understanding of agriculture long-term or beyond the grant award period

**8. Project Budget:** A project budget including a detailed list of anticipated costs for the project totaling no more than \$2,500.

**Proposal Evaluations.** Proposals will be evaluated based on the following criteria:

1. *Agricultural education component* - How well does this project increase the students' understanding of agriculture and the role it plays in their daily lives?

2. *Achievability of the proposed project and objectives* - How well do the anticipated project results support the project's purpose?

3. *Project Budget* - Is the requested budget reasonable? Is the project budget dedicated to student education and not campus beautification?

4. *Sustainability of the project* - Are there lasting benefits after the end of the project?

#### **Evaluation and Selection Information.**

1. An administrative review will be conducted by agency staff to determine whether the applicant was responsive to the requirements of this RFA.

2. A panel appointed by the Commissioner of the Texas Department of Agriculture shall review and score the proposals. The panel shall consist of representatives from the following: Texas Department of Agriculture, education industry, livestock industry, specialty crop industry, row crop industry, horticulture industry and the Texas AgriLife Extension Service. The panel shall provide a technical review to evaluate the merits of each Proposal using the criteria set forth in the Proposal Evaluation Sheet.

3. An internal review panel will discuss ranking and potential impact, to determine which projects will be selected for funding.

**Approved Projects.** The announcement of the grant awards will be made by August 2012. All approved projects will have a start date of September 1, 2012 and must be completed by August 31, 2013.

**Reporting Requirements.** Approved projects are required to submit the following reports:

1. *Payment Requests.* The Urban Schools Agricultural Grant Program is administered on a cost reimbursement basis. Funds will be disbursed once a proper payment request, including back-up documentation, has been received by TDA. Payment requests may be submitted with no greater frequency than monthly.

2. *Project Progress Reports.* These reports are due on a quarterly basis from one to three pages in length, detailing accomplishment of project

objectives as well as a budget status report for the time periods specified in the grant agreement.

3. *Final Compliance Report.* These reports are due either thirty (30) days after completion of the project or upon termination of the Grant Agreement. The final report shall be submitted in a hard copy format and an electronic format should be emailed to the Department. The final report shall contain:

a. A project summary -history of the project, its objectives, importance, effort and results of the project;

b. A description of the successes, challenges, and any limitations of the program;

c. A description of future plans, including how the project will continue after the grant is expended and how additional funding might address expansion efforts; and

d. Photographs to document results.

#### **General Compliance Information.**

1. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature.

2. Any delegation by the Grantee to a subcontractor regarding any duties and responsibilities imposed by the grant award shall be approved in advance by TDA and shall not relieve the Grantee of its responsibilities to TDA for their performance.

3. Any information or documentation submitted to TDA as part of the project grant proposal is subject to disclosure under the Texas Public Information Act.

4. Awarded grant projects must remain in full compliance with state and federal laws and regulations. Noncompliance with such law may result in termination by TDA.

5. Grant recipients must keep a separate bookkeeping account with a complete record of all expenditures relating to the project. Records shall be maintained for three years after the completion of the project or as otherwise agreed upon with TDA. TDA and the Texas State Auditor's Office reserve the right to examine all books, documents, records, and accounts relating to the project at any time throughout the duration of the agreement and for three years immediately following completion of the project. If there has been any litigation, claim, negotiation, audit or other action started prior to the expiration of the three-year period involving the records, then the records must be retained until the completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later. TDA and the Texas State Auditor's Office reserve the right to inspect the research locations and to obtain from the research team full information regarding all project activities.

6. If the Grantee has a financial audit performed in any year during which Grantee receives funds from TDA, and if TDA requests information about the audit, the Grantee shall provide such information to TDA or provide information as to where the audit report can be publicly viewed, including the audit transmittal letter, management letter, and any schedules in which the Grantee's funds are included.

7. Grant awards to Texas institutions shall comply in all respects with the Uniform Grant Management Standards (UGMS). A copy may be downloaded from the following website: [www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS012001.doc](http://www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS012001.doc)

**Deadline for Submission of Responses.** A complete, hard copy application with signature must be mailed and **postmarked by Thursday, April 19, 2012.** See mailing information below.

Complete applications with signature must be submitted to:

Physical Address: Ms. Mindy Fryer, Grants Specialist, Texas Department of Agriculture, 1700 North Congress Avenue, Austin, Texas 78701.

Mailing Address: Ms. Mindy Fryer, Grants Specialist, Texas Department of Agriculture P.O. Box 12847, Austin, Texas 78711.

The applicant is also required to submit the Project Narrative by email in a Microsoft Word document. PDF documents will not be accepted. Electronic copies may be emailed to [Grants@TexasAgriculture.gov](mailto:Grants@TexasAgriculture.gov).

TDA will send an acknowledgement receipt by email indicating the application was received.

#### **Assistance and Questions.**

For questions regarding submission of the proposal and TDA documentation requirements, please contact Ms. Mindy Fryer, Grants Specialist, at (512) 463-6908 or by email at [grants@TexasAgriculture.gov](mailto:grants@TexasAgriculture.gov).

**Texas Public Information Act.** All proposals shall be deemed, once submitted, to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

### **ATTACHMENT 1**

#### **Definition of Agriculture**

Agriculture is defined as the science, art, or practice of cultivating the soil, producing crops, and raising livestock, and in varying degrees the preparation and marketing of the resulting products.

If the students in your classroom were asked where hamburger meat, milk, carrots, ham, bread or cereal come from, how would they answer? Would they know that all food comes from farms and ranches or would they answer, "the grocery store"?

#### **Project Examples:**

School gardens (vegetable, salsa, pizza, etc.);

Classroom projects (herb gardens, hatchery, etc.);

Field trips (Livestock shows, Farmers' Markets, farms and ranches);

Guest speakers;

After school projects.

Please consider using the following suggested online resources to enhance the agriculture emphasis in your project. This list is also located on TDA's website ([www.TexasAgriculture.gov](http://www.TexasAgriculture.gov)) under the grants/funding tab. TDA strives to provide the most up to date information and will be periodically updating this information as needed.

**National 4-H** - [www.4-hmall.org](http://www.4-hmall.org)

**National Cotton Council** - [www.cotton.org/pubs/cottoncounts/resources.cfm](http://www.cotton.org/pubs/cottoncounts/resources.cfm)

**National Peanut Board** - <http://www.nationalpeanutboard.org/>

**Popcorn Board** - [www.popcorn.org](http://www.popcorn.org)

**Texas 4-H** - <http://texas4-h.tamu.edu/>

**Texas Sheep and Goat Raisers Association** - [www.ts-gra.com/learn.htm](http://www.ts-gra.com/learn.htm)

**The Texas Farm Bureau** - [www.txfb.org](http://www.txfb.org) or [www.beagsmart.org](http://www.beagsmart.org)

**USDA - Agriculture in the Classroom** - [www.agclassroom.org](http://www.agclassroom.org)

Many teachers have taken the opportunity to use the Urban Schools Agriculture Grant Program to teach TEKS in new, exciting and hands-on ways. The following list is not exhaustive, but rather an

assimilation of general ideas that you may tailor to your needs or merely use as a starting point for your own unique ideas.

**Animal Care** - Students could select a livestock project, and become responsible for that animals' care, round the clock. This includes duty schedules during weekends and holidays, identifying costs and budget, record maintenance, and preparing the animal(s) for a livestock show or similar forum. As part of the project, they could prepare photographs, video, etc. that focus on the project and lessons learned. The documentation could include visits to farms and ranches to review the scope of large operations and to find lessons that apply to the school project.

**Agriculture and the Environment** - Students can get permission to work on a piece of property in or around their school where soil quality, drainage, topsoil or pollution and litter problems exist. They can arrange a planting project (vegetables, fruit trees, etc.) that will mitigate or improve the existing problem to help make the land productive again. They can study the impact of poor land management, urbanization and pollution, and then suggest improvements.

**Exploring Aquaculture** -An often-overlooked aspect of agriculture is the fish and shellfish industry. Students can develop a project to raise fish, study the nutrient requirements of water for various species, learn about pollution and water quality and study the differences among freshwater and saltwater species. The research could include visits to Aquaculture centers and seafood restaurants to focus on the industry. As part of the project, they could prepare photographs and educational materials that focus on Aquaculture. They could present this to young students through assemblies or by allowing the primary and pre-school students to visit the classroom for a "meet the fish day."

**School Gardens and Land Management** - Students could use a piece of district-owned property on which to plant and maintain a garden. They could include "test" areas to measure the effects of proper land management, drainage, drought, etc. on their produce. Based upon the size and output of the garden, the students could serve the "fruits of their labors" at a school function, as part of a cafeteria meal or donate it to a food bank or other community outlet. If the students elect to do a horticulture project, they could share the plants and flowers with shut-ins, nursing homes, or volunteer organizations. In addition, they could use them for a school ceremony or special recognition.

**Texas Products** - Using resources such as Go Texan and commodity group data, students can study the school cafeteria menu to identify Texas agriculture products. They can do the same at area restaurants. The students then can work with the lunchroom and restaurants to use photography, articles and videos for artistic and informative lobby displays about the products and their Texas sources.

TRD-201200644

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: February 8, 2012

### **Department of Assistive and Rehabilitative Services**

Notice of Public Hearings and Opportunity for Public Comment on Revisions to 40 TAC Chapter 108, Division for Early Childhood Intervention Services

The Department of Assistive and Rehabilitative Services (DARS) is providing an opportunity for public comment and a notice of public hearings on the proposed revisions to 40 TAC Chapter 108, Division for Early Childhood Intervention Services. The proposed revisions are

based on recent federal regulation changes, programmatic clarification of existing requirements, and new programmatic requirements.

The proposed rules are subject to a 60-day comment period between February 17, 2012 and April 16, 2012. During the comment period, any person may submit written comments on the proposed rules.

The public hearings listed below will be held from 4:00 p.m. until 7:00 p.m.

**March 19, 2012**

Education Service Center, Region 20

1314 Hines Avenue

San Antonio, Texas 78208

**March 21, 2012**

United Way of Greater Houston

50 Waugh Drive

Houston, Texas 77007

**March 23, 2012**

American Foundation for the Blind

11030 Ables Lane

Dallas, Texas 75229

Copies of the proposed rules may be obtained from the DARS web site at <http://www.dars.state.tx.us/> or by contacting the DARS Division for Early Childhood Intervention Services at (512) 424-6754.

Written comments on the proposed rule revisions may be submitted electronically to [DARSrules@dars.state.tx.us](mailto:DARSrules@dars.state.tx.us) or sent by postal mail to:

Department of Assistive and Rehabilitative Services

Center for Policy and External Relations, Mail Code 1411

4800 North Lamar Boulevard

Austin, Texas 78751-2399

**All comments must be received by 5:00 p.m. on April 16, 2012.**

Persons who have special communication or other accommodation needs who are planning to attend a public hearing should contact the DARS Inquiry Line at 1-800-628-5115. Requests for accommodations should be made five business days before the hearing date.

TRD-201200636

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Filed: February 8, 2012



**Notice of Request for Comments on DARS Annual Application for Federal Funds for Early Childhood Intervention Services**

The Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention Services is soliciting comments related to its annual application for funding under the Individuals with Disabilities Education Act, Part C. The annual funding application will be submitted to the U.S. Department of Education, Office of Special Education Programs on April 16, 2012. The application will be posted on the Department of Assistive and Rehabilitative Services' web site at: <http://www.dars.state.tx.us>. The Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention Services is providing an opportunity to comment on the application from Febru-

ary 10, 2012 until April 9, 2012. To request copies of the application or submit comments, please contact:

Department of Assistive and Rehabilitative Services

Division for Early Childhood Intervention Services, Mail Code 3029

4900 North Lamar Boulevard

Austin, Texas 78751-2399

E-mail: [ECI.policy@dars.state.tx.us](mailto:ECI.policy@dars.state.tx.us)

TRD-201200616

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Filed: February 7, 2012



**Office of the Attorney General**

**Notice of Settlement of a Texas Water Code Enforcement Action**

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to §7.110 of the Texas Water Code the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title: *Entergy Gulf States Louisiana, LLC, et al. v. Texas Commission on Environmental Quality*, No. D-1-GN-08-003250; In the 98th Judicial District Court, Travis County, Texas.

Background: This case involves the remediation of the Spector Salvage Yard State Superfund Site in Orange, Orange County, Texas. The Texas Commission on Environmental Quality ("TCEQ") has expended more than \$2.8 million in cleaning up contamination at the site. On August 7, 2008, the TCEQ issued an administrative order styled "In the Matter of the Site Known as Spector Salvage Yard State Superfund Site, Docket No. 2008-0759- SPF" ("the Order"), finding that certain parties were responsible for solid waste and hazardous substances at the Site, providing for a cleanup, and other matters. Various parties appealed the Order; those appeals were consolidated into the above-referenced case. In a previous settlement, twenty-six parties and the federal government settled the claims against them.

Nature of the Settlement: The lawsuit will be settled, as to the remaining parties in the case, by an agreed final judgment in the district court. A related claim against the State of Louisiana will be settled by a separate agreement.

Proposed Settlement: The proposed judgment provides for the recovery of response costs and attorneys' fees; the settlement with the State of Louisiana provides for the recovery of additional response costs.

The Office of the Attorney General will accept written comments relating to the proposed judgment and the federal settlement for 30 days from the date of publication of this notice. Copies of the proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. A copy of the proposed judgment may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the judgment, and written comments on the same, should be directed to Thomas H. Edwards, Assistant Attorney General, Office of the Attorney General (018), P.O.

Box 12548, Austin, Texas 78711-2548; telephone (512) 463-2012, fax (512) 320-0052.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201200624

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: February 7, 2012

## Coastal Coordination Council

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following projects during the period of January 25, 2012, through February 1, 2012. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the General Land Office's web site. The notice was published on the web site on February 8, 2012. The public comment period for this project will close at 5:00 p.m. on March 9, 2012.

#### FEDERAL AGENCY ACTIONS:

**Applicant: Aransas County** Location: The project site is located in Little Bay just east of Broadway Street, in Rockport, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Rockport, Texas. NAD 83, Latitude: 28.031275 North; Longitude: -97.044951 West

**Project Description:** The applicant proposes to construct a series of 28 overlapping offshore pancake oyster reefs of varying lengths, each approximately 30 feet in width, for a total of 7,761 linear feet of oyster reef. These reefs will be located approximately 70-130 feet bayward of Broadway Street in Little Bay. The shell material constituting the reefs will be temporarily contained by fencing/netting/gabion bags. Areas located along the shoreline behind the proposed oyster reefs that are currently at suitable elevations for sprigging will be planted with a mix of smooth cordgrass at lower elevations, and marsh-hay cordgrass with shoregrass at higher elevations. Areas that are not currently at suitable elevations will be filled to appropriate elevations with a sandy soil that will come from a commercial source and be similar in composition to those in Little Bay.

CMP Project No.: 12-0624-F1

**Type of Application:** U.S.A.C.E. permit application #SWG-2010-00975 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

**Note:** The consistency review for this project will be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: Aransas County** Location: The project site is located in Aransas Bay just east of Fulton Beach Road in Fulton, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Rockport, Texas. NAD 83, Latitude: 28.067115 North; Longitude: -97.035015 West

**Project Description:** The applicant proposes to construct a series of approximately 46 overlapping angled breakwaters measuring 70 feet in length and 26 feet in width (at the base) with a crest measuring approximately 4 feet in width and 4.5 feet in height with a 2:1 slope, for a total of 3,220 linear feet of breakwater over 1.30 acres, located approximately 20-30 feet bayward of Aransas Bay. The proposed breakwaters would be constructed by relocating existing concrete rip-rap along the shoreline and combining it with a mix of limestone and crushed concrete as well as oysters shell and spat when feasible. The areas located along the shoreline behind the proposed breakwaters that are currently at suitable elevations for sprigging will be planted with a mix of smooth cordgrass at lower elevations and marsh hay cordgrass and shoregrass at higher elevations. The purpose of the project is to prevent further erosion to the shoreline and existing coastal wetlands and bay areas while providing habitat enhancement and restoration while utilizing living shoreline technology.

CMP Project No.: 12-0625-F1

**Type of Application:** U.S.A.C.E. permit application #SWG-2011-01237 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the CMP goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Kate Zultner, Consistency Review Specialist, P.O. Box 12873, Austin, Texas 78711-2873, or via email at [kate.zultner@glo.texas.gov](mailto:kate.zultner@glo.texas.gov). Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201200655

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: February 8, 2012

## 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 02/13/12 - 02/19/12 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 02/13/12 - 02/19/12 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005<sup>3</sup> for the period of 02/01/12 - 02/29/12 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 02/01/12 - 02/29/12 is 18% for Commercial over \$250,000.

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

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

<sup>3</sup>For variable rate commercial transactions only.

TRD-201200609

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: February 7, 2012

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the 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 **March 19, 2012**. 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 March 19, 2012**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Artemio Martinez dba Allied Trading; DOCKET NUMBER: 2011-1875-MLM-E; IDENTIFIER: RN102821238; LOCATION: Brownsville, Cameron County; TYPE OF FACILITY: recycling; RULE VIOLATED: 30 TAC §335.6(h), by failing to submit a written notice to the TCEQ which includes the type(s) of industrial solid waste or municipal hazardous waste to be recycled, the method of storage prior to recycling, and the nature of the recycling activity 90 days prior to engaging in such activity; 30 TAC §335.24(j), by failing to provide a written cost estimate for closure of the facility; 30 TAC §37.921 and §335.24(k), by failing to establish and maintain financial assurance for closure of the facility; and 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activity; PENALTY: \$10,431; ENFORCEMENT COORDINATOR: Merrilee

Hupp, (512) 239-4490; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: Azteca Milling, L.P.; DOCKET NUMBER: 2011-1885-IWD-E; IDENTIFIER: RN100215086; LOCATION: Plainview, Hale County; TYPE OF FACILITY: corn milling; RULE VIOLATED: 30 TAC §305.125(1) and (5), and TCEQ Permit Number WQ0003111000 Special Provisions R.2, by failing to properly operate and maintain all facilities and systems of treatment and control; PENALTY: \$2,120; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(3) COMPANY: Barry Capps dba Capps Hardware & Ag Center; DOCKET NUMBER: 2011-2059-PST-E; IDENTIFIER: RN101667541; LOCATION: Fairfield, Freestone County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 430-6021; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2011-1807-AIR-E; IDENTIFIER: RN103919817; LOCATION: Baytown, Harris County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §§101.20(1) and (3), 115.722(d)(1), 116.115(c), and 122.143(4); New Source Review Permit (NSRP) Numbers 1504A and PSD-TX-748, Special Conditions (SC) Number 11.A.; Federal Operating Permit (FOP) Number O-02113, Special Terms and Conditions Numbers 1.A. and 17; 40 Code of Federal Regulations §60.18(c)(3)(ii), and Texas Health and Safety Code (THSC), §382.085(b); by failing to maintain a minimum net heating value of 300 British thermal units per standard cubic foot on Flare CB-710 on August 27, 2009; 30 TAC §122.143(4) and §122.145(2)(A); FOP Number O-02113, General Terms and Conditions; and THSC, §382.085(b), by failing to report two deviations in the semi-annual deviation report dated February 25, 2010 for the August 1, 2009 - January 31, 2010 reporting period; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4); NSRP Numbers 1504A and PSD-TX-748, SC Number 1; FOP Number O-02113, STC Number 17; and THSC, §382.085(b), by failing to comply with the butadiene feedstock pump Unit ID Number 1592-72 hourly maximum allowable emission rate (MAER) for volatile organic compounds; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4); NSRP Numbers 1504A and PSD-TX-748, SC Number 1; FOP Number O-02113, STC Number 17; and THSC, §382.085(b), by failing to comply with the Furnace Unit ID Numbers BA-105 and BA-110 MAER for carbon monoxide of 20.49 pound/hour; PENALTY: \$72,748; Supplemental Environmental Project offset amount of \$36,374 applied to Houston Regional Monitoring Corporation (HRMC), HRMC Houston Area Air Monitoring; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: City of Arlington; DOCKET NUMBER: 2011-1707-PST-E; IDENTIFIER: RN101998243; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: city vehicle maintenance; RULE VIOLATED: 30 TAC §334.48(a) and TWC, §26.121, by failing to prevent an unauthorized release of petroleum substance from the underground storage tank system; PENALTY: \$6,100; Supplemental Environmental Project offset amount of \$4,880 applied to University of Texas Arlington, Texas Air Monitoring Network; ENFORCEMENT

COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: City of Caddo Mills; DOCKET NUMBER: 2011-1796-PWS-E; IDENTIFIER: RN101383610; LOCATION: Caddo Mills, Hunt County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.109(f)(3) and §290.122(c)(2)(A), and Texas Health and Safety Code, §341.033(d), by failing to comply with the Maximum Contaminant Level (MCL) for total coliform and by failing to provide public notification of the MCL exceedance for the month of July 2010; and 30 TAC §290.109(f)(1)(A), by committing an acute MCL violation when six repeat distribution system samples tested coliform-positive following an Escherichia coli-positive routine distribution system sample for the month of July 2011; PENALTY: \$1,165; ENFORCEMENT COORDINATOR: Andrea Linson, (512) 239-1482; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: City of Mason; DOCKET NUMBER: 2011-2277-MSW-E; IDENTIFIER: RN106252042; LOCATION: Mason, Mason County; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$1,125; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(8) COMPANY: City of O'Brien; DOCKET NUMBER: 2011-1781-PWS-E; IDENTIFIER: RN101386852; LOCATION: O'Brien, Haskell County; TYPE OF FACILITY: municipal public water supply; RULE VIOLATED: 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result on a routine sample collected during the month of November 2010; 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(A), by failing to collect raw groundwater source Escherichia coli samples from all active sources within 24 hours of being notified of a distribution total coliform-positive result on a routine sample and by failing to provide public notification; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(A), by failing to collect at least five routine distribution coliform samples the month following a total coliform-positive result and by failing to provide public notification of the failure to collect five distribution samples during the month of December 2010; 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A), and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification regarding the failure to conduct routine coliform monitoring for the month of April 2011; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of each quarter; PENALTY: \$1,976; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: DAVIS AND WARDLAW OIL COMPANY, INCORPORATED; DOCKET NUMBER: 2011-2056-PST-E; IDENTIFIER: RN101875086; LOCATION: Seymour, Baylor County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the piping associated with the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(B),

by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$2,504; ENFORCEMENT COORDINATOR: Aaron Benmark, (512) 239-2569; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(10) COMPANY: DEVON ENERGY PRODUCTION COMPANY, L.P.; DOCKET NUMBER: 2011-1876-WR-E; IDENTIFIER: RN106209976; LOCATION: Wise County; TYPE OF FACILITY: drilling site; RULE VIOLATED: TWC, §11.121 and 30 TAC §297.11, by failing to obtain authorization prior to diverting, storing, impounding, taking, or using state water; PENALTY: \$1,850; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Duc Han Ho dba Family Food; DOCKET NUMBER: 2011-2032-PST-E; IDENTIFIER: RN102676020; LOCATION: Houston, 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 tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$1,975; ENFORCEMENT COORDINATOR: Marty Hott, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Eola Water Supply Corporation; DOCKET NUMBER: 2011-1659-MWD-E; IDENTIFIER: RN101611945; LOCATION: Concho County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §317.7(e), by failing to provide an intruder-resistant fence and hazard signage around the facility; and 30 TAC §305.125(1) and (5), and Texas Pollutant Discharge Elimination System Permit Number WQ0014053001, Special Provision Number 6, by failing to properly operate and maintain the facility and all of its systems of treatment and collection; PENALTY: \$1,940; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(13) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2011-1584-AIR-E; IDENTIFIER: RN102579307; LOCATION: Baytown, Harris County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(1) and §122.143(4), 40 Code of Federal Regulations §60.104(a)(1), Federal Operating Permit (FOP) Number O-01229 Special Terms and Conditions (STC) 1.A., and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain hydrogen sulfide concentrations in the fuel gas below 162 parts per million (230 milligrams per dry standard cubic meter) for the following emission units: Flares 3, 5, 6, 15, 16, 17, and 20, Hydrofining Unit 9, and the Fuels North Area; and 30 TAC §117.345(f)(6)(B) and (10), and §122.143(4), FOP Number O-01229, STC 11.D. and 11.E, and THSC, §382.085(b), by failing to maintain the start and stop times of the operation of emergency engines during maintenance and testing; PENALTY: \$113,724; Supplemental Environmental Project offset amount of \$45,490 applied to Houston Regional Monitoring Corporation (HRMC), HRMC Houston Area Air Monitoring; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: F A L C ENTERPRISES, LLC.; DOCKET NUMBER: 2011-1646-MLM-E; IDENTIFIER: RN105594642; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: motor freight transportation; RULE VIOLATED: 40 Code of Federal Regulations (CFR) §279.22(a), by failing to store used oil in approved containers; 40 CFR §279.22(c), by failing to label or clearly mark



containers used to store used oil with the words Used Oil; and 30 TAC §324.15 and 40 CFR §279.22(d), by failing to properly clean up and dispose of contaminated soil upon detection of a release of used oil; PENALTY: \$4,965; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(15) COMPANY: GK MART FUEL INVESTMENTS, LLC and ENCINAL FUEL, LLC dba Encinal Fuel; DOCKET NUMBER: 2011-1995-PST-E; IDENTIFIER: RN105333975; LOCATION: Encinal, La Salle County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(d)(1)(B)(ii) and (iii)(I) and TWC, §26.3475(c)(1), by failing to provide release detection for the underground storage tanks (USTs) by failing to conduct reconciliation of inventory control records at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0%; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: Andrea Park, (512) 239-4575; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(16) COMPANY: La Porte Methanol Company, L.P.; DOCKET NUMBER: 2011-1903-AIR-E; IDENTIFIER: RN102830866; LOCATION: La Porte, Harris County; TYPE OF FACILITY: methanol production; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit Number O-02291, General Terms and Conditions, and Texas Health and Safety Code, §382.085(b), by failing to submit the deviation report for reporting period March 1, 2010 - August 31, 2010, within the required 30-day time frame; PENALTY: \$2,950; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Munir Armad Munawar dba Sunrise Market 2; DOCKET NUMBER: 2011-1981-PST-E; IDENTIFIER: RN102262136; LOCATION: Aransas Pass, San Patricio County; TYPE OF FACILITY: convenience store with retail sales of gasoline and diesel; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain legible copies of all required records pertaining to the underground storage tank system and to make them immediately available for inspection upon request by agency personnel; PENALTY: \$900; ENFORCEMENT COORDINATOR: Marty Hott, (512) 239-2587; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(18) COMPANY: Peaster Independent School District Public Facility Corporation; DOCKET NUMBER: 2011-1901-MWD-E; IDENTIFIER: RN102078045; LOCATION: Parker County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013589001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permit effluent limits; PENALTY: \$7,300; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Rice Consolidated Independent School District; DOCKET NUMBER: 2011-1114-MWD-E; IDENTIFIER: RN105332662; LOCATION: Altair, Colorado County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014846001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0014846001, Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2010 by September 1, 2010; PENALTY: \$4,200; EN-

FORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Roger Gomez dba Optimum Calves; DOCKET NUMBER: 2011-1769-MLM-E; IDENTIFIER: RN104925334; LOCATION: Muleshoe, Bailey County; TYPE OF FACILITY: dairy operation; RULE VIOLATED: 30 TAC §321.36(l) and TCEQ General Permit Number TXG920817, Part III.A.10(c), by failing to collect carcasses within 24 hours of death and properly disposing of the carcasses within three days of death; and 30 TAC §335.6(a), by failing to notify the executive director that the storage, processing, or disposal activities of industrial solid waste are planned, at least 90 days prior to engaging in such activities; PENALTY: \$9,000; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(21) COMPANY: SEVTEX, INCORPORATED; DOCKET NUMBER: 2011-2035-PST-E; IDENTIFIER: RN101443182; LOCATION: College Station, Brazos County; TYPE OF FACILITY: convenience store with retail sales of gasoline and diesel; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor 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: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: Sewell Village Cadillac Company, Incorporated dba Sewell Cadillac; DOCKET NUMBER: 2011-2128-PST-E; IDENTIFIER: RN102615671; LOCATION: Dallas, Dallas 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 tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Sewell Village Cadillac Company, Incorporated dba Sewell Infiniti; DOCKET NUMBER: 2011-2123-PST-E; IDENTIFIER: RN102391349; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: petroleum storage tank; 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: \$1,875; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Texan Tulip, Incorporated dba Fuel Express 6; DOCKET NUMBER: 2011-2030-PWS-E; IDENTIFIER: RN102685286; LOCATION: Dickinson, Galveston County; TYPE OF FACILITY: retail convenience store with a public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement for all land within 150 feet of the groundwater well; 30 TAC §290.41(c)(1)(A), by failing to locate the facility's groundwater well at least 150 feet from underground petroleum storage tanks; PENALTY: \$1,360; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: TEXAS BLUE STAR ENTERPRISES INCORPORATED dba Sonu Convenience; DOCKET NUMBER: 2011-1988-PST-E; IDENTIFIER: RN102405768; LOCATION: Houston, 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: \$2,425; ENFORCEMENT COORDINATOR: Andrea Linson, (512) 239-1482; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Texas City Cogeneration, LLC; DOCKET NUMBER: 2011-1649-AIR-E; IDENTIFIER: RN100224245; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: electric power generation plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O-0089, General Terms and Conditions and Texas Health and Safety Code, §382.085(b), by failing to submit the annual permit compliance certification for the certification period of November 23, 2009 - November 22, 2010 within the required time frame; PENALTY: \$1,825; Supplemental Environmental Project offset amount of \$730 applied to Houston Galveston Area Emission Reduction Credit Organization's Clean Cities Clean Vehicles Program, Texas Air Quality Control Region 216, Houston Galveston; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: The Antique Drapery Rod Company, Incorporated; DOCKET NUMBER: 2011-2192-AIR-E; IDENTIFIER: RN105976823; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: manufacturing facility for home furnishings; 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 for surface coating operations; PENALTY: \$6,300; ENFORCEMENT COORDINATOR: Raymond Marlow, P.G., (409) 899-8785; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: TRISTAR CONVENIENCE STORES, INCORPORATED dba Handi Stop 58; DOCKET NUMBER: 2011-1752-PST-E; IDENTIFIER: RN102442811; LOCATION: Houston, 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: \$2,550; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: U.S. MART, INCORPORATED dba U S MART Number 101; DOCKET NUMBER: 2011-1962-PST-E; IDENTIFIER: RN101736817; LOCATION: Houston, 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 underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$5,200; ENFORCEMENT COORDINATOR: Marty Hott, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: WAGNON FAMILY, L.P. dba Family Mart; DOCKET NUMBER: 2011-1987-PST-E; IDENTIFIER: RN101729515; LOCATION: Paris, Lamar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the underground storage tanks; PENALTY: \$2,004; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201200617

Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: February 7, 2012



#### Enforcement Orders

A default order was entered regarding Lonnie Bearden, Sr., dba The Tireman, Docket No. 20101935MLME on January 30, 2012 assessing \$13,440 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (210) 403-4023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Andrew Pena dba A-One Aircraft Paint, Docket No. 20110215IHWE on January 30, 2012 assessing \$18,340 in administrative penalties with \$14,502 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.

A default order was entered regarding Bhaskar R. Patel, Docket No. 20110382PSTE on January 30, 2012 assessing \$3,500 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.

A default order was entered regarding Teresa Reid dba Laursens Car Care & Keene Auto, Docket No. 20110397PSTE on January 30, 2012 assessing \$2,629 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Killeen and Central Texas - Killeen Memorial Park, Inc., Docket No. 20110420WQE on January 30, 2012 assessing \$15,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enterprise Products Operating LLC, Docket No. 20110429AIRE on January 30, 2012 assessing \$66,925 in administrative penalties with \$13,385 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.

A default order was entered regarding Charlise Ann Evans Wilkins, Docket No. 20110513PSTE on January 30, 2012 assessing \$5,075 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.

A default order was entered regarding Terry F. Lee, Docket No. 20110533MSWE on January 30, 2012 assessing \$3,866 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Michael Parma, Docket No. 20110534MSWE on January 30, 2012 assessing \$3,866 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding M & K Pantry, LLC (fka M & K Pantry, L.C.) dba M & K Pantry 4, Docket No. 20110638PSTE on January 30, 2012 assessing \$28,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Robert Black dba Alta Vista Mobile Home Park and Melissa Black dba Alta Vista Mobile Home Park, Docket No. 20110641PWSE on January 30, 2012 assessing \$2,243 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Hall and Sons Transport Inc, Docket No. 20110698WQE on January 30, 2012 assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, 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 Ballard Exploration Company, Inc., Docket No. 20110711AIRE on January 30, 2012 assessing \$52,500 in administrative penalties with \$10,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ballard Exploration Company, Inc., Docket No. 20110712AIRE on January 30, 2012 assessing \$62,500 in administrative penalties with \$12,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ballard Exploration Company, Inc., Docket No. 20110713AIRE on January 30, 2012 assessing \$62,500 in administrative penalties with \$12,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Prudencia Andrade dba Paredes Line Grocery, Docket No. 20110759PSTE on January 30, 2012 assessing \$3,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pegasus Polymers Benelux Inc., Docket No. 20110775IWDE on January 30, 2012 assessing \$14,985 in administrative penalties with \$2,997 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 Arrowhead Pipeline, L.P. and Hilcorp Energy Company, Docket No. 20110891AIRE on January 30, 2012 assessing \$14,800 in administrative penalties with \$2,960 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 Princess, Inc., Docket No. 20111028PWSE on January 30, 2012 assessing \$6,854 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, 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 Commerce, Docket No. 20111032MWDE on January 30, 2012 assessing \$38,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rochester, Docket No. 20111044PWSE on January 30, 2012 assessing \$1,145 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 Margarito Flores and Lucia Flores dba Royal Oaks Apartments, Docket No. 20111084PWSE on January 30, 2012 assessing \$3,165 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrea Byington, Enforcement Coordinator at (512) 239-2579, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Shauna Lynn McGee LLC dba Bert & Ernie's General Store, Docket No. 20111102PWSE on January 30, 2012 assessing \$2,788 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie J. Frazee, 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 Nacogdoches, Docket No. 2011116MWDE on January 30, 2012 assessing \$8,300 in administrative penalties with \$1,660 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 Davis Gas Processing, Inc., Docket No. 2011119AIRE on January 30, 2012 assessing \$11,310 in administrative penalties with \$2,262 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 City of Madisonville, Docket No. 20111131MWDE on January 30, 2012 assessing \$7,860 in administrative penalties with \$1,572 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 City of Hubbard, Docket No. 20111162MWDE on January 30, 2012 assessing \$20,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Willow Park, Docket No. 20111238MWDE on January 30, 2012 assessing \$8,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding David Harden, Docket No. 20101775PSTE on February 2, 2012 assessing \$3,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201200653  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: February 8, 2012



#### Notice of Correction to Shutdown/Default Order

In the February 3, 2012, issue of the *Texas Register* (37 TexReg 541), the Texas Commission on Environmental Quality (commission) published a notice of Shutdown/Default Order Number, specifically Item

Number 1. The reference to B.K. TRADING, INC. d/b/a Speedy Stop 9 was submitted in error by the commission. The notice of Shutdown/Default should have published as:

(1) Company: B.K. TRADING, INC. d/b/a Speedy Stop 11; DOCKET NUMBER: 2011-1374-PST-E; TCEQ ID NUMBER: RN101434983; LOCATION: 1235 West Front Street, Blossom, Lamar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide proper release detection for the product piping associated with the UST system; PENALTY: \$2,629; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

For questions concerning this notification of error, please contact Phillip Goodwin at (512) 239-0675.

TRD-201200615  
Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: February 7, 2012



#### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 19, 2012**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 19, 2012**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Abrams Business Inc. d/b/a Power Mart 18; DOCKET NUMBER: 2011-0921-PST-E; TCEQ ID NUMBER: RN102366358; LOCATION: 615 West Abrams Street, Arlington, Tar-

rant County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: \$10,013; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: C K Group Enterprise, Inc. d/b/a Four Seasons Mart; DOCKET NUMBER: 2011-1210-PST-E; TCEQ ID NUMBER: RN101833333; LOCATION: 309 Highway 35 South, Rockport, Aransas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide release detection for the piping associated with the USTs; PENALTY: \$2,629; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: City of Elsa; DOCKET NUMBER: 2011-0564-MWD-E; TCEQ ID NUMBER: RN101610251; LOCATION: approximately 0.5 miles southwest of the intersection of Farm-to-Market Road 1925 and State Highway 88, Hidalgo County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011510002, Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results at the intervals specified in the permit; 30 TAC §305.125(1) and (17), and TPDES Permit Number WQ0011510002, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2010, by September 1, 2010; and TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0011510002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$5,725; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: Gary C. Durham d/b/a American Lift Truck and Tractor, Inc.; DOCKET NUMBER: 2010-0554-PST-E; TCEQ ID NUMBER: RN101555126; LOCATION: 222 South Loop 12, Irving, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system was not brought into timely compliance with the upgrade requirements; PENALTY: \$2,500; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: JOTKAMAL, INC. d/b/a J Mart; DOCKET NUMBER: 2011-1407-PST-E; TCEQ ID NUMBER: RN102092285; LO-

CATION: 1921 North Plano Road, Garland, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for review upon request by agency personnel; PENALTY: \$3,277; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: NOORANI & BROTHERS, INC. d/b/a Shop N Go; DOCKET NUMBER: 2011-0355-PST-E; TCEQ ID NUMBER: RN103020822; LOCATION: 97 Tidwell Road, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), and by failing to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with the UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free from liquid or debris; and 30 TAC §334.74, by failing to immediately investigate a suspected release of a regulated substance after the receipt of a failed statistical inventory reconciliation analysis report; PENALTY: \$19,820; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Thomas Pankratz DBA Shady Rest Mobile Home Park; DOCKET NUMBER: 2010-1105-MLM-E; TCEQ ID NUMBER: RN102686128 and RN103508875; LOCATION: 15 Cascade Caverns Road, Boerne, Kendall County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(iii) and Texas Health and Safety Code (THSC), §341.0315(a)(1), by failing to provide two or more service pumps that have a total capacity of 2.0 gallons per minute per connection at each pump station or pressure plane; 30 TAC §290.110(b)(4) and THSC, §341.0315(c), by failing to provide a minimum disinfectant residual concentration of 0.2 milligrams per liter of free chlorine throughout the distribution system; 30 TAC §290.46(f)(2), by failing to make the facility's records available for review at the time of the investigation; 30 TAC §290.46(e)(4)(A) and THSC, §341.033(a), by failing to have all production, treatment, and distribution facilities under the direct supervision of a water works operator who holds a Class "D" or higher license; 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A), and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification of the failure to conduct routine sampling; 30 TAC §290.109(f)(3), and THSC, §341.031(a), by failing to comply with the maximum contaminant level for total coliform; and 30 TAC §30.381(b), TWC, §37.003 and THSC, §341.034(b), by failing to have a valid, effective water system operator license issued by the commission prior to performing process control duties for the production and distribution of drinking

water; PENALTY: \$7,404; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201200611

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: February 7, 2012



### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 19, 2012**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 19, 2012**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Cynthia Ann Batiste; DOCKET NUMBER: 2011-1765-MLM-E; TCEQ ID NUMBER: RN105684823; LOCATION: 6380 Boyt Road, Beaumont, Jefferson County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §330.15(c), and TCEQ Default Order Docket Number 2009-1816-MLM-E, Ordering Provisions Numbers 2.a. and 2.b., by failing to prevent the unauthorized disposal of new MSW and by failing to properly dispose of existing MSW at the facility, resulting in an unauthorized discharge into or adjacent to water in the state; PENALTY: \$10,400; STAFF ATTORNEY: Stephanie Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Derby Water Supply Corporation; DOCKET NUMBER: 2011-1101-PWS-E; TCEQ ID NUMBER: RN101281178; LOCATION: the intersection of County Road 3415 and County Road 3428, Moore, Frio County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106(e) and §290.108(e), by failing to provide the results of triennial metal, mineral, and radionuclide sampling to the executive director; 30 TAC §290.106(e), by failing to provide the results of annual nitrate sampling to the executive director; 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A), and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis, and by failing to provide notice to persons served by the facility regarding the failure to conduct routine coliform monitoring for the month of February 2011; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit Disinfectant Level Quarterly Operating Reports to the executive director each quarter by the tenth day of the month following the end of each quarter; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver a 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 executive director 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; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay annual Public Health Service fees; PENALTY: \$5,010; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Greenwood Ventures, Inc. dba Greenwood Ventures and Patricia Williams dba Greenwood Ventures; DOCKET NUMBER: 2011-1073-PWS-E; TCEQ ID NUMBER: RN102689213; LOCATION: 10706 Farm-to-Market Road 307, Midland, Midland County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report by the tenth day of the month following the end of each quarter; 30 TAC §290.106(e) and §290.108(e), by failing to report the quarterly results for inorganic and radiation contaminant levels to the executive director; and 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A), and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification of the failure to sample; PENALTY: \$10,938; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Midland Regional Office, 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5406, (432) 570-1359.

(4) COMPANY: Jason M. Harvey; DOCKET NUMBER: 2011-1377-LII-E; TCEQ ID NUMBER: RN106160013; LOCATION: 509 Gettysburg Loop, Elgin, Bastrop County; TYPE OF FACILITY: general construction business; RULES VIOLATED: TWC, §37.003, Texas Occupations Code, §1903.251, and 30 TAC §30.5(a), by failing to obtain a landscape irrigator license prior to selling, designing, providing consultations regarding, installing, altering, repairing, or servicing an irrigation system; PENALTY: \$742; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(5) COMPANY: Nadia Bukhari d/b/a Buk Speedy Mart; DOCKET NUMBER: 2011-0509-PST-E; TCEQ ID NUMBER: RN102381670; LOCATION: 600 West Gulfway Drive, Port Arthur, Jefferson County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or

additional information regarding the USTs within 30 days of the occurrence of the change or addition; 30 TAC §334.8(c)(4)(C) and (5)(B)(i), by failing to timely renew a UST delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of ownership change; 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; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the piping associated with the UST system; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to conduct reconciliation of inventory control at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.50(d)(1)(B)(iii)(I) and TWC, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.42(i), by failing to inspect at least once every 60 days, any sumps, manways, overspill containers or catchment basins, to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free of debris and liquid; 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §115.246(7)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee receives in-house Stage II vapor recovery training regarding the purpose and correct operation of the Stage II equipment; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and vapor space manifolding and dynamic back-pressure at least once every 36 months; 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system, including but not limited to absence or disconnection of any component that is a part of the approved system; PENALTY: \$16,123; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Paulette Hagle; DOCKET NUMBER: 2011-0465-PST-E; TCEQ ID NUMBER: RN101804086; LOCATION: 311 Union Avenue, Rule, Haskell County; TYPE OF FACILITY: underground storage tank (UST) system and a former gas station; RULES VIOLATED: 30 TAC §334.7(a)(1) and (d)(3), by failing to notify the agency of any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition; and 30 TAC §334.47(a)(2) and §334.54(b)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, and by failing to maintain

all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secure manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: \$6,000; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: Shelba G. Pruettt and James Kozel; DOCKET NUMBER: 2011-1323-MSW-E; TCEQ ID NUMBER: RN106126725; LOCATION: 27835 Farm-to-Market Road 2556, La Feria, Cameron County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; PENALTY: \$15,000; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(8) COMPANY: Waynette Pollock Brasuell; DOCKET NUMBER: 2011-1372-PST-E; TCEQ ID NUMBER: RN101785632; LOCATION: approximately 200 feet northwest of the intersection of Farm-to-Market Road 1745 and United States Highway 287 on United States Highway 287, Chester, Tyler County; TYPE OF FACILITY: inactive underground storage tank (UST) system and a former convenience store; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account Number 0034360U; PENALTY: \$3,850; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201200612  
Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: February 7, 2012



#### Notice of Public Comment Period and Public Meeting Concerning Revisions to the Texas Emissions Reduction Plan Guidelines for Emissions Reduction Incentive Grants, RG-388

The purpose of the comment period and meetings is to obtain public input concerning the proposed revisions to the guidelines.

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this public notice of proposed revisions to the guidelines. In accordance with Texas Health and Safety Code (THSC), §386.053(d), the commission shall make a proposed revision to the guidelines available to the public before the 30th day preceding the date of final adoption of the revision and shall hold at least one public meeting to consider public comments on the proposed revision before final adoption.

The Texas Emissions Reduction Plan (TERP) was established by the Texas Legislature in 2001 to provide financial incentives (grants) to owners and operators of heavy-duty on-road vehicles, non-road equip-



ment, marine vessels, locomotives, and stationary equipment to replace or upgrade their older vehicles, equipment, and/or engines with newer, cleaner models. Funding is also available to purchase and install emissions reduction retrofit systems on existing engines.

Activities eligible for funding under the TERP are intended to reduce the emissions of nitrogen oxides (NO<sub>x</sub>). NO<sub>x</sub> is usually a by-product of high temperature combustion, such as that which occurs in large internal combustion engines. NO<sub>x</sub> combines with volatile organic compounds in the presence of sunlight to form ground-level ozone. Certain areas of the state have ozone levels that exceed the National Ambient Air Quality Standards established under the Federal Clean Air Act. The TERP program was established to help these areas come into compliance with these federal requirements and to help other areas of the state that are facing air quality challenges.

Under THSC, §386.053(d), the commission may propose revisions to the guidelines and criteria as necessary to improve the ability of the plan to achieve its goals. The proposed revisions incorporate changes made to the program by House Bill (HB) 3399, enacted by the 82nd Legislature, 2011. Other changes are proposed to update or clarify the program criteria.

Proposed changes to implement HB 3399 include: updated requirements for disposition of vehicles being replaced under the program; new provisions for the executive director to grant a waiver to certain eligibility requirements on a finding of good cause; changes to allow a vehicle that has been leased to be replaced under the program; and a change to the minimum period over which a grant-funded vehicle must be operated.

Other proposed substantive changes include: changes to allow flexibility in setting the reporting schedule for grant recipients; requirements limiting the model year of the vehicle or equipment being purchased under a grant to no more than three years prior to the current year; and authorization for the executive director to adjust or lower the percentage of costs that may be reimbursed for different project categories under a particular grant round. Several non-substantive changes are also proposed.

Comments may be submitted in writing or may be provided at the public meeting scheduled for March 8, 2012, 1:30 p.m., at the Texas Commission on Environmental Quality, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. The public meeting is not a hearing for rulemaking under Texas Government Code, Chapter 2001.

All persons desiring to make comments may do so at the public meeting. All comments submitted separate from the public meeting should be sent in writing to Kathleen Vale, Texas Commission on Environmental Quality, Air Quality Division, Implementation Grants Section, MC 204, P.O. Box 13087, Austin, Texas 78711-3087, or by facsimile to Ms. Vale at (512) 239-6161. The public comment period closes at 5:00 p.m., on March 19, 2012.

Electronic copies of the proposed revisions to the guidelines and a summary of changes may be viewed and downloaded at [www.terp-grants.org](http://www.terp-grants.org). Written copies of the guidelines may be requested by calling the TERP toll-free number at (800) 919-TERP (8377). Copies may be obtained in person during regular business hours at the Texas Commission on Environmental Quality, Building F, Room 2202, 12100 Park 35 Circle, Austin, Texas.

Persons who have special communication or other accommodation needs who are planning to attend the meeting should contact the TCEQ at (800) 919-8377 or (512) 239-2464. Requests should be made as far in advance as possible.

For further information about the guidelines or the public meeting, please call the TERP toll-free number at (800) 919-8377.

TRD-201200610

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: February 7, 2012



### Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit Amendment (Proposed)

APPLICATION. City of El Paso, McCombs Municipal Landfill, 7968 San Paulo Drive, El Paso, El Paso County, Texas 79907, a municipal solid waste disposal facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Type I MSW permit amendment requesting for a vertical expansion to the existing McCombs Landfill owned and operated by the City of El Paso. The amendment is requesting to allow the City of El Paso to have adequate capacity for future solid waste disposal. The amendment is also requesting the landfill be permitted to dispose of regulated asbestos containing material in a designated location. The facility is located at 13660 McCombs Street, El Paso, El Paso County, Texas 79924. The TCEQ received the application on December 15, 2011. The permit application is available for viewing and copying at the El Paso Municipal Service Center, (MSC) 7968 San Paulo Drive, El Paso, El Paso County, Texas 79907. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=31.988611&lng=-106.405277&zoom=13&type=r>. For exact location, refer to application.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number;



the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

**MAILING LIST.** If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

**AGENCY CONTACTS AND INFORMATION** All public comments and requests must be submitted either electronically at [www.tceq.texas.gov/about/comments.html](http://www.tceq.texas.gov/about/comments.html) or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, toll free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040.

Further information may also be obtained from City of El Paso at the address stated above or by calling Gloria Duran, Office Manager at (915) 621-6702.

TRD-201200652

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 8, 2012



### Notice of Water Quality Applications

The following notices were issued on January 27, 2012 through February 3, 2012.

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

**LUMINANT GENERATION COMPANY LLC** which operates the Trinidad Steam Electric Station, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0000947000, which authorizes the discharge of once through cooling water and previously monitored effluents (low volume wastes and stormwater runoff via internal Outfall 101, metal cleaning wastes and commingled low volume wastes via internal Outfall 201, and low volume wastes via internal Outfall 301) at a daily average flow not to exceed 425,000,000 gallons per day via Outfall 001. The facility is located at 1320 McEntire Road on the north shore of Trinidad Lake, off Farm-to-Market Road 764, approximately one mile south of the City of Trinidad, Henderson County, Texas 75163.

**STP NUCLEAR OPERATING COMPANY** which operates South Texas Project Electric Generating Station, has applied for a renewal with changes to TPDES Permit No. WQ0001908000, which authorizes the discharge of recirculated cooling water, cooling reservoir blowdown, storm water, make up water from the Colorado River, and previously monitored effluent (low volume wastes, metal cleaning wastes, storm water, treated sanitary sewage, car wash water, air conditioning condensate, and HVAC cooling tower blowdown) at a daily average flow not to exceed 144,000,000 gallons per day via Outfall 001. The facility is located on Farm-to-Market Road 521, approximately 10 miles north of Matagorda Bay and 12 miles south southwest of the City of Bay City, Matagorda County, Texas 77483.

**BIG BROWN POWER COMPANY LLC AND LUMINANT MINING COMPANY LLC** 500 North Akard Street, Dallas, Texas 75201, which operates Big Brown SES Western Coal Facility, have applied for a renewal of TPDES Permit No. WQ0004021000, which authorizes the discharge of coal pile runoff on an intermittent and flow variable basis via Outfall 001. The facility is located at 835 Farm-to-Market Road 2570, on the east side of State Highway 488, approximately five miles west of Big Brown Steam Electric Station and five miles north of the City of Fairfield, Freestone County, Texas 75840.

**FREESTONE POWER GENERATION, LLC AND CALPINE OPERATING SERVICES COMPANY INC** which owns and operates Freestone Power Generation Plant, a combined-cycle electric power generating facility, has applied for a renewal of TPDES Permit No. WQ0004298000, which authorizes the discharge of cooling tower blowdown and low volume waste at a daily average flow not to exceed 820,000 gallons per day via Outfall 001. The facility is located on the east side of State Highway 488, approximately 0.9 mile northeast of the intersection of State Highway 488 and County Road 1124, and 12 miles northeast of the City of Fairfield, Freestone County, Texas 75840.

**UNITED STATES DEPARTMENT OF ENERGY AND BABCOCK AND WILCOX TECHNICAL SERVICES PANTEX** which operates the Pantex Plant, a facility principally engaged in the assembly of nuclear weapons from components received from other Department of Energy plants; the fabrication of chemical high explosive components for nuclear weapons; surveillance testing and processing of chemical high explosives; disassembly of nuclear weapons; maintenance, modification, repair and nonexplosive testing of nuclear weapons components; and disposal of treated environmental restoration wastewater, has applied for a major amendment to TCEQ Permit No. WQ0004397000 to authorize the land application of treated domestic effluent and industrial effluent via subsurface irrigation of an additional tract of 100 acres of land; removal of effluent limitations and monitoring requirements for specific parameters (total arsenic, total cadmium, total chromium, total lead, total mercury, total nickel, total selenium, and total silver); removal of monitoring requirements for select parameters (total cyanide, total antimony, total beryllium,

total cobalt, total molybdenum, total thallium, and total titanium); authorize the use of two additional crops (Sorgham for Silage and Barley) for cover crops of the land application sites; removal of soil monitoring for select parameters (reactivity; ignitability; benzene; carbon tetrachloride; chlorobenzene; chloroform; cresol; m-cresol; o-cresol; p-cresol; 2,4-D; 1,4-dichlorobenzene; 1,2-dichloroethane; 1,1-dichloroethylene; 2,4-dinitrotoluene; heptachlor; hexachlorobenzene; hexachlorobutadiene; hexachloroethane; lindane; methyl ethyl ketone; methoxychlor; nitrobenzene; pentachlorophenol; pyridine; tetrachloroethylene; trichloroethylene; 2,4,5-trichlorophenol; 2,4,6-trichlorophenol; and vinyl chloride); and authorize the re-use of treated wastewater resulting from groundwater remediation activities for beneficial re-use purposes (including but not limited to surface irrigation of crops, landscape irrigation, firefighting, vehicle washing, building washing, and utility make-up water). The current permit authorizes the disposal of treated domestic effluent and industrial effluent via subsurface irrigation of 300 acres of land. The amount of wastewater released from the facultative lagoon shall not exceed a daily average flow of 560,000 gallons per day. The facility and land application site are located approximately 17 miles northeast of the City of Amarillo and 10 miles west of the City of Panhandle, west of State Highway 2373, south of State Highway 293 and north of U.S. Highway 60, Carson County, Texas 79068.

BUCKLEY OIL COMPANY which operates a wholesale chemical and allied products distribution facility has applied for the renewal of TPDES Permit No. WQ0004663000, which authorizes the discharge of treated wastewater on an intermittent and flow variable basis via Outfalls 001 and 002. The facility is located at 1809 Rock Island Street, approximately 0.36 miles southwest of the intersection of Corinth Street and South Industrial Boulevard, City of Dallas, Dallas County, Texas 75027. The effluent is discharged to Able Sump; thence to the Upper Trinity River in Segment No.0805 of the Trinity River Basin. The designated use for the unclassified receiving waters is high aquatic life. The designated uses for Segment No. 0805 are contact recreation and high aquatic life.

CITY OF KRUM has applied for a major amendment to TPDES Permit No. WQ0010729001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 137,000 gallons per day to a daily average flow not to exceed 700,000 gallons per day. The facility is located on the east side of North Hickory Creek, approximately 0.6 miles southwest of the intersection of Farm-to-Market Road 156 and Farm-to-Market Road 1173 in Denton County, Texas 76249.

HARRIS COUNTY FRESH WATER SUPPLY DISTRICT NO 61 has applied for a renewal of TPDES Permit No. WQ0010876001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,600,000 gallons per day. The facility is located at 11311 Marrs Drive, approximately 3,500 feet south of Cypress-North Houston Road and 3,000 feet east of Huffmeister Road in Harris County, Texas 77065.

HARRIS COUNTY FRESH WATER SUPPLY DISTRICT NO 61 has applied for a renewal of TPDES Permit No. WQ0010876002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located at 10431 North Eldridge Parkway, on the southern bank of Whiteoak Bayou, approximately 2,000 feet north of Farm-to-Market Road 1960 and 6,000 feet east of Huffmeister Road in Harris County, Texas 77065.

HARRIS COUNTY has applied for a renewal of TPDES Permit No. WQ0010932, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 42,000 gallons per day. The facility is located within Bear Creek Park on Golbow Drive,

approximately 490 feet north of the intersection of Golbow Drive and Brandt Drive in Harris County, Texas 77084.

TOWN OF MUSTANG has applied for a renewal of TPDES Permit No. WQ0011516001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located 800 feet east of Interstate Highway 45 on Farm-to-Market Road 739 in Navarro County, Texas 75109.

CITY OF WOODBRANCH VILLAGE has applied for a renewal of TPDES Permit No. WQ0011993001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 133,000 gallons per day. The facility is located at 120 White Oak Drive, approximately 1.5 miles east of the intersection of Roman Forest Boulevard and US Highway 59 in Montgomery County, Texas 77357.

CINCO MUNICIPAL UTILITY DISTRICT NO 1 has applied for a renewal of TPDES Permit No. WQ0013172002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 910,000 gallons per day. The facility is located approximately 1700 feet east of 6055 South Mason Road and approximately 0.75 mile north and 3 miles west of the intersection of Farm-to-Market Road 1093 and Farm-to-Market Road 1464 in Fort Bend County, Texas 77450.

ANTHONY JOHN RIEDEL has applied for a renewal of TPDES Permit No. WQ0013939001 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 400 feet north of 8038 Fallbrook Drive, at a point approximately 1.25 miles west of State Highway 249 in Harris County, Texas 77064.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 287 has applied for a renewal of TPDES Permit No. WQ0014362001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located at 3455 Elrod Road, on the west side of Elrod Road, 2,500 feet north of the intersection of Elrod Road and Morton Road in Harris County, Texas 77449.

RAVINDRA BHAKTA has applied for a new permit, proposed TPDES Permit No. WQ0015017001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 19,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0012766001 which expired December 1, 2010. The facility is located on the west right-of-way of U.S. Highway 59 approximately 2,500 feet south-southwest of the intersection of Northbelt and U.S. Highway 59 in Harris County, Texas 77396.

If you need more information about these permit applications or the permitting process, please call the Texas Commission on Environmental Quality (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-201200651

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 8, 2012

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**Texas Facilities Commission**

Request for Proposals #303-3-20326

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-3-20326. TFC seeks a five (5) or ten (10) year lease

of approximately 8,863 square feet of office space in Laredo, Webb County, Texas.

The deadline for questions is February 24, 2012 and the deadline for proposals is March 7, 2012 at 3:00 p.m. The award date is May 1, 2012. 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=98682](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=98682).

TRD-201200561

Kay Molina

General Counsel

Texas Facilities Commission

Filed: February 3, 2012



### Request for Proposals #303-3-20327

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), the Department of Family and Protective Services (DFPS), and the Department of Aging and Disability Services (DADS), announces the issuance of Request for Proposals (RFP) #303-3-20327. TFC seeks a five (5) or ten (10) year lease of approximately 9,544 square feet of office space in Brenham, Washington County, Texas.

The deadline for questions is February 24, 2012 and the deadline for proposals is March 2, 2012 at 3:00 p.m. The award date is March 30, 2012. 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, Jana D. Walp, at (512) 463-3160. 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=98691](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=98691).

TRD-201200562

Kay Molina

General Counsel

Texas Facilities Commission

Filed: February 3, 2012



## Texas Health and Human Services Commission

### Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 12-003 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act (SSA).

The proposed amendment revises the date HHSC last submitted the model supplemental rebate agreement and model program benefit agreement to Centers for Medicare and Medicaid Services (CMS) for approval and clarifies the circumstances under which drugs may be

included on the preferred drug list. The supplemental rebate agreement is an agreement between the State and a drug manufacturer for drugs provided to the Medicaid population, pursuant to §1927 of the SSA. The program benefit agreement is an agreement between the State and the drug manufacturer for program benefits provided to the Medicaid program, pursuant to §1927 of the SSA. These revised agreements are being submitted for CMS approval concurrently with this State Plan Amendment. The proposed amendment has no anticipated fiscal impact. The proposed amendment is effective January 1, 2012.

To obtain copies of the proposed amendment, interested parties may contact Brian Dees by mail at HHSC, P.O. Box 13247, Mail Code H600, Austin, Texas 78711; by telephone at (512) 491-1382; by facsimile at (512) 491-1953; or by e-mail at [brian.dees@hhsc.state.tx.us](mailto:brian.dees@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-201200521

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: February 2, 2012



### Public Notice

The Texas Health and Human Services Commission intends to submit to the Centers for Medicare and Medicaid Services a request for an amendment to the Community-Based Alternatives waiver program, under the authority of §1915(c) of the Social Security Act. The Community-Based Alternatives waiver program is currently approved for the five-year period beginning September 1, 2007, and ending August 31, 2012. The proposed effective date for this amendment is March 1, 2012.

The Community-Based Alternatives program provides home and community-based services to persons age 21 and older who qualify for nursing facility care and do not reside in STAR+PLUS 1915(c) waiver service areas. Services are offered in the participant's home, an adult foster care home, or a licensed assisted living facility. Services include personal assistance services; nursing; physical therapy; occupational therapy; speech, hearing, and language therapy; support consultation; respite care; prescribed drugs; financial management services; adaptive aids and medical supplies; dental; emergency response services; home delivered meals; minor home modifications; and transition assistance services.

The purpose of this amendment is to change the geographical location in which the Community-Based Alternatives program is offered. Due to the STAR+PLUS service area expansion, individuals currently receiving Community-Based Alternatives in the following service areas will be transferring to STAR+PLUS: El Paso service area (El Paso and Hudspeth counties); Lubbock service area (Crosby, Floyd, Garza, Hale, Hockley, Lamb, Lubbock, Lynn, Terry, Carson, Deaf Smith, Hutchinson, Potter, Randall, and Swisher counties); and the Hidalgo service area (Cameron, Duval, Hidalgo, Jim Hogg, Maverick, McMullen, Starr, Webb, Willacy, and Zapata counties).

The Texas Health and Human Services Commission is requesting that the waiver amendment be approved for the period beginning March 1, 2012, through August 31, 2012. This amendment maintains cost neutrality for waiver year 2012.

To obtain copies of the proposed waiver amendment, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-370, Austin,

Texas 78708-5200; telephone (512) 491-1152; fax (512) 491-1957; or by email at Christine.Longoria@hhsc.state.tx.us.

TRD-201200645

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: February 8, 2012



### 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 January 1, 2012, or as otherwise approved by the Centers for Medicare and Medicaid Services.

The purpose of this amendment is to incorporate recent updates to the fee schedules, including adding fees for new services and modifying fees for existing services. The amendment will modify the reimbursement methodologies in the Texas Medicaid State Plan as a result of Medicaid fee adjustments for:

Physicians and Other Practitioners;

Early Periodic Screening, Diagnosis and Treatment (EPSDT);

Rehabilitative Chemical Dependency Treatment Facility Services;

Licensed Clinical Social Worker Services;

Licensed Professional Counselor Services; and

Licensed Marriage and Family Therapists Services.

The proposed amendment is estimated to result in an additional annual cost expenditure of \$4,185,365 for the remainder of federal fiscal year (FFY) 2012, consisting of \$2,436,719 in federal funds and \$1,748,646 in state general revenue. For FFY 2013, the estimated cost expenditure is \$7,331,695 consisting of \$4,347,695 in federal funds and \$2,984,000 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. 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-201200646

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: February 8, 2012



### **Department of State Health Services**

Licensing Actions for Radioactive Materials

*(Editor's note: This document was inadvertently left out of the February 3, 2012, issue.)*

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.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	Detector Products, Inc.	L06445	Houston	00	01/05/12
Marble Falls	Hardeman County Hospital District dba Marble Falls Imaging Center	L06446	Marble Falls	00	01/11/12
Port Lavaca	Braskem America, Inc. Freeport Operations	L06443	Port Lavaca	00	01/05/12
Port Lavaca	Braskem America, Inc. Seadrift Plant	L06444	Port Lavaca	00	01/05/12
Throughout TX	J&J Solutions E&S, L.L.C.	L06442	Fairfield	00	01/03/12
Throughout TX	Calibration Solutions, L.L.C.	L06447	Midland	00	01/12/12

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Alice	Fesco Ltd., Inc.	L06343	Alice	02	01/05/12
Austin	ARA Imaging	L05862	Austin	53	01/02/12
Austin	Austin Radiological Association	L00545	Austin	170	01/02/12
Austin	St. David's Healthcare Partnership, L.P., L.L.P. dba St. David's South Austin Medical Center	L03273	Austin	94	01/05/12
Austin	St. David's Healthcare Partnership, L.P., L.L.P. dba St. David's Medical Center	L06335	Austin	05	01/09/12
Baytown	Sarna Challa, M.D., P.A.	L05040	Baytown	14	01/06/12
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	133	01/04/12
Borger	GPCH, L.L.C. dba Golden Plains Community Hospital	L04369	Borger	16	01/06/12
Burnet	Seton Healthcare dba Seton Highland Lakes Hospital	L03515	Burnet	46	12/30/11
Conroe	CHCA Conroe, L.P. dba Conroe Regional Medical Center	L01769	Conroe	85	01/10/12
Dallas	Media Physics, Inc. dba GE Healthcare	L05529	Dallas	32	01/02/12
Dallas	University of Texas Southwestern Medical Center at Dallas	L00384	Dallas	111	01/06/12
Dallas	University of Texas Southwestern Medical Center at Dallas	L05947	Dallas	22	01/10/12
Dallas	Baylor University Medical Center	L01290	Dallas	107	01/13/12
Denton	University of North Texas	L00101	Denton	89	01/03/12
Denton	Daniel W. Caldwell, M.D., P.A.	L05984	Denton	05	01/02/12
El Paso	East El Paso Physicians Medical Center, L.L.C.	L05676	El Paso	27	01/02/12
El Paso	Texas Oncology, P.A. dba El Paso Cancer Treatment Center	L05774	El Paso	07	01/11/12
El Paso	Southwest X-Ray, L.P.	L05207	El Paso	14	01/13/12
Gonzales	KI4U, Inc.	L05515	Gonzales	09	01/02/12
Houston	The University of Texas Health Science Center at Houston	L02774	Houston	61	01/13/12
Houston	Geoscience Engineering & Testing, Inc.	L05180	Houston	10	01/02/12
Houston	Platinum Energy Solutions, Inc.	L06410	Houston	05	01/05/12
Houston	The Methodist Hospital Research Institute	L06383	Houston	01	01/04/12
Houston	SJ Medical Center, L.L.C. dba St. Joseph Medical Center	L02279	Houston	73	01/10/12
Houston	Memorial City Cardiology Associates dba Katy Cardiologist Associates	L05713	Houston	17	01/11/12

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Humble	Memorial Hermann Hospital Systems dba Memorial Hermann Northeast	L02412	Humble	87	01/02/12
Midland	Texas Oncology, P.A. dba Allison Cancer Center	L04905	Midland	14	01/06/12
Midland	Midland Cardiac Clinic	L05571	Midland	09	01/06/12
Palestine	Palestine Principal Healthcare Limited Partnership dba Palestine Regional Medical Center	L02728	Palestine	45	01/05/12
Pampa	Hunting Titan, Ltd.	L04920	Pampa	19	01/09/12
Point Comfort	Formosa Plastics Corporation-Texas	L03893	Point Comfort	43	01/09/12
San Antonio	Methodist Healthcare System of San Antonio, Ltd., L.L.P.	L00594	San Antonio	295	01/13/12
Sugar Land	Schlumberger Technology Corporation	L06303	Sugar Land	01	01/05/12
Sugar Land	Schlumberger Technology Corporation	L00764	Sugar Land	127	01/05/12
Sugar Land	Schlumberger Technology Corporation	L00109	Sugar Land	61	01/05/12
Temple	Texas A&M University System Health Science Center	L05494	Temple	15	01/03/12
Texarkana	New Hope Enterprises, Ltd. dba New Hope Cancer Institute	L05560	Texarkana	08	01/04/12
The Woodlands	Memorial Hermann Hospital System dba Memorial Hermann Hospital The Woodlands	L03772	The Woodlands	89	12/30/11
The Woodlands	St. Luke's the Woodlands Hospital	L05763	The Woodlands	22	01/11/12
The Woodlands	Woodlands Internists, P.A.	L06201	The Woodlands	04	01/11/12
Throughout TX	Oxea Corporation	L06079	Bishop	02	01/12/12
Throughout TX	IESCO, L.L.C.	L06351	Corpus Christi	03	01/09/12
Throughout TX	GME Consulting Services, Inc.	L05128	Dallas	07	01/02/12
Throughout TX	Alliance Geotechnical Group, Inc.	L05314	Dallas	18	01/05/12
Throughout TX	J&J Solutions E&S, L.L.C.	L06442	Fairfield	01	01/11/12
Throughout TX	Weaver Boo's Consultants, L.L.C.	L06395	Fort Worth	03	01/17/12
Throughout TX	Earthco, L.L.C.	L06213	Harlingen	03	01/03/12
Throughout TX	HVJ Associates, Inc.	L03813	Houston	47	01/05/12
Throughout TX	Thrubit, L.L.C.	L06030	Houston	12	01/03/12
Throughout TX	Professional Services Industries, Inc.	L04942	Houston	23	01/10/12
Throughout TX	Paradigm Consultants, Inc.	L04875	Houston	08	01/09/12
Throughout TX	Pathfinder Energy Services, L.L.C.	L05236	Katy	25	01/10/12
Throughout TX	Acuren Inspection, Inc.	L01774	La Porte	268	01/11/12
Throughout TX	Sunset Well Services, Inc.	L06426	Midland	01	01/02/12
Throughout TX	Petrochem Inspection Services, Inc.	L04460	Pasadena	113	01/04/12
Throughout TX	Petrochem Inspection Services, Inc.	L04460	Pasadena	114	01/09/12
Throughout TX	Pioneer Wireline Services, L.L.C.	L06220	Rosharon	16	01/09/12
Throughout TX	Raba-Kistner Consultants, Inc. dba Raba-Kistner-Brytest Consultants, Inc.	L01571	San Antonio	68	01/09/12
Tomball	RCOA Imaging Services, Inc.	L06091	Tomball	06	01/13/12
Tyler	Mother Frances Hospital Regional Health Care Center	L01670	Tyler	173	01/10/12
Webster	Cardiovascular Clinic	L05949	Webster	04	01/11/12

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout TX	Golder Associates, Inc.	L04645	Houston	10	01/12/12

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Galveston	Galveston Laboratories, L.L.C.	L02970	Galveston	09	01/09/12
Grapevine	Cardiology Specialties	L05779	Grapevine	04	01/02/12
Marble Falls	MFIC, L.P.	L05301	Marble Falls	12	01/11/12
Throughout TX	Mactec Engineering and Consulting, Inc.	L05490	Addison	16	01/04/12
Wichita Falls	Jack C. Askins, M.D.	L05588	Wichita Falls	05	01/06/12

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-201200283  
 Lisa Hernandez  
 General Counsel  
 Department of State Health Services  
 Filed: January 23, 2012



Schedules of Controlled Substances

PURSUANT TO THE TEXAS CONTROLLED SUBSTANCES ACT, HEALTH AND SAFETY CODE, CHAPTER 481, THESE SCHEDULES SUPERCEDE PREVIOUS SCHEDULES AND CONTAIN THE MOST CURRENT VERSION OF THE SCHEDULES OF ALL CONTROLLED SUBSTANCES FROM THE PREVIOUS SCHEDULES AND MODIFICATIONS.

This annual publication of the Texas Schedules of Controlled Substances was signed by David L. Lakey, Commissioner of the Department of State Health Services, and will take effect 21 days following publication of this notice in the *Texas Register*.

Changes to the schedules are designated by an asterisk (\*). Additional information can be obtained by contacting the Department of State Health Services, Drugs and Medical Devices Group, P.O. Box 149347, Austin, Texas 78714-9347. The telephone number is (512) 834-6755 and the website address is <http://www.dshs.state.tx.us/dmd>.

**SCHEDULES**

Nomenclature: Controlled substances listed in these schedules are included by whatever official, common, usual, chemical, or trade name they may be designated.

**SCHEDULE I**

Schedule I consists of:

Schedule I opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
- (2) Allylprodine;
- (3) Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);
- (4) Alpha-methylfentanyl or any other derivative of Fentanyl;
- (5) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl-4-piperidinyl]-N-phenyl-propanamide);
- (6) Benzethidine;
- (7) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenyl-propanamide);
- (8) Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);
- (9) Betaprodine;
- (10) Clonitazene;
- (11) Diampromide;
- (12) Diethylthiambutene;
- (13) Difenoxin;
- (14) Dimenoxadol;
- (15) Dimethylthiambutene;
- (16) Dioxaphetyl butyrate;

- (17) Dipipanone;
- (18) Ethylmethylthiambutene;
- (19) Etonitazene;
- (20) Etoxidine;
- (21) Furethidine;
- (22) Hydroxypethidine;
- (23) Ketobemidone;
- (24) Levophenacymorphan;
- (25) Meprodine;
- (26) Methadol;
- (27) 3-methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide), its optical and geometric isomers;
- (28) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidyl]-N-phenylpropanamide);
- (29) Moramide;
- (30) Morpheridine;
- (31) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- (32) Noracymethadol;
- (33) Norlevorphanol;
- (34) Normethadone;
- (35) Norpipanone;
- (36) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidyl]-propanamide);
- (37) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- (38) Phenadoxone;
- (39) Phenampromide;
- (40) Phencyclidine;
- (41) Phenomorphan;
- (42) Phenoperidine;
- (43) Piritramide;
- (44) Proheptazine;
- (45) Properidine;
- (46) Propiram;
- (47) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidyl]-propanamide);
- (48) Tilidine; and
- (49) Trimeperidine.

Schedule I opium derivatives

The following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;

- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine (except hydrochloride salt);
- (11) Heroin;
- (12) Hydromorphinol;
- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Monoacetylmorphine;
- (16) Morphine methylbromide;
- (17) Morphine methylsulfonate;
- (18) Morphine-N-Oxide;
- (19) Myrophine;
- (20) Nicocodeine;
- (21) Nicomorphine;
- (22) Normorphine;
- (23) Pholcodine; and
- (24) Thebacon.

Schedule I hallucinogenic substances

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this Schedule I hallucinogenic substances section only, the term "isomer" includes optical, position, and geometric isomers):

- (1) Alpha-ethyltryptamine (some trade or other names: etryptamine; Monase; alpha ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; AET);
- (2) alpha-methyltryptamine (AMT), its isomers, salts, and salts of isomers;
- (3) 4-bromo-2,5-dimethoxyamphetamine (some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA);
- (4) 4-bromo-2,5-dimethoxyphenethylamine (some trade or other names: Nexus; 2C-B; 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB);
- (5) 2,5-dimethoxyamphetamine (some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA);
- (6) 2,5-dimethoxy-4-ethylamphetamine (some trade or other names: DOET);
- (7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts and salts of isomers;
- (8) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts, and salts of isomers;



- (9) 5-methoxy-3,4-methylenedioxy-amphetamine;
- (10) 4-methoxyamphetamine (some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);
- (11) 1-methyl-4-phenyl-1,2,5,6-tetrahydro-pyridine (MPTP);
- (12) 4-methyl-2,5-dimethoxyamphetamine (some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methyl-phenethylamine; "DOM"; and "STP");
- (13) 3,4-methylenedioxy-amphetamine;
- (14) 3,4-methylenedioxy-methamphetamine (MDMA, MDM);
- (15) 3,4-methylenedioxy-N-ethylamphetamine (some trade or other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine; N-ethyl MDA; MDE; MDEA);
- (16) 3,4,5-trimethoxy amphetamine;
- (17) N-hydroxy-3,4-methylenedioxyamphetamine (Also known as N-hydroxy MDA);
- \*(18) 5-methoxy-N,N-dimethyltryptamine (Some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT);
- (19) Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; map-pine);
- (20) Diethyltryptamine (some trade and other names: N,N-Diethyl-tryptamine; DET);
- (21) Dimethyltryptamine (some trade and other names: DMT);
- (22) Ethylamine Analog of Phencyclidine (some trade or other names: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl)-ethylamine; cyclohexamine; PCE);
- (23) Ibogaine (some trade or other names: 7-Ethyl-6,6-beta, 7,8,9,10,12,13-octhydro-2-methoxy-6,9-methano-5H-pyrido[1',2':1,2]azepino [5,4-b] indole; taber-nanthe iboga);
- (24) Lysergic acid diethylamide;
- (25) Marihuana;
- (26) Mescaline;
- (27) N-benzylpiperazine (some other names: BZP; 1-benzylpiperazine), its optical isomers, salts and salts of isomers;
- (28) N-ethyl-3-piperidyl benzilate;
- (29) N-methyl-3-piperidyl benzilate;
- (30) Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl);
- (31) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora*, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;
- (32) Psilocybin;
- (33) Psilocin;
- (34) Pyrrolidine analog of phencyclidine (some trade or other names: 1-(1-phenyl-cyclohexyl)-pyrrolidine, PCPy, PHP);
- (35) Tetrahydrocannabinols;

meaning tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis* (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

1 cis or trans tetrahydrocannabinol, and their optical isomers;

6 cis or trans tetrahydrocannabinol, and their optical isomers; and

3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.);

(36) Thiophene analog of phencyclidine (some trade or other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-thienyl analog of phencyclidine; TPCP); and

(37) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (some trade or other names: TCPy).

#### Schedule I stimulants

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Aminorex (some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5-phenyl-2-oxazolamine);

(2) Cathinone (some trade or other names: 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone and norephedrone);

(3) Fenethylamine;

(4) Methcathinone (some other names: 2-(methylamino)-propiophenone; alpha-(methylamino) propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR1432);

(5) 4-methylaminorex;

(6) N-ethylamphetamine; and

(7) N,N-dimethylamphetamine (some other names: N,N-alpha-trimethylbenzene-ethaneamine; N,N-alpha-trimethylphenethylamine).

#### Schedule I depressants

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma-hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(2) Mecloqualone; and

(3) Methaqualone.

\*Schedule I temporarily listed substances subject to emergency scheduling

Any material, compound, mixture or preparation which contains any quantity of the following substances:

\*(1) 5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, its optical, positional, and geometric isomers, salts and salts of isomers--7297 (Other names: CP-47,497)

\*(2) 5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, its optical, positional, and geometric isomers, salts and salts of isomers--7298 (Other names: cannabicyclohexanol and CP-47,497 C8 homologue)

\*(3) 1-Butyl-3-(1-naphthoyl)indole, its optical, positional, and geometric isomers, salts and salts of isomers--7173 (Other names: JWH-073)

\*(4) 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole, its optical, positional, and geometric isomers, salts and salts of isomers--7200 (Other names: JWH-200)

\*(5) 1-Pentyl-3-(1-naphthoyl)indole, its optical, positional, and geometric isomers, salts and salts of isomers--7118 (Other names: JWH-018 and AM678)

\*(6) 4-methyl-N-methylcathinone (mephedrone), its salts, isomers, and salts of isomers

\*(7) 3,4-methylenedioxy-N-methylcathinone (methylone), its salts, isomers, and salts of isomers; and

\*(8) 3,4-methylenedioxypyrovalerone (MDPV), its salts, isomers, and salts of isomers.

## SCHEDULE II

Schedule II consists of:

Schedule II substances, vegetable origin or chemical synthesis

The following substances, however produced, except those narcotic drugs listed in other schedules:

(1) Opium and opiate, and a salt, compound, derivative, or preparation of opium or opiate, other than thebaine-derived butorphanol, naloxone and its salts, naltrexone and its salts, and nalmefene and its salts, but including:

(1-1) Codeine;

(1-2) Dihydroetorphine;

(1-3) Ethylmorphine;

(1-4) Etorphine hydrochloride;

(1-5) Granulated opium;

(1-6) Hydrocodone;

(1-7) Hydromorphone;

(1-8) Metopon;

(1-9) Morphine;

(1-10) Opium extracts;

(1-11) Opium fluid extracts;

(1-12) Oripavine

(1-13) Oxycodone;

(1-14) Oxymorphone;

(1-15) Powdered opium;

(1-16) Raw opium;

(1-17) Thebaine; and

(1-18) Tincture of opium.

(2) A salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by Paragraph (1) of Schedule II substances, vegetable origin or chemical synthesis, other than the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Cocaine, including:

(4-1) its salts, its optical, position, and geometric isomers, and the salts of those isomers; and

(4-2) coca leaves and a salt, compound, derivative, or preparation of coca leaves that is chemically equivalent or identical to a substance described by this paragraph, other than decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine; and

(5) Concentrate of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

## Opiates

The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alfentanil;

(2) Alphaprodine;

(3) Anileridine;

(4) Bezitramide;

(5) Carfentanil;

(6) Dextropropoxyphene, bulk (nondosage form);

(7) Dihydrocodeine;

(8) Diphenoxylate;

(9) Fentanyl;

(10) Isomethadone;

(11) Levo-alphaacetylmethadol (some trade or other names: levo-alphaacetylmethadol, levomethadyl acetate, LAAM);

(12) Levomethorphan;

(13) Levorphanol;

(14) Metazocine;

(15) Methadone;

(16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;

(17) Moramide-Intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid;

(18) Pethidine (meperidine);

(19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(22) Phenazocine;

(23) Piminodine;

- (24) Racemethorphan;
- (25) Racemorphan;
- (26) Remifentanil;
- (27) Sufentanil; and
- (28) Tapentadol

Schedule II stimulants

Unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) Methamphetamine, including its salts, optical isomers, and salts of optical isomers;
- (3) Methylphenidate and its salts; and
- (4) Phenmetrazine and its salts.
- (5) Lisdexamfetamine, including its salts, isomers, and salts of its isomers.

Schedule II depressants

Unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Amobarbital;
- (2) Glutethimide;
- (3) Pentobarbital; and
- (4) Secobarbital.

Schedule II hallucinogenic substances (1) Nabilone (Another name for nabilone: (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8, 10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one).

Schedule II precursors

Unless specifically excepted or listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances:

- (1) Immediate precursor to methamphetamine:
  - (1-1) Phenylacetone and methylamine if possessed together with intent to manufacture methamphetamine;
  - (2) Immediate precursor to amphetamine and methamphetamine:
    - (2-1) Phenylacetone (some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone); and
    - (3) Immediate precursors to phencyclidine (PCP):
      - (3-1) 1-phenylcyclohexylamine; and
      - (3-2) 1-piperidinocyclohexanecarbonitrile (PCC).
    - (4) Immediate precursor to fentanyl:
      - (4-1) 4-anilino-N-phenethyl-4-piperidine (ANPP).

**SCHEDULE III**

Schedule III consists of:

Schedule III depressants

Unless listed in another schedule and except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) a compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any of their salts and one or more active medicinal ingredients that are not listed in a schedule;
- (2) a suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any of their salts and approved by the Food and Drug Administration for marketing only as a suppository;
- (3) a substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances that are specifically listed in other schedules;
- (4) Chlorhexadol;
- (5) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food Drug and Cosmetic Act;
- (6) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (plusmn;)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;
- (7) Lysergic acid;
- (8) Lysergic acid amide;
- (9) Methyprylon;
- (10) Sulfondiethylmethane;
- (11) Sulfonethylmethane;
- (12) Sulfonmethane; and
- (13) Tiletamine and zolazepam or any salt thereof. Some trade or other names for a tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethyl-pyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyrazapon.

Nalorphine

Schedule III narcotics

Unless specifically excepted or unless listed in another schedule:

- (1) a material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any of their salts:
  - (1-1) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
  - (1-2) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
  - (1-3) not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
  - (1-4) not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than

15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-5) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(1-6) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(1-7) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(1-8) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(2) any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts:

(2-1) Buprenorphine.

Schedule III stimulants

Unless listed in another schedule, a material, compound, mixture or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of the substance's isomers, if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Benzphetamine;
- (2) Chlorphentermine;
- (3) Clortermine; and
- (4) Phendimetrazine.

Schedule III anabolic steroids and hormones

Anabolic steroids, including any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone), and include the following:

- (1) androstenediol
  - (1-1) 3 beta,17 beta-dihydroxy-5 alpha-androstane;
  - (1-2) 3 alpha,17 beta -dihydroxy-5 alpha-androstane;
- (2) androstenedione (5 alpha-androstan-3,17-dione);
- (3) androstenediol--
  - (3-1) 1-androstenediol (3 beta,17 beta-dihydroxy-5 alpha-androst-1-ene);
  - (3-2) 1-androstenediol (3 alpha,17 beta-dihydroxy-5 alpha-androst-1-ene);
  - (3-3) 4-androstenediol (3 beta,17 beta-dihydroxy-androst-4-ene);
  - (3-4) 5-androstenediol (3 beta,17 beta-dihydroxy-androst-5-ene);
- (4) androstenedione--
  - (4-1) 1-androstenedione ([5 alpha]-androst-1-en-3,17-dione);
  - (4-2) 4-androstenedione (androst-4-en-3,17-dione);
  - (4-3) 5-androstenedione (androst-5-en-3,17-dione);

(5) bolasterone (7 alpha,17 alpha-dimethyl-17 beta-hydroxyandrost-4-en-3-one);

(6) boldenone (17 beta-hydroxyandrost-1,4,-diene-3-one);

(7) boldione (androsta-1,4-diene-3,17-dione)

(8) calusterone (7 beta,17 alpha-dimethyl-17 beta-hydroxyandrost-4-en-3-one);

(9) clostebol (4-chloro-17 beta-hydroxyandrost-4-en-3-one);

(10) dehydrochloromethyltestosterone (4-chloro-17 beta-hydroxy-17alpha-methyl-androst-1,4-dien-3-one);

(11) delta-1-dihydrotestosterone (a.k.a. '1-testosterone') (17 beta-hydroxy-5 alpha-androst-1-en-3-one);

(12) desoxymethyltestosterone (17[alpha]-methyl-5[alpha]-androst-2-en-17[beta]-ol; madol)

(13) 4-dihydrotestosterone (17 beta-hydroxy-androstan-3-one);

(14) drostanolone (17 beta-hydroxy-2 alpha-methyl-5 alpha-androstan-3-one);

(15) ethylestrenol (17 alpha-ethyl-17 beta-hydroxyestr-4-ene);

(16) fluoxymesterone (9-fluoro-17 alpha-methyl-11 beta,17 beta-dihydroxyandrost-4-en-3-one);

(17) formebolone (2-formyl-17 alpha-methyl-11 alpha,17 beta-dihydroxyandrost-1,4-dien-3-one);

(18) furazabol (17 alpha-methyl-17 beta-hydroxyandrostan[2,3-c]-fuzazan);

(19) 13 beta-ethyl-17 beta-hydroxygon-4-en-3-one;

(20) 4-hydroxytestosterone (4,17 beta-dihydroxy-androst-4-en-3-one);

(21) 4-hydroxy-19-nortestosterone (4,17 beta-dihydroxy-estr-4-en-3-one);

(22) mestanolone (17 alpha-methyl-17 beta-hydroxy-5 alpha-androstan-3-one);

(23) mesterolone (1 alpha-methyl-17 beta-hydroxy-[5 alpha]-androstan-3-one);

(24) methandienone (17 alpha-methyl-17 beta-hydroxyandrost-1,4-dien-3-one);

(25) methandriol (17 alpha-methyl-3 beta,17 beta-dihydroxyandrost-5-ene);

(26) methenolone (1-methyl-17 beta-hydroxy-5 alpha-androst-1-en-3-one);

(27) 17 alpha-methyl-3 beta, 17 beta-dihydroxy-5 alpha-androstane;

(28) 17alpha-methyl-3 alpha,17 beta-dihydroxy-5 alpha-androstane;

(29) 17 alpha-methyl-3 beta,17 beta-dihydroxyandrost-4-ene;

(30) 17 alpha-methyl-4-hydroxynandrolone (17 alpha-methyl-4-hydroxy-17 beta-hydroxyestr-4-en-3-one);

(31) methyldienolone (17 alpha-methyl-17 beta-hydroxyestra-4,9(10)-dien-3-one);

(32) methyltrienolone (17 alpha-methyl-17 beta-hydroxyestra-4,9-11-trien-3-one);

(33) methyltestosterone (17 alpha-methyl-17 beta-hydroxyandrost-4-en-3-one);

(34) mibolerone (7 alpha,17 alpha-dimethyl-17 beta-hydroxyestr-4-en-3-one);

- (35) 17 alpha-methyl-delta-1-dihydrotestosterone (17 beta-hydroxy-17 alpha-methyl-5 alpha-androst-1-en-3-one) (a.k.a. '17-alpha-methyl-1-testosterone');
- (36) nandrolone (17 beta-hydroxyestr-4-en-3-one);
- (37) norandrostenediol--
- (37-1) 19-nor-4-androstenediol (3 beta, 17 beta-dihydroxyestr-4-ene);
- (37-2) 19-nor-4-androstenediol (3 alpha, 17 beta-dihydroxyestr-4-ene);
- (37-3) 19-nor-5-androstenediol (3 beta, 17 beta-dihydroxyestr-5-ene);
- (37-4) 19-nor-5-androstenediol (3 alpha, 17 beta-dihydroxyestr-5-ene);
- (38) norandrostenedione--
- (38-1) 19-nor-4-androstenedione (estr-4-en-3,17-dione);
- (38-2) 19-nor-5-androstenedione (estr-5-en-3,17-dione);
- (39) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione)
- (40) norbolethone (13 beta,17alpha-diethyl-17 beta-hydroxygon-4-en-3-one);
- (41) norclostebol (4-chloro-17 beta-hydroxyestr-4-en-3-one);
- (42) norethandrolone (17 alpha-ethyl-17 beta-hydroxyestr-4-en-3-one);
- (43) normethandrolone (17 alpha-methyl-17 beta-hydroxyestr-4-en-3-one);
- (44) oxandrolone (17 alpha-methyl-17 beta-hydroxy-2-oxa-[5 alpha]-androstan-3-one);
- (45) oxymesterone (17 alpha-methyl-4,17 beta-dihydroxyandrost-4-en-3-one);
- (46) oxymetholone (17 alpha-methyl-2-hydroxymethylene-17 beta-hydroxy-[5 alpha]-androstan-3-one);
- (47) stanozolol (17 alpha-methyl-17 beta-hydroxy-[5 alpha]-androst-2-eno[3,2-c]-pyrazole);
- (48) stenbolone (17 beta-hydroxy-2-methyl-[5 alpha]-androst-1-en-3-one);
- (49) testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);
- (50) testosterone (17 beta-hydroxyandrost-4-en-3-one);
- (51) tetrahydrogestrinone (13 beta,17 alpha-diethyl-17 beta-hydroxygon-4,9,11-trien-3-one);
- (52) trenbolone (17 beta-hydroxyestr-4,9,11-trien-3-one); and
- (53) any salt, ester, or ether of a drug or substance described in this paragraph.

Schedule III hallucinogenic substances

- (1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in U.S. Food and Drug Administration approved drug product. (Some other names for dronabinol:(6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-tri-methyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or (-)-delta-9-trans)-tetrahydrocannabinol).

**SCHEDULE IV**

Schedule IV consists of:

Schedule IV depressants

Except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) Alprazolam;
- (2) Barbitol;
- (3) Bromazepam;
- (4) Camazepam;
- (5) Chloral betaine;
- (6) Chloral hydrate;
- (7) Chlordiazepoxide;
- (8) Clobazam;
- (9) Clonazepam;
- (10) Clorazepate;
- (11) Clotiazepam;
- (12) Cloxazolam;
- (13) Delorazepam;
- (14) Diazepam;
- (15) Dichloralphenazone;
- (16) Estazolam;
- (17) Ethchlorvynol;
- (18) Ethinamate;
- (19) Ethyl loflazepate;
- (20) Fludiazepam;
- (21) Flunitrazepam;
- (22) Flurazepam;
- (23) Halazepam;
- (24) Haloxazolam;
- (25) Ketazolam;
- (26) Loprazolam;
- (27) Lorazepam;
- (28) Lormetazepam;
- (29) Mebutamate;
- (30) Medazepam;
- (31) Meprobamate;
- (32) Methohexital;
- (33) Methylphenobarbital (mephobarbital);
- (34) Midazolam;
- (35) Nimetazepam;
- (36) Nitrazepam;
- (37) Nordiazepam;
- (38) Oxazepam;
- (39) Oxazolam;

- (40) Paraldehyde;
- (41) Petrichloral;
- (42) Phenobarbital;
- (43) Pinazepam;
- (44) Prazepam;
- (45) Quazepam;
- (46) Temazepam;
- (47) Tetrazepam;
- (48) Triazolam;
- (49) Zaleplon;
- (50) Zolpidem; and
- (51) Zopiclone, its salts, isomers, and salts of isomers.

Schedule IV stimulants

Unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of those isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Cathine [(+)-norpseudoephedrine];
- (2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenfluramine;
- (5) Fenproporex;
- (6) Mazindol;
- (7) Mefenorex;
- (8) Modafinil;
- (9) Pemoline (including organometallic complexes and their chelates);
- (10) Phentermine;
- (11) Pipradrol;
- (12) SPA [(-)-1-dimethylamino-1,2-diphenylethane]; and
- (13) Sibutramine.

Schedule IV narcotics

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs or their salts:

- (1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and
- (2) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

Schedule IV other substances

Unless specifically excepted or unless listed in another schedule, a material, compound, substance's salts:

- (1) Butorphanol, including its optical isomers;
- (2) Pentazocine, its salts, derivatives, compounds, or mixtures; and
- (3) Carisoprodol

**SCHEDULE V**

Schedule V consists of:

Schedule V narcotics containing non-narcotic active medicinal ingredients

A compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that also contain one or more non-narcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100grams;
- (2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;
- (3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;
- (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
- (5) Not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and
- (6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

Schedule V stimulants

Unless specifically exempted or excluded or unless listed in another schedule, a compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

- (1) Pyrovalerone.

Schedule V depressants

Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

- (1) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide]; and
- (2) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

TRD-201200623

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: February 7, 2012

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**Texas Department of Insurance**

Company Licensing

Application to change the name of INFINITY SPECIALTY INSURANCE COMPANY to STONEWOOD NATIONAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Columbus, Ohio.

Application to change the name of TEXAS NATIONAL TITLE INSURANCE COMPANY to FIRST NATIONAL TITLE INSURANCE COMPANY, a title company pending incorporation. The home office is in Plano, Texas.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201200650  
Sara Waitt  
General Counsel  
Texas Department of Insurance  
Filed: February 8, 2012

◆ ◆ ◆  
**Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer**

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Scott and White Health Plan

The application is subject to public inspection at the offices of the Texas Department of Insurance, General Counsel Division, Legal Section-Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of Scott and White Health Plan to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application and comments, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-201200643  
Sara Waitt  
General Counsel

Texas Department of Insurance  
Filed: February 8, 2012

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**Texas Lottery Commission**

Instant Game Number 1387 "\$500,000,000 Extreme Cash Blast"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1387 is "\$500,000,000 EXTREME CASH BLAST." The play style is "multiple games."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1387 shall be \$20.00 per ticket.

1.2 Definitions in Instant Game No. 1387.

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: BILL SYMBOL, STAR SYMBOL, COIN SYMBOL, RING SYMBOL, CHEST SYMBOL, POT OF GOLD SYMBOL, HORSESHOE SYMBOL, CROWN SYMBOL, RABBIT FOOT SYMBOL, ORANGE SYMBOL, BELL SYMBOL, CHERRY SYMBOL, GOLD BAR SYMBOL, WISHBONE SYMBOL, DIAMOND SYMBOL, BANANA SYMBOL, KEY SYMBOL CLOVER SYMBOL, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, \$5.00, \$10.00, \$20.00, \$25.00, \$30.00, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000, \$25,000, \$1,000,000 and \$2,500,000.

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. 1387 - 1.2D

PLAY SYMBOL	CAPTION
BILL SYMBOL	WIN
STAR SYMBOL	STAR
COIN SYMBOL	COIN
RING SYMBOL	RING
CHEST SYMBOL	CHEST
POT OF GOLD SYMBOL	POTOGOLD
HORSESHOE SYMBOL	SHOE
CROWN SYMBOL	CROWN
RABBIT FOOT SYMBOL	FOOT
ORANGE SYMBOL	ORANGE
BELL SYMBOL	BELL
CHERRY SYMBOL	CHERRY
GOLD BAR SYMBOL	BAR
WISHBONE SYMBOL	WISHBONE
DIAMOND SYMBOL	DIAMOND
BANANA SYMBOL	BANANA
KEY SYMBOL	KEY
CLOVER SYMBOL	CLOVER
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
\$5.00	FIVE\$
\$10.00	TENS\$
\$20.00	TWENTY
\$25.00	TWY FIV
\$30.00	THIRTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND



\$500	FIV HUND
\$1,000	ONE THOU
\$10,000	TEN THOU
\$25,000	25 THOU
\$1,000,000	1 MILLION
\$2,500,000	2 MILL 5 HUN

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 \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$30.00, \$50.00, \$100, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$10,000, \$25,000, \$1,000,000 or \$2,500,000.

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 (1387), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 025 within each pack. The format will be: 1387-0000001-001.

K. Pack - A pack of "\$500,000,000 EXTREME CASH BLAST" Instant Game tickets contains 025 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 025 while the other fold will show the back of ticket 001 and front of 025.

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 "\$500,000,000 EXTREME CASH BLAST" Instant Game No. 1387 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 "\$500,000,000 EXTREME CASH BLAST" Instant Game is determined once the latex on the ticket is scratched off to expose 51 (fifty-one) Play Symbols. GAME 1: If a player reveals a "BILL" play symbol in either "MONEY BAG", the player wins the PRIZE for that symbol. GAME 2: If a player reveals 3 identical play symbols within a ROW, the player wins the PRIZE for that ROW. GAME 3: If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the

PRIZE for that number. 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 51 (fifty-one) 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 51 (fifty-one) 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 51 (fifty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 51 (fifty-one) 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. Players can win up to twenty (20) times on a ticket in accordance with the approved prize structure.

B. Adjacent non-winning tickets within a pack will not have identical play and prize symbol patterns. Two (2) tickets have identical play and prize symbol patterns if they have the same play and prize symbols in the same positions.

C. No ticket will ever contain more than four (4) identical non-winning prize symbols.

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. The top prize symbol will appear on every ticket unless otherwise restricted.

F. GAME 1: The "BILL" play symbol will only appear on winning tickets as dictated by the prize structure.

G. GAME 1: All non-winning play symbols will be different.

H. GAME 2: Non-winning play symbols will never appear more than two (2) times.

I. GAME 2: There will be no duplicate non-winning ROWS on a ticket. Duplicate non-winning ROWS are considered duplicate if the same play symbols appear in the same order in both ROWS.

J. GAME 3: Each game will contain three (3) different "WINNING NUMBERS" play symbols.

K. GAME 3: All non-winning play symbols will be different.

L. GAME 3: No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" play symbol (i.e. 5 and \$5).

## 2.3 Procedure for Claiming Prizes.

A. To claim a "\$500,000,000 EXTREME CASH BLAST" Instant Game prize of \$20.00, \$25.00, \$30.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the ticket in the space designated on the

ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$30.00, \$50.00, \$100, \$200 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$500,000,000 EXTREME CASH BLAST" Instant Game prize of \$1,000, \$10,000, \$25,000 or \$1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "\$500,000,000 EXTREME CASH BLAST" top level prize of \$2,500,000, the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "\$500,000,000 EXTREME CASH BLAST" 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.

E. 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 Texas 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.

F. 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 "\$500,000,000 EXTREME CASH BLAST" 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 "\$500,000,000 EXTREME CASH BLAST" 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 speci-

fied 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 33,600,000 tickets in the Instant Game No. 1387. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1387 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$20	6,048,000	5.56
\$25	2,688,000	12.50
\$30	1,344,000	25.00
\$50	672,000	50.00
\$100	873,040	38.49
\$200	147,000	228.57
\$500	44,800	750.00
\$1,000	22,400	1,500.00
\$10,000	840	40,000.00
\$25,000	280	120,000.00
\$1,000,000	40	840,000.00
\$2,500,000	10	3,360,000.00

\*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 2.84. 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. 1387 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. 1387, 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-201200601  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: February 7, 2012



Instant Game Number 1398 "Cash Farmer"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1398 is "CASH FARMER." The play style is "multiple games."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1398 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1398.

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: CORN SYMBOL, COTTON SYMBOL, COW SYMBOL, HAY SYMBOL, HORSE SYMBOL, MELON SYMBOL, MILK SYMBOL, RAIN SYMBOL, SHOVEL SYMBOL, PIG SYMBOL, SUN SYMBOL, WHEAT SYMBOL, TRACTOR SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$500, \$2,000 and \$50,000.

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. 1398 - 1.2D

PLAY SYMBOL	CAPTION
CORN SYMBOL	CORN
COTTON SYMBOL	COTTON
COW SYMBOL	COW
HAY SYMBOL	HAY
HORSE SYMBOL	HORSE
MELON SYMBOL	MELON
MILK SYMBOL	MILK
RAIN SYMBOL	RAIN
SHOVEL SYMBOL	SHOVEL
PIG SYMBOL	PIG
SUN SYMBOL	SUN
WHEAT SYMBOL	WHEAT
TRACTOR SYMBOL	TRACTOR
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$2,000	TWO THOU
\$50,000	50 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 \$5.00, \$10.00, \$15.00, or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100, or \$500.

H. High-Tier Prize - A prize of \$2,000 or \$50,000.

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 (1398), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1398-0000001-001.

K. Pack - A pack of "CASH FARMER" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

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 FARMER" Instant Game No. 1398 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 FARMER" Instant Game is determined once the latex on the ticket is scratched off to expose 32 (thirty-two) play symbols. GAMES 1-8: If a player reveals 3 matching amounts in a single game, the player wins that amount. If a player reveals 2 matching amounts and a symbol in a single game, the player wins 2 times that amount. BONUS GAMES: If a player reveals a symbol in Games 1 through 8, the player must scratch the matching symbol in the BONUS GAMES. If the player matches and reveals 3 symbols in either BONUS GAME, the player wins the Prize for that BONUS GAME. 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 32 (thirty-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 32 (thirty-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 32 (thirty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
  17. Each of the 32 (thirty-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. Players can win up to ten (10) times on a ticket in accordance with the approved prize structure.

B. Adjacent non-winning tickets within a pack will not have identical play and prize symbol patterns. Two (2) tickets have identical play and prize symbol patterns if they have the same play and prize symbols in the same positions.

C. No ticket will ever contain more than three (3) identical non-winning prize symbols.

D. GAMES 1-8: Non-winning tickets will have at least five (5) BONUS GAME play symbols among the (8) games.

E. GAMES 1-8: Winning tickets will have at least five (5) BONUS GAME play symbols among the (8) games unless restricted by the prize structure or other parameters.

F. GAMES 1-8: An individual game will not contain more than one (1) BONUS GAME play symbol.

G. GAMES 1-8: No non-winning game will have two or more matching prize amounts.

H. BONUS: BONUS GAME play symbols will be different in each of two (2) BONUS GAMES.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "CASH FARMER" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Sections 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "CASH FARMER" Instant Game prize of \$2,000 or \$50,000, 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 FARMER" 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 Texas 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 FARMER" 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 FARMER" 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. 1398. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1398 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	480,000	12.50
\$10	560,000	10.71
\$15	240,000	25.00
\$20	160,000	37.50
\$50	70,350	85.29
\$100	12,500	480.00
\$500	800	7,500.00
\$2,000	66	90,909.09
\$50,000	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 3.94. 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. 1398 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 ticket 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. 1398, 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-201200602  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: February 7, 2012



Instant Game Number 1399 "Easy Money"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1399 is "EASY MONEY." The play style is "key number match with doubler."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1399 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1399.

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, 16, 17, 18, 19, 20, BILL SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000, or \$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. 1399 - 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
BILL SYMBOL	BILL
\$2.00	TWOS\$
\$4.00	FOUR\$
\$5.00	FIVES\$
\$10.00	TENS\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$20,000	20THOU

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, \$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 (1399), 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: 1399-0000001-001.

K. Pack - A pack of "EASY MONEY" 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 "EASY MONEY" Instant Game No. 1399 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 "EASY MONEY" 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 symbol, the player wins the PRIZE for that number. If a player reveals a "BILL" 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. Players can win up to ten (10) times on a ticket in accordance with the approved prize structure.

B. Adjacent non-winning tickets within a pack will not have identical play and prize symbol patterns. Two (2) tickets have identical play and prize symbol patterns if they have the same play and prize symbols in the same positions.

C. Each ticket will contain two (2) different "WINNING NUMBERS" play symbols.

D. The "BILL" play symbol will never appear in the "WINNING NUMBERS" play symbol spots.

E. The "BILL" play symbol will only appear as dictated by the prize structure.

F. When the "BILL" symbol appears the associated winning prize will always be doubled as dictated by the prize structure.

G. Non-winning tickets will contain ten (10) different "YOUR NUMBERS" play symbols.

H. On winning tickets, non-winning "YOUR NUMBERS" play symbols will all be different.

I. No ticket will ever contain more than two (2) identical non-winning prize symbols.

J. Non-winning prize symbols will never be the same as the winning prize symbol(s).

K. The top prize symbol will appear on every ticket unless otherwise restricted.

L. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" play symbol (i.e. 5 and \$5).

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "EASY MONEY" 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 Sections 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "EASY MONEY" 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 "EASY MONEY" 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 Texas 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 of less than \$600 from the "EASY MONEY" 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 "EASY MONEY" 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. 1399. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1399 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	576,000	10.42
\$4	624,000	9.62
\$5	96,000	62.50
\$10	72,000	83.33
\$20	48,000	125.00
\$50	29,350	204.43
\$100	2,900	2,068.97
\$1,000	75	80,000.00
\$20,000	8	750,000.00

\*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 4.14. 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. 1399 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 ticket 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. 1399, 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-201200603  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: February 7, 2012



Instant Game Number 1400 "Texas 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1400 is "TEXAS 7'S." The play style is "slots-straight line."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1400 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1400.

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: BANANA SYMBOL, POT OF GOLD SYMBOL, CLOVER SYMBOL, HORSESHOE SYMBOL, COIN SYMBOL, DOLLAR BILL SYMBOL, ORANGE SYMBOL, WATERMELON SYMBOL, 7 SYMBOL, \$5.00, \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$300, \$500, \$1,000 and \$77,777. The possible red symbols are: 7 SYMBOL, CROWN SYMBOL, TOMATO SYMBOL, CHEST SYMBOL, STRAWBERRY SYMBOL, and APPLE SYMBOL. The possible blue symbols are: 7 SYMBOL, WISHBONE SYMBOL, MOON SYMBOL, RING SYMBOL, DIAMOND SYMBOL and GOLD BAR SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO.1400 - 1.2D

PLAY SYMBOL	CAPTION
BANANA SYMBOL (BLACK)	BANANA
POT OF GOLD SYMBOL (BLACK)	GOLD
CLOVER SYMBOL (BLACK)	CLOVER
HORSESHOE SYMBOL (BLACK)	-SHOE-
COIN SYMBOL (BLACK)	COIN
DOLLAR BILL SYMBOL (BLACK)	BILL
ORANGE SYMBOL (BLACK)	ORANGE
WATERMELON SYMBOL (BLACK)	WTRMLN
7 SYMBOL (BLACK)	BLK SVN
7 SYMBOL (RED)	RED SVN
CROWN SYMBOL (RED)	CROWN
TOMATO SYMBOL (RED)	TOMATO
CHEST SYMBOL (RED)	CHEST
STRAWBERRY SYMBOL (RED)	STRWBRY
APPLE SYMBOL (RED)	APPLE
7 SYMBOL (BLUE)	BLUE SVN
WISHBONE SYMBOL (BLUE)	WISHBONE
MOON SYMBOL (BLUE)	MOON
RING SYMBOL (BLUE)	RING
DIAMOND SYMBOL (BLUE)	DIAMOND
GOLD BAR SYMBOL (BLUE)	GOLD BAR
\$5.00 (BLACK)	FIVES
\$10.00 (BLACK)	TEN\$
\$20.00 (BLACK)	TWENTY
\$30.00 (BLACK)	THIRTY
\$50.00 (BLACK)	FIFTY
\$100 (BLACK)	ONE HUND
\$300 (BLACK)	THR HUND
\$500 (BLACK)	FIV HUND
\$1,000 (BLACK)	ONE THOU
\$77,777 (BLACK)	77THO777

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 \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$100, \$300 or \$500.

H. High-Tier Prize - A prize of \$1,000 or \$77,777.

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 (1400), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1400-0000001-001.

K. Pack - A pack of "TEXAS 7'S" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

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 "TEXAS 7'S" Instant Game No. 1400 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 "TEXAS 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 48 (forty-eight) play symbols. If a player reveals three matching play symbols within a PULL, the player wins the prize for that PULL. If a player reveals three "7" play symbols in any one PULL, the player multiplies their total winnings as indicated in legend. If a player reveals one red "7" play symbol, one black "7" play symbol and one blue "7" play symbol, the player wins 5X THE PRIZE. If a player reveals three red "7" play symbols, the player wins 4X THE PRIZE. If a player reveals three black "7" play symbols, the player wins 3X THE PRIZE. If a player reveals three blue "7" play symbols, the player wins 2X THE PRIZE. 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 48 (forty-eight) 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 48 (forty-eight) 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 48 (forty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 48 (forty-eight) 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. Players can win up to twelve (12) times on a ticket in accordance with the approved prize structure.

B. Adjacent non-winning tickets within a pack will not have identical play and prize symbol patterns. Two (2) tickets have identical play and prize symbol patterns if they have the same play and prize symbols in the same positions.

C. No ticket will contain an occurrence of 3 (three) or more consecutive identical symbols vertically or diagonally (regardless of color - all "7" play symbols are considered the same play symbol).

D. A non-winning PULL with a pair of play symbols (excluding the "7's") will not have any "7" (RED, BLUE or BLACK) as a third symbol.

E. There will be no occurrence of two (2) "7" play symbols with a matching color and the 3rd "7" play symbol being a different color.

F. Non-winning play symbols will never appear more than three (3) times on a ticket.

G. Non-winning prize symbols will never appear more than 2 (two) times on a ticket.

H. There will be no duplicate non-winning PULLS on a ticket. Duplicate non-winning PULLS are considered duplicate if the same play symbols appear in the same order in both PULLS.

I. When three (3) "7" play symbols appear in the same PULL, the total winnings on the ticket will be multiplied as dictated by the prize structure: Three (3) BLUE 7's - 2X the amount; Three (3) BLACK 7's - 3X

the amount; Three (3) RED 7's - 4X the amount; RED "7", BLACK "7", BLUE "7" - 5X the amount.

J. On tickets winning 5X (RED "7", BLACK "7", BLUE "7"), the winning pattern will be in exactly that order. No PULL will contain any other order of these three (3) play symbols.

K. Non-winning prize symbols will never be the same as the winning prize symbol(s).

L. The top prize (\$77,777) will appear on every ticket unless otherwise restricted.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS 7'S" Instant Game prize of \$5.00, \$10.00, \$20.00, \$30.00, \$100, \$300 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$100, \$300 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Sections 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "TEXAS 7'S" Instant Game prize of \$1,000 or \$77,777, 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 "TEXAS 7'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Texas 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 of less than \$600 from the "TEXAS 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "TEXAS 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1400. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1400 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	640,000	9.38
\$10	840,000	7.14
\$20	120,000	50.00
\$30	80,000	75.00
\$100	20,000	300.00
\$300	4,050	1,481.48
\$500	250	24,000.00
\$1,000	194	30,927.84
\$77,777	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 3.52. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

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. 1400 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. 1400, 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-201200638  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: February 8, 2012



Instant Game Number 1407 "Hot Numbers®"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1407 is "HOT NUMBERS®." The play style is "multiple games."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1407 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1407.

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, 16, 17, 18, 19, 20, STAR SYMBOL, DIAMOND SYMBOL, SAFE SYMBOL, PIGGY BANK SYMBOL, WISHBONE SYMBOL, FLAME SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000 and \$20,000. The possible red play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20.

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. 1407 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1 (black)	ONE
2 (black)	TWO
3 (black)	THR
4 (black)	FOR
5 (black)	FIV
6 (black)	SIX
7 (black)	SVN
8 (black)	EGT
9 (black)	NIN
10 (black)	TEN
11 (black)	ELV
12 (black)	TLV
13 (black)	TRN
14 (black)	FTN
15 (black)	FFN
16 (black)	SXN
17 (black)	SVT
18 (black)	ETN
19 (black)	NTN
20 (black)	TWY
1 (red)	ONE
2 (red)	TWO
3 (red)	THR
4 (red)	FOR
5 (red)	FIV
6 (red)	SIX
7 (red)	SVN
8 (red)	EGT
9 (red)	NIN
10 (red)	TEN
11 (red)	ELV
12 (red)	TLV
13 (red)	TRN
14 (red)	FTN
15 (red)	FFN
16 (red)	SXN
17 (red)	SVT
18 (red)	ETN
19 (red)	NTN
20 (red)	TWY
STAR SYMBOL (black)	STAR
DIAMOND SYMBOL (black)	DIAM
SAFE SYMBOL (black)	SAFE
PIGGY BANK SYMBOL (black)	PBANK
WISHBONE SYMBOL (black)	WBONE
FLAME SYMBOL (black)	WIN\$10

\$2.00 (black)	TWO\$
\$4.00 (black)	FOUR\$
\$5.00 (black)	FIVE\$
\$10.00 (black)	TEN\$
\$20.00 (black)	TWENTY
\$50.00 (black)	FIFTY
\$100 (black)	ONE HUND
\$1,000 (black)	ONE THOU
\$20,000 (black)	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 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, \$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 (1407), 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: 1407-0000001-001.

K. Pack - A pack of "HOT NUMBERS®" 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 "HOT NUMBERS®" Instant Game No. 1407 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 "HOT NUMBERS®" Instant Game is determined once the latex on the ticket is scratched off to expose 21 (twenty-one) play symbols.

If a player matches any of YOUR NUMBERS to either HOT NUMBER, the player wins the PRIZE for that number. If the matching

YOUR NUMBER play symbol is red, the player wins DOUBLE the PRIZE for that number! HOT BONUS: If the player reveals a "flame" play symbol in the HOT BONUS spot, the player wins \$10 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 21 (twenty-one) 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 21 (twenty-one) 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 21 (twenty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 21 (twenty-one) 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 identical non-winning YOUR NUMBERS play symbols on a ticket regardless of color.

C. No identical HOT NUMBERS play symbols on a ticket.

D. A DOUBLE win created by a "RED" YOUR NUMBERS play symbol matching a HOT NUMBERS play symbol will only appear on intended winning tickets as dictated by the prize structure.

E. Each ticket will have a minimum of three (3) and a maximum of seven (7) "RED" YOUR NUMBERS play symbols unless otherwise restricted by the prize structure.

F. No more than two identical non-winning prize symbols 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 "HOT NUMBERS®" 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 Sections 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "HOT NUMBERS®" 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 "HOT NUMBERS®" 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 Texas 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 lia-

bility 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 of less than \$600 from the "HOT NUMBERS®" 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 "HOT NUMBERS®" 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. 1407. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1407 - 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	40,000	150.00
\$100	5,550	1,081.08
\$1,000	34	176,470.59
\$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.

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. 1407 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 ticket 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. 1407, 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-201200604



Instant Game Number 1409 "Fast Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1409 is "FAST CASH." The play style is "key symbol match."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1409 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1409.

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: BELL SYMBOL, BERRY SYMBOL, TREASURE CHEST SYMBOL, CLOVER SYMBOL, STACK OF COINS SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, EMERALD SYMBOL, FISTFUL OF BILLS SYMBOL, MINK COAT SYMBOL, NECKLACE SYMBOL, PIGGY BANK SYMBOL, POT OF GOLD SYMBOL, RING SYMBOL, ROLL OF BILLS SYMBOL, DOLLAR SIGN SYMBOL, STAR SYMBOL, GOLD BAR SYMBOL, MONEY BAG SYMBOL, CASH SYMBOL, \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$6.00, \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$500 and \$1,000.

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. 1409 - 1.2D

PLAY SYMBOL	CAPTION
BELL SYMBOL	BELL
BERRY SYMBOL	BERRY
TREASURE CHEST SYMBOL	CHEST
CLOVER SYMBOL	CLOVER
STACK OF COINS SYMBOL	COINS
CROWN SYMBOL	CROWN
DIAMOND SYMBOL	DMND
EMERALD SYMBOL	EMRLD
FISTFUL OF BILLS SYMBOL	FISTFUL
MINK COAT SYMBOL	MINK
NECKLACE SYMBOL	NKLACE
PIGGY BANK SYMBOL	PIGBNK
POT OF GOLD SYMBOL	POT
RING SYMBOL	RING
ROLL OF BILLS SYMBOL	ROLL
DOLLAR SIGN SYMBOL	SIGN
STAR SYMBOL	STAR
GOLD BAR SYMBOL	GOLD
MONEY BAG SYMBOL	MNYBAG
CASH SYMBOL	TRPLR
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$6.00	SIX\$
\$10.00	TEN\$
\$20.00	TWENTY
\$30.00	THIRTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE 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 \$1.00, \$2.00, \$3.00, \$6.00 or \$10.00.

G. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$100, or \$500.

H. High-Tier Prize - A prize of \$1,000.

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 (1409), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1409-0000001-001.

K. Pack - A pack of "FAST CASH" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FAST CASH" Instant Game No. 1409 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 "FAST CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 12 (twelve) play symbols. If a player reveals a "moneybag" play symbol in the play area, the player wins the PRIZE below it. If a player reveal a "cash" play symbol, the player wins TRIPLE the PRIZE below it. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 12 (twelve) Play Symbols under the latex overprint on the front portion of

the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 12 (twelve) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current 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 identical non-winning prize symbols on a ticket.

C. No identical non-winning play symbols on a ticket.

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. The "CASH" (tripler) play symbol will only appear on intended winning tickets as dictated by the prize structure.

F. 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 "FAST CASH" Instant Game prize of \$1.00, \$2.00, \$3.00, \$6.00, \$10.00, \$30.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with

a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Sections 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "FAST CASH" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FAST CASH" 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 Texas 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 "FAST CASH" 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 "FAST CASH" 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 9,120,000 tickets in the Instant Game No. 1409. The approximate number and value of prizes in the game are as follows:



Figure 2: GAME NO. 1409 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,094,400	8.33
\$2	638,400	14.29
\$3	243,200	37.50
\$6	76,000	120.00
\$10	76,000	120.00
\$30	14,554	626.63
\$50	4,940	1,846.15
\$100	1,140	8,000.00
\$500	380	24,000.00
\$1,000	167	54,610.78

\*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 4.24. 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. 1409 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 ticket 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. 1409, 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-201200605  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: February 7, 2012



Instant Game Number 1437 "Monthly Bonus"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1437 is "MONTHLY BONUS." The play style is "key number match."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1437 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1437.

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, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, DOLLAR BILL SYMBOL, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000, \$20,000 and \$10,000.

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. 1437 - 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
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
DOLLAR BILL SYMBOL	WIN
\$5	FIVES
\$10	TENS
\$20	TWENTY
\$50	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$20,000	20 THOU
\$10,000	MO/20YRS

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 \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000, \$20,000 or \$10,000/MO.

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 (1437), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1437-0000001-001.

K. Pack - A pack of "MONTHLY BONUS" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

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 "MONTHLY BONUS" Instant Game No. 1437 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 "MONTHLY BONUS" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) play symbols. If the player matches any of the YOUR NUMBERS play symbols to any of the LUCKY NUMBERS play symbols, the player wins the PRIZE for that number. If the player reveals a "dollar bill" play symbol, the player wins \$10,000 per month for 20 years. 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 45 (forty-five) 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 45 (forty-five) 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 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) 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. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

- C. No duplicate LUCKY NUMBERS play symbols on a ticket.
- D. No more than four matching non-winning prize symbols on a ticket.
- E. A non-winning prize symbol will never be the same as a winning prize symbol.
- F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).
- G. The "DOLLAR BILL" (auto win) and \$10,000 annuity prize symbol will only appear on intended winning tickets as dictated by the prize structure and will only appear with each other.

H. The \$20,000 prize symbol will appear at least once on every ticket unless otherwise restricted.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "MONTHLY BONUS" Instant Game prize of \$5.00, \$10.00, \$20.00, \$25.00, \$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 \$25.00, \$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 Sections 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "MONTHLY BONUS" 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 "MONTHLY BONUS" 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. To claim a "MONTHLY BONUS" top level prize of \$10,000/MO for 20 years, the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. When claiming a "MONTHLY BONUS" Instant Game prize of \$10,000 per month for 20 years, the claimant must choose one of two (2) payment options for receiving his prize:

1. Monthly via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of \$10,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made each month on the first business day of the month for a combined total of \$120,000 per year. Monthly payments will be made for a period of 20 years or a total of 240 monthly payments to reach the total maximum payment of "\$2,400,000".

2. Annually via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of \$120,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made once a year on the first business day of the anniversary month of the claim. Annual payments will be made for a period of 20 years or a total of 20 annual to reach the total maximum payment of \$2,400,000.

3. If a payment falls on a holiday or weekend, the payment will be made on the following business day.

F. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Texas Government Code, §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

G. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.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 "MONTHLY BONUS" 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 "MONTHLY BONUS" 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 15,000,000 tickets in the Instant Game No. 1437. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1437 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	2,000,000	7.50
\$10	1,100,000	13.64
\$20	400,000	37.50
\$25	100,000	150.00
\$50	200,000	75.00
\$100	4,750	3,157.89
\$1,000	800	18,750.00
\$20,000	20	750,000.00
\$10,000/MO	4	3,750,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.94. 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. 1437 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. 1437, 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-201200606  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: February 7, 2012



Instant Game Number 1438 "Bonus Cashword"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1438 is "BONUS CASHWORD." The play style is "crossword."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1438 shall be \$3.00 per ticket.

1.2 Definitions in Instant Game No. 1438.

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. One of

the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z and blackened square.

D. Play Symbol Caption- the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have play symbol captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1438 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
■	

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 \$3.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$100 or \$500.

H. High-Tier Prize - A prize of \$5,000 or \$35,000.

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 (1438), 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: 1438-0000001-001.

K. Pack - A pack of "BONUS CASHWORD" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning 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 "BONUS CASHWORD" Instant Game No. 1438 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 "BONUS CASHWORD" Instant Game is determined once the latex on the ticket is scratched off to expose 141 (one hundred forty-one) possible play symbols. The player must scratch the YOUR LETTERS and BONUS play areas. When the player forms words in the BONUS CASHWORD puzzle using the YOUR LETTERS and BONUS LETTERS, the player wins the amount shown in the PRIZE LEGEND. There will be only one prize per ticket. Letters combined to form a complete "word" must be revealed in an unbroken horizontal (left to right) sequence or vertical (top to bottom) sequence of letters within the BONUS CASHWORD puzzle. Only letters within the BONUS CASHWORD puzzle grid that are matched with the YOUR LETTERS and BONUS LETTERS can be used to form a complete "word". In the BONUS CASHWORD puzzle, every lettered square within an unbroken horizontal or vertical sequence must be matched with the YOUR LETTERS or BONUS LETTERS to be considered a complete "word". Words within words are not eligible for a prize. For example, all the YOUR LETTERS play symbols "S, T, O, N, E" must be revealed for this to count as one complete "word". TON, ONE or any other portion of the sequence of STONE would not count as a complete "word". A complete "word" must contain at least three letters. 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. One hundred forty-one (141) possible 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, and each Play Symbol must agree with its Play Symbol Caption; Crossword and Bingo style games do not typically have play symbol captions;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

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 141 (one hundred forty-one) possible 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 141 (one hundred forty-one) possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 141 (one hundred forty-one) possible 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. Each grid will contain exactly the same amount of letters.

C. Each grid will contain exactly the same number of words.

D. No duplicate words on a ticket.

E. All words used will be from the TEXAS APPROVED WORD LIST CASHWORD/CROSSWORD v.1.0.

F. All words will contain a minimum of 3 letters.

G. No words will contain more than 9 letters.

H. The CALLER AREA is defined as the combined YOUR LETTERS and BONUS area.

I. No duplicate play symbols in the CALLER AREA.

J. There will be a minimum of 3 vowels (A, E, I, O and U) in the CALLER AREA.

K. A minimum of 15 play symbols in the CALLER AREA will match at least one letter in the crossword grid.

L. At least one play symbol in the BONUS area will match to at least one letter in the crossword grid.

M. The presence or absence of any letter or combination of letters in the CALLER AREA will not be indicative of a winning or non-winning ticket.

N. No consonant play symbol will appear more than 9 times in the crossword grid and no vowel will appear more than 14 times in the crossword grid.

O. Words from the TEXAS REJECTED WORD LIST v.2.0 will not appear horizontally in the YOUR LETTERS area.

P. On winning tickets, at least 1 play symbol in the BONUS area will match at least one letter in a completed word.

Q. On non-winning tickets, each crossword grid will have at least 2 completed words.

R. Each non-winning ticket will have at least 5 near wins (word with all but one letter matched).

## 2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS CASHWORD" Instant Game prize of \$3.00, \$5.00, \$10.00, \$20.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Sections 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BONUS CASHWORD" Instant Game prize of \$5,000 or \$35,000, 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 "BONUS CASHWORD" 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 Texas 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 "BONUS CASHWORD" 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 "BONUS CASHWORD" 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 therefor, 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 therefor, 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 therefore. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 30,000,000 tickets in the Instant Game No. 1438. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1438 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	3,360,000	8.93
\$5	4,320,000	6.94
\$10	600,000	50.00
\$20	360,000	83.33
\$100	61,500	487.80
\$500	12,500	2,400.00
\$5,000	75	400,000.00
\$35,000	50	600,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.44. 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. 1438 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. 1438, 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-201200607

Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: February 7, 2012



Instant Game Number 1440 "Weekly Grand"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1440 is "WEEKLY GRAND." The play style is "multiple games."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1440 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1440.

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, \$2.00, \$4.00, \$5.00, \$10.00, \$40.00, \$100, \$300, GRAND

SYMBOL, CLOVER SYMBOL, DIAMOND SYMBOL, GOLD BAR SYMBOL, POT OF GOLD SYMBOL, MONEY BAG SYMBOL and TOP HAT SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1440 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
\$2.00	TWOS
\$4.00	FOURS
\$5.00	FIVES
\$10.00	TENS
\$40.00	FORTY
\$100	ONE HUND
\$300	THR HUND
GRAND SYMBOL	WEEK
CLOVER SYMBOL	CLVR
DIAMOND SYMBOL	DIAMD
GOLD BAR SYMBOL	GOLD
POT OF GOLD SYMBOL	POTGLD
MONEY BAG SYMBOL	MBAG
TOP HAT SYMBOL	TPHAT

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 \$40.00 or \$300.

H. High-Tier Prize - A prize of \$1,000/wk (\$1,000 per week for 20 years).

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 (1440), 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: 1440-0000001-001.

K. Pack - A pack of "WEEKLY GRAND" 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 "WEEKLY GRAND" Instant Game No. 1440 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 "WEEKLY GRAND" Instant Game is determined once the latex on the ticket is scratched off to expose 15 (fifteen) play symbols. Game 1: If YOUR NUMBER play symbol beats THEIR NUMBER play symbol in any one row across, the player wins the prize for that row. If a player reveals the GRAND play symbol, the player wins \$1,000 per week for 20 years. Game 2: If a player reveals 3 matching prize amounts, the player wins that amount. If a player reveals 3 GRAND play symbols, the player wins \$1,000 per week for 20 years. Game 3: If a player matches 2 out of 3 play symbols, the player wins \$20 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 15 (fifteen) 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 15 (fifteen) 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 15 (fifteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 15 (fifteen) 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. No three or more matching non-winning prize symbols on a ticket.
- B. Consecutive non-winning tickets will not have identical play data, spot for spot.
- C. The \$300 and GRAND prize symbols will appear on every ticket unless otherwise restricted.
- D. The GRAND prize symbol may only be used in Games 1 and 2.
- E. Non-winning prize symbols will not match a winning prize symbol on a ticket.
- F. Game 1: No ties between YOUR NUMBER play symbols and THEIR NUMBER play symbols in a row.
- G. Game 1: No duplicate rows on a ticket.
- H. Game 1: No duplicate non-winning prize symbols on a ticket.
- I. Game 2: No 4 or more of a kind.
- J. Game 3: There will never be 3 matching symbols in this game.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "WEEKLY GRAND" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00 or \$300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$40.00 or \$300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form

and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WEEKLY GRAND" top level prize of \$1,000 per week for 20 years, the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. When claiming a "WEEKLY GRAND" Instant Game prize of \$1,000 per week for 20 years, the claimant must choose one of four (4) payment options for receiving his prize:

1. Weekly via wire transfer to the claimant/winner's account. This will be similar to the current "WEEKLY GRAND" (Game 1355) payment process. With this plan, a payment of \$1,000.00 less Federal withholding will be made once a week for 20 years. After the initial payment, installment payments will be made every Wednesday.

2. Monthly via wire transfer to the claimant/winner's account. If the claim is made during the month, the claimant/winner will still receive the entire month's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of \$4,337.00 less Federal withholding will be made the month of the claim. Each additional month, a payment of \$4,333.00 less Federal withholding will be made once a month for 20 years. After the initial payment, installment payments will be made on the first business day of each month.

3. Quarterly via wire transfer to the claimant/winner's account. If the claim is made during the quarter, the claimant/winner will still receive the entire quarter's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of \$13,000.00 less Federal withholding will be made each quarter (four times a year) for 20 years. After the initial payment, installment payments will be made on the first business day of the first month of every quarter (January, April, July, October).

4. Annually via wire transfer to the claimant/winner's account. These payments will be made in a manner similar to how jackpot payments are currently handled. With this plan, a payment of \$52,000.00 less Federal withholding will be made once a year during the anniversary month of the claim for 20 years. After the initial payment, installment payments will be made on the first business day of the anniversary month.

D. As an alternative method of claiming a "WEEKLY GRAND" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, or \$300, 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.

E. 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 Texas 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.

F. 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 "WEEKLY GRAND" 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 "WEEKLY GRAND" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment

to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 33,600,000 tickets in the Instant Game No. 1440. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1440 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	4,569,600	7.35
\$4	3,091,200	10.87
\$5	201,600	166.67
\$10	336,000	100.00
\$20	201,600	166.67
\$40	180,880	185.76
\$300	10,360	3,243.24
\$1,000/WK	4	8,400,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.91. 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. 1440 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. 1440, 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-201200608  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: February 7, 2012



Notice of Public Comment Hearing

A public hearing to receive public comments regarding proposed new 16 TAC §401.320 relating to "All or Nothing" On-Line Game Rule will be held on Wednesday, February 29, 2012, at 9:00 a.m. at 611 E. 6th

Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-201200589  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: February 6, 2012



Notice of Public Comment Hearing

A public hearing to receive public comments regarding the proposed repeal of 16 TAC §402.302, relating to Card-Minding Systems; and proposed new 16 TAC §402.321, relating to Card-Minding Systems--Definitions; §402.322, relating to Card-Minding Systems--Site System Standards; §402.323, relating to Card-Minding Systems--Device Standards; §402.324, relating to Card-Minding Systems--Approval of Card-Minding Systems; §402.325, relating to Card-Minding Systems--Licensed Authorized Organizations Requirements; §402.326, relating to Card-Minding Systems--Distributor Requirements; §402.327, relating to Card-Minding Systems--Security Standards; and/or §402.328, relating to Card-Minding Systems--Inspections and Restrictions, will be held on Wednesday, February 29, 2012, at 10:00 a.m. at 611 E. 6th Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant

to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-201200591  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: February 6, 2012

◆ ◆ ◆  
**North Central Texas Council of Governments**

**Consultant Contract Award**

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant request appeared in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6570). The selected consultant will perform technical and professional work for the West Dallas Signature Point Project. The firm selected for this project is Freese & Nichols, Inc., 1701 N. Market Street, Suite 500 LB 51, Dallas, Texas 75202. The amount of the contract is not to exceed \$127,031.

TRD-201200613  
R. Michael Eastland  
Executive Director  
North Central Texas Council of Governments  
Filed: February 7, 2012

◆ ◆ ◆  
**Public Utility Commission of Texas**

**Notice of Application for Amendment to Certificated Service Area Boundary**

Notice is given to the public of an application filed on February 6, 2012, with the Public Utility Commission of Texas for an amendment to a certificated service area boundary in Collin County, Texas.

Docket Style and Number: Application of AT&T Texas to Amend its Certificate of Convenience and Necessity for a Minor Service Area Boundary Change in Collin County, McKinney and Allen Exchanges. Docket Number 40168.

The Application: The minor boundary amendment is being filed to realign the service area boundaries of AT&T Texas' McKinney and Allen exchanges in Collin County, Texas. There are no current customers.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by March 2, 2012, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by telephone at (512) 936-7120 or toll-free at 1-888-782-8477. 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 40168.

TRD-201200634  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 7, 2012

◆ ◆ ◆  
**Notice of Application for Amendment to Service Provider Certificate of Operating Authority**

On February 2, 2012, NextG Networks of Illinois, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) Certificate Number 60717. Applicant seeks to reflect a change in ownership/control wherein NextG Networks of Illinois, Inc. will become a wholly-owned subsidiary of Crown Castle Solutions Corp.

The Application: Application of NextG Networks Illinois, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 40154.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by telephone at (512) 936-7120 or toll free at 1-888-782-8477 no later than Friday, February 24, 2012. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 40154.

TRD-201200599  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 6, 2012

◆ ◆ ◆  
**Notice of Application for Designation as an Eligible Telecommunications Carrier**

Notice is given to the public of a petition filed with the Public Utility Commission of Texas on February 2, 2012, for designation as an eligible telecommunications carrier (ETC) in the State of Texas for the limited purpose of offering Lifeline Service to qualified households, pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Cricket Communications, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Texas for the Limited Purpose of Offering Lifeline Service to Qualified Households. Docket Number 40157.

The Application: Cricket Communications, Inc. (Cricket) seeks ETC designation solely to provide Lifeline service to qualifying Texas households. It will not seek access to funds from the High Cost Pool, nor is Cricket seeking state ETP designation. In its application, Cricket provided a list of wire centers for AT&T Texas and Verizon Southwest for which the Company requests ETC designation and serves the entire wire center. Cricket also provided a list of wire centers for which the Company requests ETC designation and serves only part of the wire center. Cricket is a facilities based provider that provides digital wireless services on a common carrier basis, offering customers unlimited calling at flat rates without requiring a fixed-term contract or a credit check.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by Thursday, March 8, 2012. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989 to reach the commission's toll free number 1-888-782-8477. All comments should reference Docket Number 40157.

TRD-201200600

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 6, 2012



#### Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 6, 2012, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Partners New Energy, LLC for Retail Electric Provider Certification, Docket Number 40161 before the Public Utility Commission of Texas.

Applicant's requested service area is defined by customers, specifically Segma Group, LLC and Outside The Lines, Inc.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by telephone at (512) 936-7120 or toll free at 1-888-782-8477. 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 inquiries should reference Docket Number 40161.

TRD-201200632  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 7, 2012



#### 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) an application on February 6, 2012, to amend a certificate of convenience and necessity for a proposed transmission line in Hale and Swisher Counties, Texas.

Docket Title and Number: Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line within Hale and Swisher Counties. Docket Number 40125.

The Application: The application of Southwestern Public Service Company (SPS) is designated as the Kiser Substation to Kress Substation Transmission Line Project. The facilities include construction of a single-circuit, 115-kV electric transmission line between the proposed Kiser Substation located in Hale County, and the existing Kress Substation located in Swisher County. All routes begin at the existing Kress Substation located northwest of the City of Kress, and end at the proposed Kiser Substation to be located in the northeast portion of the City of Plainview. The total estimated cost for the project ranges from approximately \$25.3 to \$29.3 million depending on the route chosen.

The proposed project is presented with 11 alternate routes and is estimated to be approximately 23 to 30 miles in length. Any of the routes or route segments presented in the application could, however, 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 telephone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this

proceeding is March 22, 2012. 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 40125.

TRD-201200635  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 7, 2012



#### Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208(h)

Notice is given to the public of Southwestern Bell Telephone Company d/b/a AT&T Texas' application filed with the Public Utility Commission of Texas (commission) to withdraw services pursuant to P.U.C. Substantive Rule §26.208(h).

Docket Title and Number: Application of Southwestern Bell Telephone Company d/b/a AT&T Texas to Withdraw Transport Resource Management Service- Docket Number 40121.

The Application: On January 20, 2012, pursuant to P.U.C. Substantive Rule §26.208(h), Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T Texas or the applicant) filed an application to withdraw transport resource management service. AT&T Texas explained that the manufacturer will no longer produce the necessary equipment needed to continue the service. The applicant also stated that there are no current subscribers to this service. The proceedings were docketed and suspended on January 23, 2012, to allow adequate time for review and intervention.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by telephone at (512) 936-7120 or toll free at 1-888-782-8477. 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 inquiries should reference Docket Number 40121.

TRD-201200631  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 7, 2012



#### Notice of Joint Agreement to Provide Extended Area Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a joint application on January 4, 2012, seeking approval of two-way mandatory Extended Area Service, between Hill Country Telephone Cooperative, Inc. (HCTC), Southwest Texas Telephone Company (SWT) and the exchanges of Center Point, Comfort, Doss, Fredonia, Frio Canyon (Leakey), Garven Store, Hunt, Ingram, Katemcy, Medina, Mountain Home, Pontotoc, Sisterdale, Streeter, Tarpley, Barksdale, Camp Wood, D'Hanis, Rocksprings, Utopia, and Vinegarroon (Petitioning Exchanges).

Project Title and Number: Joint Application of Hill Country Telephone Cooperative, Inc, Southwest Texas Telephone Company and Petitioning Exchanges for Two-Way Expanded Area Service Pursuant to P.U.C. Substantive Rule §26.217; Docket Number 40080 before the Public Utility Commission of Texas.

The agreement will expand the mandatory two-way local calling scopes in all Petitioning Exchanges such that all of HCTC's customers and SWT's customers may call each other without incurring long distance charges. In addition, the Petitioners have requested that the commission grant a good cause waiver of the contiguous boundary requirement, the requirement to propose a rate additive that recovers HCTC's and SWT's cost for providing the service, and the requirement to publish notice for two consecutive weeks in newspapers of general circulation. The Petitioners have proposed an effective date of March 1, 2012.

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 telephone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 40080.

TRD-201200556  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 2, 2012



#### Public Notice of Spanish Language Prepaid Disclosure Statement

On Friday, February 3, 2012, the staff of the Public Utility Commission of Texas (commission) posted the Spanish translations of the Residential and Small Commercial Customer Prepaid Disclosure Statements (PDS) on the commission's website. The English version of the form was originally adopted on November 22, 2011 under Project Number 39357, *Project to Develop a Standard Form for the PDS*.

The form has been filed in Central Records under Project Number 39357 and is also available at <http://www.puc.state.tx.us/industry/electric/forms/>.

Questions concerning this notice should be referred to Rebecca Reed, Competitive Markets Division, (512)-936-7371. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201200619  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 7, 2012



#### Public Notice of Workshop on Transparency and Accountability in the Administration of the Texas Universal Service Fund

The staff of the Public Utility Commission of Texas (commission) will hold a workshop seeking input from interested parties regarding procedures to ensure reasonable transparency and accountability in the administration of the Texas Universal Service Fund (TUSF), pursuant to PURA §56.023(d). The workshop will be held at 9:00 a.m. on Monday, February 27, 2012, in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas. Project Number 39939, *Rulemaking to Consider Amending Chapter 26 of the Telecommunications Substantive Rules, Subchapter P, Relating to the Texas Universal Service Plan Pursuant to PURA §56.023(d)*, has been established for this proceeding.

Questions concerning the workshop or this notice should be referred to David Smithson, Retail Market Analyst, Competitive Markets Division, (512) 936-7156. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201200618  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 7, 2012



#### Request for Comment and Notice of Workshop

Senate Bill (SB) 980, passed during the 82nd Legislature, directed the Public Utility Commission of Texas (commission or PUCT) to initiate one or more proceedings to review and evaluate whether the universal service fund accomplishes the fund's purposes or whether changes are necessary to accomplish those purposes. To fulfill this mandate, the commission staff has opened Project No. 39938 - *Rulemaking to Consider Amending Substantive Rule §26.404, Relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan*.

The staff of the PUCT requests comments from interested parties with regard to the following questions. Parties are invited to submit written comments in response to these questions by filing sixteen copies of such comments with Central Records no later than 4:00 p.m. on Thursday, March 8, 2012.

Commission staff will conduct a workshop on Wednesday, March 28, 2012 to discuss potential changes to P.U.C. Substantive Rule §26.404. The workshop will begin at 9:30 a.m. in the Commissioner's Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas.

Questions concerning the workshop or this notice should be referred to Mark Bryant, Competitive Markets Division, at (512) 936-7279 or at [mark.bryant@puc.state.tx.us](mailto:mark.bryant@puc.state.tx.us). Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

#### QUESTIONS

1. Assuming the commission were to revise support amounts from the Small and Rural Incumbent Local Exchange Company Universal Service Plan, please respond to the following questions regarding how to implement revisions.

a. What conditions should exist in the voice-communication marketplace in order for support amounts for a particular type of network or to a particular entity to be eliminated? Explain.

b. If it were determined that appropriate public policy is to continue universal service support for a particular type of network or to a particular entity in the voice-communication marketplace, what is the best methodology for the commission to use to determine the appropriate level of payments?

c. If rate rebalancing were used in combination with reductions to universal service support,

i. What is a reasonable rate for voice communication service now, and on an ongoing basis? Explain the rationale for your answer.

ii. What set of processes and procedures are available to companies to raise local rates? What impediments exist?

2. Given the language of Public Utility Regulatory Act (PURA) §56.031 added by SB 980, and the language of PURA §56.032 added



by House Bill 2603, what is the earliest date on which the commission is allowed by law to implement revisions to support amounts from the Small and Rural Incumbent Local Exchange Company Universal Service Plan?

3. What impact will the recent FCC Order (FCC 11-161) have on small and rural telephone companies in Texas?

TRD-201200629

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: February 7, 2012



### Request for Comment and Notice of Workshop

In considering amendments to P.U.C. Substantive Rule §26.403 at the Open Meeting on January 26, 2012 (Open Meeting Agenda Item #2, Project 39937), the commission directed staff to initiate a rulemaking to consider whether the Texas Universal Service Fund (TUSF) should be subject to a cap on disbursements and/or the assessment rate on intrastate telecommunications revenues that provides funding for the TUSF. In response to this directive, staff has opened Project No. 40153 - *Rulemaking to Consider Methods of Limiting the Size of the Texas Universal Service Fund*.

The staff of the PUCT requests comments from interested parties with regard to the following questions. Parties are invited to submit written comments in response to these questions by filing sixteen copies of such comments with Central Records no later than 4:00 p.m. on Thursday, March 8, 2012. Reply comments should be filed no later than 4:00 p.m. on Monday, March 19, 2012.

Commission staff will conduct a workshop on Wednesday, April 4, 2012 to discuss potential changes to P.U.C. Substantive Rule §26.420. The workshop will begin at 9:30 a.m. in the Commissioner's Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas.

Questions concerning the workshop or this notice should be referred to Mark Bryant, Competitive Markets Division, at (512) 936-7279 or at [mark.bryant@puc.state.tx.us](mailto:mark.bryant@puc.state.tx.us). Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

### QUESTIONS

1. Does the commission have the authority to impose a cap on the total amount of funding for, or disbursements from, the TUSF?
  - a. Does the commission possess the authority to impose a cap at a specific dollar amount, or a cap at an amount of funding as of a specific date?
  - b. Does the commission possess the authority to impose a cap in the form of a ceiling on the assessment rate?
2. If a cap results in a shortfall of TUSF revenue compared to funding levels calculated according to current procedures, how should funding reductions be applied to the various programs supported by the TUSF?
3. Is the absolute funding level or method of calculating a funding level for any TUSF-supported program specified by statute?
4. Within programs that support telecommunications service in high cost areas, should certain companies or certain telephone exchanges be prioritized for support?

TRD-201200630

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: February 7, 2012



## Texas Department of Transportation

### Aviation Division - Request for Proposal for Professional Engineering Services

The City of Arlington, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: City of Arlington, Arlington Municipal Airport. TxDOT CSJ No. 1202ARNGT. Scope: Perform a Wildlife Hazard Assessment (WHA) by a qualified Wildlife Damage Management Biologist meeting the requirements established by FAA Advisory Circular AC 150/5200-36, latest edition. The assessment will include but is not limited to an analysis of the events prompting the assessment, identifying wildlife species observed and their numbers, locations, local movements, and daily and seasonal occurrences; identification and location of features on or near the airport that attract wildlife; a description of wildlife hazards to aircraft operations; and recommended actions for reducing wildlife hazards to aircraft operations.

There is no DBE goal. TxDOT Project Manager is Daniel Benson.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal." The form may be requested from TxDOT Aviation Division, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/business/projects/aviation.htm>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

### Please note:

Five completed, unfolded copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **March 13, 2012, 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 Edie Stimach.

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 proposals. The committee will review all proposals and rate and rank each. The evaluation criteria for airport planning projects can be found at <http://www.txdot.gov/business/projects/aviation.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selec-

tion 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.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Daniel Benson, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-201200557  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: February 3, 2012



### Aviation Division - Request for Proposal for Professional Engineering Services

Upton County, 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 proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Upton County Airport during the course of the next five years through multiple grants.

**Current Project:** Upton County. TxDOT CSJ No.: 1206MCCMY. Scope: Provide engineering/design services to install PAPI-2 RW 10, install PAPI -2 RW 28, reconstruct cross taxiways, upgrade rotating beacon electrical system, overlay RW 10-28, stripe & mark RW 10-28, replace LIRL with MIRL RW 10-28.

The HUB goal for the current project is 8%. TxDOT Project Manager is Clayton Bridwell.

Future scope work items for engineering/design services within the next five years may include the following:

1. Install fencing
2. Construct turnaround RW 10 end
3. Install AVGAS fuel system
4. Rehabilitate apron and TW
5. Rehabilitate, stripe and mark RW 10-28

Upton County 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 proposal preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at [www.txdot.gov/avn/avninfo/notice/consult/index.htm](http://www.txdot.gov/avn/avninfo/notice/consult/index.htm) by selecting "Upton County Airport." The proposal 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 "Aviation Engineering Services Proposal." The form may be requested from TxDOT, Aviation Division, 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/business/projects/aviation.htm>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the pro-

posal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS 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:

Four completed, unfolded 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 March 13, 2012, 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 Amy Slaughter.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The Evaluation Criteria for Engineering Proposals can be found at <http://www.txdot.gov/business/projects/aviation.htm> 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 Amy Slaughter. For technical questions, please contact Clayton Bridwell, Project Manager.

TRD-201200626  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: February 7, 2012



### Aviation Division - Request for Proposal for Professional Engineering Services

Montgomery County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: Montgomery County; Lone Star Executive Airport. TxDOT CSJ No. 1212LONES. Scope: Perform a Wildlife Hazard Assessment (WHA) by a qualified Wildlife Damage Management Biologist meeting the requirements established by FAA Advisory Circular AC 150/5200-36, latest edition. The assessment will include, but is not limited to, an analysis of the events prompting the assessment, identifying wildlife species observed and their numbers, locations, local movements, and daily and seasonal occurrences; identification and location of features on or near the airport that attract wildlife; a description of wildlife hazards to aircraft operations; and recommended actions for reducing wildlife hazards to aircraft operations.

There is no DBE goal. TxDOT Project Manager is Daniel Benson.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal." The form may be requested from TxDOT, Aviation Division, 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/business/projects/aviation.htm>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

**Please note:**

Six completed, unfolded copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than March 13, 2012, 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 Sheri Quinlan.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The evaluation criteria for airport planning projects can be found at <http://www.txdot.gov/business/projects/aviation.htm>. 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.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Daniel Benson, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-201200628  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: February 7, 2012



Public Hearing Notice - Unified Transportation Program

The Texas Department of Transportation (department) will hold a public hearing on Monday, March 5, 2012 at 10:00 a.m. at 200 East River-

side Drive, Room 1A-1, in Austin, Texas to receive public comments on the proposed updates to the 2012 Unified Transportation Program (UTP), preliminary 2013 UTP funding levels, and the development of the 2013 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 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 update to the 2012 UTP, preliminary 2013 UTP funding levels, and a draft of the 2013 UTP will be available at each of the department's district offices, at the department's Finance Division offices located at 150 East Riverside Drive, Austin, Texas, or (800) 687-8108, 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 David Plutowski, Finance Division, at (512) 486-5043 not later than Thursday, March 1, 2012, or they may register at the hearing location beginning at 9:30 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 Government and Public Affairs Division, at (512) 463-6086. 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 proposed update to the 2012 UTP, preliminary 2013 UTP funding levels, and the development of the 2013 UTP to Brian Ragland, Director, Finance Division, P.O. Box 149217, Austin, Texas 78714-9217 or on the department's website at: [http://www.txdot.gov/public\\_involvement/utp.htm](http://www.txdot.gov/public_involvement/utp.htm). In order to be considered, all written comments must be received at the Finance Division office by 4:00 p.m. on Monday, March 19, 2012.

TRD-201200627  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: February 7, 2012



## 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)