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# TEXAS REGISTER

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

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

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

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

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

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

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

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

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

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

# THE ATTORNEY GENERAL

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

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

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

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

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Requests for Opinions

**RQ-0117-KP**

**Requestor:**

Dr. J.M. Di Maio, Presiding Officer

Texas Forensic Science Commission

1700 North Congress Avenue

Austin, Texas 78701

Re: Statutory authority of the Forensic Science Commission, the admissibility of certain forensic analyses in Texas courts, and reporting requirements for certain crime laboratories (RQ-0117-KP)

**Briefs requested by August 19, 2016**

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

TRD-201603601

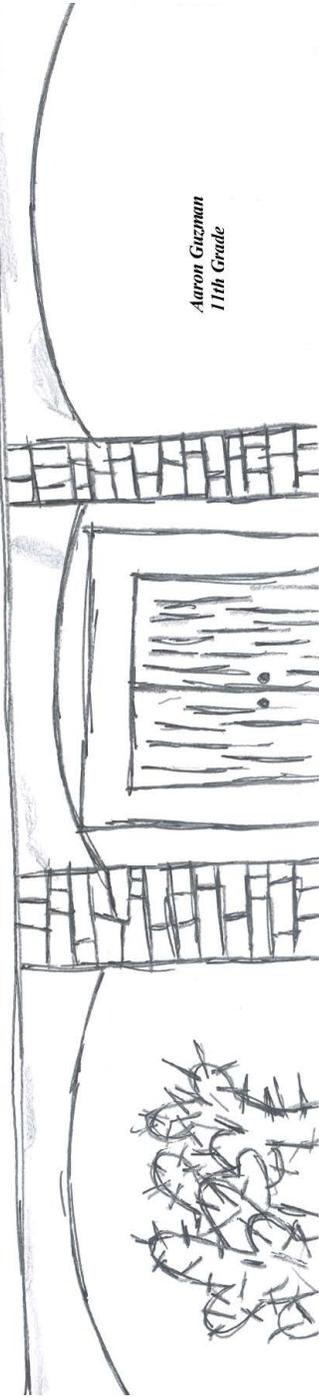
Amanda Crawford

General Counsel

Office of the Attorney General

Filed: July 20, 2016





Aaron Ginzman  
11th Grade

# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

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

#### CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

##### SUBCHAPTER A. GENERAL PROVISIONS

###### 1 TAC §351.4

The Texas Health and Human Services Commission (HHSC) proposes new §351.4, concerning Health and Human Services Commission Executive Council.

###### BACKGROUND AND JUSTIFICATION

Section 1.03 of Senate Bill 200, 84th Texas Legislature, Regular Session, establishes the Health and Human Services Commission (HHSC) Executive Council and requires the HHSC Executive Commissioner to adopt rules for the operation of the council.

###### SECTION-BY-SECTION SUMMARY

Proposed §351.4 describes the operations of the Executive Council, including purpose, definitions, tasks, meetings, and membership

###### FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the proposed rule is in effect, there may be a cost to state government. Specifically there is an expected estimated cost of \$363 General Revenue (GR) \$363 All Funds for State Fiscal Year (SFY) 2017 for webcast expense. There may be additional costs for SFYs 2018 - 2021, however, the agency lacks data to predict any such additional costs at this at this time. Costs and revenues of local governments will not be affected.

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

HHSC has determined that there will be no adverse economic impact on small businesses or micro-businesses to comply with the proposed rule, as the requirements for compliance and the impact of the rule are both entirely internal to HHSC.

###### PUBLIC BENEFIT

Cecile Young, Chief Deputy Executive Commissioner, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit will be the establishment of a primary venue for public comment on Health and Human Services system programs and operations.

Ms. Rymal has also determined that there are no probable economic costs to persons who are required to comply with the proposed rule.

HHSC has determined that the proposed rule will not affect a local economy. There is no anticipated negative impact on local employment.

###### REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "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

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

###### PUBLIC COMMENT

Written comments on the proposal may be submitted to Meghan Young, HHSC Transformation, Policy, and Performance Division, by mail to 4900 North Lamar Boulevard, MC-1045, Austin, Texas 78751; by fax to (512) 487-3455; or by email to [meghan.young@hhsc.state.tx.us](mailto:meghan.young@hhsc.state.tx.us) within 30 days of publication of this proposal in the *Texas Register*.

###### PUBLIC HEARING

A public hearing is scheduled for August 23 from 9:00 a.m. to 11:00 a.m. (central time) in the Brown-Healty Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Meghan Young at (512) 462-6238 or [meghan.young@hhsc.state.tx.us](mailto:meghan.young@hhsc.state.tx.us).

###### STATUTORY AUTHORITY

The new rule is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and §531.0051(d), which directs the Executive Commissioner of HHSC to adopt rules governing the HHSC Executive Council.

The proposed new rule implements Texas Government Code §531.0051. No other statutes, articles, or codes are affected by this proposal.

§351.4. Health and Human Services Commission Executive Council.

(a) Statutory authority. Texas Government Code §531.0051 establishes the Health and Human Services Commission Executive Council and requires the Executive Commissioner to adopt rules for its operation.

(b) Applicability of Texas Government Code Chapter 2110. The Health and Human Services Commission Executive Council is not subject to Texas Government Code Chapter 2110.

(c) Applicability of Texas Government Code Chapter 551. The Health and Human Services Commission Executive Council is not subject to Texas Government Code Chapter 551.

(d) Definitions. For the purpose of this section, the following terms are defined as follows:

(1) Executive Commissioner--The executive commissioner of the Health and Human Services Commission.

(2) Executive Council--The Health and Human Services Commission Executive Council.

(3) Health and Human Services system--All state agencies and departments under and including the Health and Human Services Commission.

(4) HHSC--The Health and Human Services Commission.

(e) Purpose. The Executive Council is established to receive public input and advise the Executive Commissioner regarding the operation of the Health and Human Services system.

(f) Tasks. The Executive Council reviews policies related to the operation of the HHS system.

(1) The Executive Council seeks and receives public comment on:

(A) proposed rules;

(B) recommendations of advisory committees established under Subchapter B of this Chapter (relating to Advisory Committees);

(C) legislative appropriations request or other documents related to the appropriations process;

(D) the operation of health and human services programs; and

(E) other items the Executive Commissioner determines appropriate.

(2) The Executive Council does not have the authority to make administrative or policy decisions.

(g) Membership. The members of the Executive Council serve at the pleasure of the Executive Commissioner.

(1) The Executive Council is composed of:

(A) the Executive Commissioner;

(B) the director of each HHSC division established under Texas Government Code §531.008(c);

(C) the commissioner of each Health and Human Services system agency; and

(D) other individuals appointed by the Executive Commissioner.

(2) When appointing members under paragraph (1)(D) of this subsection, the Executive Commissioner will make every effort to

ensure that those appointments result in Executive Council membership that includes:

(A) a balanced representation of a broad range of health and human services industry and consumer interests; and

(B) representation from broad geographic regions of the State of Texas.

(3) Members appointed under paragraph (1)(D) of this subsection are subject to the restrictions applicable to service on the Executive Council provided by Texas Government Code §531.006(a-1).

(4) Terms. Members appointed under paragraph (1)(D) of this subsection will serve two-year terms.

(A) No more than half of the terms of members appointed under paragraph (1)(D) of this subsection shall expire in a single state fiscal year.

(B) If more than half of the members appointed under paragraph (1)(D) of this subsection have terms beginning in the same state fiscal year, members will draw for one- or two-year terms. Subsequent terms will be for a period of two years.

(C) Members may serve a maximum of two consecutive terms.

(h) Presiding officer. The Executive Commissioner serves as the chair of the Executive Council.

(i) Meetings. The Executive Council meets at the call of the Executive Commissioner, at least quarterly.

(1) A meeting of the individual members of the Executive Council that occurs in the ordinary course of Health and Human Services system operations is not a meeting of the Executive Council, and the provisions of subsection (j) of this section do not apply.

(2) Live video transmissions of each meeting will be publicly available through the HHSC website.

(j) Public notice. The Executive Council will give public notice of the date, time, and place of each meeting.

(k) Quorum. A majority of the members of the Executive Council constitutes a quorum for the transaction of business.

(l) Reimbursement and compensation. Members appointed under subsection (g)(1)(D) of this section may not receive compensation but are entitled to reimbursement for travel expenses incurred while conducting the business of the Executive Council, as provided by the Texas General Appropriations Act.

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

Filed with the Office of the Secretary of State on July 18, 2016.

TRD-201603543

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 28, 2016

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



CHAPTER 354. MEDICAID HEALTH SERVICES

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

The Texas Health and Human Services Commission (HHSC) proposes amendments to §354.1624, concerning Independent Assessment of DSRIP Projects. HHSC also proposes new Division 6, concerning DSRIP Program Demonstration Year 6, and within the division, new §354.1661, concerning Definition; §354.1663, concerning Medicaid and Low-income or Uninsured (MLIU) Quantifiable Patient Impact (QPI); §354.1665, concerning Demonstration Year 6 DSRIP Pool Funding and Distribution; §354.1667, concerning Requirements for Continuing DSRIP Projects; §354.1669, concerning Requirements for Combining Certain DSRIP Projects; §354.1671, concerning DSRIP Requirements for Uncompensated Care Hospitals; §354.1673, concerning Remaining DSRIP Funds; and §354.1675, concerning Anchor Requirements.

### Background and Justification

HHSC and the Centers for Medicare & Medicaid Services (CMS) have agreed to extend the Texas Healthcare Transformation and Quality Improvement Program, a Section 1115 Waiver. The waiver authorizes Texas to operate managed care statewide, the Uncompensated Care (UC) pool, and the Delivery System Reform Incentive Payment (DSRIP). DSRIP is a program for hospitals and certain other providers to propose and implement transformative projects that increase access to care and quality of care.

To prepare for expected changes in the structure of DSRIP, HHSC proposed to CMS an initial 15-month extension. CMS approved the requested initial 15-month extension as DY6 (October 1, 2016 - December 31, 2017). DY6 is divided into DY6A and DY6B. DY6A is federal fiscal year (FFY) 2017, or the first 12 months of DY6 (October 1, 2016 to September 30, 2017). DY6B is the last three months of DY6 (October 1, 2017 to December 31, 2017). The proposed rules in new Division 6 describe the policies for DY6A.

In DY6A, HHSC proposes to simplify the structure and administration of the DSRIP program while maintaining the overall level of funding to performing providers (or "performers" as used in the DSRIP rules). To that end, HHSC proposes to focus payments more directly on the impact to patients.

HHSC is also proposing an amendment to §354.1624, to specify that compliance monitoring is an ongoing process that will continue in the transition year, and to clarify performing providers' responsibility to provide any requested documentation to the independent assessor and HHSC. The proposed amendment also clarifies that HHSC can initiate recoupments based on the findings of the independent assessor.

### Section-by-Section Summary

Proposed amended §354.1624 clarifies the requirements for performing providers related to compliance monitoring and the potential HHSC actions based on that monitoring.

Proposed new §354.1661 defines terms specific to the new division.

Proposed new §354.1663 describes the proper categorization for individuals as Medicaid and Low-income or Uninsured (MLIU) for purposes of the Quantifiable Patient Impact (QPI) milestone.

Proposed new §354.1665 describes the DSRIP pool amount for Demonstration Year (DY) 6, which is the same as the DSRIP pool amount for DY 5. It also describes the distribution of funds across Categories 1-4.

Proposed new §354.1667 describes the DY6A requirements for continuing DSRIP projects for Categories 1-4. It describes the required Category 1 and 2 milestones for DY6A, which include the total QPI, MLIU QPI, core component reporting, and sustainability planning milestones. It specifies that each of these four milestones will be worth 25 percent of the DSRIP project's Category 1 or 2 value. It also describes the requirements for Categories 3 and 4 for DY6A.

Proposed new §354.1669 describes the DY6A requirements for combining certain DSRIP projects.

Proposed new §354.1671 describes the DY6A requirements for uncompensated care only hospitals.

Proposed new §354.1673 describes how the funds in the DSRIP pool not currently allocated to DSRIP projects for DY6A will be used. These uses include the option to increase value for the providers with low total value, and a one-time anchor payment to support anchor responsibilities in DY6A.

Proposed new §354.1675 describes the requirements for anchors in DY6A.

### Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services for HHSC, has determined that for each year of the first five years the amended and proposed new rules will be in effect, there will be no impact to costs or revenues of state government.

There could be a fiscal impact on local governments. HHSC can recoup funds under these proposed rules. In that case, the DSRIP performing provider would return all Medicaid funds specified in the rule that have been received for the project. HHSC would refund federal funds to CMS, and intergovernmental transfers (IGTs) used as the non-federal portion would be returned to the transferring entity. HHSC cannot predict if any DSRIP projects would have funds recouped. Therefore, HHSC lacks sufficient data to provide an estimate of the possible local government fiscal impact.

Additionally, to fund a project requesting previously unallocated DSRIP funding, a local government would be required to provide additional IGTs to fund the non-federal share of the costs. However, since IGTs are voluntary, providing the additional funding would not be required by adoption or implementation of this rule.

### Public Benefits and Costs

Gary Jessee, State Medicaid Director, has determined that, for each year of the first five years the proposed rules will be in effect, the public will benefit from adoption of the proposed rules. The anticipated public benefit will be the continued transformation of the Texas healthcare system through more efficient means.

Ms. Rymal has also determined that there are no economic costs to persons required to comply with the proposed rules.

HHSC has determined that the proposed rules will not affect a local economy or local employment.

### Small Business and Micro-business Impact Analysis

HHSC has determined that the proposed rules would have no adverse economic effect on small businesses or micro-busi-

nesses. Participation in the DSRIP program and in the DSRIP transition year is voluntary and no small business or micro-business is required to be involved in the program.

#### REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "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

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

#### Public Comment

Written comments on the proposal may be submitted to Kimberly Tucker, Health and Human Services Commission, Medicaid/CHIP Transformation Waiver Operations, Brown-Healty Building, 4900 N. Lamar Blvd., Mail Code H-425, Austin, Texas 78751; by fax to (512) 730-7479; or by e-mail to kimberly.tucker@hhsc.state.tx.us; within 30 days after publication of this proposal in the *Texas Register*.

#### Public Hearing

A public hearing is scheduled for July 27, 2016, at 2:30 p.m. (central time) at the Brown-Healty Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Amy Chandler at (512) 487-3419.

### DIVISION 3. RHP PLAN CONTENTS AND APPROVAL

#### 1 TAC §354.1624

##### Statutory Authority

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

The amendment implements Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

##### *§354.1624. Independent Assessment of DSRIP Projects.*

(a) Mid-point assessment. An independent assessor will initiate a mid-point assessment of DSRIP projects prior to the fourth demonstration year, consistent with the requirements of the PFM Protocol.

(1) The independent assessor will review a DSRIP project for the following elements:

(A) Compliance with the approved RHP plan.

(B) Compliance with the required core components described in the RHP Planning Protocol, including continuous quality improvement activities.

(C) Ensuring that activities funded through DSRIP do not duplicate activities funded through other federal funds.

(D) The clarity of the improvement milestones for the fourth and fifth demonstration years and those milestones' connection to DSRIP project activities and patient impact.

(E) The benefit of the DSRIP project to the patients served by the project, including the Medicaid and uninsured populations.

(F) The opportunity for DSRIP project improvement.

(2) Any change to an RHP plan resulting from this process will be reviewed by HHSC.

(3) Based upon the recommendations of the independent assessor, HHSC or CMS may require changes to the RHP plan for the fourth and fifth demonstration years.

(b) Compliance Monitoring. ~~The [After the mid-point assessment, the]~~ independent assessor will continually monitor DSRIP projects.

(1) In addition to generally monitoring for compliance with DSRIP program requirements and objectives, the independent assessor may, at HHSC's discretion [with]:

(A) ~~[(4)]~~ review and make recommendations regarding DSRIP project values determined by HHSC or CMS to be outliers;

(B) ~~[(2)]~~ provide recommendations to HHSC regarding a request from a performer to use a Category 3 achievement target that varies from the standard target setting methodology, as described in §354.1633 of this subchapter (relating to DSRIP Requirements for Performers); and

(C) ~~[(3)]~~ provide secondary review of a request for a substantial reduction in project scope through plan modification.

(2) All RHP plans are subject to potential audits, including review by the independent assessor, during ongoing compliance monitoring. Upon request, performers must have available for review by the independent assessor, HHSC, and CMS, all supporting data and back-up documentation demonstrating performance as described under an RHP plan for DSRIP payments.

(c) Effect on DSRIP Payments. Future payments for a non-compliant DSRIP project may be withheld in whole or in part until the necessary changes identified by HHSC or CMS are addressed. In addition, the findings of the independent assessor may form the basis of a recoupment of a DSRIP payment. Failure of a performer to provide supporting documentation of metric or milestone achievement may result in recoupment of DSRIP payments.

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

Filed with the Office of the Secretary of State on July 18, 2016.

TRD-201603534

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 28, 2016

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

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## DIVISION 6. DSRIP PROGRAM TRANSITION YEAR

**1 TAC §§354.1661, 354.1663, 354.1665, 354.1667, 354.1669, 354.1671, 354.1673, 354.1675**

### Statutory Authority

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

The new rules implement Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

### §354.1661. Definitions.

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

(1) Alternate improvement activity--An activity that must be selected in conjunction with a Category 3 outcome designated as pay-for-reporting (P4R) or maintenance. There are two types of alternate improvement activities: stretch activities and Population-Focused Priority Measures (PFPMs).

(2) Baseline--The baseline that HHSC has on record for a Category 3 outcome, typically the baseline that the performer most recently submitted to HHSC.

(3) Baseline measurement period--The time period used to set the baseline for a Category 3 outcome.

(4) Category 3 outcome--An outcome measure for which a performer can earn Category 3 payments.

(5) Demonstration Year (DY) 6--The initial 15-month time period, as approved by CMS, for which the waiver is extended beyond the initial demonstration period, or October 1, 2016 - December 31, 2017.

(A) DY6A--Federal fiscal year (FFY) 2017, or the first 12 months of DY6 (October 1, 2016 to September 30, 2017).

(B) DY6B--The last three months of DY6 (October 1, 2017 to December 31, 2017).

(6) Extension period--The entire time period, as approved by CMS, for which the waiver is extended beyond the initial demonstration period.

(7) Federal poverty level--The household income guidelines issued annually and published in the *Federal Register* by the United States Department of Health and Human Services.

(8) Improvement floor--A fixed value equal to ten percent of the difference between the minimum performance level (MPL) and the high performance level (HPL) for a Category 3 outcome. It is used to set the performance year (PY) goal for certain Category 3 outcomes designated as pay-for-performance (P4P) and Quality Improvement System for Managed Care (QISMC) that have a baseline that is either close to the HPL or above the HPL.

(9) Improvement over self (IOS)--A goal-setting methodology for certain Category 3 outcomes designated as pay-for-performance (P4P). Under IOS, an outcome's goal is set as closing the gap between the baseline and the perfect rate.

(10) Initial demonstration period--The first five DYs of the waiver, or December 12, 2011, through September 30, 2016.

(11) Medicaid and Low-income or Uninsured (MLIU) Quantifiable Patient Impact (QPI)--The number of MLIU individuals served, or encounters provided to MLIU individuals, during an applicable DY that are attributable to the DSRIP project.

(12) Medicaid and Low-income or Uninsured (MLIU) Quantifiable Patient Impact (QPI) Goal--The number of MLIU individuals that a performer intends to serve, or the number of MLIU encounters that a performer intends to provide, during an applicable DY that are attributable to the DSRIP project.

(13) Performance level--The benchmark level used to determine a Category 3 outcome's performance year (PY) goal relative to the baseline under the Quality Improvement System for Managed Care (QISMC) goal-setting methodology. There is a high performance level (HPL) and minimum performance level (MPL) for each outcome, as described in the RHP Planning Protocol.

(14) Performance Year (PY)--The 12-month measurement period that follows the baseline measurement period for a Category 3 outcome. For most outcomes, PY1 is the 12-month period that immediately follows the baseline measurement period, and PY2 is the 12-month period that immediately follows PY1.

(15) Population-Focused Priority Measure (PFPM)--A Category 3 outcome designated as pay-for-performance (P4P) that is an alternate improvement activity.

(16) Pre-DSRIP baseline--The service volume prior to the implementation of a DSRIP project, as measured by the number of individuals served or encounters provided during the 12-month period preceding the implementation of the DSRIP project. There is a pre-DSRIP baseline for total QPI and a pre-DSRIP baseline for MLIU QPI.

(17) Quality Improvement System for Managed Care (QISMC)--A goal-setting methodology for certain Category 3 outcomes designated as pay-for-performance (P4P). Under QISMC, an outcome's goal is set as closing the gap relative to the baseline and a high performance level (HPL) and minimum performance level (MPL) benchmark.

(18) Quantifiable Patient Impact (QPI) Grouping--The category of the QPI measurement. The category may be either individuals served or encounters provided.

(19) Reporting Domain (RD)--Category 4 contains five domains upon which hospital performers must report, as specified in the Program Funding and Mechanics (PFM) Protocol.

(20) Stretch activity--A pay-for-reporting (P4R) activity that is an alternate improvement activity.

(21) Total Quantifiable Patient Impact (QPI)--The total number of individuals served or encounters provided during an applicable DY that are attributable to the DSRIP project.

(22) Total Quantifiable Patient Impact (QPI) Goal--The total number of individuals that a performer intends to serve, or the total number of encounters that a performer intends to provide, during an applicable DY that are attributable to the DSRIP project.

(23) Uncompensated Care (UC) Hospital--A hospital eligible to be a performer that is not a performer, but receives UC payments.

§354.1663. Medicaid and Low-income or Uninsured (MLIU) Quantifiable Patient Impact (QPI).

(a) To qualify as a Medicaid individual for purposes of MLIU QPI, the individual must be enrolled in Medicaid at the time of at least

one DSRIP project encounter during the applicable demonstration year (DY).

(b) To qualify as a low-income or uninsured individual for purposes of MLIU QPI, the individual must either be below 200 percent of the federal poverty level or must not have health insurance at the time of at least one DSRIP project encounter during the applicable DY.

(c) If an individual was enrolled in Medicaid at the time of one DSRIP project encounter during the applicable DY, and was low-income or uninsured at the time of a separate DSRIP project encounter during the applicable DY, that individual is classified as a Medicaid individual for purposes of MLIU QPI.

§354.1665. Demonstration Year 6 DSRIP Pool Funding and Distribution.

(a) The DSRIP pool for demonstration year (DY) 6 is \$3.875 billion.

(1) The DSRIP pool for DY6A is \$3.1 billion.

(2) The DSRIP pool for DY6B is \$775 million.

(b) A performer's total value for DY6A is equal to the performer's total value for DY5, unless otherwise specified in §354.1667 of this division (relating to Requirements for Continuing DSRIP Projects).

(c) The DSRIP funding distribution among categories for a hospital performer in DY6A is as follows:

(1) Categories 1 and 2 must comprise no more than 57 percent of the performer's total value with the following exceptions:

(A) If the performer is a hospital that does not participate in Category 4, Categories 1 and 2 must comprise no more than 67 percent of the performer's total value.

(B) If the performer met the 57 percent threshold at the time of initial RHP plan submission, but later exceeded it due to HHSC and CMS approval of a three-year project or withdrawal of Category 4 Reporting Domain 6, Categories 1 and 2 must comprise no more than 62 percent of the performer's total value.

(2) Category 3 must comprise at least 33 percent of the performer's total value.

(3) Category 4 must comprise no more than 10 percent of the performer's total value.

(d) The DSRIP funding distribution among categories for a non-hospital performer in DY6A is as follows:

(1) Categories 1 and 2 must comprise no more than 80 percent of the performer's total value.

(2) Category 3 must comprise at least 20 percent of the performer's total value.

§354.1667. Requirements for Continuing DSRIP Projects.

(a) A performer's total value for demonstration year (DY) 6A is equal to the performer's total value for DY5 with the following exceptions:

(1) HHSC notifies a performer that a DSRIP project's value may be reduced if the DSRIP project fails to complete DSRIP project or metric goals by the end of DY5.

(2) Performers with a total value less than \$250,000 for DY5 may increase their total value to up to \$250,000 per each subsequent DY beginning in DY6A. The increase in value is contingent on funds availability as described in §354.1673 of this division (relating to Remaining DSRIP Funds). Categories 1-4 will each be increased

proportionately. However, any funds in excess of the 10 percent maximum for Category 4 will be allocated to Category 3. A performer may need to increase a DSRIP project's MLIU QPI goal for DY6A and beyond in order to obtain the increased value. Performers eligible for this option must make this choice by a date to be determined by HHSC.

(b) The DY5 IGT process, payment calculations, and monitoring IGT are continued in the extension period. IGT entities from DY5 will continue to provide funding for the extension period unless a performer submits changes during the reporting period. No new certifications (RHP Plan Section VI) are required for continuing RHP participants.

(c) If a performer participated in Category 4 in DY5, the performer will continue to participate in Category 4 in DY6A. The performer's Category 4 value for DY6A will be equal to the performer's Category 4 value for DY5, unless the performer's DY5 Category 4 value is greater than 10 percent of the performer's total DY5 value. In such a situation, the performer's DY6A Category 4 value will be reduced to 10 percent of the performer's total DY5 value, and the funds above the 10 percent threshold will be allocated to Category 3 in DY6A.

(d) The following Category 1 and 2 requirements must be met in DY6A:

(1) Each DSRIP project must have the following four milestones:

(A) a total Quantifiable Patient Impact (QPI) milestone valued at 25 percent of each DSRIP project's Category 1 or 2 value;

(B) a Medicaid and Low-income or Uninsured (MLIU) QPI milestone valued at 25 percent of each DSRIP project's Category 1 or 2 value;

(C) a core component reporting milestone valued at 25 percent of each DSRIP project's Category 1 or 2 value; and

(D) a sustainability planning milestone valued at 25 percent of each DSRIP project's Category 1 or 2 value.

(2) Total Quantitative Patient Impact (QPI) Milestone.

(A) HHSC will convert each total QPI metric to a total QPI milestone with standardized language. However, if a DSRIP project has multiple QPI metrics in DY5, that project may be exempted from this conversion, based on criteria determined by HHSC and CMS.

(B) The total QPI goal is equal to the DY5 total QPI goal.

(i) Certain DSRIP projects are eligible for an adjustment to the total QPI goal. These DSRIP projects include projects for which the provider reported 66 percent achievement or less of their DY4 total QPI metric as of April DY5 reporting, and for which:

(I) the value per MLIU individual is less than or equal to \$1,000; or

(II) the value per MLIU encounter is less than or equal to \$500.

(ii) Performers of a DSRIP project described in clause (i) of this subparagraph may, by a date determined by HHSC in a form determined by HHSC, request an adjustment to the DSRIP project's total QPI goal.

(C) DSRIP projects must retain the same QPI grouping from the initial demonstration period for total QPI.

(D) DSRIP projects must retain the same pre-DSRIP baseline for total QPI from the initial demonstration period. If multiple

metrics are combined to form one total QPI milestone, the pre-DSRIP baselines will also be combined.

(E) DSRIP projects may carry forward total QPI milestones from DY6A to DY6B and DY7.

(3) MLIU QPI Milestone.

(A) Beginning in DY6A, there is an MLIU QPI milestone.

(B) For DSRIP projects that have an MLIU QPI requirement in DY5:

(i) The MLIU QPI goal is equal to the DY5 MLIU QPI goal. If, based on a determination pursuant to paragraph (2)(B) of this subsection, the total QPI goal is changed, the MLIU QPI goal will also be changed in proportion to the total QPI goal.

(ii) If the DSRIP project has an MLIU QPI metric in DY5, it retains the same pre-DSRIP baseline for MLIU QPI used in the initial demonstration period.

(iii) If the DSRIP project does not have an MLIU QPI metric in DY5, the pre-DSRIP baseline for MLIU QPI is equal to the pre-DSRIP baseline for total QPI multiplied by the earliest MLIU percentage goal on record with HHSC.

(iv) The MLIU QPI milestone must be pay-for-performance (P4P).

(C) For DSRIP projects that do not have an MLIU QPI requirement in DY5:

(i) The MLIU QPI goal is equal to the DY5 MLIU percentage goal multiplied by the DY5 total QPI goal, or as indicated in the DY5 goal language. If, based on a determination pursuant to paragraph (2)(B) of this subsection, the total QPI goal is changed, the MLIU QPI goal will also be changed in proportion to the total QPI goal.

(ii) The pre-DSRIP baseline for MLIU QPI is equal to the pre-DSRIP baseline for total QPI multiplied by the earliest MLIU percentage goal on record with HHSC.

(iii) Although all DSRIP projects must include an MLIU QPI goal, DSRIP projects under this subparagraph, with the exception of projects subject to clause (iv) of this subparagraph, must include an MLIU QPI milestone that is pay-for-reporting (P4R). This means that the performer is eligible to receive payment for the project's MLIU QPI milestone by reporting their actual MLIU QPI achievement, regardless of whether they achieved the MLIU QPI goal.

(iv) HHSC may determine that some of these DSRIP projects must include an MLIU QPI milestone that is P4P, meaning that the performer must demonstrate achievement of the project's MLIU QPI goal in order to receive payment for the MLIU QPI milestone.

(l) These DSRIP projects include the following:

(-a-) all Project Area 1.9 DSRIP projects, as described by the RHP Planning Protocol;

(-b-) DSRIP projects that did not achieve the estimated MLIU percentage in DY3, DY4, or DY5, and that caused them to have a higher than expected value per MLIU individual/ encounter;

(-c-) DSRIP projects for which HHSC notified the performer that the project was eligible to continue with changes, but the project's MLIU QPI milestone must be P4P; and

(-d-) DSRIP projects that included an MLIU goal in their QPI metric Baseline/Goal statement (an embedded goal) of their own choosing or that were required to include MLIU to receive CMS initial DSRIP project approval.

(II) A performer of a DSRIP project with an MLIU QPI milestone that is P4P under this section may request to adjust the pre-DSRIP baseline for MLIU QPI by a date determined by HHSC in a form determined by HHSC. HHSC will consider requests to adjust the pre-DSRIP baseline for MLIU QPI and may approve those requests with a strong justification.

(D) Certain DSRIP projects are eligible for an adjustment to the MLIU QPI goal. These DSRIP projects include:

(i) a DSRIP project that HHSC identifies as underperforming on MLIU QPI estimates in the initial demonstration period;

(ii) a DSRIP project that is reporting on individuals or encounters that meet the MLIU definition for the initial demonstration period, but will not meet the MLIU definition for the extension period; and

(iii) any other DSRIP project that HHSC determines has a strong justification for an adjustment.

(E) Performers of a DSRIP project described in subparagraph (D) of this paragraph may, by a date to be determined by HHSC, request an adjustment to the DSRIP project's MLIU QPI goal.

(F) DSRIP projects must retain the same total QPI grouping from the initial demonstration period for MLIU QPI.

(G) DSRIP projects may carry forward MLIU QPI milestones from the DY6A to DY6B and DY7.

(4) Non-QPI Milestones.

(A) DSRIP projects must include the following non-QPI milestones:

(i) core component reporting, which may include continuous quality improvement (CQI); and

(ii) sustainability planning, which may include activities toward furthering the exchange of health information, integration into managed care, collaboration with other community partners, or a project level-evaluation.

(B) Performers must report on their activities for these milestones in order to be eligible for milestone payment.

(C) DSRIP projects may report on DY6A non-QPI milestones only during the second reporting period of DY6A.

(D) DSRIP projects may not carry forward non-QPI milestones from DY6A to DY6B or DY7.

(e) The following Category 3 requirements must be met in DY6A:

(1) The Category 3 outcome values are equal to the Category 3 outcome values for DY5. However, if a performer's Category 4 value is greater than 10 percent of the performer's total value, the Category 4 funds in excess of the 10 percent will be redistributed to the performer's Category 3 outcomes proportionately.

(2) If a Category 3 outcome has multiple parts, the Category 3 outcome's value is equally divided among the parts.

(3) Each Category 3 outcome is designated as pay-for-performance (P4P), pay-for-reporting (P4R), or maintenance. The direction of an outcome (positive or negative) necessary to demonstrate improvement is described in the Category 3 Compendium. An outcome designated as maintenance was high performing at baseline with no reasonable room for improvement and was approved to use a milestone structure for DYs 3-5 that includes an alternate improvement activity.

(4) If a Category 3 outcome is designated as pay-for-performance (P4P) in DY5, 100 percent of the Category 3 outcome's value is P4P.

(5) If a Category 3 outcome is designated as pay-for-reporting (P4R) or maintenance with a population focused priority measure (PFPM) in DY5, 100 percent of the Category 3 outcome's value is P4P of the PFPM.

(6) If a Category 3 outcome is designated as P4R with an associated stretch activity in DY5, the performer must choose one of the following options by a date determined by HHSC in a form determined by HHSC:

(A) Maintain the Category 3 outcome designated as P4R from DY5 and select a new stretch activity that does not duplicate the DY5 stretch activity.

(i) The performer must select a new stretch activity from the following:

(I) program evaluation (alternate approaches to program and outcome linkages);

(II) new participation in health information exchange (HIE) or improvement of existing HIE infrastructure; or

(III) cost analysis and value-based purchasing planning.

(ii) Under this option, 50 percent of the Category 3 outcome's value is P4R of the Category 3 outcome and 50 percent is for completion of the stretch activity.

(B) Select a PFPM. Under this option, 100 percent of the Category 3 outcome's value is P4P of the selected PFPM.

(7) If a Category 3 outcome is designated as maintenance with an associated stretch activity in DY5, 100 percent of the Category 3 outcome's value is for statistically significant maintenance of the baseline.

(8) If a Category 3 outcome is designated as P4P in DY5, performance year (PY) 3 is the 12-month period immediately following the PY2 approved for use in DYs 3-5, or a performer may request, by a date to be determined by HHSC, to use DY6A as PY3. PY4 is the 12-month period immediately following PY3.

(9) If a Category 3 outcome is designated as P4R in DY5, PY3 is the 12-month period immediately following the PY2 approved for use in DYs 3-5.

(10) If a Category 3 outcome is designated as P4P in DY5, the outcome's goal is set as an improvement over the baseline from DYs 3-5 to be achieved in PY3, or PY4 if not fully achieved in PY3.

(A) One of the following methodologies is used to set the outcome's goal, as described in the RHP Planning Protocol:

(i) Quality Improvement System for Managed Care (QISMC);

(ii) Improvement over self (IOS); or

(iii) IOS - Survey.

(B) If an outcome is designated as QISMC in DY5, the outcome's PY3 goal is calculated as follows, using the baseline, minimum performance level (MPL), and high performance level (HPL) that were used for goal setting in DYs 3-5:

Figure: 1 TAC §354.1667(e)(10)(B)

(C) If an outcome is designated as IOS in DY5, the outcome's PY3 goal is a 12.5 percent gap closure towards perfect over the baseline.

(D) If an outcome is a P4P survey-based outcome in outcome domain 10 or 11 as defined in the RHP Planning Protocol, and is designated as IOS-survey in DY5, HHSC will develop an alternate goal-setting methodology for the PY3 goal.

(E) If an outcome has an HHSC approved alternate achievement request in DY5, the performer must submit to HHSC, by a date determined by HHSC in a form determined by HHSC, a request to use a PY3 goal that is a continuation of the goals approved in DYs 4-5. Such requests will be approved by HHSC on a case-by-case basis.

(F) If an outcome is designated as QISMC in DY5, with a baseline that is below the MPL, and the performer is measuring a population substantially dissimilar from the population used to establish the MPL benchmark, the performer may submit, by a date determined by HHSC in a form determined by HHSC, an alternate achievement request to set the PY3 goal as a 12.5 percent gap closure towards perfect over the baseline.

(11) Partial payment for a Category 3 P4P outcome is available in quartiles as defined in the RHP Planning Protocol, measured between the outcome's PY1 goal and PY3 goal.

(A) Each Category 3 P4P outcome has an associated achievement milestone that is assigned an achievement value based on the performer's achievement of the outcome's goal as follows:

(i) if 100 percent of the goal is achieved, the achievement milestone is assigned an achievement value of 1.0;

(ii) if at least 75 percent of the goal is achieved, the achievement milestone is assigned an achievement value of 0.75;

(iii) if at least 50 percent of the goal is achieved, the achievement milestone is assigned an achievement value of 0.5;

(iv) if at least 25 percent of the goal is achieved, the achievement milestone is assigned an achievement value of 0.25; or

(v) if less than 25 percent of the goal is achieved, the achievement milestone is assigned an achievement value of 0.

(B) The percent of the goal achieved is determined as follows:

Figure: 1 TAC §354.1667(e)(11)(B)

(i) If an outcome is approved to use a baseline established in DY4, partial payment will be measured over a PY1 equivalent goal. The PY1 equivalent goal will follow the QISMC or IOS goal calculations for PY1 as approved in the RHP Planning Protocol.

(ii) If a QISMC outcome has a PY3 goal that was determined using the improvement floor, partial payment will be measured over the PY1 equivalent goal. If a higher rate indicates improvement for the outcome, the PY1 equivalent goal is the baseline plus 40 percent of the improvement floor. If a lower rate indicates improvement for the outcome, the PY1 equivalent goal is the baseline minus 40 percent of the improvement floor.

(12) Performers may carry forward Category 3 milestones from DY6A to DY6B and DY7.

(f) The following Category 4 requirements must be met in DY6A:

(1) Requirements for Category 4 are the same as the requirements for Category 4 Reporting Domains (RDs) 1-5 in DY5.

(2) If a performer's Category 4 value is greater than 10 percent of the performer's total value, the funds in excess of the 10 percent will be redistributed to Category 3.

(3) The optional RD6 will be removed as it was required to value Category 4 at the 15 percent maximum in DYs 3-5.

§354.1669. Requirements for Combining Certain DSRIP Projects.

(a) Certain DSRIP projects may be eligible to combine based on performer requests to combine. These DSRIP projects must:

- (1) be eligible to continue into the extension period;
- (2) not exceed a DY6A value of \$5 million when combined; and
- (3) be one of the following:

(A) cross-regional community mental health center DSRIP projects;

(B) similar DSRIP projects by the same performer; or

(C) similar DSRIP projects by different performers within the same health system.

(b) HHSC will combine these DSRIP projects' total QPI metrics, MLIU QPI metrics, and MLIU QPI goals, as well as their pre-DSRIP baselines, into:

- (1) one total QPI milestone and goal;
- (2) one MLIU QPI milestone and goal; and
- (3) one pre-DSRIP baseline for each.

§354.1671. DSRIP Requirements for Uncompensated Care Hospitals.

An Uncompensated Care hospital must participate in an annual learning collaborative and report on mandatory Category 4 domains as described in §354.1633(e)(1) of this subchapter (relating to DSRIP Requirements for Performers).

§354.1673. Remaining DSRIP Funds.

The funds in the DSRIP pool not allocated to DSRIP projects for DY6A will be reallocated.

(1) Funds are reallocated to increase the performer's total value to up to \$250,000 per each subsequent demonstration year (DY) beginning in DY6A. Such an increase is only available to performers who have DSRIP projects totaling less than \$250,000.

(2) The anchor of an RHP is allocated the greater of RHP allocation as defined in 354.1634(b) of this subchapter (relating to Waiver Pool Allocation) multiplied by \$20 million or the following minimum allocations.

(A) A Tier 1 RHP anchor has no minimum DY6A allocation.

(B) A Tier 2 RHP anchor has no minimum DY6A allocation.

(C) A Tier 3 RHP anchor has a minimum DY6A allocation of \$1,250,000.

(D) A Tier 4 RHP anchor has a minimum DY6A allocation of \$625,000. A Tier 4 RHP's minimum DY6A allocation may be increased to \$800,000 if the anchor meets the requirements described in §354.1675(1) of this division (relating to Anchor Requirements).

(3) The DY6A anchor allocation is in lieu of the anchor administrative payment.

§354.1675. Anchor Requirements.

To receive its DY6A anchor payment, an anchor must comply with the requirements in this section.

(1) An anchor must submit a DY6A learning collaborative plan in accordance with the PFM Protocol, if it is the anchor of a Tier 1, 2, or 3 region or it is the anchor of a Tier 4 region that wishes to receive the enhanced allocation.

(A) The DY6A learning collaborative plan, at a minimum, must include an annual regional learning collaborative. The learning collaborative must include a focus on DSRIP integration into Medicaid managed care, value-based purchasing, alternative payment models, or sustainability strategies for low-income uninsured. The anchor could also meet this requirement through a workgroup that would be in addition to the annual regional learning collaborative.

(B) Two or more regions may work together to submit a cross-regional DY6A learning collaborative plan.

(2) An anchor must conduct an extension stakeholder engagement forum to promote collaboration in the next phase of the waiver and community goals. The feedback from this forum should be used to inform the learning collaborative plan for DY6B and beyond. The anchor must post a copy of the updated RHP plan on the RHP's website prior to the extension stakeholder engagement forum.

(3) An anchor must submit the following information in accordance with the PFM Protocol:

(A) the region's community needs assessment that was submitted with the original RHP plan in 2012 that has been updated as appropriate to reflect major changes, including changes to the priority needs;

(B) a description of the process used to update the region's community needs assessment, including the process used to obtain stakeholder feedback; and

(C) the RHP plan that was submitted in 2012 that has been updated for DY6B onward. This updated RHP plan will include next steps for DSRIP projects as agreed upon by HHSC and CMS that would occur beginning in DY6B.

(4) An anchor must submit documentation in accordance with the PFM Protocol that demonstrates that the anchor implemented the DY6A learning collaborative plan and conducted an extension stakeholder engagement forum.

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

Filed with the Office of the Secretary of State on July 18, 2016.

TRD-201603535

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 28, 2016

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

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**TITLE 4. AGRICULTURE**

**PART 1. TEXAS DEPARTMENT OF AGRICULTURE**

CHAPTER 7. PESTICIDES  
SUBCHAPTER H. STRUCTURAL PEST  
CONTROL SERVICE  
DIVISION 1. GENERAL PROVISIONS  
4 TAC §7.115

The Texas Department of Agriculture (the Department) proposes new Texas Administrative Code (TAC), Title 4, Part 1, Chapter 7, Subchapter H, Division 1, §7.115, Structural Pest Control Enforcement, relating to penalties for violations of Subchapter H. The penalties set forth in the attachment to §7.115, the Penalty Matrix (Matrix), are created to deter conduct detrimental to public health and safety, the environment, and consumer confidence and to prevent unfair competition by noncompliant businesses. The proposed rule promotes transparency in the Department's regulatory efforts to protect Texas consumers, and provides notice to regulated persons and businesses subject in accordance with Chapter 1951 of the Texas Occupations Code (Code).

Chapter 1951 of the Code authorizes the Department to regulate certain structural pest control activities in this state. The Department's regulatory goals are to provide consumers and businesses with a fair and efficient trade environment, to encourage business development, to inspire consumer confidence, and to protect human health and safety, the environment, and the real and personal property of consumers. To achieve these goals, the Department has rulemaking authority under Chapter 12 of the Texas Agriculture Code to prescribe and assess administrative penalties to enforce structural pest control laws and regulations through routine and risk-based inspection programs, complaint investigations, and other regulatory activities involving pest control in and around structures such as homes, commercial buildings, apartments, schools, and workplaces.

As part of its ongoing commitment to consumer protection, the Department has proposed §7.115 to encourage consistent, uniform, and fair assessment of penalties by the Department for violations of Chapter 7 of TAC, Title 4. Prior to proposal of this rule, the Department sought and received input from the Structural Pest Control Advisory Committee, which includes members of the structural pest control industry. Those suggestions and input have been taken under consideration in the development of the Matrix.

Under §12.020(d) of the Agriculture Code, all penalties assessed by the Department shall be individualized to the specific nature, circumstances, extent, and gravity (NCEG) the hazard or potential hazard (HPH) of the violation, as well as other factors related to the violation or violator, when appropriate.

The Department may settle violations, as deemed appropriate, through various means including, but not limited to, negotiation or deferment of penalties, probation, required continuing education, license limitations, or other appropriate lawful means, subject to approval of the Commissioner, on a case-by-case basis. All decisions made by the Department related to violations of Subchapter H are based on current circumstances, including extant information, laws.

The proposed attachment and §7.115 may be reviewed and revised from time to time. This Matrix shall be effective immediately upon adoption and shall supersede the current "Structural Pest Control Service Penalty Guidelines and Penalty Matrix" which was previously published by the Department in the June 14, 2013, issue of the *Texas Register* (TRD-201302239).

Leslie Smith, Director for Consumer Service Protection, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of the proposal.

Ms. Smith has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the increased deterrence of violations of Chapter 7, related to structural pesticide controls by licensed and unlicensed individuals. Currently the penalty Matrix is in effect and provides for economic penalties for those individuals who are subject to and violate Chapter 7, Subchapter H of TAC, Title 4. Therefore, the only economic impact on micro-businesses, small businesses or individuals subject to Chapter 7, Subchapter H, will be possible increased penalties related to those new categories within the Matrix.

Written comments on the proposal may be submitted for 30 days following publication of this proposal to Leslie Smith, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or by email at [Leslie.Smith@TexasAgriculture.gov](mailto:Leslie.Smith@TexasAgriculture.gov).

The new rule is proposed under Chapter 12 of the Texas Agriculture Code, which authorizes the Department to prescribe and assess administrative penalties to enforce structural pest control laws and regulations, and Chapter 1951 of the Occupations Code, which authorizes the Department to regulate certain structural pest control activities in this state.

The proposal is made under Chapter 12 of the Texas Agriculture Code and Chapter 1951 of the Occupations Code.

§7.115. Structural Pest Control Enforcement.

The Department has established the following schedule of disciplinary sanctions for violations of Subchapter H, related to Structural Pest Control Service.

Figure: 4 TAC §7.115

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

Filed with the Office of the Secretary of State on July 18, 2016.

TRD-201603544

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: August 28, 2016

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



**TITLE 19. EDUCATION**

**PART 2. TEXAS EDUCATION AGENCY**

**CHAPTER 102. EDUCATIONAL PROGRAMS**

**SUBCHAPTER EE. COMMISSIONER'S RULES  
CONCERNING PILOT PROGRAMS**

**19 TAC §102.1058**

The Texas Education Agency (TEA) proposes new §102.1058, concerning the reading excellence team pilot program. The proposed new section would implement the requirements of the Texas Education Code (TEC), §28.0061, as added by Senate Bill (SB) 935, 84th Texas Legislature, Regular Session, 2015.

SB 935, 84th Texas Legislature, Regular Session, 2015, added the TEC, §28.0061, to require the commissioner of education to establish and administer a reading excellence team pilot program. The pilot program establishes reading excellence teams composed of reading instruction specialists who would provide assistance to eligible school districts upon request. A school district is eligible to participate in the reading excellence team pilot program if the district has low student performance, as determined by the commissioner, on required reading diagnosis assessments for kindergarten, Grade 1, and Grade 2 or on the Grade 3 State of Texas Assessments of Academic Readiness (STAAR®) reading assessment.

Proposed new 19 TAC §102.1058, Reading Excellence Team Pilot Program, would implement the TEC, §28.0061, by establishing qualifications and criteria for selecting reading instruction specialists for reading excellence teams. It would also require that reading instruction specialists have significant expertise in reading instruction; experience in providing instruction related to the curriculum in 19 TAC Chapter 110, Texas Essential Knowledge and Skills for English Language Arts and Reading; and knowledge of developmentally appropriate and research-based strategies for students. The proposed new section would require selected education service centers to prioritize school districts and open-enrollment charter schools that apply based on low performance on statutorily defined kindergarten-Grade 3 assessments for receipt of reading excellence teams.

Participants in the pilot program will be required to report pre- and post-assessment results to the TEA in the time and manner described in the request for participation.

School districts participating in the pilot program will be required to collect data and maintain paperwork as necessary to provide the TEA with reports on implementation of the pilot program.

FISCAL NOTE. Martin Winchester, deputy commissioner for educator support, has determined that for the first five-year period the new section is in effect, there will be no fiscal implications for state or local government, including local school districts and open-enrollment charter schools, as a result of enforcing or administering the new section. There is no effect on local economy for the first five years that the proposed new rule is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Mr. Winchester has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be to provide schools with additional training and support to improve instruction and raise student achievement in reading instruction in kindergarten-Grade 3. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins July 29, 2016, and ends August 29, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to [rules@tea.texas.gov](mailto:rules@tea.texas.gov). A

request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on July 29, 2016.

STATUTORY AUTHORITY. The new section is proposed under the Texas Education Code (TEC), §28.0061, as added by Senate Bill 935, 84th Texas Legislature, Regular Session, 2015, which requires the commissioner of education to adopt rules to administer the reading excellence team pilot program, including establishing qualifications and criteria for selecting reading instruction specialists for a reading excellence team; and the TEC, §12.104(d), which authorizes the commissioner to permit open-enrollment charter schools access to state programs available to school districts if the open-enrollment charter schools comply with the requirements of the programs.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §28.0061, as added by Senate Bill 935, 84th Texas Legislature, Regular Session, 2015, and §12.104(d).

*§102.1058. Reading Excellence Team Pilot Program.*

(a) Eligibility for participation. The commissioner of education shall determine a school district's or open-enrollment charter school's eligibility to participate in the Reading Excellence Team Pilot Program based on the following:

(1) a school district's or open-enrollment charter school's performance on a reading instrument administered in accordance with the Texas Education Code (TEC), §28.006(c); or

(2) a school district's performance on a Grade 3 reading assessment instrument administered under the TEC, §39.023(a), relative to other districts in the district's region.

(b) Selection of districts.

(1) Education service centers (ESCs) selected to administer the pilot program by the commissioner shall establish an application deadline for school districts and open-enrollment charter schools to request assignment of a reading excellence team.

(2) The ESCs shall prioritize the assignment of reading excellence teams to the lowest performing school districts and open-enrollment charter schools that apply for assistance, as measured by the reading instruments referenced in subsection (a)(1) and (2) of this section.

(3) After assignment of reading excellence teams under the initial application, if any capacity to assign reading excellence teams remains, the ESCs may accept additional applications and provide reading excellence team support to additional school district and open-enrollment charter school applicants based on the lowest performing school districts or open-enrollment charter schools, as measured by the reading instruments referenced in subsection (a)(1) and (2) of this section.

(c) Qualifications for reading instruction specialist. A reading instruction specialist must have:

(1) significant expertise in reading instruction with a minimum of three years of classroom teaching experience;

(2) experience in providing instruction directly related to the curriculum in Chapter 110 of this title (relating to Texas Essential Knowledge and Skills for English Language Arts and Reading), specifically in kindergarten-Grade 3; and

(3) knowledge of developmentally appropriate and research-based strategies for students in kindergarten-Grade 3.

(d) Assignment of reading excellence teams. ESCs shall assign reading excellence teams upon prioritization of the applications and in accordance with this section and the TEC, §28.0061.

(e) Requests for student achievement data. Participating school districts and open-enrollment charter schools will comply with requests for student achievement data made by reading excellence teams or their sponsoring ESC that will assist in monitoring the implementation as well as the effectiveness of the overall pilot program. The sponsoring ESC shall adopt procedures to ensure compliance with applicable state and federal privacy laws. The sponsoring ESC shall comply with requests for student achievement data made by the Texas Education Agency.

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

Filed with the Office of the Secretary of State on July 18, 2016.

TRD-201603540

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: August 28, 2016

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



## TITLE 22. EXAMINING BOARDS

### PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

#### CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

##### SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

###### 22 TAC §501.91

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.91, concerning Reportable Events.

###### Background, Justification and Summary

The amendment to §501.91 adds the requirement of a licensee to notify the Board of any voluntary consent decree of the right to practice before any governmental body or agency, state foreign country or other jurisdiction and the notification would be required of any limitation on a professional license issued in any state or federal regulatory agency including Texas.

###### Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

###### Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a better understanding of when licensees are required to report an event that limits their right to practice.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

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

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

###### Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on August 29, 2016.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

###### Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

###### §501.91. Reportable Events.

(a) A licensee or certificate holder shall report in writing to the board the occurrence of any of the following events within 30 days of the date the licensee or certificate holder has knowledge of these events:

(1) the conviction or imposition of deferred adjudication of the licensee or certificate holder of any of the following:

(A) a felony;

(B) a crime of moral turpitude;

(C) any crime of which fraud or dishonesty is an element or that involves alcohol abuse or controlled substances; and

(D) any crime related to the qualifications, functions, or duties of a public accountant or CPA, or to acts or activities in the course and scope of the practice of public accountancy or as a fiduciary;

{(2) the cancellation, revocation, or suspension of a certificate, other authority to practice, or refusal to renew a certificate or other authority to practice as a CPA or a public accountant, by any state, foreign country or other jurisdiction;}

(2) [(3)] the cancellation, revocation, or suspension or a voluntary consent decree of the right to practice as a CPA or a public accountant before any governmental body or agency or state, foreign country, or other jurisdiction [other licensing agency];

(3) [(4)] an un-appealable [unappealable] adverse finding in any state or federal court or an agreed settlement in a civil action against the licensee or certificate holder concerning professional accounting services or professional accounting work or a finding of a breach of fiduciary duty, fraud or misappropriation; or

(4) [(5)] the revocation, suspension, voluntary consent decree or any limitation on [loss of] a professional license from any [another] state or federal regulatory agency such as an insurance license or a securities license, resulting from an un-appealable [unappealable] adverse finding.

(b) The report required by subsection (a) of this section shall be signed by the licensee or certificate holder and shall set forth the facts which constitute the reportable event. If the reportable event involves the action of an administrative agency or court, then the report shall set forth the title of the matter, court or agency name, docket number, and dates of occurrence of the reportable event.

(c) Nothing in this section imposes a duty upon any licensee or certificate holder to report to the board the occurrence of any of the events set forth in subsection (a) of this section either by or against any other licensee or certificate holder.

(d) As used in this section, a conviction includes the initial plea, verdict, or finding of guilt, plea of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence may not be actually imposed until all appeals are exhausted.

(e) Interpretive Comment: A crime of moral turpitude is defined in this chapter as a crime involving grave infringement of the moral sentiment of the community and further defined in §501.90(18) and §519.7 of this title (relating to Discreditable Acts and Misdemeanors that Subject a Certificate or Registration Holder to Discipline by the Board).

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

Filed with the Office of the Secretary of State on July 15, 2016.

TRD-201603531

Jerry Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: August 28, 2016

For further information, please call: (512) 305-7842



## CHAPTER 505. THE BOARD

### 22 TAC §505.10

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.10, concerning Board Committees.

Background, Justification and Summary

The amendment to §501.10 streamlines the rule to make it easier to read and understand.

#### Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

#### Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will a more streamlined rule.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

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

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

#### Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on August 29, 2016.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

#### Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

#### §505.10. Board Committees.

(a) Committee appointments. Appointments to standing committees and ad hoc committees shall be considered annually by the board's presiding officer to assist in carrying out the functions of the board under the provisions of the Act. Committee appointments shall

be made by the presiding officer for a term of two years but may be terminated at any point by the presiding officer. Committee members may be re-appointed at the discretion of the presiding officer. The board's presiding officer shall be an ex officio member of each standing committee and ad hoc committee and chair of the executive committee.

(b) Committee actions. The actions of the committees are recommendations only and are not binding until ratification by the board at a regularly scheduled meeting.

(c) Committee meetings. Committee meetings shall be held at the call of the committee chair, and a report to the board at its next regularly scheduled meeting shall be made by such chair or, in the absence of the chair, by another board member serving on the committee.

(d) Vacancies. If for any reason a vacancy occurs on a committee, the board's presiding officer may appoint a replacement in accordance with subsection (a) of this section.

(e) Standing committee structure and charge to committees. The standing committees shall consist of policy-making committees and working committees comprised of the following individuals and shall be charged with the following responsibilities.

(1) The executive committee shall be a policy-making committee comprised of the board's presiding officer, assistant presiding officer, secretary, treasurer, immediate past presiding officer of the board if still serving on the board, and at least one other officer elected by the board. The executive committee shall also be the board's audit committee. The executive committee may act on behalf of the full board in matters of urgency, or when a meeting of the full board is not feasible; the executive committee's actions are subject to full board ratification at its next regularly scheduled meeting. The functions of the executive committee shall be to advise, consult with, and make recommendations to the board concerning matters requested by the board's presiding officer, including:

(A) the board's budget and finances;

(B) litigation;

(C) emergency suspensions pursuant to §519.11 of this title (relating to Emergency Suspension);

(D) emergency rulemaking pursuant to §2001.034 of the Administrative Procedure Act;

(E) amendments to the Act;

(F) responses/positions relating to papers, reports, and other submissions from national or international associations or boards;

(G) legislative oversight, including, but not limited to, budget, performance measures, proposed changes in legislation affecting the board, and computer utilization; and

(H) special issues.

(2) The CPE committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) the mandatory CPE program in accordance with Chapter 523 of this title (relating to Continuing Professional Education) [as it relates to reporting and attendance requirements, registration and monitoring of CPE sponsors, disciplinary actions, reporting forms; and office procedures];

(B) investigations of sponsor compliance with the terms of the sponsor agreements, including the related recordkeeping requirements;

(C) the results of monitoring CPE courses for the purpose of evaluating the facilities, course content as presented, and the adequacy of the course presenter(s);

(D) any significant deficiencies observed in carrying out subparagraphs (B) and (C) of this paragraph; and

(E) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to the mandatory CPE program as it relates to licensees and to relations with sponsors of CPE.

(3) The qualifications committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) the educational qualifications of an applicant for the UCPAE in accordance with Chapter 511, Subchapter C of this title (relating to Educational Requirements) and courses that may be used to meet the education requirements to take the examination;

(B) the administration, security, discipline, and other aspects of the conduct of the UCPAE in Texas;

(C) the work experience qualifications of an applicant for the CPA certificate in accordance with §§511.121 - 511.124 of this title (relating to Experience Requirements); and

(D) recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the qualifications process.

(4) The licensing committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) applications for certification, registration, and licensure;

(B) where applicable, the equivalency examination measuring the professional competency of an applicant for a CPA certificate by reciprocity; and

(C) recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies as they relate to the licensing process.

(5) The behavioral enforcement committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall:

(A) review requests or applications for reinstatement of any certificate, registration, or license which the committee recommended and the board revoked, suspended, or refused to renew;

(B) investigate complaints involving alleged violations of the Act and the board's rules, primarily concerning behavioral issues, and based upon its findings, make recommendations to the board or authorize the staff to offer an agreed consent order, or in the alternative, to litigate the findings of Act or rule violations;

(C) follow up on board orders to insure that licensees and certificate holders and others adhere to sanctions prescribed by or agreements with the board; and

(D) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to the behavioral restraints of the rules and the Act.

(6) The technical standards review committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least three non-board members who shall serve in an advisory capacity. The committee shall:

(A) review requests or applications for reinstatement of any certificate, registration, or license which the committee recommended and the board revoked, suspended, or refused to renew;

(B) investigate complaints from any source involving alleged violations of the Act and the board's rules, primarily concerning technical issues and based upon its findings, make recommendations to the board or authorize the staff to offer an agreed consent order, or in the alternative, to litigate the findings of Act or rule violations;

(C) follow up on board orders to insure that licensees or certificate holders and others adhere to sanctions prescribed by or agreements with the board; and

(D) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to enforcement of technical standards.

(7) The peer review committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall:

(A) conduct a periodic review of firms in accordance with Chapter 527 of this title (relating to Peer Review) [and evaluation of reports publicly filed with the State of Texas (or any board, commission, or agency thereof) and of each of the various types of reports, as defined by board rule, of each practice unit, as defined by board rule, which is engaged in the practice of public accountancy in the State of Texas];

(B) refer to the technical standards review committee firms with deficient reviews [egregious substandard reports issued by practice units] for which educational rehabilitation has not been effective; and

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the peer review program.

(8) The board rules committee shall be a policy-making committee comprised of at least three board members, one of whom shall serve as chair. The committee shall make recommendations to the board concerning the board's rules, opinions and policies. All working committees shall refer proposed changes to the board's rules, opinions and policies to the rules committee for consideration for recommendation to the board.

(9) The peer assistance oversight committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall oversee the peer assistance program administered by the TSCPA as required under the Texas Health and Safety Code, §467.001(1)(B), and insure

that the minimum criteria as set out by the Department of State Health Services are met. It shall make recommendations to the board and the TSCPA regarding modifications to the program and, if warranted, refer cases to other board committees for consideration of disciplinary or remedial action by the board. The committee shall report to the board on a semi-annual basis, by case number, on the status of the program.

(10) The constructive enforcement committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by non-board CPA members. At least one Committee member shall be a public member of the board. The committee shall approve the constructive enforcement program, coordinate its activities with board committees and staff, and supervise the training of constructive enforcement advisory committee members. A staff attorney of the board shall supervise the day to day administration of the constructive enforcement program and activities of the committee's non-board members on behalf of the committee chairman. The committee shall:

(A) investigate matters forwarded to the committee from any other board committee or board staff in accordance with board instruction and policy;

(B) prepare, as appropriate, investigative reports regarding each referred matter;

(C) inform referring board committees or board staff of the results of its investigations;

(D) inform the appropriate committee when possible violations of board rules and the Act are observed; and

(E) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the constructive enforcement program.

(11) The Fifth-Year Accounting Students Scholarship Program advisory committee was created in §901.657 of the Act (relating to Advisory Committee) and consists of eight members appointed by the board for the purpose of advising the board on how scholarships under the Fifth-Year Accounting Students Scholarship Program should be established and administered; the amount of money needed to adequately fund the scholarships and the maximum amount that may be awarded in any given year to an individual student; and any priorities among the factors of financial need, ethnic or racial minority status, and scholastic ability and performance.

(f) Ad hoc advisory committees. Ad hoc advisory committees may be established by the board's presiding officer and members and advisory members appointed as appropriate.

(g) Policy guidelines. All advisory committee members performing any duties utilizing board facilities and/or who have access to board records, shall conform and adhere to the standards, board rules, and personnel policies of the board as described in its personnel manual and to the laws of the State of Texas governing state employees.

(h) Conflicts of interest. To avoid a conflict of interest or the appearance of a conflict of interest, no committee member may provide a report or expert testimony for or otherwise advocate on behalf of a complainant or a respondent in a disciplinary matter pending before the board while serving on a standing committee of the board.

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

Filed with the Office of the Secretary of State on July 15, 2016.



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 85. HEALTH AUTHORITIES

##### SUBCHAPTER A. LOCAL PUBLIC HEALTH

###### 25 TAC §85.1

The Executive Commissioner of Health and Human Services, on behalf of the Department of State Health Services (department), proposes an amendment to §85.1, concerning health authorities.

###### BACKGROUND AND PURPOSE

The Local Public Health Reorganization Act, Health and Safety Code, Chapter 121, governs health authorities. A health authority performs duties necessary to implement and enforce laws to protect the public health and as prescribed by the department. The purpose of the amendments is to replace references to the Board of Health with references to the department and to clarify the rule by correcting references to subsections in a previous rule revision.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 85.1 has been reviewed, and the department has determined that reasons for adopting the section continues to exist because a rule on this subject is needed to administer health authorities effectively.

###### SECTION-BY-SECTION SUMMARY

The amendments to §85.1 are nonsubstantive changes needed to clarify the rule. The amendments to §85.1(b)(2) and (f) replace references to the "Board of Health" with the "department." The proposed change in reference to the department is in compliance with Senate Bill 219, 84th Legislature, 2015, which revised Health and Safety Code, Chapter 121.

The amendment to §85.1(c) deletes an unnecessary reference to subsection (d) from a previous rule revision. The amendment to §85.1(i) replaces a reference to subsection (i) with a reference to subsection (h) to clarify that when a new health authority has been appointed, the person must take the official oath and file a copy of the oath and appointment with the appropriate regional office as required by subsection (h).

###### FISCAL NOTE

Ms. Beverly Pritchett, Director for the Office of Public Health, has determined that for each year the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section.

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

Ms. Pritchett has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with this rule. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply. Therefore, an economic impact statement and regulatory flexibility analysis for small and micro-businesses are not required.

###### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

###### PUBLIC BENEFIT

In addition, Ms. Pritchett has also determined that for each year of the first five years the rule is in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the rule will be a decreased risk of illness through effective statewide local monitoring and reporting of reportable conditions and enforcement of public health law.

###### REGULATORY ANALYSIS

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

###### TAKINGS IMPACT ASSESSMENT

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

###### PUBLIC COMMENT

Comments on the proposal may be submitted to Dan Smith, Office of Public Health, Division for Regional and Local Health Services, Department of State Health Services, Mail Code 1908, P.O. Box 149347, Austin, Texas 78714-9347 or by email to dan.smith@dshs.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

###### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

###### STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §121.024, which requires local health authorities to perform each duty that is necessary to implement and enforce a law to protect the public health or as prescribed by the department; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the

Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

The amendment implements Health and Safety Code, Chapters 121 and 1001; and Government Code, Chapters 531 and 2001.

§85.1. *Health Authorities.*

(a) A health authority is a physician appointed under the Local Public Health Reorganization Act, Health and Safety Code, Chapter 121, by the governing body of a city, county, or public health district to administer the state and local laws relating to public health.

(b) A health authority must be appointed in a municipality or county that has established a local health department or public health district.

(1) (No change.)

(2) If a non-physician serves as the director of a local health department or public health district, the director shall appoint a physician to serve as the health authority within the jurisdiction of such local health department or district subject to the approval of the governing body of the local health department or public health district. No action is required by the department [~~Board of Health (board)~~] to further approve the appointment.

(c) A health authority may be appointed, but is not required to be appointed, in a municipality or county that has not established a local health department or public health district [~~unless it falls under subsection (d) of this section~~]. The governing body of the municipality or the commissioners court of the county may appoint the health authority within its jurisdiction.

(d) - (e) (No change.)

(f) A regional director of the department may perform some or all of the duties of a health authority if an appointed health authority fails to perform duties prescribed by the board in this section. At the request of the appointing authority, a regional director may serve as a health authority because of the absence or incapacity of the appointed health authority. No action by the department [~~board~~] is necessary to further approve a regional director's performance or service.

(g) - (h) (No change.)

(i) If a health authority ceases to hold office for any reason, the appointing authority shall immediately notify the department and appropriate regional director. When a new health authority has been appointed, the person will take the action outlined in subsection (h) [(i)] of this section and notify the appropriate regional office of the change.

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

Filed with the Office of the Secretary of State on July 15, 2016.

TRD-201603532

Lisa Hernandez

General Counsel

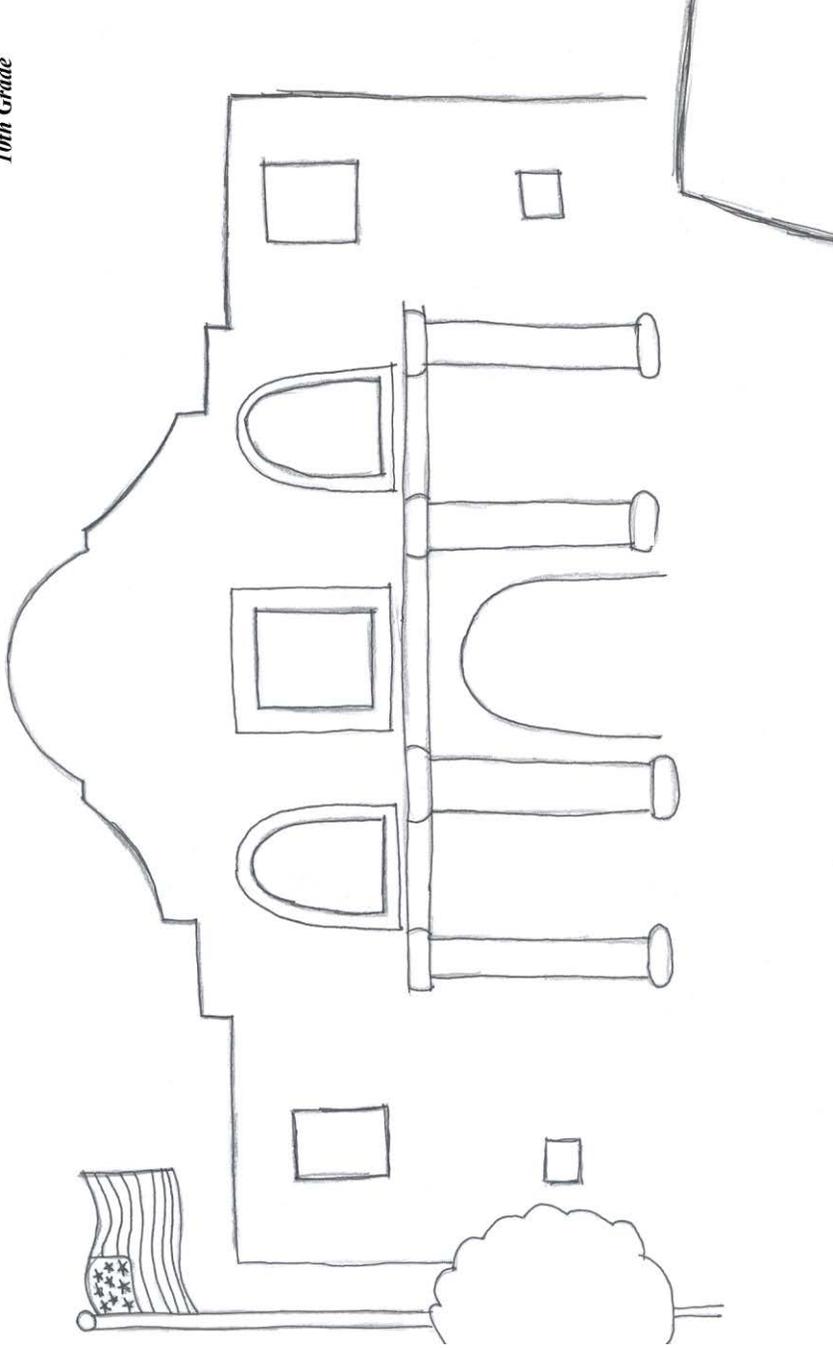
Department of State Health Services

Earliest possible date of adoption: August 28, 2016

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



*Amber Ubalde  
10th Grade*



# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Filed with the Office of the Secretary of State on July 18, 2016.  
TRD-201603541

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY



#### 37 TAC §15.23

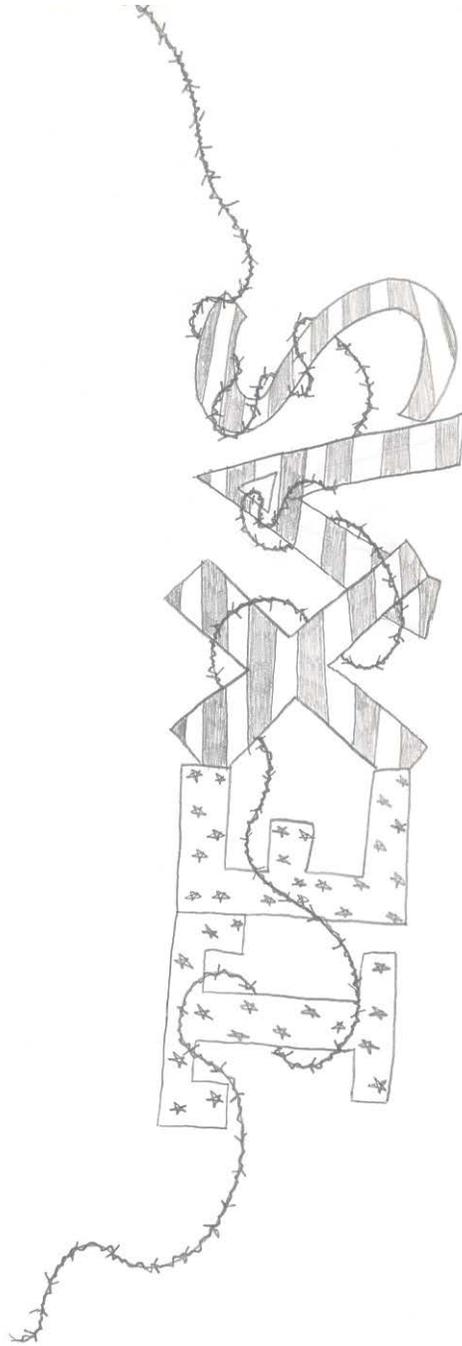
Proposed new §15.23, published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 445), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

### CHAPTER 15. DRIVER LICENSE RULES SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES 37 TAC §15.23

Filed with the Office of the Secretary of State on July 18, 2016.  
TRD-201603542



Proposed repeal of §15.23, published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 445), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)



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

##### SUBCHAPTER B. ELIGIBILITY

##### DIVISION 9. CRIMINAL ACTIVITY

###### 1 TAC §372.501

The Texas Health and Human Service Commission (HHSC) adopts an amendment to §372.501, concerning Disqualifications Due to Criminal Activity, without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3030). The rule will not be republished.

###### Background and Justification

In 2015, the 84th Legislature enacted Texas Human Resources Code §33.018, which modifies Supplemental Nutrition Assistance Program (SNAP) eligibility standards for certain individuals who have been convicted of felonies. See Act of May 28, 2015, 84th Leg., R.S., ch. 837, §2.29 (S.B. 200). As authorized by 21 U.S.C. §862a(d)(1), Texas Human Resources Code §33.018 affects SNAP eligibility in three ways. First, §33.018 removes the SNAP permanent disqualification for an individual with a felony drug conviction that occurred after August 22, 1996. Second, §33.018 requires that an individual who is convicted of a felony drug offense on or after September 1, 2015, and who does not comply with his or her parole or community supervision conditions is ineligible for SNAP for two years. Third, under §33.018, an individual who received a felony drug conviction on or after September 1, 2015, and who incurs a subsequent felony drug conviction while receiving SNAP is permanently disqualified from receiving SNAP. The permanent disqualification does not apply if an individual is convicted of a subsequent offense while not receiving SNAP.

The amendments to 1 Texas Administrative Code (TAC) §372.501 implement §33.018.

###### Comments

The 30-day comment period ended May 29, 2016. During this period, HHSC did not receive any comments regarding the amended rule.

The amendment is adopted in accordance with Texas Human Resources Code §33.018, which modifies SNAP eligibility for certain individuals. Texas Government Code §531.0055 provides the Executive Commissioner of HHSC with broad rule-

making authority, and Texas Human Resources Code §33.052 requires HHSC to develop procedures to ensure that clear guidance on program eligibility requirements is provided to SNAP applicants and prospective applicants.

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

Filed with the Office of the Secretary of State on July 18, 2016.

TRD-201603536

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: September 1, 2016

Proposal publication date: April 29, 2016

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



## TITLE 16. ECONOMIC REGULATION

### PART 9. TEXAS LOTTERY COMMISSION

#### CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §§402.103 (Training Program), 402.200 (General Restrictions on the Conduct of Bingo), 402.203 (Unit Accounting), 402.205 (Unit Agreements), 402.210 (House Rules), 402.300 (Pull-Tab Bingo), 402.301 (Bingo Card/Paper), 402.303 (Pull-tab or Instant Bingo Dispensers), 402.324 (Card-Minding Systems--Approval of Card-Minding Systems), 402.325 (Card-Minding Systems--Licensed Authorized Organizations Requirements), 402.400 (General Licensing Provisions), 402.404 (License and Registry Fees), 402.407 (Unit Manager), 402.411 (License Renewal), 402.420 (Qualifications and Requirements for Conductor's License), 402.424 (Amendment of a License by Electronic Mail, Telephone or Facsimile), 402.451 (Operating Capital), 402.500 (General Records Requirements), 402.504 (Debit Card Transactions), 402.506 (Disbursement Records Requirements), 402.511 (Required Inventory Records), 402.514 (Electronic Fund Transfers), 402.600 (Bingo Reports and Payments), 402.602 (Waiver of Penalty, Settlement of Prize Fees, Rental Tax, Penalty and/or Interest), 402.603 (Bond or Other Security), 402.703 (Audit Policy), 402.706 (Schedule of Sanctions), 402.707 (Expedited Administrative Penalty Guideline), and 402.708 (Dispute Resolution), with changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3050).

The adopted rule amendments are a result of both the Commission's recent review of the Charitable Bingo Operations Division's (CBOD) rules conducted in accordance with Texas Government Code §2001.039, and several stakeholder meetings between Commission staff and various representatives of the bingo community. The Commission solicited from these representatives any proposed rule changes desired by the bingo community, and the proposed changes were discussed at length in the meetings. Many (but not all) of the bingo community's proposed changes are reflected in this rulemaking adoption, including certain changes noted below made in response to public comments, as are certain other changes identified in the rule review and/or desired by the Commission.

A public comment hearing was held on Wednesday, May 11, 2016, at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. The following persons commented at the hearing in support of some, and in opposition to some, of the proposed amendments: Kimberly L. Kiplin for Department of Texas, Veterans of Foreign Wars (VFW); Stephen Fenoglio for Texas Charity Advocates and the members of over 350 other charitable and business organizations involved in charitable bingo (TCA); Steve Bresnen for the Bingo Interest Group (BIG); Sharon Ives for Fort Worth Book-keeping (FWB) (generally supporting the comments of the TCA and the BIG); Mark Clark for the AMVETS (for and against portions of §§402.210, .325, and .703 only). In addition, Will Martin for the American Legion for the State of Texas and Conservative Texans for Charitable Bingo commented in opposition to §402.404; Charles Hutchings for the AMVETS commented in opposition to portions of §402.200; Richard Bunkley for Littlefield Corporation commented in opposition to portions of §§402.200 and .300; and Melodye Green for Everman Jaycees commented in opposition to §402.602. At the hearing, the TCA provided a written side-by-side comparison of the TCA's recommended changes to certain rules (§§402.200, .210, .300, .325, .400, .411, .511, .600, .602, .703, .706, .707, and .708.), and the TCA and the BIG generally requested the inclusion of any of the proposed rule language in the comparison that was not included (in substance) in the Commission's proposal.

The Commission also received written follow-up comments on the proposed amendments from the VFW, the TCA, the BIG, and FWB; as well as written comments from State Representative Senfronia Thompson regarding §402.200(n), Patricia Greenfield for Greenfield Bingo Services (seeking clarification to §402.300(g)(2)), and Mary B. Magnuson for the National Association of Fundraising Ticket Manufacturers (NAFTM) (in support of the proposed amendments to §402.300(b) and (d)(13)(D)). The public comments and the Commission's responses are summarized below.

**§402.103 Training Program:** The amendment to §402.103 removes an obsolete reference to the "Bingo Bulletin," which is no longer published.

**COMMENT SUMMARY:** The VFW supports the proposed amendments.

**COMMISSION RESPONSE:** No changes will be made in response to this comment.

**§402.200 (General Restrictions on the Conduct of Bingo):** The amendments to §402.200 affect the general conduct of bingo. First, the amendments require bingo conductors to make available upon request the written procedure that addresses equipment malfunctions and improper calls or placements. Next, the amendments clarify that bingo cards may never be reserved for

a particular player. The amendments also permit bingo conductors to value bingo equipment awarded as bingo prizes at the price actually paid for the equipment. The amendments also allow a bingo conductor to designate more than one individual as the bingo operator. The amendments also require a conductor's bingo caller to announce prior to the start of a bingo game the pattern needed to win the game and the prize(s), unless the prize amount is based on sales or attendance, in which case the prize must be announced prior to the end of the game. Finally, the amendments clarify that a bingo occasion is considered to have occurred on the date on which the occasion began.

**COMMENT SUMMARY:** The VFW supports the proposed amendments to subsections 402.200(e), (f), (h)(3), (i), (k)(4), and (o). The BIG supports the proposed amendments to subsections 402.200(b)(6), (e), (f), (i), (k)(4), and (o).

**COMMISSION RESPONSE:** No changes will be made in response to these comments.

**COMMENT SUMMARY:** The TCA, the VFW, the BIG, FWB, and Mr. Hutchings (AMVETS) propose eliminating the requirement in subsections (b)(3) and (b)(5) for a conductor organization to maintain a bingo ball log, and in subsection (b)(5) for a conductor to maintain a console and flashboard inspection log. The VFW and the BIG stated the logs are unnecessary and of no regulatory benefit, add a record-keeping burden to the organizations, and set up a "trap" for an organization to be found noncompliant in an audit.

**COMMISSION RESPONSE:** The Commission agrees with these comments, and has deleted the referenced requirements from the adopted rule changes.

**COMMENT SUMMARY:** The VFW requests clarification that the proposed amendment to subsection (b)(6) (requiring an organization to make its procedures on addressing problems during a bingo occasion available to players upon request) is satisfied if an organization posts these procedures in the hall. The TCA requests deletion of the proposed language, stating such a requirement does not serve a regulatory purpose.

**COMMISSION RESPONSE:** No changes will be made in response to these comments. In response to the VFW's comments, the Commission clarifies that bingo conductors may comply with this requirement by posting their procedures on addressing problems in a conspicuous place at the bingo hall. The Commission disagrees with the TCA's comments, and believes the proposal to make dispute procedures available to players (as clarified in this response) will improve transparency regarding such procedures to bingo hall patrons.

**COMMENT SUMMARY:** The TCA, the BIG, and Mr. Hutchings (AMVETS) request that the Commission add to the list of merchandise bingo prizes under subsection (f), a raffle ticket conforming to the Charitable Raffle Act (Texas Occupations Code Chapter 2002). At the public comment hearing, the TCA presented information regarding the potential revenue benefit to charities associated with offering raffle tickets as bingo prizes.

**COMMISSION RESPONSE:** No changes will be made in response to these comments. In a 2002 Texas Attorney General Opinion to then-Senator Frank Madla (Opinion No. JC-480), the Attorney General opined (at page 9), "[A]lthough the Bingo Enabling Act, Tex. Occ. Code Ann. ch. 2001 (Vernon 2002), and the Charitable Raffle Enabling Act, *id.* ch. 2002, might not expressly prohibit the award of a raffle ticket as a prize in a bingo game, the award of a raffle ticket as a bingo prize would vio-

late section 47.03 of the Penal Code, if the bingo conductor acts knowingly or intentionally." While the Commission appreciates the commenters' position, the Commission will follow the advice of the Attorney General until such time as Opinion No. JC-480 is modified or overruled by a subsequent Attorney General opinion, statutory amendment, or judicial decision. (See Attorney General Letter Opinion No. 93-80 (1993) at 1.)

COMMENT SUMMARY: The TCA recommended adding language in subsection (f) (regarding merchandise prizes) stating, "the prize fees paid shall be based upon the cost to the licensed authorized organizations."

COMMISSION RESPONSE: No changes will be made in response to this comment. Prize fees paid must be based either on the current retail price or, if applicable, the actual price paid by the licensed authorized organization and supported by a receipt or other documentation.

COMMENT SUMMARY: The TCA recommends deleting subsection (h)(1), which requires a conductor organization to obtain, maintain, keep current, and make available for review to any person upon request a copy of the Bingo Enabling Act and the Charitable Bingo Administrative Rules. The TCA stated there is no comparable requirement at several other Texas state agencies, that any interested person can obtain these items via the Internet, and that lottery licensees are not subject to such a requirement.

COMMISSION RESPONSE: The Commission agrees with this comment and has deleted the referenced requirement from the adopted rule.

COMMENT SUMMARY: The VFW, the TCA, the BIG, FWB, and Mr. Hutchings (AMVETS) propose eliminating the requirement of a game schedule in subsections (h)(4) and (h)(5). The VFW stated an organization should be allowed to make its own business decision regarding game schedules, and requests subsection (h)(4) be revised to say: "The charity must keep a record of all items sold and prizes paid", and subsection (h)(5) be revised to reflect that if a licensed authorized organization uses a game schedule, it may amend the schedule during the bingo occasion.

COMMISSION RESPONSE: No changes will be made in response to these comments. The written schedule is used by patrons to inform them of the costs of games, the games being played, and the prizes to be awarded. CBOD staff uses this information for audit purposes to provide assurance that sales and prizes are accurately and completely reported by licensees. Additionally, the game schedule requirement in this rule was only recently adopted (effective January 2014), after consulting with industry representatives.

COMMENT SUMMARY: State Representative Senfronia Thompson, the VFW, the TCA, the BIG, Littlefield Corporation, and Mr. Hutchings (AMVETS) request that subsection (n) be revised to make it clear that any number of prizes of \$50 or less may be awarded in a single bingo game without such prizes counting towards the \$2500 prize cap per bingo occasion, regardless of whether the prize announced for the game was more than \$50. Rep. Thompson stated the subsection as currently written is inconsistent with the language and intent of §2001.420(b)(2) of the Texas Occupations Code, a view that was shared by the other commenters. This statutory provision was enacted pursuant to H.B. 394 in the 83rd Texas Legislature, Regular Session, legislation that Rep. Thompson sponsored. The BIG submitted proposed language to amend subsection (n), which Rep. Thompson urged the Commission to adopt to

bring subsection (n) into conformity with the statute. The TCA also supports the BIG's proposed language.

COMMISSION RESPONSE: The Commission is persuaded by Rep. Thompson's statement, and agrees with the comments. The proposed language provided by the BIG, and supported by Rep. Thompson and the TCA, has been included in the adopted rule to bring subsection (n) into conformity with the statute.

§402.203 (Unit Accounting): The amendments to §402.203 remove obsolete references to a specific form and the payment of the gross rentals tax.

COMMENT SUMMARY: The VFW has no objection to the proposed amendments. The TCA supports the proposed amendments.

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.205 (Unit Agreements): The amendments to §402.205 clarify that a bingo bookkeeper may only be a business contact for a commercial lessor and a designated agent for an accounting unit if the bookkeeper is not an employee of the commercial lessor. The amendments also clarify that when an organization joins an accounting unit and transfers bingo equipment and supplies to that unit, the written inventory of that equipment and supplies must include all pull-tab tickets.

COMMENT SUMMARY: The VFW and the TCA support the proposed amendment in subsection (f)(2). The VFW has no objection to the proposed amendments in subsections (g)(7) and (i).

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.210 (House Rules): The amendments to §402.210 add a requirement that a bingo conductor's house rules be posted at the bingo premises in a location that is easily accessible to all patrons.

COMMENT SUMMARY: The VFW, FWB, and Mr. Clark (AMVETS) request clarification of the new phrase "easily accessible to all patrons" in subsection (e), stating this term is subject to interpretation and could be construed differently by different bingo inspectors. The BIG similarly expressed concern about uneven enforcement of the proposed "easily accessible" requirement by CBOD staff. The TCA and FWB disagree with this proposed amendment and recommend its deletion.

COMMISSION RESPONSE: No changes will be made in response to these comments. However, the Commission clarifies that under this amendment bingo conductors are required to post their house rules in a conspicuous place at the bingo hall. The Commission disagrees with the TCA's comments, and believes the proposal to make house rules easily accessible to all patrons (as clarified in this response) will improve transparency regarding the conduct of bingo to bingo hall patrons.

§402.300 (Pull-Tab Bingo): The amendments to §402.300 affect pull-tab bingo games. First, the amendments clarify that instant pull-tab tickets may be sold over multiple bingo occasions, and a winning instant ticket may only be claimed during the bingo occasion(s) where tickets from the winning ticket's deal are sold. Regarding event pull-tab tickets, the amendments clarify that the event which determines the ticket winner(s) must occur during the same bingo occasion at which the first event pull-tab ticket from the deal was sold. Further, a winning event pull-tab ticket may only be claimed during the bingo occasion at which the event occurred. However, the amendments include except-

tions that would permit licensed authorized organizations that are unit members, and organizations that conduct bingo on consecutive occasions within one 24-hour period, to hold an event and pay a winning ticket at certain other bingo occasions. The amendments will still require certain information, including ticket price and game name, to be printed on a pull-tab ticket, but the amendments abolish the requirement that the information be printed on a specific side of the ticket. The amendments also provide a consistent basis by which to determine the value of merchandise prizes. The amendments also remove the absolute prohibition on pull-tab tickets displaying images of alcoholic beverages and weapons, but the amendments add a prohibition on the display of violent acts. The amendments also allow the Commission to determine how many pull-tab tickets a manufacturer must submit for testing, which codifies current practice. The amendments also require manufacturers to include with a pull-tab ticket deal instructions on at least one permissible method to play the game. The amendments also alter the distance required between numbers/symbols and the window perforations on a pull-tab ticket. Finally, the amendments clarify the definitions of instant and event pull-tab tickets and no longer require bingo conductors to include distributor information in their pull-tab ticket purchase log.

COMMENT SUMMARY: The VFW supports the proposed amendments regarding the design of the pull-tab because they will allow for more flexibility in ticket design, and the proposed amendment in subsection (a)(8) that allows bingo equipment to be awarded as pull-tab bingo prizes. The NAFTM commented in support of subsection (b) regarding Commission approval of pull-tab bingo tickets and subsection (d)(13)(D) regarding manufacturing standards for pull-tab bingo tickets. The TCA supports the proposed amendments to subsection (d)(15).

COMMISSION RESPONSE: No changes will be made in response to these comments.

COMMENT SUMMARY: The TCA, the BIG, and Littlefield Corporation request that the Commission add to the definition of "Merchandise" used as a pull-tab prize under subsection (a)(8), a raffle ticket conforming to the Charitable Raffle Act (Texas Occupations Code Chapter 2002). The BIG commented that the Texas Occupations Code Chapter 2001 (Bingo Enabling Act) grant of rulemaking authority to the Commission over pull-tab bingo (at §2001.408 of the Act) is sufficient for the Commission to authorize raffle tickets as a pull-tab bingo prize.

COMMISSION RESPONSE: No changes will be made in response to these comments. As discussed in the response to comments to §402.200 above, the Attorney General in Opinion No. JC-480 opined that "the award of a raffle ticket as a bingo prize would violate section 47.03 of the Penal Code, if the bingo conductor acts knowingly or intentionally." While the Commission appreciates the commenters' position, the Commission will follow the advice of the Attorney General until such time as Opinion No. JC-480 is modified or overruled by a subsequent Attorney General opinion, statutory amendment, or judicial decision.

COMMENT SUMMARY: The VFW and the TCA oppose the proposed use of the word "offensive" in subsection (b)(3)(G) in connection with Commission approval of pull-tab artwork, because the term is subjective, vague, and does not provide meaningful guidance on what is considered "offensive". The TCA additionally requests that the Commission provide a process for an expedited challenge to the Commission's rejection of proposed artwork.

COMMISSION RESPONSE: The Commission agrees with the comments regarding the word "offensive", which has been deleted from the adopted rule changes. In light of this change, the Commission declines to expressly provide a specific process for an expedited challenge to the Commission's rejection of proposed artwork.

COMMENT SUMMARY: The TCA and the BIG request that the rule expressly allow the use of bar code technology on pull-tab bingo tickets (referencing subsections (d)(10) and (d)(13)). The TCA stated this would greatly assist with inventory control.

COMMISSION RESPONSE: No changes will be made in response to these comments. Nothing in the Bingo Enabling Act or Commission rules prevents the use of bar code technology for ticket sale or inventory purposes.

COMMENT SUMMARY: The BIG expressed concern that it is not clear that subsection (e) maintains an organization's existing authority to sell pull-tabs during an intermission. The BIG further cautioned that, regardless of whether there are scheduled intermissions during a bingo occasion, the Commission should be careful not to restrict conductor organizations from conducting activities that are currently authorized.

COMMISSION RESPONSE: No changes will be made in response to these comments. The Commission notes that bingo occasions currently do not include formal intermissions (statutory references to required intermissions in the Bingo Enabling Act were deleted in the 81st Regular Legislative Session in 2009) and bingo games may be conducted back-to-back during a bingo occasion. The Commission clarifies that pull-tab and event tab bingo tickets may be sold at any time during an authorized bingo occasion.

COMMENT SUMMARY: With respect to subsection (g)(2) regarding records, the VFW requests confirmation that, so long as the required information is captured in a schedule that then rolls into the cash report, a conductor organization is in compliance with this requirement; that the Daily Schedule of Prizes is part of the Occasion Cash Report; and that including the form number on the Daily Schedule of Prizes satisfies the requirement of the form number being on the Occasion Cash Report. The VFW noted that, if the foregoing does not satisfy the requirement, it will require some organizations to incur a cost to modify their reporting format. Greenfield Bingo Services similarly requests such confirmation.

COMMISSION RESPONSE: The Commission confirms that the description of records as provided by the VFW will satisfy the requirements of subsection (g)(2).

COMMENT SUMMARY: The TCA proposed language for subsection (h)(8) deleting the requirement that a multiple part event or multiple part instant ticket must be broken apart and sold in sections by a licensed authorized organization. The TCA's proposed language would require only that the two or more sections of the ticket be separated by a perforation.

COMMISSION RESPONSE: No changes will be made in response to this comment. The requirement to sell each part of a multiple part ticket separately ensures that the prize amount does not exceed the \$750 per game prize cap.

COMMENT SUMMARY: The BIG urged the Commission to include language allowing video confirmation of pull-tab tickets.

COMMISSION RESPONSE: No changes will be made in response to this comment. The Commission recently considered

the issue of allowing video confirmation of pull-tab tickets in a 2014 rulemaking proceeding; and, after receiving public comment, declined to amend the rule. The Commission does not believe circumstances have changed since the 2014 proceeding to warrant further consideration of such an amendment at this time.

§402.301 (Bingo Card/Paper): The amendments to §402.301 remove the absolute prohibition on bingo cards and paper displaying images of alcoholic beverages and weapons.

COMMENT SUMMARY: The VFW and the TCA oppose the proposed use of the word "offensive" in subsection (b)(3) in connection with Commission approval of bingo card/paper artwork, because the term is subjective, vague, and does not provide meaningful guidance on what is considered "offensive". In addition, the TCA requests the right to an expedited challenge of the Commission's rejection of proposed artwork that contains language or text the Commission staff finds objectionable.

COMMISSION RESPONSE: The Commission agrees with the comments regarding the word "offensive", which has been deleted from the adopted rule changes. In light of this change, the Commission declines to expressly provide a specific process for an expedited challenge to the Commission's rejection of proposed artwork.

§402.303 (Pull-tab or Instant Bingo Dispensers): The amendments to §402.303 remove the requirement that, when pull-tab bingo tickets are sold from a dispenser, the entire deal or package of pull-tab bingo tickets must be offered for sale. The amendments also remove the requirement that manufacturers, distributors, and conductors maintain logs related to pull-tab bingo ticket dispensers. The proposed amendments also delete an obsolete reference to the Problem Gamblers' Help Line.

COMMENT SUMMARY: The VFW and the TCA have no objection to the deletion of subsection (b)(6), which removes obsolete language; and support the deletion of the language in subsection (e) regarding records. The TCA also supports the deletions in subsection (c)(4) regarding the sale of pull-tab tickets and instant bingo cards.

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.324 (Card-Minding Systems-Approval of Card-Minding Systems): The amendments to §402.324 remove both the requirement that a manufacturer notify the Commission in writing before submitting a card-minding system to an independent testing facility for review and the requirement that the independent testing facility communicate with the manufacturer and/or Commission if any testing questions arise. The amendments also require the Commission to notify both the manufacturer and the independent testing facility whether the Commission has approved or disapproved a specific card-minding system.

COMMENT SUMMARY: The VFW and the TCA support the proposed amendments.

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.325 (Card-Minding Systems-Licensed Authorized Organizations Requirements): The amendments to §402.325 no longer require a player seeking a refund from a voided transaction to provide their address and telephone number. The amendments also remove the prohibition on reserving card-minding devices for players.

COMMENT SUMMARY: Mr. Clark (AMVETS) commented in support of the proposed changes to this rule. The VFW, the TCA, and the BIG support elimination (in old subsection(k)) of the prohibition on reserving card-minding devices for players.

COMMISSION RESPONSE: No changes will be made in response to these comments.

COMMENT SUMMARY: The VFW supports elimination of the requirement in subsection (d)(3) that a player be required to provide their address and phone number (in addition to name, signature, and amount of the refund) to obtain a refund for a void transaction. The TCA and FWB recommend adding the words "Unless the player refuses" to this subsection, stating sometimes players refuse or are unable to provide even their name and signature. The TCA stated further that this requirement serves no regulatory purpose.

COMMISSION RESPONSE: In response to the comments of the TCA and FWB, the Commission has added language to subsection (d)(3) that, if a player seeking a refund refuses or is unable to provide the required information, the organization shall so note on the back of the receipt.

§402.400 (General Licensing Provisions): The amendments to §402.400 remove obsolete references to a specific schedule and replace it with the proper form name.

COMMENT SUMMARY: The TCA proposed language in subsection (a) requiring the Commission to "review its applications, application instructions, and ancillary schedules annually and update them, as applicable."

COMMISSION RESPONSE: No changes will be made in response to this comment. The Commission declines to prescribe by rule a schedule to govern internal management processes such as updating agency forms. However, the CBOD continually evaluates the efficacy of its forms, and welcomes industry suggestions for any improvements to them.

COMMENT SUMMARY: The VFW and the TCA request that subsection (a)(3) be deleted. Subsection (a)(3) provides that an application is incomplete if the applicable license fee is not provided. The commenters stated the CBOD has taken the position an application will be returned unprocessed if it is incomplete, which causes a problem if there is a legitimate dispute regarding the fee amount. The VFW further stated the CBOD's practice of returning applications unprocessed if they are incomplete is inconsistent with subsection (e), which provides that the Commission will notify an applicant if an application is incomplete.

COMMISSION RESPONSE: No changes will be made in response to this comment. The Commission understands this comment refers to past debt collection efforts resulting from the CBOD ledger reconciliation project, and clarifies that any future debt collection efforts will be pursued separately from, and not tied to, the license renewal process. Further, the Commission recognizes the agency's obligation under Texas Government Code §403.055 to establish a debt prior to initiating collection efforts or reporting a debtor to the Comptroller of Public Accounts for a warrant hold.

COMMENT SUMMARY: The VFW and the TCA proposed language for subsections (d), (e), and (n) that would impose deadlines on the Commission's review of license applications, which the Commission did not include in its proposal. Each commenter requested the language they submitted be included in the adopted rule. The TCA commented specifically on its proposed language in subsection (d) requiring the Commission

to notify the applicant of an original application within three business days after receiving the application of any key missing information, and to notify the applicant within 14 days if any additional information is required.

COMMISSION RESPONSE: No changes will be made in response to these comments. The Commission declines to prescribe by rule internal deadlines to govern the CBOD's application and licensing process. However, the CBOD will continue to review its process to identify potential improvements and streamlining opportunities, and welcomes industry suggestions. Further, the Commission notes that §2001.304 of the Bingo Enabling Act (Temporary Authorization) requires the Commission to issue a temporary authorization for the activity requested if a license for such activity is not issued or denied before the 31st day after the earliest date on which each of the following has occurred: (1) the filing of an application for the license; (2) the payment of the proper license fee; (3) the filing of a copy of a tax exemption statement issued by the Internal Revenue Service under §501(c), Internal Revenue Code of 1986, if required; and (4) the completion of a criminal background investigation.

COMMENT SUMMARY: The TCA proposed, and FWB supported, language for subsection (k) to allow a conductor organization to place a regular license in administrative hold status at any time.

COMMISSION RESPONSE: No changes will be made in response to these comments. The restriction on placing a license in administrative hold only at the time of license renewal was only recently adopted (effective February 2015), after consulting with industry representatives. The Commission does not believe circumstances have changed since the 2015 adoption to warrant further consideration of such an amendment at this time.

COMMENT SUMMARY: The TCA commented on subsection (m) that the Commission staff can, and sometimes does, refuse to discuss a licensing matter with a licensed attorney who has filed paperwork stating that the attorney represents the charitable organization, but instead requires the attorney to submit a required form before the staff will discuss substantive matters. The TCA stated no other state agency has this requirement and that it is over-regulation that serves to hinder the licensee.

COMMISSION RESPONSE: No changes will be made in response to this comment. To ensure that a person is authorized to act on behalf of an organization, the CBOD allows for authorized representatives only as requested by the licensee/applicant organization itself.

§402.404 (License and Registry Fees): The amendments to §402.404 remove obsolete language, and shorten the time period when a bingo worker registry renewal application may be submitted (from 90 days to 60 days before the current expiration date).

COMMENT SUMMARY: Mr. Martin commented in opposition to existing language in the rule that sets the amount of a license fee for conducting bingo based on the licensee's annual gross receipts. The commenter stated this fee structure unfairly penalizes organizations that do well in business and rewards those that do not do well, and urged the Commission to reduce license fees to a reasonable rate, such as, a \$100 per year across-the-board fee for all conductor organizations. The TCA also commented that conductor's licenses are too expensive, given the declining number of licensees that are being licensed by the Commission. The TCA stated that bingo is not

an expanding business due to competition from the lottery and other legal and illegal entertainment options.

COMMISSION RESPONSE: No changes will be made in response to these comments. The tiered structure which the Commission follows to set conductor license fees based on a licensee's annual gross receipts is required by §2001.104(a) of the Bingo Enabling Act, which also sets a minimum fee the Commission must charge for each identified class of license. Although the statute grants the Commission some authority to determine the actual fee amount for each class of license identified in the statute, the tiered fee structure Mr. Martin opposes is set in the statute and would require a legislative amendment to change. The Commission will continue to evaluate the actual fee amounts set by Commission rule to ensure they are not more than an amount reasonable to defray administrative costs.

COMMENT SUMMARY: The VFW and the TCA requested that subsection (h)(2)(B), Refunds, be amended to make it clear that the reference to "any other outstanding bingo liabilities to the State" means liabilities that have been established, not simply by virtue of a Notice of Outstanding Liabilities Due being sent.

COMMISSION RESPONSE: No changes will be made in response to these comments. The Commission recognizes the agency's obligation under Texas Government Code §403.055 to establish a debt prior to initiating collection efforts or reporting a debtor to the Comptroller of Public Accounts for a warrant hold.

§402.407 (Unit Manager): The amendments to §402.407 delete the formula used to determine the bond amounts for unit managers. The new formula is located in §402.603.

COMMENT SUMMARY: The VFW and the TCA have no objection to the proposed amendments.

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.411 (License Renewal): The amendments to §402.411 shorten the time period when a license renewal application may be submitted (from 90 days to 60 days before the current expiration date).

COMMENT SUMMARY: FWB requested that the Commission allow renewed licenses to be printed on demand.

COMMISSION RESPONSE: No changes will be made in response to these comments. The Commission clarifies that, under current practice, the bingo chairperson is authorized to print licenses on demand.

COMMENT SUMMARY: The VFW and the TCA (supported by FWB) proposed language to subsections (b) and (l) to provide that a renewal application is not considered incomplete based on a failure to submit the license renewal fee or a portion thereof, and to prohibit delaying issuance of a license renewal based on an alleged debt that has not been finally established. The TCA provided several example regarding claims of debts owed to the state without supporting documentation. The VFW stated it is the CBOD's position that it will return an application unprocessed if it is incomplete, and that the problem with this approach is there are hard deadlines for license renewals. The VFW stated that missing a renewal deadline can cause either additional fees, or, in the case of a grandfathered lessor license, an outright loss of the license.

COMMISSION RESPONSE: No changes will be made in response to these comments. The Commission understands these comments refer to past debt collection efforts resulting from the

CBOD ledger reconciliation project, and clarifies that any future debt collection efforts will be pursued separately from, and not tied to, the license renewal process. Further, the Commission recognizes the agency's obligation under Texas Government Code §403.055 to establish a debt prior to initiating collection efforts or reporting a debtor to the Comptroller of Public Accounts for a warrant hold.

COMMENT SUMMARY: The VFW opposes the proposed amendment to subsection (m) that shortens the time within which the Division will accept a renewal application, currently from 90 days to proposed 60 days.

COMMISSION RESPONSE: No changes will be made in response to this comment. As explained in the preamble to the proposal, this proposed change aligns the rule with the requirements of the bingo operating service system (BOSS), the computer system that supports the CBOD regulatory program. This change also reflects current CBOD operating practices.

§402.420 (Qualifications and Requirements for Conductor's License): The amendments to §402.420 only alter the attached figure. The amendments remove obsolete references to form names and replace them with the proper names, and correct a spelling error.

COMMENT SUMMARY: The VFW and the TCA request that the Commission include language in the chart, which is part of the rule, to clarify that a fraternal/non-profit organization must have had at least three years of tax-exempt status before filing the application. The VFW stated their belief the CBOD has recently applied a new interpretation of the Bingo Enabling Act license eligibility statutes for fraternal organizations, and that the prior interpretation was that an organization must have obtained tax exempt status prior to the filing of its application to conduct bingo. The VFW stated the Commission should put all interested persons on notice of its interpretation of license eligibility criteria so applicants don't pay a substantial license fee to be denied because of a new interpretation.

COMMISSION RESPONSE: No changes will be made in response to these comments. The Commission notes that, at the time of this rule adoption, the issue raised in these comments is the subject of a pending contested case. Further, the resolution of this issue potentially impacts not only fraternal organizations, but also certain medical and veterans organizations. Because this issue is being litigated, and because it affects several categories of bingo conductor organizations that may not have been apprised of the issue in this proceeding, the Commission declines to make the requested change to the adopted rule in this proceeding.

§402.424 (Amendment of a License by Electronic Mail, Telephone or Facsimile): The amendments to §402.424 allow a license amendment request application to be submitted via electronic mail, telephone or facsimile.

COMMENT SUMMARY: The VFW and the TCA have no objection to the proposed amendments.

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.451 (Operating Capital): The amendments to §402.451 remove obsolete language and the attached figure regarding the disbursement of any bingo account balance in excess of the bingo conductor's or accounting unit's operating capital limit.

COMMENT SUMMARY: The VFW and the TCA have no objection to the proposed amendments.

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.500 (General Records Requirements): The amendments to §402.500 clarify that any bingo licensee must provide to the Commission upon request any information required to be maintained by the Bingo Enabling Act or the Charitable Bingo Administrative Rules.

COMMENT SUMMARY: The VFW and the TCA have no objection to the proposed amendments.

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.504 (Debit Card Transactions): The amendments to §402.504 require a bingo conductor to provide a debit card transaction sales receipt to the purchaser only upon request. The amendments also clarify that bingo conductors must maintain either an electronic or hard copy of all debit card transaction sales receipts.

COMMENT SUMMARY: The VFW and the TCA have no objection to the proposed amendments.

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.506 (Disbursement Records Requirements): The amendments to §402.506 clarify that the types of records listed in subsection (b) of the rule are only examples of the types of records that are acceptable to substantiate bingo expenses. The amendments also remove the requirement that a bingo conductor's Cash Disbursements Journal include the conductor's or unit's name, taxpayer or unit number, and the calendar quarter.

COMMENT SUMMARY: The VFW, the TCA, and FWB support the proposed amendments. FWB specifically supports the proposed deletion of subsections (e)(2)(A) - (C) (requirement to include organization or unit name, taxpayer or unit number, and calendar quarter on the Cash Disbursement Journal), noting that some accounting software programs do not allow a user to manipulate the programming or headers of forms to include this information.

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.511 (Required Inventory Records): The amendments to §402.511 add a requirement that a bingo conductor's perpetual inventory of pull-tab bingo tickets contain the occasion date(s) that the pull-tab tickets were sold.

COMMENT SUMMARY: The VFW supports the proposed amendment; however, under subsections (d)(2) and (e)(2), the VFW, the BIG, the TCA, and FWB request deletion of the requirement that the perpetual inventory of disposable bingo cards contain the distributor's name and taxpayer number because this requirement is unnecessary and burdensome. The TCA further requested the deletion of the following information from the perpetual inventory of pull-tab bingo tickets: number of tickets per deal; number of tickets sold, missing, or damaged by occasion date; and number of pull-tab tickets remaining if the deal is closed.

COMMISSION RESPONSE: The Commission agrees with the comments regarding the bingo product distributor's name and taxpayer number, and the adopted rule deletes the requirement

to include this information on the perpetual inventory of both disposable bingo cards (in subsection (d)(2)) and pull-tab bingo tickets (in subsection (e)(2)). The Commission declines to delete the additional requested information from the perpetual inventory of pull-tab bingo tickets because this ticket information is needed for CBOD audit purposes.

§402.514 (Electronic Fund Transfers): The amendments to §402.514 permit the bingo chairperson of a bingo conductor that is part of an accounting unit to designate another individual to review the accounting records and bank statements with the conductor's bookkeeper.

COMMENT SUMMARY: The VFW supports the proposed amendments. The TCA has no objection to the proposed amendments.

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.600 (Bingo Reports and Payments): The amendments to §402.600 remove obsolete references to the payment of gross rental taxes. The amendments also clarify that all quarterly report supplements must be submitted to the Commission in accordance with the same requirements for the report itself. The amendments also require commercial lessors to include in their quarterly reports information regarding property taxes paid by the lessor and reimbursed by the lessee bingo conductor. Finally, the amendments require indicated quarterly report monetary amount entries to be rounded to whole dollar amounts.

COMMENT SUMMARY: The VFW, the TCA, and FWB stated their support of many of the proposed amendments to this rule. The BIG stated its support for the proposed changes addressing the rounding of dollar amounts under subsection (m).

COMMISSION RESPONSE: No changes will be made in response to these comments.

COMMENT SUMMARY: The TCA recommended striking subsection (e) which allows the Commission to deny or revoke a commercial lessor license if the licensee remits two insufficient checks for rental tax within four quarters.

COMMISSION RESPONSE: The Commission's proposal deletes subsection (e) because it is an obsolete reference to gross rental taxes.

COMMENT SUMMARY: The TCA, the BIG, and FWB support the Commission's proposal in subsection (m) to allow rounding of dollar amounts for certain entries in the quarterly reports.

COMMISSION RESPONSE: To clarify subsection (m) further, the Commission has added the words "where indicated" to the end of the first sentence, so that it reads: "Quarterly report entries must be rounded to whole dollar amounts, where indicated." The added language is intended to clarify that only entries required to be reported as whole dollars (as indicated on the report form) will be rounded.

COMMENT SUMMARY: The TCA stated its hope that the new references to "supplements" in this rule do not mean the Commission will be creating many new forms for charities to complete, and, at the public hearing, asked the Commission to explain what the term "supplements" means.

COMMISSION RESPONSE: No changes will be made in response to these comments. Any particular supplemental document that is required will depend on a licensee's particular cir-

cumstances, and the CBOD will inform the licensee of any supplemental filing requirement.

§402.602 (Waiver of Penalty, Settlement of Prize Fees, Rental Tax, Penalty and/or Interest): The amendments to §402.602 require the Commission to notify inactive accounts that a prize fee or rental tax is owed, and provide the accounts with existing documents that support the delinquency determination.

COMMENT SUMMARY: The VFW, the TCA, the BIG, FWB, and Ms. Green (for Everman Jaycees) oppose the proposed sentence in subsection (b) stating, "Failure to produce documents supporting the delinquency determination does not limit the Division's ability to collect the debt." The VFW requests that language be added to this rule that the Commission may not pursue collecting on a debt it cannot establish and the Commission may not deny a license application due to the Commission's belief a debt is owed. The TCA proposed alternative language to subsections (b) and (c) to address the same concern, as well as a new subsection (d) that would prohibit the Commission from denying a license based on an alleged delinquent tax or fee unless the debt has been established through a jeopardy determination process.

COMMISSION RESPONSE: The Commission agrees with the comments in support of deleting the referenced sentence and has deleted that sentence from the adopted rule changes, but declines to make the additional requested changes. The Commission understands these comments refer to past debt collection efforts resulting from the CBOD ledger reconciliation project, and clarifies that any future debt collection efforts will be pursued separately from, and not tied to, the license renewal process. Further, the Commission recognizes the agency's obligation under Texas Government Code §403.055 to establish a debt prior to initiating collection efforts or reporting a debtor to the Comptroller of Public Accounts for a warrant hold.

§402.603 (Bond or Other Security): The amendments to §402.603 alter and clarify the bond and security requirements for bingo conductors, manufacturers, accounting units, and unit managers. The bond requirement for commercial lessors to secure payment of the gross rentals tax was abolished in the 84th Regular Legislative Session, therefore the amendments also remove all references to commercial lessors' bond requirements.

COMMENT SUMMARY: The VFW does not oppose the proposed amendments in principle, but asks the Commission to understand there will be a financial impact on licensees who have been paying prize fees on time and currently have a zero bond amount, to now have to obtain a bond, even if the bond is in the amount of \$100. The TCA provided examples of the difficulty newer charities (without eight consecutive quarters of compliance history) can have in obtaining the higher required bond amount.

COMMISSION RESPONSE: No changes will be made in response to these comments. The Bingo Enabling Act requires conductor licensees to obtain a bond. After much discussion of this matter in stakeholder meetings, the Commission believes requiring a nominal \$100 bond for a licensee that has complied with paying their prize fees for eight consecutive quarters is a reasonable and fair standard. Further, the Commission notes that the tiered bond amounts for organizations that do not qualify for the \$100 bond have not changed as a result of this rulemaking.

COMMENT SUMMARY: The TCA proposed the following language to replace the last sentence in proposed subsection (a)(4)(B), to clarify that, when a new charity without a history of eight consecutive quarters of compliance joins an existing accounting unit, that charity must obtain its own bond and the funds of the other charities in the unit should not be used to pay for it: "If another organization subsequently joins such a Unit and this organization is not covered in subsection (a)(1)(C), the new organization must pay separately for its security amount; in such situation, the Unit cannot pay for the security amount unless and until the new organization has been licensed for eight (8) consecutive quarters with no jeopardy determination." The TCA expressed its support for the other proposed changes to this rule.

COMMISSION RESPONSE: No changes will be made in response to this comment. The Commission believes it is up to the other unit members to make the business decision in a particular instance whether to pay for the new organization's security amount.

§402.703 (Audit Policy): The amendments to §402.703 provide that the audit fieldwork may take place at the licensee's business office, bingo premises, bookkeeper's office, or accountant's office, as well as at a location designated by the auditor.

COMMENT SUMMARY: The VFW, the BIG, the TCA, FWB, and Mr. Clark (AMVETS) requested that the rule be revised to shorten the time an audit can remain open, which is now 5 years. The TCA proposed language to shorten the time frame for completing an audit.

COMMISSION RESPONSE: In response to the comments, the Commission has made two changes to this rule: First, subsection (b)(2) has been modified by adding the following sentence at the end to clarify the timeframe when an audit will begin: "An audit must commence by the fourth anniversary of the date a licensee is identified for audit." Second, subsection (d)(2) has been modified to state that an audit "must be completed within two years from the date of the entrance conference unless the Director extends the time period and notifies the licensee of the extension." Further, the Commission notes that the CBOD currently provides an estimated date for issuing an audit report when it sends an audit engagement letter to a licensee.

COMMENT SUMMARY: The VFW, the TCA, and FWB support the amendment to subsection (e) that allows field work to occur at the licensee's business office, bingo premises, bookkeeper's office or accountant's office instead of a location designated by the auditor.

COMMISSION RESPONSE: The preamble to the proposed amendments stated the proposed change to subsection (e) would "require" that audit fieldwork take place at the licensee's business office, bingo premises, bookkeeper's office, or accountant's office, suggesting that such work would not occur at any other location, including a Commission office. Upon further reflection, the Commission believes it needs the flexibility, in specific instances, to conduct fieldwork at a location other than those specified in the proposed amendments. Thus, while the Commission intends for the CBOD staff to conduct audit fieldwork at a licensee location whenever practicable, in the adopted rules the Commission has retained the ability to conduct fieldwork at "a location designated by the auditor(s)", which may include a Commission office. This change essentially retains the language the Commission had proposed to delete in the published proposal, in addition to the proposed new language.

COMMENT SUMMARY: The TCA proposed language in subsection (e) to require a CBOD auditor to promptly notify a licensee if a violation is discovered during an audit or inspection.

COMMISSION RESPONSE: No changes will be made in response to this comment. A game inspection report does not contain findings of violations; its purpose is to collect relevant information which later will be used by CBOD management to assess potential non-compliance issues. Findings regarding non-compliance are communicated to the licensee only after the relevant information has been reviewed by CBOD management, at which time the licensee will have an opportunity to respond. The CBOD currently provides a licensee a copy of the report of a game inspection performed on site before leaving the bingo location. The report must be signed by the authorized person on staff at the bingo location prior to the auditor leaving the bingo hall. Any additional notification, including potential violations found during an audit, could disrupt the ongoing audit/inspection and may not give the CBOD an opportunity to review relevant evidence.

COMMENT SUMMARY: The TCA proposed language in subsection (g)(1) requiring the CBOD to provide a copy of all supporting documentation (if any) of audit findings with a draft audit report, stating that the agency generally is in possession of the licensee's documentation at that time.

COMMISSION RESPONSE: No changes will be made in response to this comment. Under current practice, the CBOD provides the auditee a copy of the draft audit report three days prior to the audit exit conference. All records are returned to the auditee at the exit conference, at which time the audit findings are discussed. Thus, the auditee has possession of their original records that are used by the auditor to support any findings. The auditee then has 20 days to respond to the draft report, and may provide written comments and supporting documents to the auditor. If such a response is submitted, the auditor will review and include it in the final report.

COMMENT SUMMARY: The TCA proposed a new subsection (h), requiring that the CBOD must initiate any administrative disciplinary action against a licensee resulting from an audit no later than 90 days from the date the final audit report is issued; otherwise, the CBOD would be barred from initiating such an action.

COMMISSION RESPONSE: No changes will be made in response to this comment. The Commission is mindful of the potential burden a delay in initiating an enforcement action may impose on a licensee, but believes a rigid 90-day deadline would unduly restrict the CBOD's discretion in determining in which instances an enforcement action is warranted.

§402.706 (Schedule of Sanctions): The amendments to §402.706 implement §2001.358 of the Bingo Enabling Act, which requires the Commission to adopt a schedule of sanctions that defines and summarizes statutory and rule violations to ensure that sanctions imposed are appropriate to the violation. The amendments add to the schedule those violations that could result in license suspension, revocation or denial, or bingo worker registry removal or denial.

COMMENT SUMMARY: The VFW, the TCA, and the BIG question, and seek clarification on, the proposed language in subsection (a) suggesting that the Commission may impose sanctions on non-licensees. The TCA requests the Commission to articulate its authority if this is its position.

COMMISSION RESPONSE: No changes will be made in response to these comments. The Commission clarifies that the

reference to "other persons" in subsection (a) may refer either to individuals listed on the Bingo Worker Registry (who are not referred to as "licensees") that violate the Bingo Enabling Act or Commission rules, or other unlicensed persons engaged in the unauthorized conduct of bingo-related activities. Section 2001.601 of the Bingo Enabling Act states, "The commission may impose an administrative penalty against a person who violates this chapter or a rule or order adopted by the commission under this chapter." Section 2001.606 of the Act further describes the Director's authority to issue orders finding that "a person" has committed a violation and assessing an administrative penalty. Under §2001.002(20) of the Act, a "person" means "an individual, partnership, corporation, or other group." Thus, the Commission's authority is not limited to assessing penalties against a licensee.

**COMMENT SUMMARY:** The VFW opposes the increased sanction of possible revocation of license for a first violation of the Other Game of Chance rule (§402.211). The VFW stated this penalty is harsh, and noted the Commission's primary responsibility is to administer and regulate bingo so that bingo is fairly conducted and the proceeds derived from bingo are used for an authorized purpose. The VFW stated the Commission should focus on violations of the Bingo Enabling Act and rules that directly relate to this responsibility.

**COMMISSION RESPONSE:** Based on a Sunset Commission recommendation, the Texas Legislature amended the Bingo Enabling Act, at §2001.358(b)(2), to require the Commission to include in its rules those violations which may result in license revocation, denial, or suspension, or removal from or denial for the registry of bingo workers. The adopted amendments comply with this directive.

§402.707 (Expedited Administrative Penalty Guideline): The amendments to §402.707 add language to the rule's Expedited Administrative Penalty Chart to incorporate §2001.420(b)(2) of the Bingo Enabling Act, which states that prizes of \$50 or less are not included in calculating the \$2,500 prize limit for a single bingo occasion (the language initially proposed has been modified based on the Commission's response to comments on §402.200(n), discussed above). The amendments also remove an obsolete reference to the Problem Gamblers' Help Line of the Texas Council on Problem and Compulsive Gambling. Finally, the amendments allow for an informal dispute resolution conference to occur after a licensee or other person receives a Notice of Administrative Violation and Settlement Agreement.

**COMMENT SUMMARY:** The VFW supports the proposed amendments. The TCA has no objection to the proposed amendments.

**COMMISSION RESPONSE:** No changes will be made in response to these comments.

§402.708 (Dispute Resolution): The amendments to §402.708 correct a spelling error and remove obsolete references to the Request for Informal Dispute Resolution Form. The amendments also clarify that if a licensee does not attend a scheduled Dispute Resolution Conference, a formal hearing may occur. Finally, the amendments allow for an informal dispute resolution conference for disputes regarding a Notice of Administrative Violation and Settlement Agreement, an audit finding(s) contained within a final audit report, a determination letter or a notice of opportunity to show compliance letter.

**COMMENT SUMMARY:** The VFW supports the proposed amendments. The TCA has no objection to the proposed amendments.

**COMMISSION RESPONSE:** No changes will be made in response to these comments.

**COMMENT SUMMARY:** FWB supports language originally proposed by the TCA in subsection (c)(4) to allow an informal dispute resolution conference for a game inspection report. FWB further requested that conductor organizations have the right to provide written comments on a game inspection report at the time the inspection is conducted. FWB stated this change would allow organizations to respond to any alleged violations at the time of the inspection.

**COMMISSION RESPONSE:** No changes will be made in response to these comments. As noted above in the response to comments to §402.703(e), a game inspection report does not contain findings of violations; its purpose is to collect relevant information which later will be used by CBOD management to assess potential non-compliance issues. Findings regarding non-compliance are communicated to the licensee only after the relevant information has been reviewed by CBOD management, at which time the licensee will have an opportunity to respond.

**OTHER COMMENTS:** In addition to the comments noted above, FWB commented on suggested changes to §§402.102 (Bingo Advisory Committee), 402.401 (Temporary License), and 402.410(a) (Amendment of a License - General Provisions). However, the Commission has not proposed amending these rules and, thus, cannot adopt changes to these rules in this rulemaking proceeding.

## SUBCHAPTER A. ADMINISTRATION

### 16 TAC §402.103

The rule amendments are adopted under: (1) §2001.054 of the Texas Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (2) §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of Chapter 467 and the laws under the Commission's jurisdiction. The rule amendments, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

#### §402.103. *Training Program.*

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

(1) On-line training course--A training course developed by the Commission that is accessible on the Commission's website and may be taken at any time.

(2) On-site training course--A training course conducted by a Commission employee held at a specified date, time, and location.

(3) Primary training course--Comprehensive initial training required for all individuals who have never held a valid certificate of completion.

(4) Continuing education course--Refresher training for individuals who have held a valid certificate of completion.

(5) Certificate of completion--Documentation issued by the Commission certifying an individual's completion of the training program that is valid for two years.

(b) Training format. The training program is offered in two formats--on-site and on-line. Individuals may choose an on-site or on-line training course.

(c) Required training.

(1) At all times the bingo chairperson and a designated agent of a unit must have a valid certificate of completion for the training program unless the organization is a member of a unit that designates a unit manager under §2001.437 of the Bingo Enabling Act. A designated unit manager must have a valid certificate of completion for the training program.

(2) All individuals listed in paragraph (1) of this subsection who have not previously been issued a certificate of completion are required to take the primary training course.

(3) Subsequent training requirements may be met by taking either a primary or continuing education training course.

(4) As part of the terms of a Commission order, the Commission may direct one or more members of a licensed authorized organization to complete the primary or continuing education training course within a specified timeframe, regardless of whether or not the individual(s) has a valid certificate of completion.

(d) Optional training. Other individuals including operators, officers, directors, or members of a licensed authorized organization may take a training course.

(e) Content of the primary training course. The primary training course covers, at a minimum, the following areas:

(1) Overview of the Bingo Enabling Act and Charitable Bingo Administrative Rules;

(2) Conducting a bingo game;

(3) Record keeping requirements;

(4) Administration and operation of charitable bingo;

(5) Promotion of a bingo game;

(6) Bingo Advisory Committee; and

(7) General information about the license application process.

(f) On-site training course.

(1) Notice of the specified date, time and location of scheduled on-site training courses will be posted on the Commission's website.

(2) A person attending an on-site training course should pre-register by:

(A) completing an electronic submission form prescribed by the Commission located on the Commission's website; or

(B) telephoning the Commission's headquarters location and providing the information requested on the form prescribed by the Commission.

(3) To confirm attendance, each individual attending a training course must sign the attendance sheet provided by the Commission at the training course.

(4) A person must attend a complete course to receive a certificate of completion.

(5) The Commission instructor has discretionary authority to determine whether a person has attended a complete course in order to receive the certificate of completion.

(6) All reasonable and necessary expenses or costs of attendance by any member of the licensed authorized organization may be paid from the licensed authorized organization's bingo bank account. Expenses and costs are limited to travel, lodging, meals, and materials.

(7) In the event the Charitable Bingo Operations Division cancels the on-site training, reasonable effort will be made to notify persons who have pre-registered.

(g) On-line training course. Persons taking the on-line training course must:

(1) complete the training modules as specified on the Commission's website; and

(2) obtain a certificate of completion through the automated program on the website.

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

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Bob Biard

General Counsel

Texas Lottery Commission

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



## SUBCHAPTER B. CONDUCT OF BINGO

### 16 TAC §§402.200, 402.203, 402.205, 402.210

The following rule amendments are adopted under: (1) §2001.054 of the Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (2) §467.102 of the Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

*§402.200. General Restrictions on the Conduct of Bingo.*

(a) A bingo occasion that is fairly conducted by a licensed authorized organization is one that is impartial, honest, and free from prejudice or favoritism. It is also conducted competitively, free of corrupt and criminal influences, and follows applicable provisions of the Bingo Enabling Act and Charitable Bingo Administrative Rules.

(b) Inspection and use of equipment.

(1) All bingo equipment is subject to inspection at any time by any representative of the Commission. No person may tamper with or modify or allow others to tamper with or modify any bingo equipment in any manner which would affect the randomness of numbers chosen or which changes the numbers or symbols appearing on the face of a bingo card. A licensed authorized organization has a continuing responsibility to ensure that all bingo equipment used by it is in proper working condition.

(2) A registered bingo worker must inspect the bingo balls prior to the first game of each bingo occasion, making sure all of the balls are present and not damaged or otherwise compromised.

(3) Bingo balls that are missing, damaged, or otherwise compromised shall be replaced in complete sets or individually if the bingo balls are of the same type and design.

(4) A registered bingo worker must inspect the bingo console and flashboard to ensure proper working order prior to the first game of each bingo occasion.

(5) The organization must establish and adhere to, and make available to the players upon request, a written procedure that addresses problems during a bingo occasion concerning:

- (A) bingo equipment malfunctions; and
- (B) improper bingo ball calls or placements.

(c) Location of bingo occasion. A bingo occasion may be conducted only on premises which are:

- (1) owned by a licensed authorized organization;
- (2) owned by a governmental agency when there is no charge to the licensed authorized organization for use of the premises;
- (3) leased, or used only by the holder of a temporary license; or
- (4) owned or leased by a licensed commercial lessor.

(d) All bingo games must be conducted and prizes awarded on the days and within the times specified on the license to conduct bingo. If a circumstance occurs that would cause a regular bingo game to continue past the time indicated on the license, the licensed authorized organization may complete the regular bingo game. A written record detailing the circumstance that caused the bingo game to continue past the time indicated on the license must be maintained by the organization for forty-eight (48) months.

(e) Pull-tab bingo event tickets may not be sold after the occurrence of the event used to determine the game's winner(s) unless the organization has a policy and procedure in their house rules addressing the sale and redemption of pull-tab bingo event tickets after the event has taken place.

(f) Merchandise prizes. Any merchandise or other non-cash prize, including bingo equipment, awarded as a bingo prize shall be valued at its current retail price. However, a non-cash prize awarded as a bingo prize may be valued at the price actually paid for that prize provided that the licensed authorized organization maintains a receipt or other documentation evidencing the actual price paid. Prize fees must be collected on merchandise and non-cash prizes.

(g) Donated bingo prizes. Only licensed authorized organizations holding a non-annual temporary license may accept or award donated bingo prizes. A donated bingo prize shall be valued at its current retail price.

(h) The licensed authorized organization is responsible for ensuring the following minimum requirements are met to conduct a bingo occasion in a manner that is fair:

(1) The licensed authorized organization must make the following information available to players prior to the selling of a pull-tab bingo event ticket game:

- (A) how the game will be played;
- (B) the prize to be awarded if not United States currency; and
- (C) how the winner(s) will be determined.

(2) Each licensed authorized organization shall conspicuously display during all bingo occasions a sign indicating the name(s) of the operator(s) authorized by the licensed authorized organization to be in charge of the occasion.

(A) The letters on the sign shall be no less than one inch tall.

(B) The sign shall inform the players that they should direct any questions or complaints regarding the conduct of the bingo occasion to an operator listed on the sign.

(C) The sign should further state that if the player is not satisfied with the response given by the operator that the player has the right to contact the Commission and file a formal complaint.

(3) Prior to the start of a bingo occasion, the licensed authorized organization shall make a written game schedule available to all patrons. The game schedule must contain the following information:

- (A) all regularly scheduled games to be played;
- (B) the order in which the games will be played;
- (C) the patterns needed to win;
- (D) the prize(s) to be paid for each game, including the value of any non-cash bingo prizes as set in subsections (f) and (g) of this section;
- (E) whether the prize payout is based on sales or attendance;
- (F) the entrance fee and the number of cards associated with the entrance fee, if any; and
- (G) the price of each type of bingo card offered for sale.

(4) The licensed authorized organization may amend the game schedule during the bingo occasion to correctly reflect any changes to game play during that occasion provided that the amendments are announced to the patrons and documented, in writing, on the game schedule. If not otherwise prohibited by law, the licensed authorized organization may conduct a bingo game that was not originally listed on the game schedule if the game and the prize(s) to be awarded for that game are announced to the patrons prior to the start of the game and documented, in writing, on the game schedule. Upon completion of the bingo occasion, the final game schedule must properly account for all games played during that occasion and the prizes awarded for those games. The final game schedule shall be maintained pursuant to §402.500(a) of this title.

(i) Reservation of bingo cards. No licensed authorized organization may reserve, or allow to be reserved, any bingo card or cards for use by a bingo player.

(j) Bingo worker requirements

(1) Bingo staff and employees may not play bingo during an occasion in which the bingo staff or employees are conducting or assisting in the conduct of the bingo occasion.

(2) A bingo worker shall not:

(A) communicate verbally, or in any other manner, to the caller the number(s) or symbol(s) needed by any player to win a bingo game;

(B) require anything of value from players, other than payment, for bingo cards, electronic card minding devices, pull-tab bingo tickets, and supplies; or

(C) deduct any cash or portion of a winning prize other than the prize fee without the player's permission.

(k) Caller requirements. The caller shall:

- (1) be located so that one or more players can:

(A) observe the drawing of the ball from the bingo receptacle; and

(B) gain the attention of the caller when the players bingo;

(2) be the only person to handle the bingo balls during each bingo game;

(3) call all numbers and make all announcements in a manner clear and audible to all of the playing areas of the bingo premises;

(4) announce:

(A) prior to the start of the regular bingo game, the pattern needed to win and the prize. If the prize amount is based on sales or attendance, the prize amount must be announced prior to the end of the game;

(B) that the game, or a specific part of a multiple-part game, is closed after asking at least two (2) times whether there are any other bingos and pausing to permit additional winners to identify themselves;

(C) whether the bingo is valid and if not, that there is no valid bingo and the game shall resume. The caller shall repeat the last number called before calling any more numbers; and

(D) the number of winners for the game.

(5) return the bingo balls to the bingo receptacle only upon the conclusion of the game; and

(6) not use cell phones, personal digital assistants (PDAs), computers, or other personal electronic devices to communicate any information that could affect the outcome of the bingo game with anyone during the bingo occasion.

(l) Verification.

(1) Winning cards. The numbers appearing on the winning card must be verified at the time the winner is determined and prior to prize(s) being awarded in order to insure that the numbers on the card in fact have been drawn from the receptacle.

(A) This verification shall be done either in the immediate presence of one or more players at a table or location other than the winner's, or displayed on a TV monitor visible by all of the players or by an electronic verifier system visible by all the players.

(B) After the caller closes the game, a winning disposable paper card or an electronic representation of the card for each game shall also be posted on the licensed premises where it may be viewed in detail by the players until at least 30 minutes after the completion of the last bingo game of that organization's occasion.

(2) Numbers drawn. Any player may request a verification of the numbers drawn at the time a winner is determined and a verification of the balls remaining in the receptacle and not drawn.

(A) Verification shall take place in the immediate presence of the operator, one or more players other than the winner, and player requesting the verification.

(B) Availability of this additional verification, done as a request from players, shall be made known either verbally prior to the bingo occasion, printed on the playing schedule, or included with the bingo house rules.

(m) Each licensed authorized organization must establish and adhere to written procedures that address disputes. Those procedures shall be made available to the players upon request.

(n) The total aggregate amount of prizes awarded for regular bingo games during a single bingo occasion may not exceed \$2500. This subsection does not apply to:

(1) a pull-tab bingo game; or

(2) a prize of \$50 or less that is actually awarded in an individual game of regular bingo.

(o) For purposes of §2001.419 of the Occupations Code, a bingo occasion will be considered to have occurred on the date on which the occasion began.

§402.203. *Unit Accounting.*

(a) The provisions of this rule relate only to the accounting, reporting and operation of units in accordance with the Bingo Enabling Act and this chapter. Nothing in this rule shall be construed as a grant of authority or waiver of responsibility under federal law, including tax law, and other state law.

(b) Definitions. In addition to the definitions provided in §402.100 of this chapter, and unless the context in this section otherwise requires, the following definitions apply:

(1) Default--The term used to describe the status of a licensed authorized organization that does not timely pay for the sale or lease of bingo supplies or equipment as provided in Occupations Code, §2001.218.

(2) Net proceeds--The unit's gross receipts from bingo and gross rental income, if applicable, less prizes awarded and authorized expenses.

(c) Each unit will be assigned an identification number by the Commission.

(d) If a unit dissolves and starts another unit with the same organizations, for all intent and purposes, it is the same unit and is responsible for all liabilities and distributions owed by the prior unit.

(e) Unit Representation.

(1) All units, with the exception of a unit with a Unit Manager, must name a designated agent who is responsible for providing the Commission access to all inventory and financial records of the unit on request by the Commission.

(2) It is the responsibility of the unit's designated agent to provide information to the Commission on:

(A) the unit agreement or trust agreement;

(B) submission of all required forms;

(C) unit Quarterly Report; and

(D) unit's bingo records.

(3) The designated agent will make available all unit accounting records to any member of a licensed authorized organization whose organization is a member of the accounting unit within thirty (30) calendar days of the request.

(4) The designated agent will provide a copy of all unit accounting records to the bingo chairperson of a licensed authorized organization whose organization was a member of the accounting unit within thirty (30) calendar days of the date of separation.

(f) Unit's Use of Proceeds.

(1) All distributions of net proceeds of the unit shall be paid from the unit's bingo account to the account designated by the unit member. Each unit member is required to maintain adequate records

establishing that the use of such net proceeds is in accordance with Occupations Code §2001.454.

(2) All prize fees collected in accordance with Occupation Code, §2001.502 must be deposited in the unit's bingo account and paid from the unit's bingo account.

(g) Unit Transactions.

(1) Upon prior written consent by the Commission:

(A) a licensed authorized organization may make a sale of bingo cards, pull-tab bingo tickets, or a used bingo flash board or blower to a unit;

(B) a unit may make a sale of bingo cards, pull-tab bingo tickets, or a used bingo flash board or blower to a licensed authorized organization; or

(C) a unit may make a sale of bingo cards, pull-tab bingo tickets, or a used bingo flash board or blower to another unit.

(D) Within thirty (30) calendar days of initially joining a unit, the licensed authorized organization shall notify the Commission of the bingo cards and pull-tab bingo tickets transferred to the unit.

(2) If a member of a unit is in default, a person may not sell or transfer bingo equipment or supplies to the unit on terms other than immediate payment on delivery.

(h) Unit Recordkeeping.

(1) Each unit must file a quarterly report and any required supplements on forms prescribed by the Commission and maintain records to substantiate the contents of the reports.

(2) The unit must adhere to all applicable recordkeeping requirements in the Bingo Enabling Act and Charitable Bingo Administrative Rules.

(3) A member of a unit which is also licensed as a commercial lessor must report its rental income on the unit quarterly report.

(4) Each unit must maintain a log for each bingo occasion indicating the following:

(A) date of the occasion;

(B) licensed authorized organization conducting the bingo occasion; and

(C) operator on duty.

(i) Unit Bingo Account.

(1) The unit must establish and maintain one checking account designated as the "bingo account." The unit must maintain the "bingo account" in compliance with the same provisions of the Bingo Enabling Act and Charitable Bingo Administrative Rules applicable to a licensed authorized organization.

(2) The face of the checks must list the name of the unit, the words "Bingo Account", and the unit's identification number.

(3) Only the following may be deposited into the unit's bingo account:

(A) proceeds from the conduct of bingo;

(B) rent payments received by a unit member that is also a licensed commercial lessor; and

(C) funds transferred by new members or funds transferred in accordance with §402.202 of this subchapter (relating to Transfer of Funds).

(4) A separate deposit must be made for each bingo occasion conducted. Additionally, all sales and prizes must be recorded on the records for the occasion on which they occurred.

(5) All prize fees must be paid from the unit bingo account.

(j) Transfer of Funds to the Unit Account by new Members.

(1) A licensed authorized organization joining a unit may transfer funds from its previous bingo account into the unit bingo account at the time:

(A) the unit is formed;

(B) within 60 days of joining an existing unit;

(2) Any additional funds transferred to the unit bingo account must comply with §402.202 of this subchapter.

(3) Funds previously reported on a bingo quarterly report as charitable distributions may not be transferred to the unit bingo account.

(4) All net proceeds remaining in the organization's former bingo account at the time it joins a unit must:

(A) be disbursed by the last day of the quarter following the date the organization joined the unit; or

(B) transferred to the unit bingo account in accordance with paragraph (1) of this subsection.

(5) At the time an organization joins a unit, all of its bingo expenses must be paid from the unit bingo account including outstanding bingo expenses and subsequent expenses. The total amount of outstanding bingo expenses should be included in the amount of funds transferred at the time the unit is formed or at the time of joining an existing unit.

(6) If a unit member does not have sufficient funds to cover outstanding bingo expenses or the amount required to join the unit, the unit member's portion of the charitable distribution may be reduced until these obligations have been satisfied. This business practice may be used provided that:

(A) the exact terms are reflected in the unit agreement;

(B) a copy of the unit agreement is provided to the Commission; and

(C) the unit meets the charitable distribution requirement.

(7) If the organization transferred funds from its previous bingo account into the unit bingo account, the funds must be reported on the unit's "Texas Bingo Quarterly Report" for the quarter they were transferred and on the last "Texas Bingo Quarterly Report" the organization filed as a non-unit member.

(8) An organization that is required to file a Texas Bingo Quarterly Report for a period prior to joining a unit must file a Final Disposition of Bingo Proceeds in Bank Account reporting the final disposition of all proceeds in its bingo account. The form must be submitted with the unit's "Texas Bingo Quarterly Report" for that quarter and would be subject to all "Texas Bingo Quarterly Report" filing deadlines, requirements and penalties.

(k) Distribution of Funds Upon Withdrawal or Dissolution.

(1) An organization receiving a distribution of funds from the unit's bingo account upon leaving the unit, must classify the distribution as a charitable distribution on the unit's "Texas Bingo Quarterly Report".

(2) Funds distributed as a charitable distribution must be used for the charitable purpose of the organization in accordance with the Bingo Enabling Act and Charitable Bingo Administrative Rules and may not be used to join another unit.

(3) A licensed authorized organization joining or withdrawing from a unit at any time other than at the beginning or ending of a reporting quarter is responsible for filing a separate quarterly report for bingo activities conducted apart from the unit.

(l) Responsibilities of Unit Members.

(1) Each unit member organization is responsible for administering its own bingo occasions and for any violations of the Bingo Enabling Act or Charitable Bingo Administrative Rules that may take place.

(2) Each unit member organization is responsible for maintaining and retaining the bingo records relating to all aspects of its occasions up to and including the point at which the deposit is made into the unit's bingo account.

(3) Each unit member organization is liable for any bingo cash shortages, inventory shortages, or missing or deficient occasion deposits occurring in association with its bingo occasion conducted.

(4) Each unit member organization is responsible for distributing the bingo proceeds received from the unit for its authorized charitable purposes.

§402.205. *Unit Agreements.*

(a) Definition. The following term, when used in this section, shall have the following meaning: Unit Agreement--A unit accounting agreement or a trust agreement forming a unit.

(b) A trust agreement forming a unit must contain all required elements of a unit accounting agreement as specified under §2001.431(3) of the Act.

(c) Prior to operating as a unit, the unit must submit to the Commission a Texas Notice of Unit Accounting form and a copy of the executed unit agreement.

(d) Organizations may not act as a unit until all member organizations are licensed.

(e) A designated agent or unit manager must submit a Texas Notice of Change for Accounting Unit form and an amended unit agreement to the Commission seven calendar days prior to the date of a change in unit management.

(f) A unit may appoint a designated agent who must be a natural person.

(1) A designated agent for a unit must be current in the training required under §2001.107 of the Act and §402.103 of this title (relating to Training Program).

(2) A bookkeeper may be a business contact for a commercial lessor and a designated agent for an accounting unit provided that the bookkeeper is not an employee of the commercial lessor.

(g) The original unit or trust agreement must contain the following information:

(1) the unit member's taxpayer name which is the name on the organization's organizing instrument or the name of the organization as stated on its license to conduct bingo;

(2) the eleven-digit taxpayer number on file with the Commission;

(3) the designated agent information;

(4) the trustee organization if a trust agreement;

(5) whether inventory was transferred to the unit;

(6) the street address where the records of a dissolved unit will be maintained for the required four year retention period unless the unit agreement specifies that each unit member will receive a copy of the unit records;

(7) the method by which net proceeds and charitable purpose disbursements will be apportioned among the members;

(8) the length of time allowed for the distribution of funds, records, and inventory and allocation of authorized expenses and liabilities on dissolution or withdrawal of a member of the unit;

(9) the method of determining the amount of payment for inventory or disposition of inventory for dissolution or withdrawal of a member of the unit; and

(10) a unit agreement must be signed by the unit member organization's bingo chairperson or other officer or director.

(h) An organization joining a unit and possessing inventory must provide to the Commission a complete list of the inventory it has transferred to the unit within thirty (30) calendar days of joining the unit. It is the responsibility of the organization to ensure that the Commission timely received the inventory list.

(i) A written inventory of bingo equipment and supplies must include the following:

Figure: 16 TAC §402.205(i)

(j) Amendment to a unit agreement must contain:

(1) name of the unit;

(2) effective date of the change;

(3) specific section of the unit agreement being changed;

(4) new terms of the agreement which are in compliance with the Act and the Rules;

(5) signature of the bingo chairperson or other officer or director for each of the current unit members; and

(6) statement which binds the amendment to the original unit agreement creating one document unless the entire unit agreement is re-stated.

(k) A unit must submit an amended unit agreement within thirty (30) calendar days of the effective date of any change to the Act or the Rules which would affect the agreement's compliance with the new Act or Rules.

(l) If a unit agreement or an amendment to a unit agreement is found not to be in compliance with the Act or the Rules, the unit will have thirty (30) calendar days after being notified by the Commission to provide a revised compliant unit agreement or compliant amendment to a unit agreement.

(m) At the time when only one unit member remains in the unit, the designated agent will dissolve the unit within thirty (30) calendar days or the Commission will dissolve the unit.

§402.210. *House Rules.*

(a) House rules are rules adopted by the licensed authorized organization that have been developed by its officers to inform players in detail of how the organization will conduct its bingo games.

(b) The licensed authorized organization shall develop house rules.

(c) The licensed authorized organization shall adhere to its house rules.

(d) The operator on duty is responsible for ensuring house rules are consistently applied.

(e) The house rules must be posted at a location within the bingo premises that is easily accessible to all patrons and made available to anyone upon request.

(f) House rules shall not conflict with the Bingo Enabling Act or the Charitable Bingo Administrative Rules.

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

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General Counsel

Texas Lottery Commission

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



## SUBCHAPTER C. BINGO GAMES AND EQUIPMENT

### 16 TAC §§402.300, 402.301, 402.303, 402.324, 402.325

The following rule amendments are adopted under: (1) §2001.054 of the Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (2) §467.102 of the Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

#### §402.300. *Pull-Tab Bingo.*

(a) Definitions. The following words and terms, shall have the following meanings, unless the context clearly indicates otherwise:

(1) **Bingo Ball Draw**--A pulling of a bingo ball(s) to determine the winner of an event ticket by either the number or color on the ball(s).

(2) **Deal**--A separate and specific game of pull-tab bingo tickets of the same serial number and form number.

(3) **Face**--The side of a pull-tab bingo ticket, which displays the artwork of a specific game.

(4) **Flare**--A poster or placard that must display:

(A) a form number of a specific pull-tab bingo game;

(B) the name of the pull-tab bingo game;

(C) the total card count of the pull-tab bingo game;

(D) the cost per pull-tab bingo ticket;

(E) the number of prizes to be awarded and the corresponding prize amounts of the pull-tab bingo game; and

(F) the name of the manufacturer or trademark.

(5) **Form Number**--The unique identification number assigned by the manufacturer to a specific pull-tab bingo game. A form

number may be numeric, alpha, or a combination of numeric and alpha characters.

(6) **High Tier**--The two highest paying prize amounts as designated on the pull-tab bingo ticket and on the game's flare.

(7) **Last Sale**--The purchaser of the last pull-tab bingo ticket(s) sold in a deal with this feature is awarded a prize or a registration for the opportunity to win a prize.

(8) **Merchandise**--Any non-cash item(s), including bingo equipment, provided to a licensed authorized organization that is used as a prize.

(9) **Wheels**--Devices that determine event ticket winner(s) by a spin of a wheel.

(10) **Pay-Out**--The total sum of all possible prize amounts in a pull-tab bingo game.

(11) **Payout Schedule**--A printed schedule prepared by the manufacturer that displays:

(A) the name of the pull-tab bingo game;

(B) the form number of the pull-tab bingo game;

(C) the total card count of the pull-tab bingo game;

(D) the cost per pull-tab bingo ticket;

(E) the number of prizes to be awarded and the corresponding prize amount or jackpot for each category of the pull-tab bingo game;

(F) the number of winners for each category of prize;

(G) the profit of the pull-tab bingo game;

(H) the percentage of payout or the percentage of profit of the pull-tab bingo game; and

(I) the payout(s) of the pull-tab bingo game.

(12) **Payout Structure**--The printed information that appears on a pull-tab bingo ticket that shows the winnable prize amounts, the winning patterns required to win a prize, and the number of winners for each category of prize.

(13) **Prize**--An award of collectible items, merchandise, cash, bonus pull-tabs, and additional pull-tab bingo tickets, individually or in any combination.

(14) **Prize Amount**--The value of cash and/or merchandise which is awarded as a prize, as valued under §402.200(f) of this chapter. A collectible item is considered merchandise for determining allowable prize amounts.

(15) **Serial Number**--The unique identification number assigned by the manufacturer identifying a specific deal of pull-tab bingo tickets. A serial number may be numeric, alpha, or a combination of numeric and alpha characters.

(16) **Subset**--A part of a deal that is played as a game to itself or combined with more subsets and played as a game. Each subset may be designed to have:

(A) a designated payout; or

(B) a series of designated payouts. Subsets must be of the same form and serial number to have a combined designated payout or a series of designated payouts.

(17) **Symbol**--A graphic representation of an object other than a numeric or alpha character.

(18) Video Confirmation--A graphic and dynamic representation of the outcome of a bingo event ticket that will have no effect on the result of the winning or losing event ticket.

(b) Approval of pull-tab bingo tickets.

(1) A pull-tab bingo ticket may not be sold in the state of Texas, nor furnished to any person in this state nor used for play in this state until that pull-tab bingo ticket has received approval for use within the state of Texas by the Commission. The manufacturer at its own expense must present their pull-tab bingo ticket to the Commission for approval.

(2) All pull-tab bingo ticket color artwork with a letter of introduction including style of play must be presented to the Commission's Austin, Texas location for review. The manufacturer must submit one complete color positive or hardcopy set of the color artwork for each pull-tab bingo ticket and its accompanying flare. The color artwork may be submitted in an electronic format prescribed by the Commission in lieu of the hardcopy submission. The submission must include the payout schedule. The submission must show both sides of a pull-tab bingo ticket and must be submitted on an 8 1/2" x 11" size sheet. The color artwork will show the actual size of the ticket and a 200% size of the ticket. The color artwork will clearly identify all winning and non-winning symbols. The color artwork will clearly identify the winnable patterns and combinations.

(3) The color artwork for each individual pull-tab bingo ticket must:

(A) display in no less than 26-point diameter circle, an impression of the Commission's seal with the words "Texas Lottery Commission" engraved around the margin and a five-pointed star in the center;

(B) contain the name of the game in a conspicuous location on the pull-tab bingo ticket;

(C) contain the form number assigned by the manufacturer in a conspicuous location on the pull-tab bingo ticket;

(D) contain the manufacturer's name or trademark in a conspicuous location on the pull-tab bingo ticket;

(E) disclose the prize amount and number of winners for each prize amount, the number of individual pull-tab bingo tickets contained in the deal, and the cost per pull-tab bingo ticket in a conspicuous location on the pull-tab bingo ticket;

(F) display the serial number where it will be printed in a conspicuous location on the pull-tab bingo ticket. The color artwork may display the word "sample" or number "000000" in lieu of the serial number;

(G) contain graphic symbols that preserve the integrity of the Commission. The Commission will not approve any pull-tab bingo ticket that displays images or text that could be interpreted as depicting violent acts, profane language, or provocative, explicit, or derogatory images or text, as determined by the Commission. All images or text are subject to final approval by the Commission; and

(H) be accompanied with the color artwork of the pull-tab bingo tickets along with a list of all other colors that will be printed with the game.

(4) Upon approval of the color artwork, the manufacturer will be notified by the Commission to submit a specified number of tickets for testing. The tickets must be submitted for testing to the Commission at the manufacturer's own expense. If necessary, the Commission may request that additional tickets or a deal be submitted for testing.

(5) If the color artwork is approved and the pull-tab bingo tickets pass the Commission's testing, the manufacturer will be notified of the approval. This approval only extends to the specific pull-tab bingo game and the specific form number cited in the Commission's approval letter. If the pull-tab bingo ticket is modified in any way, with the exception of the serial number, index color, or trademark(s), it must be resubmitted to the Commission for approval. Changes to symbols require only an artwork approval from the Commission.

(6) The Commission may require resubmission of an approved pull-tab bingo ticket at any time.

(c) Disapproval of pull-tab bingo tickets.

(1) Upon inspection of a pull-tab bingo ticket by the Commission and if it is deemed not to properly preserve the integrity or security of the Commission including compliance with the art work requirements of this rule, the Commission may disapprove a pull-tab bingo ticket. All pull-tab bingo tickets that are disapproved by the Commission will cease to be allowed for sale until such time as the manufacturer complies with the written instructions of the Commission, or until any discrepancies are resolved. Disapproval of and prohibition to use, purchase, sell or otherwise distribute such a pull-tab bingo ticket is effective immediately upon notice to the manufacturer by the Commission. Upon receipt of such notice, the manufacturer must immediately notify the distributor and the distributor must immediately notify affected licensed authorized organizations to cease all use, purchase, sale or other distribution of the disapproved pull-tab ticket. The distributor must provide to the Commission, within 15 days of the Commission's notice to the manufacturer, confirmation that the distributor has notified the licensed authorized organization that the pull-tab ticket has been disapproved and sale and use of the disapproved ticket must cease immediately.

(2) If modified by the manufacturer all disapproved pull-tab bingo tickets may be resubmitted to the Commission. No sale of disapproved tickets will be allowed until the resubmitted tickets have passed security testing by the Commission. At any time the manufacturer may withdraw any disapproved pull-tab bingo tickets from further consideration.

(3) The Commission may disapprove a pull-tab bingo game at any stage of review, which includes artwork review and security testing, or at any time in the duration of a pull-tab bingo game. The disapproval of a pull-tab bingo ticket is administratively final.

(d) Manufacturing requirements.

(1) Manufacturers of pull-tab bingo tickets must manufacture, assemble, and package each deal in such a manner that none of the winning pull-tab bingo tickets, nor the location, or approximate location of any winning pull-tab bingo ticket can be determined in advance of opening the deal by any means or device. Nor should the winning pull-tab bingo tickets, or the location or approximate location of any winning pull-tab bingo ticket be determined in advance of opening the deal by manufacture, printing, color variations, assembly, packaging markings, or by use of a light. Each manufacturer is subject to inspection by the Commission, its authorized representative, or designee.

(2) All winning pull-tab bingo tickets as identified on the payout schedule must be randomly distributed and mixed among all other pull-tab bingo tickets of the same serial number in a deal regardless of the number of packages, boxes, or other containers in which the deal is packaged. The position of any winning pull-tab bingo ticket of the same serial numbers must not demonstrate a pattern within the deal or within a portion of the deal. If a deal of pull-tabs is packed in more than one box or container, no individual container may indicate that it

includes a winner or contains a disproportionate share of winning or losing tickets.

(3) Each deal of pull-tab bingo tickets must contain a packing slip inside the deal. This packing slip must substantiate the name of the manufacturer, the serial number for the specific deal, the date the deal was packaged, and the name or other identification of the person who packaged the deal.

(4) Each deal's package, box, or other container shall be sealed at the manufacturer's factory with a seal including a warning to the purchaser that the deal may have been tampered with if the package, box, or other container was received by the purchaser with the seal broken.

(5) Each deal's serial number shall be clearly and legibly placed on the outside of the deal's package, box or other container or be able to be viewed from the outside of the package, box or container.

(6) A flare must accompany each deal.

(7) The information contained in subsection (a)(3)(A), (B), (C), (D), and (F) of this section shall be located on the outside of each deal's sealed package, box, or other container.

(8) Manufacturers must seal or tape, with tamper resistant seal or tape, every entry point into a package, box or container of pull-tab bingo tickets prior to shipment. The seal or tape must be of such construction as to guarantee that should the container be opened or tampered with, such tampering or opening would be easily discernible.

(9) All high tier winning instant pull-tab bingo tickets must utilize a secondary form of winner verification.

(10) Each individual pull-tab bingo ticket must be constructed so that, until opened by a player, it is substantially impossible, in the opinion of the Commission, to determine its concealed letter(s), number(s) or symbol(s).

(11) No manufacturer may sell or otherwise provide to a distributor and no distributor may sell or otherwise provide to a licensed authorized organization of this state or for use in this state any pull-tab bingo game that does not contain a minimum prize payout of 65% of total receipts if completely sold out.

(12) A manufacturer in selling or providing pull-tab bingo tickets to a distributor shall seal or shrink-wrap each package, box, or container of a deal completely in a clear wrapping material.

(13) Pull-tab bingo tickets must:

(A) be constructed of cardboard and glued or otherwise securely sealed along all four edges of the pull-tab bingo ticket and between the individual perforated break-open tab(s) on the ticket. The glue must be of sufficient strength and type so as to prevent the separation of the sides of a pull-tab bingo ticket;

(B) have letters, numbers or symbols that are concealed behind perforated window tab(s), and allow such letters, numbers or symbols to be revealed only after the player has physically removed the perforated window tab(s);

(C) prevent the determination of a winning or losing pull-tab bingo ticket by any means other than the physical removal of the perforated window tab(s) by the player;

(D) be designed so that the numbers and symbols are a minimum of 2/32 (4/64) inch from the dye-cut window perforations;

(E) be designed so that the lines or arrows that identify the winning symbol combinations will be a minimum of 5/32 inch from

the open edge farthest from the hinge of the dye-cut window perforations;

(F) be designed so that highlighted "pay-code" designations that identify the winning symbol combinations will be a minimum of 3.5/32 inch from the dye-cut window perforations;

(G) be designed so that secondary winner protection codes appear in the left margin of the ticket, unless the secondary winner protection codes are randomly generated serial number-type winner protection codes. Randomly generated serial number-type winner protection codes will be randomly located in either the left or middle column of symbols and will be designed so that the numbers are a minimum of 3.5/32 inch from the dye-cut window perforations. Any colored line or bar or background used to highlight the winner protection code will be a minimum 3.5/32 (7/64) inch from the dye-cut window perforations;

(H) have the Commission's seal placed on all pull-tab bingo tickets by only a licensed manufacturer; and

(I) be designed so that the name of the manufacturer or its distinctive logo, form number and serial number unique to the deal, name of the game, price of the ticket, and the payout structure remain when the letters, numbers, and symbols are revealed.

(14) Wheels must be submitted to the Commission for approval. As a part of the approval process, the following requirements must be demonstrated to the satisfaction of the Commission.

(A) wheels must be able to spin at least four times with reasonable effort;

(B) wheels must only contain the same number or symbols as represented on the event ticket; and

(C) locking mechanisms must be installed on wheel(s) to prevent play outside the licensed authorized organization's licensed time(s).

(15) A manufacturer must include with each pull-tab bingo ticket deal instructions for how the pull-tab bingo ticket can be played in a manner consistent with the Bingo Enabling Act and this chapter. The instructions are not required to cover every potential method of playing the pull-tab bingo ticket deal.

(e) Sales and redemption.

(1) Instant pull-tab bingo tickets from a single deal may be sold by a licensed authorized organization over multiple occasions. A winning instant pull-tab bingo ticket must be presented for payment during the licensed authorized organization's bingo occasion(s) at which the instant pull-tab bingo ticket is available for sale.

(2) Except as provided by paragraph (3) or (4) of this subsection, the event used to determine the winner(s) of an event pull-tab bingo ticket deal must occur during the same bingo occasion at which the first event pull-tab bingo ticket from that deal was sold. A winning event pull-tab ticket must be presented for payment during the same bingo occasion at which the event occurred.

(3) For a licensed authorized organization that conducts bingo through a unit created and operated under Texas Occupations Code, Subchapter I-1, any organization in the unit may sell or redeem event pull-tab tickets from a deal on the premises specified in their bingo licenses and during such licensed time on consecutive occasions within one 24-hour period.

(4) For a licensed authorized organization that conducts bingo on consecutive occasions within one 24-hour period, the organ-

ization may sell or redeem event pull-tab tickets from a deal during either occasion.

(5) Licensed authorized organizations may not display or sell any pull-tab bingo ticket which has in any manner been marked, defaced, tampered with, or which otherwise may deceive the public or affect a person's chances of winning.

(6) A licensed authorized organization may not withdraw a deal of instant pull-tab bingo tickets from play until the entire deal is completely sold out or all winning instant pull-tab bingo tickets of \$25.00 prize winnings or more have been redeemed, or the bingo occasion ends.

(7) A licensed authorized organization may not commingle different serial numbers of the same form number of pull-tab bingo tickets.

(8) A licensed authorized organization may bundle pull-tab bingo tickets of different form numbers and may sell these bundled pull-tab bingo tickets during their licensed times.

(9) The licensed authorized organization's gross receipts from the sale of pull-tab bingo tickets must be included in the reported total gross receipts for the organization. Each deal of pull-tab bingo tickets must be accounted for in sales, prizes or unsold cards.

(10) A licensed authorized organization may use video confirmation to display the results of an event ticket pull-tab bingo game(s). Video confirmation will have no effect on the play or results of any ticket or game.

(11) A licensed authorized organization must sell the pull-tab ticket for the price printed on the pull-tab ticket.

(12) Immediately upon payment of a winning pull-tab ticket of \$25.00 or more, the licensed authorized organization must punch a hole with a standard hole punch through or otherwise mark or deface that winning pull-tab bingo ticket.

(f) Inspection. The Commission, its authorized representative or designee may examine and inspect any individual pull-tab bingo ticket or deal of pull-tab bingo tickets and may pull all remaining pull-tab bingo tickets in an unsold deal.

(g) Records.

(1) Any licensed authorized organization selling pull-tab bingo tickets must maintain a purchase log showing the date of the purchase, the form number and corresponding serial number of the purchased pull-tab bingo tickets.

(2) Licensed authorized organizations must show the sale of pull-tab bingo tickets, prizes that were paid and the form number and serial number of the pull-tab bingo tickets on the occasion cash report. The aggregate total sales for the licensed authorized organization must be recorded on the cash register or point of sale station.

(3) Licensed authorized organizations must maintain a perpetual inventory of all pull-tab bingo games. They must account for all sold and unsold pull-tab bingo tickets and pull-tab bingo tickets designated for destruction. The licensed authorized organization will be responsible for the gross receipts, prizes and prize fee associated with the unaccounted for pull-tab bingo tickets.

(4) As long as a specific pull-tab bingo game serial number is in play, all records, reports, receipts and redeemed winning pull-tab bingo tickets of \$25.00 or more relating to this specific pull-tab bingo game serial number must be retained on the licensed premises for examination by the Commission.

(5) If a deal is removed from play and marked for destruction then all redeemed and unsold pull-tab bingo tickets of the deal must be retained by the licensed authorized organization for a period of four years from the date the deal is taken out of play or until the destruction of the deal is witnessed by the Commission, its authorized representative or designee.

(6) Manufacturers and distributors must provide the following information on each invoice and other document used in connection with a sale, return, or any type of transfer of pull-tab bingo tickets:

(A) date of sale;

(B) quantity sold;

(C) cost per each deal of pull-tab bingo game sold;

(D) form number and serial number of each pull-tab bingo game's deal;

(E) name and address of the purchaser; and

(F) Texas taxpayer number of the purchaser.

(7) All licensed organizations must retain these records for a period of four years.

(h) Style of Play. The following pull-tab bingo tickets are authorized by this rule. A last sale feature can be utilized on any pull-tab bingo ticket.

(1) Sign-up Board. A form of pull-tab bingo that is played with a sign-up board. Sign-up board tickets that contain a winning numeric, alpha or symbol instantly win the stated prize or qualify to advance to the sign-up board. The sign-up board that serves as the game flare is where identified winning sign-up board ticket holders may register for the opportunity to win the prize indicated on the sign-up board.

(2) Sign-up Board Ticket. A sign up board ticket is a form of pull-tab bingo played with a sign-up board. A single window or multiple windows sign-up board ticket reveals a winning (or losing) numeric, alpha or symbol that corresponds with the sign-up board.

(3) Tip Board. A form of pull-tab game where perforated tickets attached to a placard that have a predetermined winner under a seal.

(4) Coin Board. A placard that contains prizes consisting of coin(s). Coin boards can have a sign-up board as part of its placard.

(5) Coin Board Ticket. A form of pull-tab bingo that when opened reveals a winning number or symbol that corresponds with the coin board.

(6) Event Ticket. A form of pull-tab bingo that utilizes some subsequent action to determine the event ticket winner(s), such as a drawing of ball(s), spinning wheel, opening of a seal on a flare(s) or any other method approved by the Commission so long as that method has designated numbers, letters, or symbols that conform to the randomly selected numbers or symbols. When a flare is used to determine winning tickets, the flare shall have the same form number and serial number as the event tickets. Pull-tab bingo tickets used as event tickets must contain more than two instant winners.

(7) Instant Ticket. A form of pull-tab bingo that has predetermined winners and losers and has immediate recognition of the winners and losers.

(8) Multiple Part Event or Multiple Part Instant Ticket. A pull-tab bingo ticket that is broken apart and sold in sections by a licensed authorized organization. Each section of the ticket consists of a

separate deal with its own corresponding payout structure, form number, serial number, and winner verification.

(9) **Jackpot Pull-Tab Game.** A style of pull-tab game that has a stated prize and a chance at a jackpot prize(s). A portion of the stated payout is contributed to the jackpot prize(s). Each jackpot is continuous for the same form number and continues until a jackpot prize(s) is awarded; provided that any jackpot prize(s) must not exceed the statutory limits.

(10) **Video Confirmation** shall be subject to Commission approval.

§402.301. *Bingo Card/Paper.*

(a) **Definitions.** The following words and terms, shall have the following meanings unless the context clearly indicates otherwise:

(1) **Bingo card/paper.** A hard card, disposable bingo card/paper, shutter card, or any other bingo card/paper approved by the Commission.

(2) **Bingo hard card.** A device made of cardboard, plastic or other suitable material that is intended for repeated use of the bingo card at multiple bingo occasions.

(3) **Bonus number(s).** A type of bingo card/paper that has an identified number or numbers which when called could result in an additional prize awarded.

(4) **Braille bingo card.** A device that contains raised symbols that reflect numbers on a reusable card.

(5) **Break-open bingo.** A type of disposable bingo card/paper that is sealed, that conceals the bingo card/paper face, that may be folded, and where the bingo game or a portion of the bingo game has been pre-called.

(6) **Case.** A receptacle that contains bingo card/paper products.

(7) **Cut.** Indicates the direction in which a sheet of faces will be cut from the master sheet of disposable bingo card/paper. A cut can be square, horizontal or vertical. The sheet of disposable bingo card/paper printed by the manufacturer of a specific group of disposable bingo card/paper that can be subdivided vertically or horizontally into sheets.

(8) **Defective.** Bingo card/paper missing specifications as originally approved by the Commission.

(9) **Disposable bingo card/paper.** A sheet or sheets of paper that is designed or intended for use at a single bingo occasion.

(10) **Double numbers.** Bingo card/paper with two numbers in each of the 24 spaces on each face.

(11) **Face.** A specific configuration of numbers, symbols, or blank squares imprinted on paper, cardboard, or other materials, and designed to be used to conduct bingo games. The bingo card/paper normally consists of five rows of five columns that may bear 24 pre-printed numbers between 1 and 75, symbols, or blank squares, except for the center square which is a free space and have the letters B-I-N-G-O appear in order above the five columns, with the exception of bonus number(s) that may appear on the bingo card/paper.

(12) **Free space.** The center square on the face of a bingo card/paper.

(13) **Loteria.** A type of bingo that utilizes symbols or pictures. Normally playing cards are utilized instead of numbered balls.

(14) **Multi-part card/paper.** A type of disposable bingo card/paper where the player selects the numbers. The player retains

one part of the disposable bingo card/paper while the licensee for the purpose of verification retains the other part of the disposable bingo card/paper.

(15) **On.** The number of faces imprinted on a sheet of disposal bingo card/paper after it is cut. The number of bingo card/paper faces normally precedes this term.

(16) **Pre-marked.** A bingo card/paper where one or more of the numbers are already marked or identified prior to the start of the game.

(17) **Product line.** A specific type of bingo card/paper, identifiable by features or characteristics that are unique when compared to other bingo card/paper manufactured by the manufacturer.

(18) **Serial number.** The unique identification number assigned by the manufacturer to a specific product line of bingo card/paper.

(19) **Series number.** The specific number assigned by the manufacturer that identifies the unique configuration of numbers that appears on an individual bingo card/paper face.

(20) **Sheet.** A single piece of paper that contains one or more disposable bingo card/paper faces.

(21) **Shutter card.** A device made of cardboard or other suitable material with plastic "shutters" that cover a number to simulate the number being daubed.

(22) **UP.** The number of sheets of disposable bingo paper glued together by the manufacturer. The number of sheets normally precedes this term.

(23) **UPS pads.** A bound collection of disposable bingo card/paper where each sheet in the collection is used to play a separate bingo game during the occasion.

(b) **Approval of bingo card/paper.**

(1) **Bingo card/paper** shall not be sold in the state of Texas, nor furnished to any person in this state, nor used for play in this state until the manufacturer of the bingo card/paper has received written approval for use within the state of Texas by the Commission. The manufacturer at its own expense must present the bingo card/paper to the Commission for approval.

(2) A letter of introduction including the style of play must be presented to Commission headquarters for review. The manufacturer must submit one complete color positive or sample for each type of bingo card/paper. The color positive or sample may be submitted in an electronic format prescribed by the Commission in lieu of the hard-copy submission. The color positive or sample bingo card/paper must:

(A) bear on the face of every disposable bingo card/paper used, sold, or furnished in this state an impression of the State of Texas and a star of five points encircled by olive and live oak branches and the words "Texas Lottery Commission," in accordance with detailed specification, available on request from the Commission. The face of each disposable bingo card/paper must also have printed on it in a conspicuous location the name of the manufacturer or trademark, which has been filed with the Commission; and

(B) contain the serial and series numbers assigned by the manufacturer on the face of each of the bingo card/paper, except in the case of Break-open bingo, which may contain the serial number assigned by the manufacturer on the outside so as not to be concealed.

(3) The bingo card/paper may contain numbers or symbols so long as the numbers or symbols preserve the integrity of the Commission. The Commission will not approve any bingo paper that dis-

plays images or text that could be interpreted as depicting violent acts, profane language, or provocative, explicit, or derogatory images or text, as determined by the Commission. All images or text are subject to final approval by the Commission.

(4) If the bingo card/paper is approved the manufacturer will be notified of the approval. This approval only extends to the specific bingo card/paper submitted and will be cited in the Commission's approval letter. If the bingo card/paper is modified in any way, with the exception of the color, series number, and/or serial number it must be resubmitted to the Commission for approval.

(5) The Commission may require resubmission of an approved bingo card/paper at any time.

(6) If an approved bingo card/paper is discontinued or no longer manufactured for sale in Texas, the manufacturer must provide the Commission written notification within ten days of discontinuance or cessation of manufacturing for sale in Texas. The written notification may be sent to the Commission via facsimile, e-mail, delivery services or postal delivery.

(c) Disapproval of bingo card/paper.

(1) After inspection of the bingo card/paper by the Commission, if the bingo card/paper does not comply with the provisions of this rule and/or the Bingo Enabling Act, the Commission shall disapprove the bingo card/paper and shall notify the manufacturer of the disapproval. Any bingo card/paper that is disapproved by the Commission may not be displayed, purchased or sold in the state of Texas. Disapproval of and prohibition to use, purchase, sell or otherwise distribute, is effective immediately upon notice to the manufacturer by the Commission.

(2) A manufacturer shall not sell, or furnish unapproved bingo card/paper to anyone, including another manufacturer or distributor for use in this state. A manufacturer shall not sell, or furnish bingo card/paper not bearing the seal of the Commission on the face of the bingo card/paper and the manufacturer's name or trademark to distributors for use in this state. This requirement also applies to any manufacturer who assembles bingo card/paper for sale in Texas.

(3) A licensed authorized organization shall not purchase, obtain, or use disapproved bingo card/paper in this state.

(4) If the manufacturer modifies the bingo card/paper that was previously disapproved, the manufacturer may resubmit the modified bingo card/paper for Commission approval. At any time the manufacturer may withdraw any disapproved bingo card/paper from further consideration.

(5) The Commission may disapprove the bingo card/paper at any stage of review. The disapproval of the bingo card/paper is administratively final.

(d) Manufacturing requirements.

(1) Bingo card/paper must comply with the following construction standards.

(A) The disposable paper used shall be of sufficient weight and quality to allow for clearly readable numbers and to prevent ink from spreading or bleeding through an UPS pad thereby obscuring other numbers or bingo card/paper;

(B) series numbers may be displayed in the center square of the bingo card/paper;

(C) numbers printed on the bingo card/paper shall be randomly assigned; and

(D) a manufacturer shall not repeat a serial number on or in the same product line, series, and color of bingo card/paper within one year of the last printing of that serial number.

(2) UPS pad must comply with the following construction standards.

(A) Bingo card/paper in UPS pads must only be glued and not stapled; and

(B) the disposable bingo card/paper assembled into UPS pads shall not be separated, with the exception of the multi-part disposable bingo card/paper, nor shall single sheets already manufactured be cut for sale for special bingo games.

(3) Inspection. The Commission, its authorized representative or designee may examine and inspect any individual bingo card/paper or series of bingo card/paper and may pull all remaining bingo card/paper in the inventory if the Commission, its authorized representative or designee determines that the bingo card/paper is defective or has not been approved.

(4) Packaging.

(A) Bingo card/paper shall be sealed in shrink wrap and be designed so that if the shrink wrapped bingo card/paper, package, or case was opened or tampered with, it would be easily noticed.

(B) Barcodes may be included on each bingo card/paper, package, or case provided the barcode contains information required in subparagraph (C).

(C) A label shall be placed on, or be visible from, the exterior of each package or case of bingo card/paper listing the following information:

- (i) Type of product;
- (ii) Series number of the UPS pads and/or sheet(s);
- (iii) Serial numbers of the top sheet of the UPS pads and/or sheet(s);
- (iv) Number of package or cases; and
- (v) Cut and color of paper.

(D) A packing slip shall be included with the package or case listing the following information:

- (i) Type of product;
- (ii) Number of UPS pads or sheets;
- (iii) Series number of the UPS pads and/or sheet(s);
- (iv) Serial numbers of the top sheet of the UPS pads and/or sheet(s);
- (v) Number of package or cases; and
- (vi) Cut and color of paper.

(e) Records.

(1) Manufacturers and distributors must provide the following information on each invoice and other documents used in connection with a sale, return or any other type of transfer of bingo card/paper:

- (A) Date of sale;
- (B) Quantity sold and number of faces per sheet;
- (C) Serial and series number of each bingo card/paper sold;

- (D) Name and address of the purchaser; and
- (E) Texas taxpayer identification number of the purchaser.

(2) Manufacturers and distributors must maintain standard accounting records that include but are not limited to:

- (A) Sales invoice;
- (B) Credit memos;
- (C) Sales journal; and
- (D) Purchase records.

(3) Licensed authorized organization.

(A) A licensed authorized organization must maintain a disposable bingo card/paper sales summary showing the organization's name, taxpayer number, distributor's taxpayer number, invoice date, distributor's name, invoice number, serial number, and series number. Also, the disposable bingo card/paper sales summary must include the number of faces (ON), number of sheets (UP), and color of borders.

(B) A licensed authorized organization must show the date of the occasion on which the disposable bingo card/paper was sold, a beginning inventory, along with the number of disposable bingo card/paper sold.

(C) A licensed authorized organization must maintain a perpetual inventory of all disposable bingo card/paper.

(D) Disposable bingo card/paper marked for destruction cannot be destroyed until witnessed by the Commission, its authorized representative or designee. All destruction documentation must be retained by the licensed organization for a period of four years from the date of destruction.

(4) All records identified in this subsection must be retained for a period of four years from creation of the records.

(f) Braille cards. Visually impaired, legally blind, or persons with disabilities may use their own personal Braille cards when the authorized organization does not provide Braille Cards. Players using Braille cards shall pay the equivalent price to participate in the game. The authorized organization shall have the right to inspect, and to reject any personal Braille card(s). Braille cards are not required to be approved by the Commission. Braille cards are not considered bingo equipment as defined by Occupations Code, §2001.002(5).

(g) Loteria. The symbols or pictures may be identified with Spanish subtitles and each of the 54 cards contains a separate and distinct symbol or picture. The 54 individual cards may be shuffled by the caller and then randomly drawn and announced to the players. The player uses a loteria card, which contains a minimum of sixteen squares and each square has one of the 54 symbols or pictures. There are no duplicate symbols or pictures on the loteria card. Loteria cards are not considered bingo equipment as defined by Occupations Code, §2001.002(5).

(h) Style of play and minimum standards of play. Prizes awarded on any style of play must be in accordance with Occupations Code, §2001.420.

(1) Player pick ems. A game of bingo where a player selects his/her own numbers on a multi-part duplicated disposable bingo card/paper. One copy is retained by the player and used as a bingo card/paper while the other copy is provided to the organization for verification purposes.

(2) Progressive bingo. A game of bingo that either the established prize amount or number of bingo balls and/or objects may be

increased from one session to the next scheduled session. If no player completes the required pattern within the specified number of bingo balls or objects drawn, the established prize amount may be increased but shall not exceed the prize amount authorized by the Bingo Enabling Act.

(3) Warm-up or early bird. A bingo game conducted at the beginning of a bingo occasion during the authorized organization's license times, in which prizes are awarded based upon a percentage of the sum of money received from the sale of the warm-up/early bird bingo card/paper.

(4) Shaded/Images bingo. Bingo card/paper that incorporates images where one or more squares on a bingo card/paper face are shaded. Each shaded image conforms to a pattern that must be achieved to win a bingo game or each shaded square may be used as a free space or a pattern for a bingo game.

(5) Bingo bonus number(s). A bingo game that has additional identified number(s) in excess of the 24 numbers that appear on the bingo card/paper face that, when called, could result in an additional prize awarded. The first player who matches the numbers shown on the bonus number(s) line within the specified number(s) called wins the additional prize.

(6) Multi level or multi tier. Bingo card/paper that has one or more additional lines of number(s) aside from the normal five lines that when played could result in an additional prize. Therefore, a multi level or multi tiered game could be played on this bingo card/paper that provides more opportunities to win.

(7) Multi color bingo. A bingo game played on a bingo card/paper with a different color for each bingo card/paper face. Prizes are awarded based on the color on which the bingo card/paper face that had the bingo.

(8) Pre-called. A game of bingo where the numbers for the game have been pre-called and identified prior to the start of the game.

(9) Double number. A bingo game played on a bingo card/paper that has two numbers per square. A player has two chances to daub each square.

(10) Break-open bingo. A type of bingo game played on sealed disposable bingo card/paper, where the bingo card/paper face is concealed, that may be folded, and where the bingo game has been pre-called. The bingo game may not be pre-called prior to the authorized organization's license time.

(11) Regular bingo. A bingo game played on the standard card face of five rows by five columns with 24 pre-printed numbers between 1 and 75, symbols, or blank squares and a free space square where the winner is determined by a predetermined pattern.

(i) Promotional bingo. This rule shall not apply to bingo card/paper furnished for use in a promotional bingo game conducted in accordance the Occupations Code, §2001.551. The card/paper may not contain the Commission seal.

(j) Exempt organization. This rule shall not apply to bingo card/paper furnished for use by an organization receiving an exemption from bingo licensing in accordance with the Occupations Code, §§2001.551(b)(3)(A) and (B). The bingo card/paper may not contain the Commission seal.

(k) House rules. A licensed authorized organization playing a style of bingo other than regular bingo must develop house rules on how the game is played. The house rules must be made available to the public.

(l) Card-minding devices. This rule shall be applicable only to bingo card/paper made of paper, cardboard or similar material approved by the Commission and shall not be applicable to the manufacture or use of card-minding devices addressed in §§402.321 - 402.328 of this chapter, with the exception of style of play as defined by this rule and approved by the Commission.

*§402.303. Pull-tab or Instant Bingo Dispensers.*

(a) Approval of Pull-tab or Instant Bingo Dispensers.

(1) No pull-tab or instant bingo dispenser may be sold, leased, or otherwise furnished to any person in this state or used in the conduct of bingo for public play unless and until a dispenser which is identical to the dispenser intended to be sold, leased, or otherwise furnished has first been presented to the Commission by its manufacturer, at the manufacturer's expense, and has been approved by the Commission for use within the state.

(2) An identical dispenser to the dispenser intended to be sold, leased, or otherwise furnished must be presented to the Commission in Austin, Texas for review. If granted, approval extends only to the specific dispenser model approved. Any modification must be approved by the Commission.

(3) Once a dispenser has been approved, the Commission may keep the dispenser for further testing and evaluation for as long as the Commission deems necessary.

(b) Manufacturing requirements.

(1) Manufacturers of pull-tab or instant bingo dispensers must manufacture each dispenser in such a manner to ensure that the dispenser dispenses a break-open bingo ticket, an instant bingo ticket, a pull-tab bingo game or instant bingo card only after the player inserts money into the dispenser, and that such ticket, game or card is the sole thing of value which may be redeemed for cash.

(2) Manufacturers of dispensers must manufacture each dispenser in such a manner to ensure that the device neither displays nor has the capability to determine whether a break-open bingo ticket, an instant bingo ticket, or a pull-tab bingo game is a winning or non-winning ticket.

(3) Manufacturers of dispensers must manufacture each dispenser in such a manner that any visual animation does not simulate or display rolling or spinning reels.

(4) Manufacturers of dispensers must manufacture each dispenser in such a manner that any stacking column is adjustable for varying lengths of break-open bingo tickets, instant bingo tickets, or pull-tab bingo games. As an option, a dispenser may use replaceable stacking columns that accommodate varying lengths of break-open bingo tickets, instant bingo tickets, or pull-tab bingo games. The dispenser must be adjustable for varying thicknesses of break-open tickets, instant bingo tickets, or pull-tab bingo games.

(5) If the Commission detects or discovers any problem with the dispenser that affects the security and/or integrity of the break-open bingo ticket, an instant bingo ticket, or a pull-tab bingo game or dispenser, the Commission may direct the manufacturer, distributor, or conductor to cease the sale, lease, or use of the dispenser, as applicable. The Commission may require the manufacturer to correct the defect, malfunction, or problem or recall the dispenser immediately upon notification by the Commission to the manufacturer. If the manufacturer, distributor, or conductor detects or discovers any defect, malfunction, or problem with the dispenser, the manufacturer, distributor, or conductor, as applicable, shall immediately remove the dispenser from use or play and immediately notify the Commission of such action.

(c) Conductor requirements.

(1) A conductor who has purchased or leased a dispenser may not allow another conductor to use such dispenser unless and until the former conductor has removed its break-open bingo tickets, instant bingo tickets, pull-tab bingo games and instant bingo cards from the dispenser.

(2) Each conductor who uses a dispenser at its bingo occasion shall affix to the dispenser an identification label which displays the conductor's name and Texas taxpayer identification number.

(3) The keys to open the locked doors to the dispenser's ticket dispensing area and coin and/or cash box must be in the possession and control of the operator in charge of the occasion, or someone designated by the operator. The operator in charge or the person designated shall present the keys to a Commission representative immediately upon request. The operator in charge shall be responsible for ensuring that the person so designated shall have the keys available at all times during the occasion.

(4) All break-open bingo tickets, instant bingo tickets, pull-tab bingo games or instant bingo cards in any one column or sleeve must have the same serial number, color description, and must be of the same kind and type.

(d) Inspection. The Commission or the Commission's authorized representative(s) may examine and inspect any individual pull-tab or instant bingo dispenser. Such examination and inspection includes immediate access to the dispenser and unlimited inspection of all parts of the dispenser.

(e) Records.

(1) All records, reports, and receipts relating to the pull-tab or instant bingo dispenser sales, maintenance, and repairs must be retained by the conductor on the premises where the conductor is licensed to conduct bingo or at a location designated in writing by the conductor for a period of four years for examination by the Commission. Any change in the designated location must be submitted to the Commission in writing at least ten days prior to the change.

(2) Manufacturers and distributors must provide and maintain for a period of four years the following information on each invoice or other document used in connection with a sale or lease, as applicable:

- (A) date of sale or lease;
- (B) quantity sold or leased;
- (C) cost per dispenser;
- (D) model and serial number of each dispenser;
- (E) name and address of the purchaser or lessee; and
- (F) Texas taxpayer identification number of the purchaser or lessee.

(f) Restrictions. No licensee may display, use or otherwise furnish a dispenser which has in any manner been marked, defaced, tampered with, or which otherwise may deceive the public or affect a person's chances of winning.

*§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 submits system to lab with letter outlining the card-minding system to be tested for approval in Texas;

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

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

(4) Manufacturer submits approval request with certification report to the Commission;

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

(6) The Commission shall either approve or disapprove the submission based on the test results and inform the manufacturer and lab 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;

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

(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.

(i) All card-minding system approvals issued by the Commission prior to the effective date of this section remain valid. Any subsequent changes or modifications to an approved system require compliance with this section.

*§402.325. Card-Minding Systems--Licensed Authorized Organization 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, date of the bingo occasion, and all other required information contained in §402.321(13) of this chapter.

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

(1) 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;

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

(3) The player must write his or her name, signature, and amount of refund on the back of the void receipt before a partial or full refund may be issued (unless the player refuses or is unable to provide the required information, in which case the licensed authorized organization shall so note on the back of the receipt); and

(4) 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 sales of electronic bingo cards and card-minding devices on the card-minding system point of sale station. 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, may be recorded on the card-minding point of sale station. However, if a licensed authorized organization utilizes a customer account on a card-minding system, that organization must record all sales of 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. Disposable cards, instant bingo pull-tab tickets and event bingo pull-tab tickets sales and bingo prizes awarded may be recorded at the end of the occasion.

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

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

(m) 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.

(n) 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.

(o) At the time a player establishes a customer account, the licensed authorized organization must notify the player that any unclaimed balances in the customer account at the end of the occasion will be retained by the organization. Information regarding the retention by the licensed authorized organization of the unclaimed balances in a customer account at the end of an occasion must be included in the information the organization must provide to its players pursuant to §402.200 of this chapter. Any unclaimed balances retained by the organization under this subsection shall be considered to be funds derived from the conduct of bingo, deposited into the organization's bingo account, and reported as other income. However, any unclaimed balances deposited into the organization's bingo account are restricted to the organization's charitable purposes, as provided by Texas Occupations Code §2001.453(2) and §2001.454.

(1) For a licensed authorized organization that conducts bingo through a unit created and operated under Texas Occupations Code Chapter 2001, Subchapter I-1, any balances on a customer account may be used by the customer for any bingo occasion conducted on the same day of any of the organizations in the unit on the premises specified in their bingo licenses.

(2) For a licensed authorized organization that conducts bingo on consecutive occasions within one 24-hour period, any balances on a customer account may be used by the customer during either occasion.

(p) A licensed authorized organization must comply with the requirements in §402.200(b)(6) of this chapter regarding all bingo equipment malfunctions, including customer accounts on a card-minding system.

(q) Each licensed authorized organization must ensure that the card-minding system records the actual selling price of each card-minding device and electronic bingo card sold.

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

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## SUBCHAPTER D. LICENSING REQUIREMENTS

### 16 TAC §§402.400, 402.404, 402.407, 402.411, 402.420, 402.424, 402.451

The following rule amendments are adopted under: (1) §2001.054 of the Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (2) §467.102 of the Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

#### §402.400. General Licensing Provisions.

(a) Any person who wants to engage in a bingo related activity shall apply to the Commission for a license. The application must be on a form prescribed by the Commission and all required information must be legible, correct and complete. An application is incomplete if the following information is not provided:

- (1) All information requested on the application form and applicable schedules;
- (2) All supplemental information requested during the pre-licensing investigation period;
- (3) The applicable license fee;
- (4) The required bond or other security, if applicable; and
- (5) Authorized signatures as required by the Commission.

(b) Information submitted by an applicant in the form of an applicable schedule shall be considered to be part of the application. Supplemental information should be submitted on a form prescribed by the Commission and all information required must be correct and complete.

(c) Information submitted by an applicant in a format other than an applicable schedule must be legible and must include the following:

- (1) the name and address of the organization as it appears on the application;
- (2) the Texas taxpayer identification number; or, if sole owner, the individual's social security number;
- (3) a statement identifying the information submitted;
- (4) the signature, printed name and telephone number of the person authorized to submit the information; and

(5) all supplemental information requested during the pre-licensing investigation period.

(d) Within 21 calendar days after the Commission has received an original application, the Commission will review the application and notify the applicant if additional information is required.

(e) If an application is incomplete, the Commission will notify the applicant. The applicant must provide the requested information within 21 calendar days of such notification. Failure to provide the requested information within the 21 calendar day time line may result in the denial of the license application.

(f) Prior to the issuance of a license, the Commission may require an applicant to attend a pre-licensing interview. The Commission will identify the person or persons for the applicant who must attend the pre-licensing interview. The pre-licensing interview will consist of, at a minimum, the following:

- (1) review of the Bingo Enabling Act;
- (2) review of the Charitable Bingo Administrative Rules;
- (3) licensee responsibilities;
- (4) process pertaining to the different types of license application;
- (5) bookkeeping and record keeping requirements as it involves bingo; and
- (6) a statement from the person or persons attending the pre-licensing interview that they are aware of and will comply with the provisions of the Bingo Enabling Act and Charitable Bingo Administrative Rules.

(g) The Commission may deny an application based on information obtained that indicates non-compliance with the provisions of the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules in connection with a pre-licensing interview and/or location inspection.

(h) Each licensed authorized organization and organization issued a temporary authorization is required to file timely and complete required reports, as applicable to the type of current license held.

(i) A license applicant may withdraw an application at any time prior to the approval or denial of the application. Once the written request for withdrawal is received by the Commission, all processing of the application will cease and the withdrawal is considered final. License fees submitted with an application that is subsequently withdrawn are not eligible for refund. If the organization wants to reapply for a license, a complete new application and new license fee are required.

(j) Voluntary surrender of a license.

(1) A licensee may surrender its license for cancellation provided it has completed and submitted to the Commission the prescribed form.

(2) If surrendering a license to conduct bingo, the prescribed form must be signed by the bingo chairperson.

(3) If surrendering any other type of license, the prescribed form must be signed by the sole owner, or by two officers, directors, limited liability corporation members, or partners of the organization.

(4) The cancellation of the license shall be final and effective upon receipt by the Charitable Bingo Operations Division of a copy of the resolution, or other authoritative statement of the licensee, requesting cancellation of the license and providing a requested effective date.

(A) The cancellation is effective as of the date identified in the letter provided that the date has not passed.

(B) If no date is identified in the letter, or the date has passed, the effective date shall be the date the Commission receives the letter.

(5) Notwithstanding cancellation of the license, the licensee must file all reports, returns and remittances required by law.

(6) The licensee shall surrender the license to the Commission on the effective date of the surrender.

(7) The Commission will send the licensee a letter confirming the surrender and resulting cancellation of the license.

(k) Administrative Hold. A licensed authorized organization or commercial lessor, other than an association of licensed authorized organizations, may request to place its regular license in administrative hold, but only at the time of license renewal, as provided in §402.411 of this Chapter.

(1) The placement of a license in administrative hold shall be effective on the first day of the license period for which the administrative hold is requested.

(2) The licensee shall submit the license in administrative hold, or a certified statement that the license is not available, to the Commission no later than seven (7) calendar days after the effective date of the placement of the license in administrative hold.

(3) Once the license has been placed in administrative hold, all bingo activity (i.e. leasing, conducting bingo) must cease until the licensee files an amendment and the amended license is issued by the Commission and received by the licensee. A licensed authorized organization with its regular license in administrative hold may not conduct bingo under a temporary license.

(4) Notwithstanding placement of the license in administrative hold, the licensee must file with the Commission:

(A) all applicable reports, returns and remittances required by law; and

(B) a timely and complete application for renewal of the license each time the license is ripe for renewal.

(5) If at the time of license renewal a licensed authorized organization does not have a designated playing location, that license will be placed in administrative hold.

(6) Except for licensed commercial lessors subject to §2001.152(b) of the Occupation Code, a license may not be in administrative hold for more than twelve (12) consecutive quarters.

(7) The fee for a license in administrative hold is set in §402.404(d)(3) of this Chapter.

(8) A license may be removed from administrative hold at any time during a license period. To remove a license from administrative hold, the licensee must file a license amendment application as provided in §2001.306 of the Occupations Code and §402.410 of this Chapter.

(1) Each person required to be named in an application for license under the Bingo Enabling Act other than a temporary license will have a criminal record history inquiry at state and/or national level conducted. Such inquiry may require submission of fingerprint card(s). FBI fingerprint cards are required for an individual listed in an application for a distributor or manufacturer's license and for an individual listed on an application who is not a Texas resident. A criminal record history inquiry at the state and/or national level may be conducted on

the operator and officer or director required to be named in an application for a non-annual temporary license under the Bingo Enabling Act.

(m) Representation; personal receipt of documents. For purposes of this subsection, an individual shall be recognized by the Commission as an applicant or licensee's authorized representative only if the applicant or licensee has filed with the Commission a form prescribed by the Commission identifying the individuals currently listed as directors, officers, or operators, or if they are identified on the completed Authorization of Representation for Bingo Licenses form. A person is not an authorized representative of the applicant or licensee unless specifically named on a form prescribed by the Commission as part of the application, or in the Authorization of Representation for Bingo Licenses form that is on file with the Commission. Only those persons specifically named on a form prescribed by the Commission or in the Authorization of Representation for Bingo Licenses form as an authorized representative shall be recognized by the Commission concerning any matter relating to the licensing process or license. Only the applicant or licensee or its authorized representative may receive from the Commission documents relating to the application or license without being required to submit a request under the Public Information Act.

(n) Eligibility determination pending identification of playing location, days, times, and starting date.

(1) An organization may submit an original application for a license to conduct bingo without including information on intended playing location, days, times, and starting date if requesting a determination of eligibility status.

(2) All other information requested on the application and the accompanying supplements must be complete and in compliance with all other requirements of the Act and Rules before the Commission determines eligibility status.

(3) An organization requesting a determination of eligibility status must submit with its application a non-refundable processing fee in an amount equal to a Class A regular license fee, which will be applied towards the organization's license fee should the organization become licensed.

(4) Upon a determination that the requirements in paragraph (2) and (3) of this subsection have been met, the Commission will provide to the authorized organization written notice of the eligibility status of the applicant.

(5) Within 180 calendar days of the date the Commission provides notice of the eligibility status of an applicant, the authorized organization must inform the Commission on a form prescribed by the Commission of the intended playing location, days, times, and starting date of the occasions. If the authorized organization fails to provide the information to the Commission within 180 calendar days, the Commission will proceed with denial of the application.

(6) After review of the applicant's submitted intended playing location, days, times, starting date, and upon request by the applicant, the Commission may issue temporary authorization to conduct bingo for a period of 60 calendar days if the Commission determines that the intended playing location, days, times, and starting date comply with the Bingo Enabling Act.

(7) In order to receive a regular license to conduct bingo, an authorized organization that has received an eligibility determination and informed the Commission of its intended playing location, days, times, and starting date of the occasions must also submit the required bond or security, any remainder of the appropriate license fee, a Texas Request for Licensure for Eligible Organization form, certified meeting minutes stating that the organization voted to conduct bingo at the

licensed location, and confirmation of the accuracy of information provided on the application to conduct bingo. The Commission will notify the applicant of the required license fee and bond amounts within 21 calendar days of receipt of the organization's intended playing location, days, times, and starting date.

*§402.404. License and Registry Fees.*

(a) Definitions.

(1) Escrow Account--An account established with the Commission by an authorized organization in which funds may be deposited for the advance payment of temporary licenses and license amendments.

(2) License period--For purposes of Texas Occupations Code §2001.104 and §2001.158, the term "license period" means the four full calendar quarters immediately preceding the license end date.

(3) Regular License Fee Amount:

(A) The annual fee for a license to conduct bingo shall be as follows:

(i) Class A (annual gross receipts of \$25,000 or less) - \$132;

(ii) Class B (annual gross receipts of more than \$25,000 but not more than \$50,000) - \$264;

(iii) Class C (annual gross receipts of more than \$50,000 but not more than \$75,000) - \$396;

(iv) Class D (annual gross receipts of more than \$75,000 but not more than \$100,000) - \$528;

(v) Class E (annual gross receipts of more than \$100,000 but not more than \$150,000) - \$792;

(vi) Class F (annual gross receipts of more than \$150,000 but not more than \$200,000) - \$1,188;

(vii) Class G (annual gross receipts of more than \$200,000 but not more than \$250,000) - \$1,584;

(viii) Class H (annual gross receipts of more than \$250,000 but not more than \$300,000) - \$1,980;

(ix) Class I (annual gross receipts of more than \$300,000 but not more than \$400,000) - \$2,640;

(x) Class J (annual gross receipts of more than \$400,000) - \$3,300.

(B) The annual fee for a commercial lessor license shall be as follows:

(i) Class A (annual gross rentals from licensed organizations of not more than \$12,000) - \$132;

(ii) Class B (annual gross rentals from licensed organizations of more than \$12,000 but not more than \$20,000) - \$264;

(iii) Class C (annual gross rentals from licensed organizations of more than \$20,000 but not more than \$30,000) - \$396;

(iv) Class D (annual gross rentals from licensed organizations of more than \$30,000 but not more than \$40,000) - \$528;

(v) Class E (annual gross rentals from licensed organizations of more than \$40,000 but not more than \$50,000) - \$792;

(vi) Class F (annual gross rentals from licensed organizations of more than \$50,000 but not more than \$60,000) - \$1,188;

(vii) Class G (annual gross rentals from licensed organizations of more than \$60,000 but not more than \$70,000) - \$1,584;

(viii) Class H (annual gross rentals from licensed organizations of more than \$70,000 but not more than \$80,000) - \$1,980;

(ix) Class I (annual gross rentals from licensed organizations of more than \$80,000 but not more than \$90,000) - \$2,640;

(x) Class J (annual gross rentals from licensed organizations of more than \$90,000) - \$3,300.

(C) Manufacturer's License. The annual fee for a manufacturer's license shall be \$3,000.

(D) Distributor's License. The annual fee for a distributor's license shall be \$1,000.

(b) Original License Application.

(1) License to Conduct Charitable Bingo.

(A) An initial license fee for an original license to conduct charitable bingo or an original license to lease bingo premises submitted by an authorized organization that does not have a license issued under the Bingo Enabling Act, must be paid from the organization's general fund bank account.

(B) An applicant may be required to submit additional license fees if the estimated gross receipts used to calculate the license fee are not reasonable when compared to gross receipts of other organizations with the same number of occasions conducting bingo at the same bingo premises. If no such organizations exist, the Charitable Bingo Operations Division may use gross receipts amounts from organizations with the same number of occasions conducting bingo at similarly situated bingo premises. These amounts are used to establish the gross receipts amount upon which the applicant's license fee is based and must be submitted.

(2) Commercial License to Lease Bingo Premises.

(A) License fees for an original license to lease bingo premises submitted by an authorized organization licensed to conduct bingo must be paid from the organization's bingo bank account.

(B) An applicant may be required to submit additional license fees if the estimated gross rental income used to calculate the license fee is not reasonable when compared to the gross rental income at similarly situated bingo premises. These comparative amounts are used to establish the gross rental income amount upon which the applicant's license fee is based and must be submitted.

(3) Understating the anticipated gross receipts or rental income from a licensed activity for any purpose by an applicant or licensed entity may be grounds for administrative disciplinary action against the licensee.

(c) Changes Within Six Months of a Licensed Authorized Organization's License Term.

(1) An organization shall re-estimate its annual gross receipts and submit any balance due in license fee amount if there is an increase in the number of bingo occasions conducted within six months of the issuance of the original license to conduct bingo.

(2) An organization shall re-estimate its annual gross rental income and submit any balance due in license fee amount if there is an increase within six months of the issuance of the original lessor license in:

(A) the number of organizations conducting bingo at a licensed location; and

(B) the number of bingo occasions conducted at the licensed location.

(d) License Renewal Fee.

(1) The amount of license fee to be paid upon renewal of a license to conduct bingo or license to lease bingo premises is the recalculated license fee amount calculated for the preceding license period.

(2) If the recalculation of the license fee amount for the previous license period reflects an underpayment of the license fee amount for that license period, the incremental difference must be submitted by the organization within 30 days of the license expiration date and before the license may be renewed.

(3) Upon written request by an organization to renew its license to conduct bingo or license to lease bingo premises that is in or going in administrative hold, the organization shall pay a Class A license renewal fee, plus any amount due under paragraph (2) of this subsection, in lieu of the recalculated fee amount from the preceding license period.

(4) The Commission may require an amount of license fee in addition to the recalculated fee at renewal if there is a change in:

(A) playing location;

(B) rental amount per occasion; or

(C) increase in the number of occasions bingo is conducted.

(5) If an organization requests its license be placed in administrative hold upon the renewal of the license and submits the requisite fee as set in paragraph (3) of this subsection, the Commission may require an organization to submit an additional license fee when it files an application to amend a license to conduct charitable bingo if the organization amends its license to begin conducting bingo within the first six months of the license term.

(6) If a commercial lessor or a licensed authorized organization which leases bingo premises requests its license be placed in administrative hold upon the renewal of its lessor license and submits the requisite fee as set in paragraph (3) of this subsection, the Commission may require the commercial lessor or licensed authorized organization to submit an additional license fee when it files the application to amend a commercial license to lease bingo premises if the commercial lessor or licensed authorized organization amends its license to begin leasing bingo premises within the first six months of the license term.

(e) Two-Year License Fee Payments. An applicant for a license issued under the Bingo Enabling Act that is effective for two years must pay an amount equal to two times the amount of the annual license fee, as set in §402.404(a)(3).

(f) Regular License Fee Recalculation.

(1) For the purpose of determining the license fee recalculation for a license to conduct bingo or license to lease bingo premises, the annual gross receipts or gross rental income, as applicable, shall be based on the four consecutive quarterly returns due immediately prior to the license expiration date.

(2) For the purposes of determining the license fee recalculation for a two year license to conduct bingo or license to lease bingo premises, each year of the license period shall be recalculated separately. The final recalculated fee will be the total of the yearly license fees. The annual gross receipts or gross rental income, as applicable, shall be based on the four consecutive quarterly returns due immediately prior to the first year period and the four consecutive quarterly returns due immediately prior to the license expiration date of the second year period.

(3) For accounting units, gross receipts used to recalculate the license fee apportioned to a unit member will be calculated by dividing the unit's gross receipts by the total number of members during the quarter unless the accounting unit bases its distribution of proceeds on the number of occasions.

(4) For accounting units who base their distribution of proceeds on the number of occasions a member conducts, the gross receipts used to recalculate the license fee apportioned to a unit member will be calculated by dividing the unit's gross receipts by the total number of occasions conducted by all unit members and then multiplying by the number of occasions reported by the unit member.

(5) If a quarterly return is due less than 50 days prior to a license expiration, the gross receipts or gross rental income reported on that return will not be available to be used to calculate the annual gross receipts or gross rental income. Instead, the gross receipts or gross rental income reported on the four immediately preceding quarterly returns, as applicable, will be used to recalculate the organization's license fee.

(6) If an organization fails to file a report for one or more quarter(s) of the license period, or if there are not four quarters available for any other reason, the Commission shall average the quarterly gross receipts or gross rental income for the quarter(s) reported to determine the organization's license fee.

(7) License no longer exists.

(A) Notwithstanding the fact that an organization conducted bingo under a license that ceased to exist for whatever reason, the organization must submit the recalculated license fee for the period that the organization conducted bingo and collected gross receipts.

(B) Notwithstanding the fact that an organization which leased bingo premises under a license that ceased to exist for whatever reason, the organization must submit the recalculated license fee for the period that the organization leased the premises and collected gross rental income.

(C) If an organization ceases to be licensed for whatever reason, all gross receipts or gross rental income collected (from the period after the last quarterly return used to recalculate the license fee for the prior year) is used to recalculate the final license fee due. If the organization fails to file a return for any required period(s), an estimated return will be used. The organization shall submit any balance due after license fee recalculation.

(8) The Commission may recalculate license fees for up to four consecutive immediately preceding license periods if a change in an organization's reported gross receipts or gross rental income occurs as a result of an audit, or if the original recalculation was determined by using estimated gross receipts or gross rental income.

(9) If there is a change in an organization's reported gross receipts or gross rental income, the organization may submit a written request to the Charitable Bingo Operations Division to recalculate its license fees for up to four immediately preceding license periods.

(10) If an organization issued a license that is effective for two years ceases to be licensed prior to conducting bingo in a quarter used to calculate the second year fee, a Class A license fee will apply for the second year of the license for the purposes of recalculating the license fee.

(g) Overpayment of License Fee.

(1) An overpayment of a bingo conductor's or commercial lessor's annual license fee may occur either through a recalculation of the license fee pursuant to subsection (f) of this section, or if a licensee

or accounting unit mistakenly submits more money than is actually required for the license fee(s). An overpayment of a manufacturer's or distributor's annual license fee occurs if a licensee mistakenly submits more money than is actually required for the license fee(s). The Commission will determine whether an overpayment has occurred on a case by case basis.

(2) Upon a determination that an overpayment of an annual license fee has occurred, the Charitable Bingo Operations Division shall credit the overpayment to the licensee. Overpayments credited to a licensee may be used for the licensee's outstanding bingo liabilities, including subsequent license fees, but the credits must be used within four years of the latest date on which the annual license fee was due. Overpayments credited to a licensee remain eligible for refund under subsection (h) of this section until the credits are used or the four year refund period expires, whichever comes first.

(3) Overpayments of annual license fees must either be used as credit or claimed for refund within four years of the latest date on which the annual license fees were due. If a licensee fails to use the credits or request a refund within this time period, the overpayments will be retained by the Commission.

(4) All regular license fee overpayments submitted by an accounting unit for a unit member are only eligible to be credited or refunded to that unit member.

(h) Refunds.

(1) Except as provided by this subsection, regular license fees submitted to the Commission are not eligible for refund.

(2) A current or former licensee that submits an overpayment of a regular license fee may be eligible to receive a refund of that overpayment, provided that the licensee or former licensee:

(A) submits a complete written request for a refund to the Commission within four years of the latest date the regular license fees were due;

(B) does not have any other outstanding bingo liabilities to the State; and

(C) if applicable, files all necessary quarterly reports.

(3) Upon the receipt and review of a timely and sufficient refund request, the Commission may either deny the refund request or certify to the Comptroller of Public Accounts that a refund is warranted. Pursuant to Government Code §403.077, if the Commission certifies to the Comptroller of Public Accounts that a refund is warranted, the ultimate decision on whether to grant the refund will still be made by the Comptroller of Public Accounts.

(i) Transfer of Commercial License to Lease Bingo Premises.

(1) All gross rental income collected in connection with a license to lease bingo premises that has been transferred during the term of the license shall be used to recalculate the license fee.

(2) A license fee credit in connection with a license to lease bingo premises that was transferred during the term of the license shall be credited to the current license holder at the time of license renewal.

(3) A license fee balance due for a license to lease bingo premises that was transferred during the term of the license shall be the liability of the current license holder at the time of license renewal.

(j) Escrow Accounts.

(1) An authorized organization may submit funds to the Commission to be placed in an escrow account and used for future temporary license fees or license amendment fees. However, any funds

placed in, or otherwise credited to, an escrow account are not eligible for refund and must be used by the end of the licensee's subsequent license period. If a licensed authorized organization fails to use escrow account funds within this time period, the funds will be retained by the Commission.

(2) An accounting unit may submit funds to be placed in a unit member's escrow account and used for that member's future temporary license fees or license amendment fees. At the time of submission of the funds, the accounting unit must designate in writing the unit member's escrow account in which the funds will be placed. Funds placed in a unit member's escrow account are not eligible for refund and may not be transferred to another unit member's escrow account or otherwise credited to another unit member.

(k) Temporary Authorization to Conduct Bingo.

(1) The amount of gross receipts collected in connection with a temporary authorization is used to recalculate the regular license fee.

(2) An organization conducting bingo pursuant to a temporary authorization must comply with the same statutory and administrative rule requirements, annual gross receipts fee schedule, and quarterly return filing requirements as an organization which has a regular license to conduct bingo.

(3) If an organization conducting bingo pursuant to a temporary authorization does not become licensed to conduct bingo, the fee for the temporary authorization will be determined by the fee schedule for a license to conduct bingo set out in subsection (a)(3)(A) of this section.

(l) Registry of Approved Bingo Workers.

(1) A fee of \$25 must accompany each Texas Application for Registry of Approved Bingo Workers, and each application to renew listing on the registry, submitted to the Commission. The Commission will not consider or act upon an application until the requisite fee is paid.

(2) Except as authorized by the Charitable Bingo Operations Director, or their designee, an application to renew listing on the registry received by the Commission more than 60 days prior to the expiration date of the current registry listing will be returned unprocessed by the Commission to the sender.

§402.407. Unit Manager.

(a) Notification.

(1) An individual shall not provide services as a unit manager to licensed authorized organizations that have formed a unit until the following occurs:

(A) the Commission receives the unit accounting agreement executed by all members of the unit with the name of the unit manager designated therein;

(B) the individual holds a unit manager license issued by the Commission;

(C) the individual posts a bond or security, for each unit, as prescribed by §402.603 of this chapter; and

(D) the individual provides information to the Commission relating to the location where the unit manager services will be performed and where the records will be maintained.

(2) A unit manager shall provide written notification to the Commission of any change in the information in the unit manager's most recent application for a unit manager license or renewal. The unit

manager shall notify the Commission of the change in the information not later than the 15th day after the date of the change.

(b) Annual License Fee for a Unit Manager. The non refundable annual license fee for a unit manager may not exceed \$250.00.

§402.411. License Renewal.

(a) Any license issued under the Bingo Enabling Act expires one calendar year or two calendar years from the first date of the license period, as specified on the license.

(b) In order to renew a license issued under the Bingo Enabling Act, a licensee must timely file an application for renewal with the Commission. The renewal application must be on a form prescribed by the Commission. The Commission will not approve a renewal application until the application is complete and the licensee submits the requisite fee pursuant to §402.404 of this title (relating to License and Registry Fees). A licensee is solely responsible for the timely filing of an application for renewal of its regular license.

(c) The Commission may notify licensees regarding the expiration of their license(s) and the potential for renewal. Failure of the licensee to receive the renewal notice(s) mailed by the Commission is not a mitigating circumstance for untimely filing of a renewal application.

(d) To be timely filed:

(1) the renewal application and payment of the estimated license fee must be received by the Commission no later than the license expiration date; or

(2) the renewal application's envelope postmarked date must clearly show a date that is no later than the license expiration date, unless the expiration date is a Saturday, Sunday, or legal holiday, in which event the application is due the next day which is not a Saturday, Sunday, or legal holiday; or

(3) an application bearing no legible postmark, postal meter date, or date of delivery to the common carrier shall be considered to have been sent seven calendar days before receipt by the Agency, or on the date of the document if the document date is less than seven days earlier than the date of receipt.

(e) Notwithstanding subsection (b) of this section, if a renewal application is not timely filed, a licensee may renew their license by filing a complete application for renewal with the Commission and submitting the requisite license fee and late license renewal fee. The late license renewal fee is based on the estimated license fee for the renewal period. Penalty amounts are calculated as follows:  
Figure: 16 TAC §402.411(e)

(f) The late license renewal fee is due within 14 calendar days of the date of the written notification by the Commission of the amount due.

(g) The Commission will not issue a temporary license to a licensed authorized organization that files its renewal application late until the Commission receives the late license renewal fee.

(h) The Commission will not issue an amended license to a licensed authorized organization or licensed commercial lessor that files its renewal application late until the Commission receives the late license renewal fee.

(i) A late license renewal fee is not refundable.

(j) License renewal applications received more than 60 days after the license expiration date will be returned unprocessed by the Commission to the sender.

(k) To be complete, an application for renewal must contain all information that is required to be provided in or with the initial license application, as well as any other information required by the Commission.

(1) All information submitted to the Commission must be legible, correct, and complete.

(2) If any information previously submitted to the Commission with the licensee's initial license application or a previous renewal application has not changed since the information was last submitted to the Commission, the renewal applicant need not provide that information again. The applicant must certify on the renewal application that no changes have been made to the specific information since it was last submitted to the Commission.

(l) Unless otherwise provided by law or rule, the general licensing provisions in §402.400 of this title (relating to General Licensing Provisions) shall govern the license renewal process, including the submission and review of the renewal application, as if the renewal application was an initial license application.

(m) Except as authorized by the Charitable Bingo Operations Director, or their designee, license renewal applications received by the Commission more than 60 days prior to the current license expiration date will be returned unprocessed by the Commission to the sender.

§402.420. *Qualifications and Requirements for Conductor's License.* An applicant must provide with its application documentation demonstrating that it meets all qualifications and requirements for a license to conduct bingo based on the type of organization it is. The qualifications, requirements, and necessary documentation for different types of organizations are shown in the chart below.  
Figure: 16 TAC §402.420

§402.424. *Amendment of a License by Electronic Mail, Telephone or Facsimile.*

(a) The term "effective date," when used in this section, shall mean the first day that the changes to the day(s) or time(s) bingo is conducted by the organization are to begin.

(b) A licensed authorized organization may change the day(s) or time(s) it conducts bingo by electronic mail, telephone or facsimile provided the organization has sufficient amendment license fee credit. The request should be received no later than noon the business day before the requested effective date of the amended license.

(1) To change by telephone the day(s) or time(s) the organization conducts bingo, an authorized requestor must speak directly to a License and Permit Specialist in the Licensing Services Department of the Charitable Bingo Operations Division, who will verify the caller's authority to request an amendment.

(2) To change by facsimile the day(s) or time(s) the organization conducts bingo, the Commission must receive a complete application at the facsimile number provided on the prescribed application form.

(3) To change by electronic mail the day(s) or time(s) the organization conducts bingo, the Commission must receive a complete application at the bingo service electronic mail address provided on the prescribed application form.

§402.451. *Operating Capital.*

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

(1) Average unit member operating capital--An amount equal to the allowable retained operating capital of the unit divided by the number of unit members.

(2) Bingo account--The bingo checking account, bingo savings account, and petty cash if bingo funds, of a licensed authorized organization or unit.

(3) Quarterly report--The Texas Bingo Quarterly Report.

(4) Retained operating capital limit--The maximum amount of funds that may be retained in the bingo account of a licensed authorized organization or unit, which is equal to the organization's or unit's actual quarterly average bingo expenses, excluding prizes paid, for the preceding license period but does not exceed \$50,000 per organization.

(b) The bingo account balance of a licensed authorized organization, reconciled to include outstanding checks and deposits in transit, on the last day of each calendar quarter may not exceed the total of:

(1) the organization's or unit's retained operating capital limit;

(2) prize fees held in the bingo account to be paid to the Commission; and

(3) net proceeds from the conduct of bingo for the current quarter.

(c) Bingo account funds may be transferred between the bingo checking account, bingo savings account, and petty cash, where applicable. All funds from the bingo checking account, bingo savings account, and petty cash shall be included in the bingo account balance reported on the quarterly report on the last day of each calendar quarter, including funds in transit between the various accounts.

(d) Licensed Authorized Organization's Calculations.

(1) The retained operating capital limit for a licensed authorized organization with a one year license will be calculated based on the quarterly reports for the four (4) calendar quarters immediately preceding the license start date.

(2) The retained operating capital limit for a licensed authorized organization with a two year license will be calculated for each 12-month period of the license.

(3) The retained operating capital limit for a licensed authorized organization submitting the first renewal of its license to conduct bingo will be calculated based on the quarterly reports for the three (3) calendar quarters immediately preceding the license start date.

(4) The retained operating capital limit is effective for the four (4) calendar quarters beginning on the first day of the calendar quarter immediately following the license start date.

(e) Accounting Unit's Calculations.

(1) The retained operating capital limit for an accounting unit will be calculated based on the quarterly reports for the four (4) quarter period beginning October 1 through September 30 of each year.

(2) The retained operating capital limit for an accounting unit is effective from January 1 through December 31 of each year.

(f) A licensed authorized organization's or unit's most recent quarterly report information at the time of the calculation will be used to calculate its retained operating capital limit.

(g) Retained Operating Capital Limits.

(1) The retained operating capital in the bingo account of a licensed authorized organization may not exceed a total of \$50,000 for the first year of licensure.

(2) The retained operating capital in the bingo account of a newly formed unit may not exceed the total of the retained operating capital limits of all the licensed authorized organizations forming the unit.

(3) If a licensed authorized organization joins a unit, the retained operating capital in the unit's bingo account may be increased by an amount that is equal to the average unit member operating capital, not to exceed a total of \$50,000.

(4) If a licensed authorized organization withdraws from a unit and will no longer utilize unit accounting, its retained operating capital limit will be equal to the average unit member operating capital of the unit prior to withdrawal, not to exceed a total of \$50,000.

(5) Upon withdrawal of a unit member, the retained operating capital in the bingo account of a unit must be decreased by an amount that is equal to the average unit member operating capital by the last day of the calendar quarter immediately following the unit member's withdrawal date.

(h) Recalculation of Operating Capital.

(1) A licensed authorized organization or unit that files an original or amended quarterly report for a period used to calculate its retained operating capital limit may submit a written request to the Commission to re-calculate the limit.

(2) A request to re-calculate a retained operating capital limit must include:

(A) the reason for the request identifying the specific quarter that the original or amended quarterly report was filed; and

(B) the signature of the bingo chairperson if the request is submitted by a licensed authorized organization, the unit manager if the unit is managed by a unit manager, or the designated agent if the unit is not managed by a unit manager.

(i) A licensed authorized organization or unit may apply for an increase in its retained operating capital limit.

(j) The failure of a licensed authorized organization or unit to receive notification from the Commission of its retained operating capital limit by the effective date does not relieve the organization or unit from complying with the retained operating capital limit.

(k) All net proceeds in excess of the retained operating capital limit must be disbursed in accordance with the Act and Rules.

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

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## SUBCHAPTER E. BOOKS AND RECORDS

### 16 TAC §§402.500, 402.504, 402.506, 402.511, 402.514

The following rule amendments are adopted under: (1) §2001.054 of the Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (2) §467.102 of the Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

#### §402.500. General Records Requirements.

(a) Licensees shall retain for four years all information and records required to be maintained by the Bingo Enabling Act (Texas Occupations Code, Chapter 2001) or the Charitable Bingo Administrative Rules.

(b) Unless otherwise prescribed by Commission rule, a licensee may maintain information in a form determined by the licensee as long as that form includes the information required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(c) Upon request of the Commission, a licensee shall provide any information required to be maintained by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. Except in cases of emergency, the Commission shall provide reasonable advance notice of the specific information and records needed and the time and location at which they must be made available.

#### §402.504. Debit Card Transactions.

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

(1) ATM card--An automated teller machine card which allows the holder to withdraw money directly from the holder's bank account. An ATM card is ordinarily utilized in conjunction with a PIN selected by the holder.

(2) Check card--Another name for a debit card, a check card may display the logo of the banking institution where the funds supporting the card are held in account.

(3) Debit card--A card which may be used as a means of payment under arrangements which do not provide for the extension of credit to the cardholder. The use of a debit card results in a deduction of the transaction amount directly from the cardholder's bank account maintained at the authorizing banking institution. Debit cards come in two forms commonly known as ATM cards and check cards.

(4) PIN--A personal identification number which is used as a secure or protected password used in conjunction with a debit card. A PIN may sometimes be used as an electronic signature in transactions involving a debit card.

(5) PIN pad--Equipment which may be leased from a vendor and used to identify debit card holders by verifying the authorized PIN submitted during a debit card transaction.

(b) A debit card may be accepted only in place of United States currency or a check drawn on a funded bank account.

(c) Records.

(1) Upon request, a debit card transaction sales receipt must be provided to the purchaser that uses a debit card to buy or use bingo paper/cards, electronic bingo devices or pull tabs. An electronic or hard copy of the debit card transaction sales receipt must be kept by the licensed authorized organization or Unit in order to substantiate compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(2) Each licensed authorized organization or unit which accepts payment by debit card must maintain records to substantiate:

(A) the timely deposit of funds derived from debit card transactions into the organization's or unit's bingo account; and

(B) the fees and expenses related to debit card transactions during the calendar quarter in which the debit card transactions occurred.

(3) All debit card transactions must be reported on the quarterly reports covering the time period in which the transactions occurred.

(4) All records relating to debit card transactions must be kept for four years.

*§402.506. Disbursement Records Requirements.*

(a) The licensed authorized organization or unit shall maintain records to substantiate bingo expenses. Bank statements, cancelled checks and cancelled check images may not be adequate to substantiate bingo expenses.

(b) Examples of records that are acceptable to substantiate bingo expenses for each type of expense are:

(1) Invoices, itemized billing statements, sales receipts, or similar documents that have information about the items purchased or services provided and contain the following details:

(A) the name and contact information of the person or entity selling the goods or providing the service;

(B) an adequate description of goods or services purchased;

(C) the quantity of each product purchased or service received;

(D) the price of each product purchased or service received which may include the pricing information for services provided pursuant to a service agreement;

(E) the total dollar amount billed; and

(F) the date of the transaction.

(2) Written lease agreement between the commercial lessor and the licensed authorized organization or unit stating the amount of rent charged for the use of bingo premises. If there is no written agreement, the organization must support the rental payments with an invoice from the lessor stating location, rental dates, and rental amounts by occasion.

(3) Rent forgiveness letter or lease amendment signed by the commercial lessor stating the amount of any rent forgiven or permanently or temporarily reduced.

(4) Payroll records that include a listing for each employee showing:

(A) primary position worked;

(B) date and occasion number worked (if more than one occasion held on a single day);

(C) total number of hours worked per occasion (if paid hourly);

(D) rate and criteria (hourly, per occasion, etc.);

(E) gross wages;

(F) all taxes and payroll deduction amounts; and

(G) net payroll amount.

(5) Federal and state payroll tax returns, including related deposit slips and receipts or other documentation that the deposits were accepted.

(6) Documentation of the payment of other federal, state, and local taxes, which may include tax returns, 1099's and property tax paid.

(7) Actual or imaged bank statements, deposit slips and cancelled checks or cancelled check images, to the extent available from the financial institution.

(8) Debit card transactions reports.

(9) The purpose, amount and payee for each electronic transfer from the organization's bingo checking account.

(10) A licensed authorized organization or unit shall maintain records to document any expenses, including incidental expenses, for promotions or door prizes, including any advertisements, flyers, game schedules, or documents reflecting any special pricing structures.

(c) The licensed authorized organization or unit shall maintain records to document the allocation method for bingo expenses which are shared by organizations in a hall.

(d) The licensed authorized organization or unit shall maintain records to document the allocation method for expenses that are divided between bingo and non-bingo operations of the organization and the allocation of the expenditure between bingo expense and charitable distribution.

(e) All expenses from the bingo checking account must be listed on a Cash Disbursements Journal on forms provided by the Commission or in another format that shows the information for each check written, electronic fund transfers, bank fees, and cash shortages or overages. If any licensed authorized organized organization maintains its records on a commercially available accounting software package (e.g. Quicken), use of the standard accounting features of the package shall meet the requirements of this section.

(1) A Cash Disbursements Journal shall be maintained on a cash basis and include information for checks written, electronic fund transfers, bank fees and cash shortages or overages that are dated during the calendar quarter.

(2) Cash Disbursement Journal Required Information:

(A) date of check, withdrawal or electronic funds transfer transaction;

(B) check number, transaction number or confirmation number;

(C) name of payee;

(D) amount of expense;

(E) expense category--each expense item shall correspond to the category on the Texas Bingo Quarterly Report; and

(F) totals--Each expense category shall be totaled quarterly and match the information reported to the Commission on the Texas Bingo Quarterly Report. Any changes made on the Texas Bingo Quarterly Report shall be documented on the Cash Disbursements Journal.

(f) A licensed authorized organization or unit shall maintain sufficient funds in the bingo checking account to cover all checks written and electronic fund transfers. Bank fees incurred because the organization fails to maintain sufficient funds in its account to cover expenditures from the bingo account may not be considered a reasonable or necessary expense.

(g) All disbursement records must be complete, accurate, legible, and maintained for four (4) years by the licensed authorized organization.

§402.511. *Required Inventory Records.*

(a) A licensed authorized organization or unit shall maintain a perpetual inventory of:

(1) disposable bingo cards described in subsection (d) of this section; and

(2) pull-tab bingo tickets described in subsection (e) of this section.

(b) Each perpetual inventory shall account for all sold and unsold disposable bingo cards and pull-tab bingo tickets, as well as inventory items designated for destruction.

(c) The licensed authorized organization may be held responsible for the gross receipts, prizes and prize fees associated with missing or unaccounted for disposable bingo cards and pull-tab bingo tickets.

(d) The perpetual inventory of disposable bingo cards shall contain:

(1) organization's or unit's name and taxpayer number;

(2) serial and series number and the color of the paper or border (For UPS pad, use the top sheet for obtaining color, serial and series numbers.);

(3) number of faces (ON) and number of sheets (UP);

(4) number of sheets or UPS pads for each serial and series number remaining after each occasion;

(5) occasion date(s) the paper was used;

(6) number of sheets or packs sold, missing or damaged by date; and

(7) initials of person entering the information per occasion.

(e) The perpetual inventory of pull-tab bingo tickets shall contain:

(1) organization's or unit's name and taxpayer number;

(2) form number;

(3) serial number;

(4) number of tickets per deal;

(5) number of tickets sold, missing, or damaged by occasion date;

(6) number of pull-tab tickets remaining if the deal is closed; and

(7) occasion date(s) the pull-tab tickets were sold.

§402.514. *Electronic Fund Transfers.*

(a) **Electronic Fund Transfers.** Electronic fund transfers (EFT) refers to the transfer of funds using a computer system, electronic terminal, telephone, mobile phone, or other non-paper based method that may be used for both credit transfers, such as deposits into an account, and debit transfers, such as deposits into an account, and debit transfers, such as payments from an account.

(b) **Controls Over Electronic Fund Transfers.**

(1) Licensed authorized organizations or units shall use for all EFT transactions the same financial policies, procedures, and controls that govern disbursement by check and the receipt of funds into

the bingo bank account. (See §2001.452 of the Bingo Enabling Act and §402.505 of this chapter (relating to Permissible Expense) and §402.506 of this chapter (relating to Disbursement Records Requirements)).

(2) The licensed authorized organization or unit shall implement the following controls for EFT transactions.

(A) Only authorized person(s) shall be allowed to execute an EFT transaction on behalf of the organization or unit.

(B) The licensed authorized organization or unit shall maintain documentation of approval of changes in the person(s) authorized to execute electronic funds transfers. Documentation may include but is not limited to: meeting minutes, bank account signature cards, or copies of applications to the financial institution to authorize individuals access to perform on-line banking in association with the bingo bank account or unit bank account.

(3) The bingo chairperson, or in the case of an accounting unit, the individual authorized in writing by each unit member's bingo chairperson, and bookkeeper shall review accounting records and bank statements to ensure that only authorized EFTs are executed. Each EFT shall be accounted for when completing monthly bank reconciliations.

(c) **Recordkeeping for Electronic Funds Transfers.**

(1) EFT receipts into the bingo bank account shall be recorded in the accounting records. At a minimum the organization or unit must record the following information regarding EFT receipts:

(A) payer name;

(B) amount paid;

(C) date paid;

(D) purpose of the funds received; and

(E) the EFT confirmation receipt, if provided.

(2) The organization or unit shall maintain in its accounting records a copy of each EFT payment transaction together with the invoice or billing statement. The following information must be maintained supporting the payment:

(A) payee name;

(B) amount paid;

(C) date paid;

(D) account number from which the transfer is made;

(E) nature of payment;

(F) the name of the person executing the EFT transaction on behalf of the organization or unit; and

(G) the EFT confirmation receipt, if provided.

(3) All records relating to electronic fund transfers into or out of the bingo checking account of a licensed authorized organization or unit must be retained for a period of not less than four years.

(d) **Discrepancies or Misapplication of Electronic Fund Transfers.** The bingo chairperson or other person authorized to sign on the bingo bank account shall notify the organization's financial institution immediately to report problems or if it is suspected that someone has access to the bingo bank account without authorization.

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

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



## SUBCHAPTER F. PAYMENT OF TAXES, PRIZE FEES AND BONDS

### 16 TAC §§402.600, 402.602, 402.603

The following rule amendments are adopted under: (1) §2001.054 of the Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (2) §467.102 of the Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

#### §402.600. *Bingo Reports and Payments.*

(a) On or before the 25th of the month prior to the end of the calendar quarter, the Commission will mail the "Texas Bingo Conductor's Quarterly Reports", "Texas Lessor Quarterly Reports", and "Manufacturer/Distributor Quarterly Reports and Supplements" to its licensees.

(b) Quarterly reports, supplements, and payments due to be submitted on a date occurring on a Saturday, Sunday, or legal holiday will be due the next business day. The report will be deemed filed when deposited with the United States Postal Service or private mail service, postage or delivery charges paid and the postmark or shipping date indicated on the envelope is the date of filing. For quarterly reports and supplements submitted electronically, the report will be deemed filed as of the date and time sent from the specified e-mail address.

#### (c) Signature provisions.

(1) For the valid filing of paper quarterly reports and supplements, the bingo chairperson, an officer, director, or bookkeeper must sign the report. By signing a report, the bingo chairperson, officer, director, or bookkeeper declares that the information in the report is true and correct to the best of their knowledge and belief.

(2) For the valid filing of electronic quarterly reports and supplements, the signature will be the email address of the person sending the quarterly report.

(d) Quarterly Report for information relating to the conduct of bingo games.

(1) An authorized organization holding an annual license, temporary license, or a temporary authorization to conduct bingo must file on a form prescribed by the Commission or in an electronic format prescribed by the Commission a quarterly report for financial and statistical information relating to the conduct of bingo games. The report and supplements must be filed with the Commission on or before the 25th day of the month following the end of the calendar quarter even if there were no games conducted during that quarter. Failure to file a required report or supplement by the due date may result in an administrative penalty.

(2) The report and supplements must be filed under oath attesting to the information being true and correct. Each officer and

director is responsible for knowing the contents of the report and supplements. The person signing the report must promptly provide a copy of the report and supplements to such officer and director upon his/her request.

(3) The Commission may deny a renewal application of an authorized organization holding an annual license or revoke a license of an authorized organization holding an annual license if the licensee remits to the Commission two insufficient checks for prize fees within four quarters.

(e) Quarterly report for information relating to the lease of bingo premises.

(1) A commercial lessor holding a license to lease bingo premises must file on a form prescribed by the Commission or in an electronic format prescribed by the Commission a quarterly report stating the rental income received. The report shall also include information regarding property taxes, insurance premiums, and utility expenses which are paid by the lessor, and reimbursed by an authorized organization or unit to the lessor. The report and supplements must be filed with the Commission on or before the 25th day of the month following the end of the calendar quarter regardless of whether income was received. Failure to file a required report or supplement by the due date may result in an administrative penalty.

(2) The report and supplements must be filed under oath attesting to the information being true and correct. Each officer and director is responsible for knowing the contents of the report and supplements. The person signing the report must promptly provide a copy of the report and supplements to such officer and director upon his/her request.

(f) Quarterly report for information relating to a manufacturer or distributor license.

(1) A manufacturer of distributor shall file a report on a form prescribed by the Commission or in an electronic format prescribed by the Commission, reflecting each sale or lease of bingo equipment, and the total sales of cards, sheets, pads and instant bingo to a person or organization in this state or for use in this state.

(2) The report and supplements shall be filed with regard to each calendar quarter and is due on or before the last day of the month following the end of the quarter.

(3) The report and supplements must be filed under oath attesting to the information being true and correct.

(4) The Commission will deny a renewal application or revoke a license of a manufacturer or distributor where the licensee has failed to timely file with the Commission the required reports or supplements three times within four consecutive quarters.

(5) Failure to file a required report or supplement by the due date may result in an administrative penalty.

(g) A manufacturer or distributor shall use the eleven digit taxpayer number on file with the Commission when submitting information relating to the sale or lease of bingo equipment, sales of cards, sheets, pads and instant bingo. If six or more taxpayer numbers are incorrect on the report, the Commission will return the report to the manufacturer or distributor for correction. The licensee has thirty (30) calendar days to correct the taxpayer numbers and return the corrected report to the Commission. If five or less taxpayer numbers are incorrect, the Commission will notify the licensee of the taxpayer numbers that were changed and the correct numbers to be used in the future.

(h) Failure to receive forms. The failure of a licensee to receive forms from the Commission does not relieve the licensee from

the requirement of filing reports and remitting prize fees as applicable on a timely basis.

(i) Incorrect calculation of "Texas Bingo Conductor's Quarterly Report". If the total receipts and total expenses do not total correctly, the Commission will mail the conductor a letter, with a copy of the adjusted report, stating an adjustment has been made to the quarterly report. If the adjusted quarterly report is correct, the licensee will maintain the copy in its file and no further action is required. If the licensee does not agree with the adjusted quarterly report, an amended quarterly report reflecting the correct data must be submitted to the Commission by the licensee.

(j) The licensed authorized organization must resolve or correct quarterly report exceptions within thirty (30) calendar days from the date of notice.

(k) The Commission will deny a renewal application for a license to conduct bingo or a license to lease bingo premises or revoke a license to conduct bingo or a license to lease bingo premises if the licensee has failed to pay timely the prize fee due three times within four consecutive quarters and a final jeopardy determination has been made by the Commission for three of the four consecutive quarters in accordance with Occupations Code §2001.510 and §2001.511.

(l) Extensions.

(1) Filing extension because of natural disaster.

(A) The Director will grant to a licensee who has been identified as a victim of a natural disaster an extension of not more than 90 days to file a quarterly report and supplements or pay prize fees provided the licensee has filed a timely request for an extension. In determining the natural disaster victims, the Commission shall recognize the counties that have been identified by the Office of the Governor or the Comptroller of Public Accounts.

(B) The person owing the quarterly report, supplements, or prize fees must file a written request for an extension at any time before the expiration of five working days after the original due date in order to obtain an extension.

(C) If an extension under this paragraph is granted, interest on the unpaid prize fee does not begin to accrue until the day after the day on which the extension expires, and prize fees and penalties are assessed and determined as though the last day of the extension were the original due date.

(2) Filing extension for reasons other than natural disaster.

(A) The Director may grant an extension of not more than thirty (30) days for the filing of a quarterly report and supplements. Before a request for extension may be granted, a written request setting out the reasons or grounds for an extension and 90% of the prize fees estimated to be due must be received by the Commission postmarked on or before the due date of the quarterly report.

(B) The granting of a request is within the discretion of the Director and the licensee will be notified in five working days of the request of the decision of the Director.

(C) If the request is denied, there will be no penalty assessed if the return is filed and remaining prize fee is paid not later than ten days from the date of the denial of the request of the extension.

(3) A request postmarked after the due date for the filing of a request will not be considered.

(m) Rounding. Quarterly report entries must be rounded to whole dollar amounts, where indicated. To round off amounts to the nearest whole dollar, drop amounts under 50 cents and increase

amounts from 50 - 99 cents to the next dollar. A quarterly report will not be considered inaccurate based on rounding numbers provided that such rounding does not result in more than a \$5.00 variance when all entries are summed up.

§402.602. *Waiver of Penalty, Settlement of Prize Fees, Rental Tax, Penalty and/or Interest.*

(a) The Charitable Bingo Operations Director, for good cause shown, may waive a penalty if a licensee holding a license to conduct bingo or license to lease bingo premises exercised reasonable diligence to comply with Occupations Code, §2001.504. The Charitable Bingo Operations Division will not consider a request for a penalty or interest waiver until the principal related to the specific request is paid in full. To be considered, a written request stating the reason(s) penalty should be waived must be sent to the Charitable Bingo Operations Division within 14 days of the date the quarterly report and prize fees and rental taxes were due.

(1) The Charitable Bingo Operations Division will inform the licensee in writing within three days of the Charitable Bingo Operations Division's decision regarding the penalty waiver request after considering:

(A) Whether the licensee is current in the filing of all reports;

(B) Whether the licensee is current in the payment of all taxes or prize fees due for the last eight consecutive quarters;

(C) Whether a penalty has been waived within the last eight consecutive quarters;

(D) Whether the licensee has a good record of timely filing and paying past returns; and

(E) Whether the licensee has taken the necessary steps to correct the problem for future reporting.

(2) If a licensee has had a penalty waived within the last eight consecutive quarters, the current request will be denied.

(b) If a prize fee or rental tax is owed for an inactive account, the Charitable Bingo Operations Division will not consider a request for a penalty or interest waiver until the principal is paid in full. The Division will notify the inactive account that a prize fee or rental tax is owed and provide the inactive account with any existing documents that support the delinquency determination. The Division may provide such notice and documentation to any officer, director, or business contact listed in the inactive account's most recent filing with the Commission.

(c) Settlement of rental tax, gross receipts tax, prize fee, penalty or interest on an inactive account. The Commission may settle a claim for rental tax, gross receipts tax, prize fee, penalty, or interest if the total cost of collection, as determined by the Commission, would exceed the total amount due.

§402.603. *Bond or Other Security.*

(a) Bond or Other Security Required.

(1) An applicant for a regular license to conduct charitable bingo must submit security consistent with the provisions of this section. A licensed authorized organization must maintain the security until the organization ceases to conduct bingo and the license is relinquished or revoked.

(A) Except as otherwise provided in this section, the security amount for a regular license to conduct charitable bingo is based on the license class. The security amount is:

(i) Class A - \$125.00.

- (ii) Class B - \$325.00.
- (iii) Class C - \$600.00.
- (iv) Class D - \$825.00.
- (v) Class E - \$1,225.00.
- (vi) Class F - \$1,800.00.
- (vii) Class G - \$2,125.00.
- (viii) Class H - \$2,675.00.
- (ix) Class I - \$3,275.00.
- (x) Class J - \$7,000.00

(B) If at any time a licensed authorized organization fails to fully pay its requisite prize fees by the due date and a jeopardy determination becomes final, then the organization's security amount may be calculated at three times its highest quarterly prize fee for the four most recent quarters or for the highest quarter filed if less than four.

(C) If a licensed authorized organization has fully paid all prize fees and associated penalties, if any, prior to a final jeopardy determination for eight (8) consecutive quarters, the amount of the requisite security will be reduced to \$100.00. If at any time an organization paying the reduced security amount fails to fully pay its requisite prize fees and any associated penalties and interest by the due date and a jeopardy determination becomes final, then the Commission may calculate the organization's security amount in accordance with §402.603(a)(1)(A) or (B) of this chapter.

(2) An applicant for a manufacturer's license must submit a cash bond or bond in the amount of \$10,000 issued by a surety company chartered or authorized to do business in this state. A licensed manufacturer must maintain the bond until the license is relinquished or revoked.

(3) An applicant for a unit manager license must submit security consistent with the provisions of this section. A licensed unit manager must maintain the security until the license is relinquished or revoked.

(A) Except as otherwise provided in this section, the unit manager's security amount shall be the aggregate of each unit member organization's security amount, as set in §402.603(a)(1) of this chapter.

(B) If at any time a unit manager fails to fully pay the unit's requisite prize fees by the due date and a jeopardy determination becomes final, the security amount may be calculated at three times the unit's highest quarterly prize fee liability for the four most recent quarters or for the highest quarter filed if less than four. If the unit manager changes, the new unit manager must file security.

(C) Members of an accounting unit with a licensed unit manager are not required to submit security until the member withdraws or is removed from the unit.

(4) Accounting Units.

(A) An accounting unit may submit and maintain one bond or other security to cover each of the unit's member organizations. Except as otherwise provided in this section, the amount of the security shall be the aggregate of each unit member organization's security amount, as set in §402.603(a)(1) of this chapter. If a unit member organization subsequently withdraws or is removed from the unit, that organization is responsible for obtaining and maintaining the requisite security.

(B) If at any time an accounting unit fails to fully pay its requisite prize fees by the due date and a jeopardy determination becomes final, the unit's security amount may be calculated at three times the unit's highest quarterly prize fee liability for the four most recent quarters or for the highest quarter filed if less than four. The financial obligation for such security shall be divided equally among the organizations that were in the unit at the time of the prize fee delinquency. If a unit member organization withdraws or is removed from such a unit, that organization's security amount shall be equivalent to its share of the unit's security amount, and the unit's security amount may be reduced by an amount equivalent to the exiting organization's share. If another organization subsequently joins such a unit, the unit's security amount will increase by the amount of the newly-joined organization's security amount.

(b) Types of bonds or other security. The Commission will accept only the following types of bonds or other security as security for the payment of prize fees:

(1) Cash or check made payable to the state comptroller. Cash security will not earn interest for the licensee.

(2) Irrevocable assignments of accounts, including certificates of deposit or certificates of savings, in banks, savings and loan institutions, and credit unions, whose deposits are insured by an agency of the United States government. This security must be executed on an assignment form approved by the Commission.

(3) Letters of credit from financial institutions.

(4) United States Treasury bonds, readily convertible to cash.

(5) Surety bonds executed on a form approved by the Commission and issued only by a surety company chartered or authorized to do business in the State of Texas. The appointing instrument must be properly notarized and physically attached to the bond.

(c) Forfeiture.

(1) If a licensed authorized organization, accounting unit, or unit manager pays less than the total amount of prize fee due, the Commission shall notify the licensed authorized organization, accounting unit, or unit manager of the delinquency via the "Texas Notice of Fee Due and Jeopardy Determination" for the quarter in which the liability exists.

(2) If the licensed authorized organization, accounting unit, or unit manager does not make the required payment by the date stated in the notice provided under subsection (c)(1), the Commission will demand the bond or other security or any part of the bond or other security from the holder of the bond or other security necessary to pay the amount of prize fee due.

(3) The Commission will notify the licensed authorized organization, accounting unit, or unit manager and demand that a new or additional bond or other security for the specified amount be furnished within 20 days of the date of such notice. Failure to comply with the requirements of the notice within the 20 day period will result in the denial of an application for renewal or revocation of the license.

(d) Release of Bond or Other Security. The Commission will release a bond or other security upon the relinquishment or revocation of the license for which the security was furnished, provided that the Commission determines that no prize fee, penalty, or interest remains due and payable. The Commission will notify the former licensee in writing that the security has been released. If an accounting unit maintains one bond or other security for its member organizations, and one or more of the unit member's licenses are relinquished or revoked, then the Commission will notify the accounting unit in writing that its se-

curity amount may be reduced to an amount sufficient to cover only current unit members.

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

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## SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

### 16 TAC §§402.703, 402.706 - 402.708

The following rule amendments are adopted under: (1) §2001.054 of the Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (2) §467.102 of the Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

#### §402.703. *Audit Policy.*

##### (a) Definitions.

(1) **Audit**--The formal examination of a licensee's accounts, records, and/or business activities by designated employees or representatives of the Commission.

(2) **Audit fieldwork**--Includes, but is not limited to, the physical inspection of bingo premises, the observation of a bingo game, the inquiry of management and staff, the review of financial accounts, records or business processes, the assessment of the adequacy of any internal controls, or any other activity necessary to meet audit objectives.

(3) **Licensee**--Includes any individual, partnership, corporation, group, or entity licensed under the Bingo Enabling Act and any group of licensed authorized organizations operating under a unit agreement.

##### (b) Audit Determination.

(1) The purpose of an audit is to determine whether a licensee is, has been, and/or will remain in compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(2) Those licensees who are most at risk of violating the Bingo Enabling Act or the Charitable Bingo Administrative Rules will be identified for audit based on risk factors established by the Commission. Risk factors may be based on, among other things, a licensee's gross receipts, gross rentals, bingo expenses, net proceeds, and/or charitable distributions. An audit must commence by the fourth anniversary of the date a licensee is identified for audit.

(3) Notwithstanding paragraph (2) of this subsection, the Commission may audit any licensee if the Commission reasonably believes the licensee may violate, or may have violated, the Bingo Enabling Act or the Charitable Bingo Administrative Rules.

##### (c) Notification.

(1) If a licensee is selected for an audit pursuant to subsection (b) of this section, a Commission auditor will so notify that licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent in writing. The written notification constitutes the beginning of the audit.

(2) The written notification will identify the time period to be audited and any records or other information that must be made available for Commission review. Various forms, including questionnaires and physical inventory requests, may be included with the written notification. Licensees must complete any forms in the manner, and in the time period, specified by the Commission.

##### (d) Entrance Conference.

(1) Within ten (10) calendar days of sending the written notification under subsection (c) of this section, an auditor will attempt to contact the selected licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent to schedule an audit entrance conference. Unless otherwise provided by the Commission, the audit entrance conference will be held within fourteen (14) calendar days from the auditor's contact with the licensee. The licensee may submit a written request to the Commission to delay the audit entrance conference. The written request must include the reasons for the requested delay. After reviewing a properly submitted written request to delay, the Commission may either approve or deny the request or notify the licensee that additional information is needed before a decision is made. If the Commission and licensee are unable to agree on the date, time, and place of the audit entrance conference, or if the Commission auditor is unable to contact the licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent, the auditor shall schedule the audit entrance conference and send the licensee written notice of that fact at least ten (10) calendar days prior to the scheduled audit entrance conference.

(2) The purpose of an audit entrance conference is to allow the auditor(s) to meet with the selected licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent to collect any records or other information identified in the written notification under subsection (c) of this section, to discuss the audit process, and to answer any questions the licensee may have regarding the audit. There is no standard timeline by which an audit will be completed, but an audit must be completed within two years from the date of the entrance conference unless the Director extends the time period and notifies the licensee of the extension.

(3) The Commission may request the attendance at the audit entrance conference of any person familiar with the licensee's operations. In addition to any attendees requested by the Commission, the licensee may allow any other individuals to attend the audit entrance conference.

(e) **Audit Fieldwork.** Any time after the conclusion of the audit entrance conference, the auditor(s) may initiate and conduct the audit fieldwork at the licensee's business office, bingo premises, bookkeeper's office, or accountant's office; or, a location designated by the auditor(s). When conducting audit fieldwork, the auditor(s), at their discretion, may use a detailed auditing procedure or a sample and projection auditing method. A sample and projection auditing method may include, but is not limited to, manual sampling techniques, computer-assisted audit techniques, analytical procedures, financial projections, and auditor recompilation from reliable independent sources.

##### (f) Exit Conference.

(1) Any time after the completion of the audit fieldwork, an auditor will attempt to contact the selected licensee's bingo chair-

person, director, business contact, officer, unit manager, or designated agent to schedule an audit exit conference. If the auditor and licensee are unable to agree on the date, time, and place of the audit exit conference, or if the auditor is unable to contact the licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent, the auditor shall schedule the audit exit conference and send the licensee written notice of that fact at least ten (10) calendar days prior to the scheduled audit exit conference.

(2) The purpose of an audit exit conference is to allow the auditor(s) to meet with the selected licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent to discuss the results of the audit and the draft audit report.

(3) The Commission may request the attendance at the audit exit conference of any person familiar with the licensee's operations. In addition to any attendees requested by the Commission, the licensee may allow any other individuals to attend the audit exit conference.

(g) Audit Report.

(1) Upon completion of the audit, the auditor(s) will prepare a draft audit report containing their findings and conclusions. A copy of the draft audit report will be provided to the licensee at the audit exit conference. At least three (3) business days before the audit exit conference, but only to the extent it is practicable, the Commission will also send a copy of the draft audit report to one e-mail address or facsimile number associated with the licensee. The licensee must notify the Commission of the designated e-mail address or facsimile number by the end of the audit entrance conference if the licensee is to receive a copy of the draft audit report prior to the audit exit conference.

(2) A licensee may, but is not required to, respond to the draft audit report by providing written comments and any supporting documentation to the auditor(s) within twenty (20) calendar days of receiving the draft audit report. Written comments should include a statement of agreement or disagreement with the draft audit report findings and, if applicable, a list of any corrective measures that will be taken to ensure compliance with the Bingo Enabling Act and Charitable Bingo Administrative Rules. Any properly submitted comments and supporting documents will be reviewed by the auditor(s) and placed in the final audit report. The auditor(s) may revise the draft audit report in response to any properly submitted comments or supporting documents.

(3) Any time after the twenty (20) calendar day deadline, the auditor(s) may issue the final audit report. A copy of the report will be provided to the licensee.

*§402.706. Schedule of Sanctions.*

(a) The purpose of this section is to provide guidance for administering sanctions to licensees and other persons that violate the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules. The Schedule of Sanctions attached to §402.706(c) provides a list of the most common violations and the sanctions generally assessed for those violations, though the Commission may deviate from the schedule if it has a reasonable basis to do so. The objectives for applying sanctions are to protect the public, encourage compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules, deter future violations, offer opportunities for rehabilitation as appropriate, punish violators, and deter others from committing violations. This section is intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases and encourage settlements.

(b) The Commission, through the Director of the Charitable Bingo Operations Division or their designee, may offer settlements to persons charged with violating the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules.

(c) Unless otherwise provided by this subchapter, the terms and conditions of a settlement agreement between the Commission and a person charged with violating the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules will be based on the Schedule of Sanctions incorporated into this section.

Figure: 16 TAC §402.706(c)

(d) The following words and terms, when used in this section and §402.707, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Bingo Enabling Act--Occupations Code, Chapter 2001.

(2) Charitable Bingo Administrative Rules--Texas Administrative Code, Title 16, Part 9, Chapter 402.

(3) Licensee--a person issued a license under Occupations Code, Chapter 2001, or a Unit.

(4) Organization--a licensee, an applicant for a license, or a person required to obtain a bingo license.

(5) Respondent--a person responsible for answering a charge of violating the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules.

(6) Sanctions--revocation and suspension of a license, denial or an original or renewal application, denial of a bingo worker registry application, removal from the registry of bingo workers, administrative penalty, and warning letter.

(e) The Commission shall render the final decision in a contested case and has the responsibility to assess sanctions against licensees who are found to have violated the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules. The Commission welcomes any recommendation of an administrative law judge as to the appropriate sanctions imposed, but the Commission is not necessarily bound by such recommendations. A determination of the appropriate sanction is reserved to the Commission consistent with the Bingo Enabling Act.

(f) Additional remedies may be imposed along with or in lieu of sanctions, which may include: a redeposit of funds to the bingo account; a removal of funds from the bingo account; or a disbursement of net proceeds in order to comply with the charitable distribution requirement.

(g) A settlement agreed to under this section shall be in the form of a written Memorandum of Agreement and Consent Order prepared by the Commission that must be signed by both parties. A Memorandum of Agreement and Consent Order shall contain findings of fact and conclusions of law. The conditions of the settlement, including the imposition of sanctions, shall be completed within the time frame provided for in the settlement. Failure to comply with the conditions of the settlement may subject the respondent to further administrative action.

(h) The list of violations in the Schedule of Sanctions is not an exclusive list of violations of the Bingo Enabling Act or the Charitable Bingo Administrative Rules.

(i) If a person is charged with a repeat violation within 36 months (3 years) of a previous violation, then the sanction for a repeat violation will be imposed according to the Schedule of Sanctions for repeat violations.

(j) The sanction(s) imposed will be determined by considering the following factors, as applicable:

(1) seriousness of the violation which includes the nature, circumstances, extent and gravity of the prohibited acts;

(2) history of previous violations which includes:

- (A) the number of previous violations; and
- (B) the number of repeated violations;
- (3) the action(s) necessary to deter future violations;
- (4) efforts to correct the violation after awareness of the violation through personal knowledge or notification by the commission;
- (5) any other matter that justice may require, including:
  - (A) whether the violation was intentional, inadvertent, simple negligence, gross negligence, or the unavoidable result of a related violation;
  - (B) cooperation with the Commission during its examination, audit, or investigation of the person;
  - (C) length of time the licensee has held a license;
  - (D) risk to the public or state;
  - (E) whether the organization or person has acknowledged a violation and agreed to comply with the terms and conditions of remedial action through an agreed settlement with the Commission; and
  - (F) the cost of the investigation, examination or audit associated with the violation.

(k) If the Director or the Director's designee and the authorized representative for the respondent agree, the two parties may utilize §402.707, Expedited Administrative Penalty Guideline as alternative guidance related to this subsection.

(l) The Commission may impose lesser sanctions than those listed in the Schedule of Sanctions for a particular violation if mitigating circumstances exist, including mitigating circumstances described in §402.706(j)(5)(A) - (E).

*§402.707. Expedited Administrative Penalty Guideline.*

(a) The purpose of this subchapter is to provide an alternative disciplinary procedure for certain violations of the Bingo Enabling Act (Act) and the Charitable Bingo Administrative Rules (Rules) in which the Director of the Charitable Bingo Operations Division seeks to facilitate expeditious resolution of cases and encourage settlements.

(b) The list of statutory violations in the Expedited Administrative Penalty Chart is not an exclusive list of violations that may be expedited. The scope of this guideline will be limited to violations of the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules that are identified by the Director or their designee.

(c) Upon completion of an examination, inspection, audit, or investigation, and after which both parties have agreed that an alleged violation of the Bingo Enabling Act or the Charitable Bingo Administrative Rules can be resolved expeditiously, the Director or their designee may cause a Notice of Administrative Violation and Settlement Agreement (NAVSA) to be issued to an authorized representative for the respondent.

- (d) The NAVSA shall include the following information:
- (1) date of the notice;
  - (2) names and addresses of both parties;
  - (3) a brief summary of the alleged violation;
  - (4) the dollar amount of the administrative penalty recommended by the Director or his designee;
  - (5) a brief explanation of the additional conditions required to ensure future compliance with the Act or Rules alleged to be violated;

(6) notice that an investigation, including an examination or audit, was conducted which alleges a violation was committed;

(7) a statement signed by an authorized representative for the respondent indicating the respondent agrees to the terms of the settlement being offered;

(8) notice that if the person does not accept the settlement offered, they may request an informal dispute resolution conference in accordance with §402.708 of this chapter or a hearing on the occurrence of the violation, the amount of the penalty or both; and

(9) notice that if the person does not accept the settlement offered or request a hearing, the Commission may seek the maximum penalty authorized for the violation under the Bingo Enabling Act and the Charitable Bingo Administrative Rules, which may include revocation, suspension or denial of the person's license or worker registration, or application for a license or worker registration as applicable.

(e) The respondent shall have 20 calendar days from the date the respondent receives the NAVSA to accept the recommendation of the Director, including the recommended administrative penalty; or make a written request for a hearing on the determination. The respondent shall have 10 calendar days from the date the respondent receives the NAVSA to request an informal dispute resolution conference, which must occur within 20 calendar days of the respondent's receipt of the NAVSA. If notification of acceptance or the written request for a hearing is not made within 20 days, or if an informal dispute resolution conference does not resolve the dispute, the Director shall cause a hearing to be set and give notice of the hearing to the respondent. The opportunity for an agreement in accordance with this subsection will expire.

(f) After the NAVSA is accepted and returned to the Commission, the NAVSA will be forwarded to the Director for final approval and a copy will be forwarded to the respondent along with the Order. The respondent will have 60 days from the date of the Order to pay the recommended administrative penalty. Failure to comply with the terms of this Agreement may result in the imposition of a more severe degree of penalty which may include the revocation, suspension, denial of the license or worker registration, or removal from the worker registry as applicable.

(g) If a person is charged with a repeat violation that may be expedited within 36 months (3 years) of the first violation, then the penalty for a repeat violation will be imposed according to the Expedited Administrative Penalty Chart for repeat violations. Figure: 16 TAC §402.707(g)

*§402.708. Dispute Resolution.*

(a) What are the definitions for the terms used in this rule?

(1) Determination letter--A notice issued by the director stating the basis for the conclusion that a violation occurred, recommending that an administrative penalty be imposed on the person alleged to have committed the violation, and recommending the amount of the proposed penalty. The notice must include a brief summary of the alleged violation; include the amount of the administrative penalty recommended; and inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(2) Dispute resolution--An informal process available to licensees to resolve regulatory disputes in a fair, competent, and consistent manner.

(3) Dispute resolution conference--An informal meeting to resolve a disputed issue(s) related to a Notice of Administrative Violation and Settlement Agreement (NAVSA), an audit finding(s) contained

within a final audit report, a determination letter or a notice of opportunity to show compliance letter.

(4) Dispute resolution officer--The Director or his designee who will facilitate or manage the dispute resolution conference and guide and assist the participants.

(b) Who may request a dispute resolution conference? A licensee that does not agree with the findings in its NAVSA, final audit report, determination letter or the information in a notice of opportunity to show compliance letter may request a dispute resolution conference.

(c) How do I request a dispute resolution conference?

(1) You may request a dispute resolution conference by completing and submitting a Request for Informal Dispute Resolution to the Director.

(2) Disputed issues must be identified on the request.

(3) The request must be signed by:

Figure: 16 TAC §402.708(c)(3)

(4) A request for a dispute resolution conference related to a NAVSA must be submitted in accordance with §402.707(e). All other requests for a dispute resolution conference must be submitted no later than 15 working days from the latest date of receipt of a determination letter, the final audit report, or notice of opportunity to show compliance letter.

(5) You may provide supporting documentation related to your position with your request.

(d) Under what circumstances will the Director deny a request for a dispute resolution conference? The Director will not grant a request for a dispute resolution conference if:

(1) You are not a licensee that disputes the findings in the NAVSA, final audit report, determination letter or the information in a notice of opportunity to show compliance letter;

(2) You fail to timely submit the completed Request for Informal Dispute Resolution as required in subsection (c)(4) of this section or §402.707(e) of this chapter; or

(3) A dispute resolution conference has been held previously on the disputed issue(s).

(e) When and where will the Dispute Resolution Conference be held?

(1) Charitable Bingo Operations Division staff will contact you within 15 calendar days from the date we receive a Request for Informal Dispute Resolution, in order to schedule a mutually agreeable date, time, and location for the dispute resolution conference. However, for conferences related to a NAVSA, the Division will contact the respondent in sufficient time to schedule the conference within 20 days of the respondent's receipt of the NAVSA, as required under §402.707(e).

(2) The dispute resolution conference may be held in person, by video conference, or by telephone conference call. The date, time, and location of the conference must be agreeable to all parties.

(3) You must contact the Commission at least 24 hours prior to the scheduled conference time to reschedule a dispute resolution conference. However, in the event of unforeseen events, upon agreement of the parties, a dispute resolution conference may be rescheduled.

(f) What happens if I don't attend or reschedule a Dispute Resolution Conference? The dispute resolution process will end. The ad-

ministrative process will continue and a formal hearing may proceed. We will notify you of the date of the administrative hearing.

(g) Who attends the Dispute Resolution Conference? Depending on your regulatory classification, certain individuals from your organization must attend the dispute resolution conference. You must notify the Director at least 24 hours before the scheduled dispute resolution conference of who is attending.

Figure: 16 TAC §402.708(g)

(h) Who will represent the Charitable Bingo Operations Division at a Dispute Resolution Conference?

(1) Appropriate Commission staff from the Charitable Bingo Operations Division, Legal Services Division, and/or Enforcement Division will attend and participate in the dispute resolution conference to provide relevant information and documentation regarding the disputed issues and to attempt to reach a resolution of the dispute.

(2) The dispute resolution officer and dispute resolution support staff will facilitate the dispute resolution process but will not advocate on behalf of any party.

(i) What happens at the Dispute Resolution Conference?

(1) Each party states their position related to the disputed issues and presents appropriate documentation to substantiate their position on all disputed issues.

(2) The dispute resolution officer works with the parties to reach a settlement.

(3) Any resolution reached as a result of the dispute resolution conference will be through voluntary agreement of the parties.

(j) Do I need to provide any information prior to the Dispute Resolution Conference? If the Dispute Resolution Conference is conducted via telephone or video conferencing, you must provide to the Director a copy of any documentation you plan to present at least 48 hours prior to the conference. If the basis of the dispute involves an audit finding, the Director will provide the dispute resolution officer with the information submitted by the organization, the final audit report, and the determination letter. If the basis of the dispute is other than an audit finding, the Director will provide the dispute resolution officer the notice of opportunity to show compliance letter and the underlying report that is the basis for the notice of opportunity to show compliance letter. The dispute resolution officer may contact both parties and request additional information be submitted to him prior to the dispute resolution conference.

(k) What happens if an agreement is reached at the dispute resolution conference?

(1) If the parties agree to a resolution of disputed issues, the dispute resolution officer will prepare a Dispute Resolution Settlement Agreement for review, approval, and signature by both parties at the dispute resolution conference.

(2) The Agreement will include:

(A) the violation(s);

(B) the resolution of the disputed issues(s); and

(C) corrective action you must take.

(3) The Agreement must be signed by an officer, director, or bingo chairperson and the primary operator.

(l) What happens if an agreement is not reached at the dispute resolution conference? The matter may proceed to a formal administrative hearing.

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

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Bob Biard

General Counsel

Texas Lottery Commission

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



## SUBCHAPTER D. LICENSING REQUIREMENTS

### 16 TAC §402.413

The Texas Lottery Commission (Commission) adopts new 16 TAC §402.413 (Military Service Members, Military Veterans, and Military Spouses) without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3067). The purpose of the new rule is to implement Occupations Code Chapter 55, which requires state agencies that issue occupational licenses to adopt rules and policies pertaining to the licensing of active duty military personnel, their spouses, and military veterans. Among other things, Chapter 55 requires agencies to: (1) exempt active duty military personnel from late license renewal fees/penalties under certain circumstances; (2) quickly process applications and issue licenses for active duty military personnel, their spouses, and military veterans; and (3) waive license fees for active duty military personnel, their spouses, and military veterans in certain circumstances. The new rule §402.413 is intended to satisfy the Commission's obligations under Chapter 55.

A public comment hearing was held on Wednesday, May 11, 2016, at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. The following persons provided oral comments at the hearing: Kimberly L. Kiplin for Department of Texas, Veterans of Foreign Wars (VFW); and Steve Bresnen for the Bingo Interest Group (BIG). The Commission also received written comments from the VFW and Stephen Fenoglio for Texas Charity Advocates (TCA).

**COMMENT SUMMARY:** The VFW supports the proposed new rule. The TCA has no objection to the proposed new rule.

**COMMISSION RESPONSE:** No changes will be made in response to these comments.

**COMMENT SUMMARY:** The BIG commented they would like the Commission to expand the application of the proposed rules to any corporation that is wholly owned by an individual(s) who is specifically covered by Chapter 55.

**COMMISSION RESPONSE:** No changes will be made in response to this comment. The Commission appreciates the BIG's desire to expand the scope of the rule to corporations that are wholly owned by individuals to whom Chapter 55 expressly applies. The provisions of Chapter 55 apply to "a person who is on active duty" (definition of "military service member"), "a person who is married to a military service member" (definition of "military spouse"), and "a person who has served on active duty and who was discharged or released from active duty" (definition of

"military veteran"). The Texas Code Construction Act (at Government Code §311.005(2)) provides that a "person" includes a corporation unless the statute or context in which the term "person" is used requires a different definition. Under Chapter 55, a "person" could not include a corporation because a corporation could not satisfy the active duty or marriage requirement, and the Commission has no authority to expand the Chapter 55 definitions. A state agency, such as the Commission, may not "exercise what is effectively a new power, or a power contradictory to statute, on the theory that such a power is expedient for administrative purposes." *Pub. Util Comm'n of Tex. v. City Pub. Serv. Bd. of San Antonio*, 53 S.W.3d 310, 316 (Tex. 2001). Accordingly, it would be up to the Legislature, not the Commission, to expand the scope of Chapter 55 to include corporations or other legal entities.

The new rule is adopted under: (1) Chapter 55 of the Occupations Code (specifically §§55.002, 55.004, 55.007, and 55.008), which requires state agencies to adopt rules related to the issuance of licenses to active duty military personnel, their spouses, and military veterans; (2) §2001.054 of the Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (3) §467.102 of the Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of Chapter 467 and the laws under the Commission's jurisdiction. The new rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

This adoption implements Chapters 55 and 2001 of the Occupations Code.

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

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Texas Lottery Commission

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## TITLE 22. EXAMINING BOARDS

### PART 5. STATE BOARD OF DENTAL EXAMINERS

#### CHAPTER 102. FEES

##### 22 TAC §102.1

The Texas State Board of Dental Examiners adopts amendments to §102.1, relating to the fee schedule. This rule is adopted without changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2056).

Amendments to rule §102.1 provide guidance in the interpretation of Tex. Occ. Code §260.001.

The Board received no written comments regarding this amendment.

Amendments to rule §102.1 are adopted under Texas Occupations Code §254.001(a). The Board interprets §254.001(a) to give the Board authority to adopt rules necessary to perform its duties and ensure compliance with state law relating to the practice of dentistry to protect the public health and safety. No other statutes, articles, or codes are affected by the rule.

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

Filed with the Office of the Secretary of State on July 18, 2016.

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Kelly Parker

Executive Director

State Board of Dental Examiners

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For further information, please call: (512) 475-0989



## CHAPTER 108. PROFESSIONAL CONDUCT

### SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

#### 22 TAC §108.12

The Texas State Board of Dental Examiners adopts amendments to §108.12, relating to the dental treatment of sleep disorders. This rule is adopted without changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2066).

Amendments to rule §108.12 provide guidance in the interpretation of Tex. Occ. Code §260.001.

The Board received six written comments regarding this amendment.

The Texas Medical Association and Texas Neurological Society submitted a joint written comment in opposition to the proposed rule on the basis that the treatment of sleep disorders is the practice of medicine and exceeds the scope of the practice of dentistry in Texas. Throughout the comment, the board is urged to expand the rule to address other sleep disorders and medical conditions. The comment also provides suggested language. The comment states that subsection (a) of the rule should be modified to (1) strike the word "independently"; (2) encompass the treatment of other sleep disorders and conditions; (3) include an express prohibition on dental screening for sleep conditions/disorders; and (4) include an express prohibition on a dentist's independent treatment or monitoring of a patient for a sleep condition or disorder. The comment urges broadening the rule to address dentist/physician collaboration in the treatment of any sleep disorder through oral appliance therapy. The comment expresses concern relating to the division of responsibilities between the dentist and physician as to monitoring and maintenance of the oral appliance and monitoring of the patient's medical condition. The comment suggests additional education. The board believes the education required by the rule is sufficient to equip dentists to fabricate oral appliances for the treatment of obstructive sleep apnea, pursuant to a physician's diagnosis and prescription. With respect to subsections (c) and (d), the comment urges expansion of the rule to include the treatment of other sleep conditions and disorders and elaboration of specific

recordkeeping requirements. Again, the board finds that the revision adequately addresses its concerns related to OSA. The board further finds that compliance with its recordkeeping rules, as set out in the revision, is sufficient to ensure patient safety without further elaboration. The comment objects to the deletion of paragraphs 108.12(c)(1) and 108.12(c)(2). The comment contends that the deletion of the language will create confusion. The board finds that the rule is sufficient to address the board's intent in revision of the rule: to address the treatment of OSA by dentists in collaboration with physicians.

The board disagrees. (1) The board finds that the word "independently" does not grant diagnostic authority to dentists; it emphasizes that dentists may only treat obstructive sleep apnea (OSA) pursuant to a physician's diagnosis of OSA. (2) Prior to the development of the various forms of rule 108.12, no rule existed to address the treatment of sleep disorders and other conditions. The board finds that the present revision adequately addresses its concerns related to dentists' treatment of OSA. (3) Dentists order tests for many purposes. The board finds its complaint investigation and complaint referral processes adequate to evaluate whether a dentist has exceeded the scope of practice of dentistry by ordering of tests for screening or diagnosis of non-dental conditions in a given case under investigation by the board. (4) The board finds that the present revision adequately addresses its concerns related to dentists' treatment of OSA. Subsection (a) makes clear that the dentist is responsible for monitoring and maintaining an oral appliance created to treat OSA, while the physician is responsible for monitoring the medical condition of OSA. With respect to broadening the rule, the board notes that prior to the development of the various forms of rule 108.12, no rule existed to address the treatment of sleep disorders and other conditions. The board finds that the present revision adequately addresses its concerns related to dentists' treatment of OSA through oral appliance therapy in collaboration with a physician. The board finds that the revision makes clear that the board does not intend for a dentist to monitor a patient's medical condition. Dentists are responsible for monitoring and maintaining the oral appliance fabricated to treat OSA in collaboration with a physician. The rule states that the collaborating physician "should be responsible for monitoring the patient's medical condition" because the board cannot enforce such a requirement against a physician. The board believes the rule accurately reflects the dentist's scope of practice related to the treatment of obstructive sleep apnea by prohibiting a dentist from independently diagnosing a patient with obstructive sleep apnea and requiring any dental treatment of obstructive sleep apnea be accomplished in collaboration with and pursuant to a medical doctor's diagnosis.

The American Academy of Dental Sleep Medicine submitted a written comment requesting additional language be incorporated to clarify that a dentist may not order a test for the purpose of screening or diagnosis and may fabricate an oral appliance to treat obstructive sleep apnea only after referral by a Texas licensed physician. The comment further requests additional education requirements for dentists treating obstructive sleep apnea that reflect the continuing education recommendation in the guidelines published by AADSM. It also requests additional language that reflects their organization's guidelines related to follow-up care. The board disagrees. The board's revision eliminates language authorizing dentists to screen for obstructive sleep apnea using screening tools, including sleep studies. Dentists order tests for many purposes. The board finds its complaint investigation and complaint referral processes adequate

to evaluate whether a dentist has exceeded the scope of practice of dentistry by ordering of tests for screening or diagnosis of non-dental conditions in a given case under investigation by the board. The board further finds that the rule appropriately prohibits a dentist from diagnosing obstructive sleep apnea without need for further clarification of that directive. Finally, the board holds that 12 hours of yearly continuing education is adequate to train and maintain competency in current treatment and procedures.

The American Academy of Sleep Medicine submitted a written comment requesting additional language be incorporated to clarify that a dentist may not order a test for the purpose of screening or diagnosis and may fabricate an oral appliance to treat obstructive sleep apnea only after referral by a Texas licensed physician. The comment further requests additional education requirements for dentists treating obstructive sleep apnea that reflect the continuing education recommendation in the guidelines published by AASM. It also requests additional language that reflects the organization's guidelines related to follow-up care. The board disagrees. The board's revision eliminates language authorizing dentists to screen for obstructive sleep apnea using screening tools, including sleep studies. Dentists order tests for many purposes. The board finds its complaint investigation and complaint referral processes adequate to evaluate whether a dentist has exceeded the scope of practice of dentistry by ordering tests for screening or diagnosis of non-dental conditions in a given case under investigation by the board. The board further finds that its revision appropriately prohibits a dentist from diagnosing obstructive sleep apnea without need for further clarification of that directive. Finally, the board holds that 12 hours of yearly continuing education is adequate to train and maintain competency in current treatment and procedures.

The board received a written comment from W. Keith Thornton, DDS, in support of the proposed rule. The board received a written comment from William H. Gerlach, DDS, in support of the proposed rule. The board received a written comment from the Texas Dental Association in support of the proposed rule.

Amendments to rule §108.12 are adopted under Texas Occupations Code §254.001(a). The Board interprets §254.001(a) to give the Board authority to adopt rules necessary to perform its duties and ensure compliance with state law relating to the practice of dentistry to protect the public health and safety.

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

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

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Kelly Parker

Executive Director

State Board of Dental Examiners

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## PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

## CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

### SUBCHAPTER A. GENERAL PROVISIONS

#### 22 TAC §501.51

The Texas State Board of Public Accountancy adopts an amendment to §501.51, concerning Preamble and General Principles, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3821). The rule will not be republished.

The amendment to §501.51 deletes the word "insure" and replaces it with "ensure" and moves the word "adequately" to precede the word "serving" in subsection (c).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Jerry Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



#### 22 TAC §501.52

The Texas State Board of Public Accountancy adopts an amendment to §501.52, concerning Definitions, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3822). The rule will not be republished.

The amendment to §501.52 revises a paragraph reference in paragraph (17) and revises the definition of Good Standing in paragraph (13) to include compliance with Peer Review.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Jerry Hill  
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## SUBCHAPTER B. PROFESSIONAL STANDARDS

### 22 TAC §501.60

The Texas State Board of Public Accountancy adopts an amendment to §501.60, concerning Auditing Standards, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3824). The rule will not be republished.

The amendment to §501.60 reformats the rule to recognize several of the sources of GAAS.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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### 22 TAC §501.62

The Texas State Board of Public Accountancy adopts an amendment to §501.62, concerning Other Professional Standards, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3825). The rule will not be republished.

The amendment to §501.62 adds additional professional standards which must be following in the performance of accounting services.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

### 22 TAC §501.75

The Texas State Board of Public Accountancy adopts an amendment to §501.75, concerning Confidential Client Communications, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3826). The rule will not be republished.

The amendment to §501.75 recognizes Peer Review communications and the review of the financials related to the prospective purchase, sale or merger of a CPA firm will not be subject to confidentiality.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

### 22 TAC §501.94

The Texas State Board of Public Accountancy adopts an amendment to §501.94, concerning Mandatory Continuing Professional Education, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3828). The rule will not be republished.

The amendment to §501.94 corrects a rule reference.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## CHAPTER 518. UNAUTHORIZED PRACTICE OF PUBLIC ACCOUNTANCY

### 22 TAC §518.3

The Texas State Board of Public Accountancy adopts an amendment to §518.3, concerning Violation of a Cease and Desist Order, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3829). The rule will not be republished.

The amendment to §518.3 corrects a rule reference.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Jerry Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



### 22 TAC §518.4

The Texas State Board of Public Accountancy adopts the repeal of §518.4, concerning Administrative Penalty Guidelines for Vio-

lations of Cease and Desist Orders, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3830). The rule will not be republished.

The repeal of §518.4 will allow a new rule regarding Injunctive Relief to be placed more appropriately within the Chapter 518 rules.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Jerry Hill

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Texas State Board of Public Accountancy

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### 22 TAC §518.4

The Texas State Board of Public Accountancy adopts new rule §518.4, concerning Injunctive Relief and Penalties, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3830). The rule will not be republished.

New rule §518.4 establishes the process for seeking injunctive relief.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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Jerry Hill

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### 22 TAC §518.6

The Texas State Board of Public Accountancy adopts new rule §518.6, concerning Administrative Penalty Guidelines for the Unauthorized Practice of Public Accountancy, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3831). The rule will not be republished.

New rule §518.6 is former §518.4, which is being repealed, and includes proposed revisions to the administrative penalty guidelines to address repeat offenders.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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## CHAPTER 527. PEER REVIEW

### 22 TAC §527.2

The Texas State Board of Public Accountancy adopts an amendment to §527.2, concerning Definitions, with changes to the proposed text as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2573). The rule will be republished.

The amendment to §527.2 is in agreement with the comments received by the AICPA and the changes are in accordance with those agreements, and the word "deficiency(ies)" is changed to "deficiencies" in paragraph (4) which is a non-substantive change.

The American Institute of CPAs (AICPA) Peer Review program commented on the proposed revisions to Board Rule 527.2, suggesting:

1) the deletion of "special reports" in paragraph (4), believing it unnecessary since the definition of attest includes all engagements in the scope of peer review;

2) deleting "final paragraph of" and inserting "peer" before "review report" in paragraph (6) (renumbered as paragraph (5)) because the Peer Review Board has the ability to change the location of the rating in the report;

3) deleting the sentence "It is the end date of the review process, not the beginning." in proposed new paragraph (7) (renumbered as paragraph (6)) because the Standards for Performing and Reporting on Peer Reviews provide review due dates based on the review year;

4) deleting the reference to "AICPA or TSCPA" in proposed amended paragraphs (8) and (9) (renumbered as paragraphs (7) and (8)) because out-of-state firms licensed in Texas, with no AICPA members, may be enrolled in a peer review program where the sponsoring organization is another CPA society recognized in Rule §527.3(b) and they would not meet the requirements as currently written;

5) adding the language "or other firms that voluntarily" in proposed amended paragraph (10) (renumbered as paragraph (9)) because the AICPA Public file is now available for firms who are not members of the AICPA's Audit Quality Centers or Private Companies Practice Section to have their peer review results posted to the public file; and

6) adding the language "a secure website accessible to" and deleting "limited access web site" in proposed amended paragraph (11) (renumbered as paragraph (10)) to clarify that the FSBA is a secure website that is accessible only to the state board which better articulates the restricted use of the website provided by AICPA.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

#### §527.2. Definitions.

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

(1) "Review" or "review program" means the review conducted under the peer review program.

(2) "Review year" means the one-year (twelve-month) period covered by the review. Engagements selected for review normally would have periods ending during the year under review.

(3) "Sponsoring organization" means an entity that meets the standards specified by the board for administering the review. The board shall periodically publish a list of sponsoring organizations, which have been approved by the board.

(4) "Firm inspection program" means the process of firm inspection administered by the PCAOB.

(5) "Rating" of a peer review refers to the type of report issued. The three types of reports are pass, pass with deficiencies, or fail. The peer review rating is clearly indicated in the peer review report. A peer review report with a rating of pass with deficiencies or fail is considered a deficient review.

(6) "Assigned review date" is the reporting due date to the board of an accepted peer review report.

(7) "Acceptance date" of a peer review is the date that the sponsoring organization's peer review report committee (PRRC), referred to in §527.9(a)(1) of this chapter (relating to Procedures for a Sponsoring Organization), is presented the peer review report on a review with the rating of pass and the PRRC approves the review. The acceptance date and in this case the completion date of the peer review are the same date and is noted in a letter from the administering entity to the reviewed firm. The PRRC will be presented with the peer review report and the firm's letter of response on reviews with a rating of pass with deficiencies or fail. Ordinarily, the PRRC will require the reviewed firm to take corrective action(s) and those actions will be communicated in a letter to the firm from the administering entity. In this circumstance, the "acceptance date" is defined as the date that the

reviewed firm signs the letter from the administering entity agreeing to perform the required corrective action(s).

(8) "Completion date" of a peer review is the date that the sponsoring organization's PRRC, referred to in §527.9(a)(1) of this chapter, is presented the corrective action and the committee decides that the reviewed firm has performed the agreed-to corrective action(s) to the committee's satisfaction and the committee requires no additional corrective action(s) by the firm. The date is noted in a final letter from the administering entity to the reviewed firm.

(9) "AICPA Public File" is the file for firms that are members of AICPA's Employee Benefit Plan Audit Quality Center, Governmental Audit Quality Center, Private Companies Practice Section, or other firms that voluntarily post their review information to this public file on AICPA's web site as a membership requirement. Information in the public file includes the firm's most recently accepted peer review report and the firm's response thereto, if any.

(10) "Facilitated State Board Access (FSBA)" is a secure website accessible only to the state board that provides the most recently accepted peer review report, the firm's letter of response (LOR), the corrective action letter (CAL), and the final letter of acceptance (FLOA).

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

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Jerry Hill

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## 22 TAC §527.3

The Texas State Board of Public Accountancy adopts an amendment to §527.3, concerning Standards for Peer Reviews and Sponsoring Organizations, with changes to the proposed text as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2575). The rule will be republished.

The amendment to §527.3 is in agreement with the comments received by the AICPA and the changes are in accordance with those agreements and "standards" is replaced by "permanent inspections" in subsection (a) and "TSCPA's" is replaced in subsection (b), both non-substantive changes provided for clarity.

One comment was received by the Board.

The American Institute of CPAs Peer Review program commented on the proposed revisions to Board Rule §527.3, suggesting the deletion of "the firm inspection standards required under the Sarbanes Oxley Act of 2002 (SOX)" and replacing it with "PCAOB standards" in subsection (a). The commenter also suggested the deletion of "Peer Review Program" in two places in subsection (b) to recognize the organizations that administer the program, not the program itself.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the

agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§527.3. *Standards for Peer Reviews and Sponsoring Organizations.*

(a) The board adopts Standards for Performing and Reporting on Peer Reviews (the Standards) promulgated by AICPA and for public company audit firms, PCAOB permanent inspections as its minimum standards for review of firms.

(b) Qualified sponsoring organizations shall be the AICPA, the TSCPA and state CPA societies fully involved in the administration of the AICPA Peer Review Program, the PCAOB, and such other entities which are approved by the board.

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

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## 22 TAC §527.4

The Texas State Board of Public Accountancy adopts an amendment to §527.4, concerning Enrollment and Participation, with changes to the proposed text as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2575). The rule will be republished.

The amendment to §527.4 is in agreement with the comments received by the AICPA and the changes are in accordance with those agreements. A non-substantive change in subsection (h) deletes language for clarity.

One comment was received by the Board.

The American Institute of CPAs Peer Review program commented on the proposed revisions to Board Rule §527.4, suggesting the deletion of proposed language, "the firm shall schedule and begin an additional review within three years of the preview review's due date, or earlier as may be required by the sponsoring organization, a committee of the board or the board's executive director", and replacing it with, "a firm's subsequent review is due three years and six months after the year end of the preview peer review" in subsection (c) to coincide with the Standards.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§527.4. *Enrollment and Participation.*

(a) Participation in the program is required of each firm licensed or registered with the board that performs any attest services as defined in §901.002 of the Act (relating to General Definitions)

and §501.52(4), (11) and (23) of this title (relating to Definitions). A firm whose highest level of service is preparation engagements under SSARS is not required to participate in the program.

(b) A firm that does not perform attest services as set out in subsection (a) of this section shall annually submit a request for the exemption in writing to the board with an explanation of the services offered by the firm. A firm which begins providing attest services as set out in subsection (a) of this section shall notify the board of the change in status within 30 days of the change in status, provide the board with enrollment information within 90 days of the date the services were first provided and have a peer review performed within 18 months of the date the services were first provided.

(c) Each firm required to participate under subsection (a) of this section shall enroll in the applicable programs of an approved sponsoring organization within 30 days from its initial licensing date or the performance of services that require a review. The firm shall adopt the review due date assigned by the sponsoring organization, and must notify the board of the peer review due date within 30 days of its assignment. In addition, a firm's subsequent review is due three years and six months after the year end of the previous peer review, or earlier as may be required by the sponsoring organization, a committee of the board or the board's executive director. It is the responsibility of the firm to anticipate its needs for review services in sufficient time to enable the reviewer to complete the review by the assigned review due date.

(d) In the event that a firm is merged, otherwise combined, dissolved, or separated, the sponsoring organization shall determine which firm is considered the successor firm. The successor firm shall retain its peer review status and the review due date.

(e) The board will accept extensions granted by the sponsoring organization to complete a review, provided the board is notified by the firm within 15 days of the date that an extension is granted.

(f) A firm that has been rejected by a sponsoring organization for any reason must make a request in writing to the board for authorization to enroll in a program of another sponsoring organization. Such request shall be made within 30 days of notification by the sponsoring organization.

(g) A firm choosing to change to another sponsoring organization may do so provided that the firm authorizes the previous sponsoring organization to communicate to the succeeding sponsoring organization any outstanding corrective actions related to the firm's most recent review. Any outstanding actions must be cleared and outstanding fees paid prior to transfer between sponsoring organizations.

(h) An out-of-state firm practicing in this state pursuant to a practice privilege provided for in §901.461 of the Act (relating to Practice by Certain Out-of-State Firms) and §517.1 and §517.2 of this title (relating to Practice by Certain Out of State Firms and Practice by Certain Out of State Individuals) must comply with the peer review program of the state in which the firm is licensed.

(i) An out-of-state firm practicing in this state pursuant to a practice privilege from a state without a peer review program must comply with §901.159 of the Act (relating to Peer Review) and Chapter 517 of this title (relating to Practice by Certain Out-of-State Firms and Individuals).

(j) An out-of-state firm practicing in this state pursuant to a practice privilege must submit its peer review (or equivalent) documentation upon request of the board.

(k) Interpretive Comment. If a firm is subject to inspections pursuant to PCAOB and also performs attest work not subject to such inspections, the firm must enroll in a peer review program for review

of its non-public company attest work in addition to the firm inspection program required by the PCAOB.

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

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Jerry Hill

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## 22 TAC §527.5

The Texas State Board of Public Accountancy adopts an amendment to §527.5, concerning Successive Deficient Reviews, without changes to the proposed text as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2577). The rule will not be republished.

The amendment to §527.5 will make it clearer that the Board has the authority to take action after only one deficient peer review. The Board action could include an accelerated review but could also include removing attest services from the firm's practice in addition to imposing a sanction. If, however, a firm fails two consecutive peer reviews the proposed changes would not allow the firm to provide attest services except to complete the services it had already begun and then only after a pre-issuance review by a third party of the firm's work. The amendment also states that a firm that has been taken out of attest work, but allowed to complete work it had already begun, be given up to 60 days as opposed to 30 days as proposed, to close out the engagement.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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## 22 TAC §527.6

The Texas State Board of Public Accountancy adopts an amendment to §527.6, concerning Reporting to the Board, with

changes to the proposed text as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2578). The rule will be republished.

The amendment to §527.6 is in agreement with the comments received by the AICPA and the changes are in accordance with those agreements, and "enrolled in" has been replaced by "subject to" and the word "permanent" has been added to subsection (c)(3), both non-substantive changes provided for clarity.

The American Institute of CPAs (AICPA) Peer Review program commented on the proposed revisions to Board Rule 527.6, suggesting adding the following language in subsection (c)(2), "and state CPA societies fully involved in the administration of the AICPA Peer Review Program)" to recognize those firms whose reviews are administered by other state CPA societies, other than TSCPA.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

*§527.6. Reporting to the Board.*

(a) A firm must submit to the board:

(1) a copy of the peer review report and the FLOA from the sponsoring organization, if such report has a rating of pass;

(2) a copy of the peer review report, the firm's LOR, the CAL, and FLOA if the report has a rating of pass with deficiencies or fail; or

(3) a copy of any final report resulting from any inspection by the PCAOB firm inspection program together with documentation of any significant deficiencies and findings and the firm's response.

(b) Any report or document submitted to the board under this section is confidential pursuant to the Act.

(c) Any report or document (collectively referred to as "documents") required to be submitted under subsection (a) of this section shall be filed with the board as provided below:

(1) Peer review documents will be made available by the TSCPA for firms enrolled in the AICPA and TSCPA Peer Review Programs and administered by the TSCPA. Peer review documents will be made available by the TSCPA by posting such documents within 30 days of issuing its notice of acceptance to such firms on the FSBA web site. The reviewed firm must, within 10 days of receipt of the notice of completion from the TSCPA, complete the board's Peer Review Compliance Reporting form and submit it to the board along with the required documents.

(2) Firms otherwise enrolled in the AICPA peer review program (including those whose peer reviews are administered by the NPRC, and state CPA societies fully involved in the administration of the AICPA Peer Review Program) must, within 10 days of receipt of the notice of completion from the sponsoring organization, complete the board's Peer Review Compliance Reporting form and submit it to the board along with the required documents. However, this requirement may be met by allowing the firm's peer review documents to be posted on the FSBA web site, with access granted to the board within 30 days of issuing its notice of acceptance to such firms on the FSBA web site.

(3) Firms subject to the PCAOB permanent firm inspection program must, within 10 days of receipt of the notice of completion from the PCAOB, complete the board's Peer Review Compliance

Reporting form and submit it to the board along with the required documents.

(d) The information required under subsection (c) of this section must be filed with the board either by mail or electronically such as by fax, email, or FSBA web site.

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

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**22 TAC §527.7**

The Texas State Board of Public Accountancy adopts an amendment to §527.7, concerning Peer Review Oversight Board, with changes to the proposed text as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2579). The rule will be republished.

The amendment to §527.7 is in agreement with the comments received by the AICPA and the changes are in accordance with those agreements, and non-substantive changes in subsections (c) and (d)(1) were made for clarity purposes.

One comment was received by the Board.

The American Institute of CPAs Peer Review program commented on the proposed revisions to Board Rule §527.7, suggesting adding the word "oversight" in subsection (d)(1).

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

*§527.7. Peer Review Oversight Board.*

(a) The board shall retain the Peer Review Oversight Board (PROB) for the purpose of:

(1) monitoring sponsoring organizations to provide reasonable assurance that peer reviews are being conducted and reported in accordance with the Standards promulgated by the AICPA Peer Review Board;

(2) reviewing the policies and procedures of sponsoring organization applicants as to their conformity with the peer review standards; and

(3) reporting to the board on the conclusions and recommendations reached as a result of performing the functions in paragraphs (1) and (2) of this subsection.

(b) Information concerning a specific firm or reviewer obtained by the PROB during oversight activities shall be confidential, and the firm's or reviewer's identity shall not be reported to the board. Reports submitted to the board will not contain information concerning specific firms or reviewers. Members of the PROB will be required

to execute a confidentiality statement for the sponsoring organization which they oversee.

(c) The PROB shall consist of three members who are active licensed Texas CPAs. No member of the PROB shall be a current member of the board or one of its committees, the TSCPA's Peer Review or Professional Conduct Committee, or the AICPA Professional Ethics Executive Committees (including subcommittees). The members should have extensive experience in accounting and auditing and currently be in the practice of public accountancy at the partner (or equivalent) level, and shall be members of the TSCPA or the AICPA. The member's firm must have received a report with a rating of pass or an unmodified opinion from its last peer review. Compensation of PROB members shall be set by the board.

(d) The PROB shall make an annual recommendation to the board as to the qualifications of an approved sponsoring organization to continue as an approved sponsoring organization on the basis of the results of the following procedures:

(1) Where the sponsoring organization is the AICPA/NPRC, state CPA societies other than Texas that are fully involved in the administering AICPA Peer Review Program, or the PCAOB, PROB shall review the published oversight reports of those entities or successors, to determine that there is an acceptable level of oversight;

(2) Where the sponsoring organization is other than those listed in paragraph (1) of this subsection, PROB shall perform the following functions:

(A) At least one member of the PROB shall attend all meetings of each sponsoring organization's PRRC. Certain PRRC meetings may be conducted via telephone. In those instances, the PROB may join the conference call.

(B) During such visits, the PROB shall:

(i) meet with the organization's peer review committee during the committee's consideration of peer review documents;

(ii) evaluate the organization's procedures for administering the peer review program;

(iii) examine, on the basis of a random selection or other criteria adopted by PROB, a number of reviews performed by the organization to include, at a minimum, a review of the report on the peer review, the firm's response to the matters discussed, the sponsoring organization's FLOA outlining any additional corrective or monitoring procedures, and the required technical documentation maintained by the sponsoring organization on the selected reviews; and

(iv) expand the examination of peer review documents if significant deficiencies, problems, or inconsistencies are encountered during the analysis of the materials.

(e) In the evaluation of policies and procedures of sponsoring organization applicants, the PROB shall:

(1) examine the policies as drafted by the applicant to determine that they will provide reasonable assurance of conforming with the standards for peer reviews;

(2) evaluate the procedures proposed by the applicant to determine that:

(A) assigned reviewers are appropriately qualified to perform the review for the specific firm;

(B) reviewers are provided with appropriate materials;

(C) the applicant has provided for consulting with the reviewers on problems arising during the review and that specified occurrences requiring consultation are outlined;

(D) the applicant has provided for the assessment of the results of the review; and

(E) the applicant has provided for an independent report acceptance body that considers and accepts the reports of the review and requires corrective actions by firms with significant deficiencies;

(3) make recommendations to the board as to approval of the applicant as a sponsoring organization.

(f) Annually the PROB shall provide the board's Peer Review Committee with a report on the continued reliance of sponsoring organizations' peer reviews. The PROB report shall provide reasonable assurance that peer reviews are being conducted and reported on consistently and in accordance with the Standards promulgated by the AICPA Peer Review Board. A summary of oversight visits shall be included with the annual report.

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

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## 22 TAC §527.10

The Texas State Board of Public Accountancy adopts an amendment to §527.10, concerning Peer Review Report Committee, without changes to the proposed text as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2580). The rule will not be republished.

The amendment to §527.10 deletes the word "accounting" in paragraph (1) and replaces it with "assurance," deletes the phrase "or an unmodified report" in the same paragraph, and deletes language concerning AICPA standards to more closely follow the language found in §527.3.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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## 22 TAC §527.11

The Texas State Board of Public Accountancy adopts an amendment to §527.11, concerning Responsibilities of Peer Review Report Committee, with changes to the proposed text as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2581). The rule will be republished.

The amendment to §527.11 is in agreement with the comments received by the AICPA and the changes are in accordance with those agreements.

One comment was received by the Board.

The American Institute of CPAs Peer Review program commented on the proposed revisions to Board Rule §527.11, suggesting deleting the proposed word "ensuring" and replacing it with "providing reasonable assurance" to indicate a level of assurance that can be met as opposed to language indicating and absolute which is relatively impossible.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§527.11. *Responsibilities of Peer Review Report Committee.*

The PRRC shall:

- (1) establish and administer the sponsoring organization's peer review program in accordance with the AICPA Standards;
- (2) prescribe actions designed to assure correction of the deficiencies in the reviewed firm's system of quality control policies and procedures;
- (3) monitor the prescribed remedial and corrective actions to determine compliance by the reviewed firm;
- (4) resolve instances in which there is a lack of cooperation and agreement between the committee and review teams or reviewed firms in accordance with the sponsoring organization's adjudication process;
- (5) act upon requests from firms for changes in the timetable of their reviews;
- (6) appoint members to subcommittees and task forces as necessary to carry out its functions;
- (7) establish and perform procedures providing reasonable assurance that reviews are performed and reported on in accordance with the AICPA Standards for Performing and Reporting on Peer Reviews;
- (8) establish a report acceptance process, which facilitates the exchange of viewpoints among committee members;
- (9) communicate to the governing body of the sponsoring organization on a recurring basis:

(A) problems experienced by the enrolled firms in their systems of quality control as noted in the peer reviews conducted by the sponsoring organization;

(B) problems experienced in the implementation of the peer review program; and

(C) a summary of the historical results of the peer review program.

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

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## TITLE 25. HEALTH SERVICES

### PART 6. STATEWIDE HEALTH COORDINATING COUNCIL

#### CHAPTER 571. HEALTH PLANNING AND RESOURCE DEVELOPMENT

The Statewide Health Coordinating Council (council) adopts an amendment to §571.1 and the repeal of §§571.11 - 571.13, concerning the general provisions, state health plan and plan implementation, and the Health Information Technology Advisory Committee (advisory committee).

The amendment to §571.1 is adopted without changes to the proposed text as published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3616) and, therefore, the section will not be republished.

The repeals of §§571.11 - 571.13 are adopted without changes to the proposed text as published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3617) and, therefore, the sections will not be republished.

#### BACKGROUND AND PURPOSE

The council issues directives for and provides guidance on the development of the state health plan, submits the plan to the Health and Human Services Commission for review and comment, and approves the plan for submission to the governor. The Department of State Health Services (department), in accordance with rules adopted by the council, prepares and reviews a proposed state health plan every six years and revises and updates the plan biennially. The department submits the proposed plan to the council. The rules proposed for amendment, re-adoption, and repeal implement Health and Safety Code, Chapter 104, Statewide Health Coordinating Council and State Health Plan, and outline the development and implementation of the state health plan.

The council formed the advisory committee in 2006 pursuant to Health and Safety Code, §104.0156 and developed a long-range

plan for health care information technology, including the use of electronic medical records, computerized clinical support systems, computerized physician order entry, regional data sharing interchanges for health care information, and other methods of incorporating information technology in pursuit of greater cost-effectiveness and better patient outcomes in health care. The rules proposed for repeal implemented the advisory committee.

The amendment to §571.1 and the readoption of §571.2 are necessary to comply with Health and Safety Code, §104.012. Section 571.2 is readopted without changes to the rule.

The repeal of §§571.11 - 571.13 for the advisory committee is necessary as the council's reasons for initially adopting the rules no longer exist, given the completion of the long-range plan mandated by Health and Safety Code, §104.0156.

Government Code, §2001.039, governs an agency's review of rules, and generally requires that a state agency review a rule no later than the fourth anniversary of the date on which the rule takes effect and every four years after that date. A state agency's review of a rule must include an assessment of whether the reasons for adopting each rule continue to exist.

#### SECTION-BY-SECTION SUMMARY

The amendment to §571.1 replaces the "Texas Department of Health" with the "Texas Department of State Health Services" to reflect House Bill 2292, 78th Legislature, Regular Session, 2003, which abolished the Texas Department of Health and created the department.

#### COMMENTS

The council did not receive any comments regarding the proposed rules during the comment period.

#### LEGAL CERTIFICATION

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

### SUBCHAPTER A. STATEWIDE HEALTH COORDINATING COUNCIL

#### 25 TAC §571.1

##### STATUTORY AUTHORITY

The amendment will be adopted under Health and Safety Code, §104.012, which authorizes the council to adopt rules governing the development and implementation of the state health plan. The review of the rules implements Government Code, §2001.039.

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

Filed with the Office of the Secretary of State on July 12, 2016.

TRD-201603476

Matt Turner, PhD, MPH

Health Professions Resource Center

Statewide Health Coordinating Council

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Proposal publication date: May 20, 2016

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



## SUBCHAPTER B. HEALTH INFORMATION TECHNOLOGY ADVISORY COMMITTEE

### 25 TAC §§571.11 - 571.13

#### STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §104.012, which authorizes the council to adopt rules governing the development and implementation of the state health plan. The review of the rules implements Government Code, §2001.039.

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

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Matt Turner, PhD, MPH

Health Professions Resource Center

Statewide Health Coordinating Council

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 17. STATE PENSION REVIEW BOARD

#### CHAPTER 607. PUBLIC RETIREMENT SYSTEM MINIMUM EDUCATIONAL TRAINING PROGRAM

The State Pension Review Board (the "Board"), adopts amendments to 40 TAC Chapter 607, Subchapter B, §607.110, concerning Minimum Educational Training Requirements; Subchapter C, §607.120, concerning Program Standards for All Sponsors; and Subchapter D, §607.140, concerning Public Retirement System Reporting, without changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2146). The rules will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE AMENDMENTS

In accordance with Government Code, §801.211, the Board established an educational training program for trustees and system administrators of Texas public retirement systems under Chapter 607. Since the original adoption of the rules, the Board has received comments and questions from public retirement systems and education providers (sponsors) regarding the applicability of certain requirements. The purpose of the adopted amendments is to address the comments received by the Board.

The amendments to §§607.110, 607.120, and 607.140 are intended to make the following changes:

§607.110 allows flexibility for first year of service training completed under the Minimum Educational Training (MET) requirements. Under the prior rules, the Board received comments from public retirement systems citing scenarios in which

a trustee may want to attend an MET activity in core content areas prior to officially assuming position on the system's board. In response to these comments, the Board added the new subsection §607.110(c), which allows the Board to accept a trustee or system administrator's successfully completed MET activity up to six months prior to beginning service on a system's board or the system administrator's hiring date.

§607.120 lends clarity to program standards for sponsors providing online or electronically-delivered training. For MET activities to be more accessible, MET rules allow for electronically-delivered training. Under previous rules, the Board received questions regarding standards for online training completion and attendance verification. To address the questions, and upon consideration of various options, the Board determined a completion code would offer the best minimum standard for tracking attendance and completion of an electronically-delivered MET activity without being onerous for program participants and educational sponsors.

§607.140 updates and clarifies compliance reporting requirements. The PRB determined that the prior MET reporting schedule would not allow sufficient time for public retirement systems to submit the required training reports. The amended rule extends the submission deadlines by one month.

#### SECTION-BY-SECTION SUMMARY

The adopted amendment to §607.110 allows flexibility for Minimum Educational Training (MET) completion by trustees and system administrators prior to beginning the first year of service.

The adopted amendment to §607.120 clarifies online or electronically-delivered training standards for MET activities offered by sponsors.

The adopted amendment to §607.140 cleans up outdated language and clarifies dates for the MET reporting periods.

#### PUBLIC COMMENTS

No comments were received on the rule proposal.

### SUBCHAPTER B. MINIMUM EDUCATIONAL TRAINING REQUIREMENTS FOR TRUSTEES AND SYSTEM ADMINISTRATORS

#### 40 TAC §607.110

##### STATUTORY AUTHORITY

The adopted amendments are authorized by the Texas Government Code, §801.201(a), which grants specific authority to the Board to adopt rules for the conduct of its business; and §801.211(e), which allows the Board to adopt rules to administer and provide educational training programs under §801.211.

##### CROSS REFERENCE

The adopted amendments affect the Texas Government Code Chapter 801.

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

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Anumeha  
Executive Director  
State Pension Review Board  
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For further information, please call: (512) 463-1736

### SUBCHAPTER C. MINIMUM EDUCATIONAL TRAINING PROGRAM SPONSORS

#### 40 TAC §607.120

##### STATUTORY AUTHORITY

The adopted amendments are authorized by the Texas Government Code, §801.201(a), which grants specific authority to the Board to adopt rules for the conduct of its business; and §801.211(e), which allows the Board to adopt rules to administer and provide educational training programs under §801.211.

##### CROSS REFERENCE

The adopted amendments affect the Texas Government Code Chapter 801.

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

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### SUBCHAPTER D. COMPLIANCE WITH THE MINIMUM TRAINING REQUIREMENTS

#### 40 TAC §607.140

##### STATUTORY AUTHORITY

The adopted amendments are authorized by the Texas Government Code, §801.201(a), which grants specific authority to the Board to adopt rules for the conduct of its business; and §801.211(e), which allows the Board to adopt rules to administer and provide educational training programs under §801.211.

##### CROSS REFERENCE

The adopted amendments affect the Texas Government Code Chapter 801.

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

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## PART 20. TEXAS WORKFORCE COMMISSION

### CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION

The Texas Workforce Commission (Commission) adopts the following new section to Chapter 819, relating to the Texas Workforce Commission Civil Rights Division, *without changes*, as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3271):

#### Subchapter H. Discriminatory Housing Practices, §819.136

The Commission adopts amendments to the following sections of Chapter 819, relating to the Texas Workforce Commission Civil Rights Division, *without changes*, as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3271):

#### Subchapter A. General Provisions, §§819.1 - 819.3

Subchapter B. Equal Employment Opportunity Provisions, §819.11 and §819.12

Subchapter C. Equal Employment Opportunity Reports, Training, and Reviews, §§819.23 - 819.25

Subchapter D. Equal Employment Opportunity Complaints and Appeals Process, §§819.46, 819.47, 819.50, and 819.52

Subchapter E. Equal Employment Opportunity Deferrals, §819.72

Subchapter G. Texas Fair Housing Act Provisions, §819.112

Subchapter H. Discriminatory Housing Practices, §819.122

Subchapter I. Texas Fair Housing Act Complaints and Appeals Process, §§819.151, 819.153, and 819.156

Subchapter J. Fair Housing Deferral to Municipalities, §819.171

Subchapter L. Fair Housing Fund, §819.221

The Commission adopts the repeal of the following sections of Chapter 819, relating to the Texas Workforce Commission Civil Rights Division, as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3271):

Subchapter C. Equal Employment Opportunity Reports, Training, and Reviews, §819.22

Subchapter J. Fair Housing Deferral to Municipalities, §819.172

The Commission adopts the repeal of the following subchapter of Chapter 819, relating to the Texas Workforce Commission Civil Rights Division, in its entirety, as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3271):

Subchapter K. Fair Housing Administrative Hearings and Judicial Review, §§819.191 - 819.201

The Commission adopts the following new subchapter to Chapter 819, relating to the Texas Workforce Commission Civil Rights

Division, *without changes*, as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3271):

Subchapter K. Fair Housing Administrative Hearings and Judicial Review, §§819.191 - 819.201

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The 84th Texas Legislature, Regular Session (2015), enacted the following changes, requiring amendments to Chapter 819, the Texas Workforce Commission Civil Rights Division rules:

--Senate Bill (SB) 208, relating to the continuing functions of the Texas Workforce Commission (Agency), which abolishes the Commission on Human Rights and transfers its duties to the Agency, in addition to streamlining and clarifying several CRD functions, including review of other state agencies and reporting requirements to the legislature.

--SB 1267, relating to contested cases conducted under the Administrative Procedure Act (APA);

--House Bill (HB) 2154, relating to the functions and operation of the State Office of Administrative Hearings, resulting in changes to Texas Government Code, Chapter 2001, APA;

--HB 577, relating to pay, benefits, and requirements for state active duty service members; and

--SB 652, relating to excluding a franchisor as an employer of a franchisee or a franchisee's employees, which impacts the definition of "Employer" in §819.11.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

#### §819.1. Purpose

Section 819.1 adds a reference to Texas Government Code §437.204 and Subchapter I and removes the reference to Texas Government Code, Chapter 419, Subchapter F (relating to the review of fire department tests) to clarify that the Agency enforces discrimination claims by state military members against employers other than the Texas Military Forces due to deployment for training or active duty, and to implement SB 208 and HB 577.

#### §819.2. Definitions

Section 819.2(1) and (2) are amended to remove the definition of "Commission on Human Rights" and add the definitions of "Agency" and "Commission" to implement SB 208.

Section 819.2(4), the definition of CRD director, is amended to implement SB 208 by:

--removing Texas Labor Code reference §301.154 and adding the reference to §301.009(a); and

--adding that the CRD director is the Agency's authorized designee to implement SB 208.

Certain paragraphs have been renumbered to reflect additions.

§819.3. Roles and Responsibilities of Commission on Human Rights, CRD, and CRD Director

Section 819.3 is amended by renaming the section title as "Roles and Responsibilities of the Texas Workforce Commission and CRD" to implement SB 208.

Section 819.3(a) is amended by replacing "Commission on Human Rights" with "Agency" to implement SB 208.

Section 819.3(a)(2) is amended by adding that the Agency's executive director will appoint the CRD director in order to implement SB 208.

Section 819.3(a)(3) is amended to add that the Agency's executive director will supervise its CRD director in administering the activities of CRD.

Section 819.3(b)(1) is amended to add the reference to Texas Government Code §437.204 and Subchapter I and remove the reference to Texas Government Code, Chapter 419, Subchapter F (relating to the review of fire department tests) and Chapter 437 to clarify that the Agency enforces discrimination claims by state military members against employers other than the Texas Military Forces due to deployment for training or active duty, and to implement SB 208 and HB 577.

Section 819.3(c), Agency Personnel Policies Applicable to CRD Director, is removed to implement SB 208.

SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

The Commission adopts the following amendments to Subchapter B:

§819.11. Definitions

Section 819.11(6) is amended to clarify the definition of "Employer" to implement:

--HB 577, which excludes the Texas Military Forces from being considered employers; and

--SB 652, which excludes franchisors from being considered employers.

Section 819.11(8) is amended by clarifying that "Mediation" is an "alternative dispute resolution" process intended to "resolve" a dispute and removing "prior to reasonable cause determination or dismissal of a perfected complaint." This change aligns the definition with Agency practice.

§819.12. Unlawful Employment Practices

Section 819.12(g) is amended to replace "Commission on Human Rights" with "Agency" and to update section language to implement SB 208.

Certain paragraphs and subparagraphs have been renumbered and relettered to reflect revisions.

SUBCHAPTER C. EQUAL EMPLOYMENT OPPORTUNITY REPORTS, TRAINING, AND REVIEWS

The Commission adopts the following amendments to Subchapter C:

§819.22. Review of Firefighter Tests

Section 819.22, "Review of Firefighter Tests," is repealed to implement SB 208.

§819.23. Review of State Agency Policies and Procedures

Section 819.23(a) and new (b) update procedures in reviewing other state agencies' personnel policies and procedures systems (PPPS), which allows reviews of state agencies' PPPS more frequently than every six years, using risk assessment with the implementation of SB 208.

Certain subsections have been relettered to reflect additions.

§819.24. Standard Employment Discrimination Training

Section 819.24(a) is amended to:

--remove the requirement that a preapproved list of standard and compliance training be maintained; and

--add that the Agency shall develop materials for use by state agencies in providing standard employment discrimination training.

§819.25. Compliance Employment Discrimination Training

Section 819.25(b):

--removes the requirement that preapproved list of standard and compliance training be maintained by CRD; and

--adds that compliance training may be provided by the Agency or by another entity or person approved by the Agency.

SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND APPEALS PROCESS

The Commission adopts the following amendments to Subchapter D:

§819.46. Dismissal of Complaint

Section 819.46(b) is amended to align with Texas Labor Code §21.208 on the legal communication method to the complainant, respondent, and any applicable federal enforcement agency.

§819.47. Cause Determination

Section 819.47(b) is amended to replace "Commission on Human Rights" with "Commission members" to implement SB 208.

§819.50. Right to File a Civil Action

Section 819.50(a)(2) is amended to replace "shall" with "may" to align with Texas Labor Code §21.252(c).

§819.52. Judicial Enforcement

Section 819.52(a) is amended to add "On a majority vote of the Commission" to implement SB 208.

Section 819.52(b) is amended to specify that the Commission makes the determination to bring a civil action and that CRD shall notify the complainant by certified mail to implement SB 208.

Section 819.52(c) is amended to replace "Commission on Human Rights" with "Commission" to implement SB 208.

SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS

The Commission adopts the following amendments to Subchapter E:

§819.72. Requirements for a Local Commission

Section 819.72 is amended to reflect current operations by specifying that the local commission must be currently certified by EEOC as a Fair Employment Practices Agency (FEPA).

Certain paragraphs in this section have been renumbered to accommodate revisions.

## SUBCHAPTER G. TEXAS FAIR HOUSING ACT PROVISIONS

The Commission adopts the following amendments to Subchapter G:

### §819.112. Definitions

Section 819.112(8)(A)(ii) is amended to replace "mental retardation" with "intellectual disability," in accordance with rule changes that were previously approved in June 2014.

## SUBCHAPTER H. DISCRIMINATORY HOUSING PRACTICES

The Commission adopts the following amendments to Subchapter H:

### §819.122. Exemptions Based on Familial Status

The heading to §819.122 is amended to add "Three" to emphasize that there are three distinct exemptions.

Section 819.122(a) is amended by adding language in reference to a federal or state program for clarification.

Section 819.122(b) is amended to add language clarifying that discrimination prohibitions under the Texas Fair Housing Act based on familial status do not apply to housing intended for and solely occupied by individuals 62 years of age or older.

Section 819.122(c) is amended to add language clarifying that discrimination prohibitions under the Texas Fair Housing Act based on familial status do not apply to housing intended and operated for occupancy by individuals 55 years of age or older, given specific criteria.

New §819.136. Prohibited Interference, Coercion, Intimidation, or Retaliation

New §819.136, "Prohibited Interference, Coercion, Intimidation, or Retaliation," retains the provisions of §819.201 of Subchapter K of this chapter, concurrently proposed for repeal.

## SUBCHAPTER I. TEXAS FAIR HOUSING ACT COMPLAINTS AND APPEALS PROCESS

The Commission adopts the following amendments to Subchapter I:

### §819.151. Filing a Complaint

Section 819.151(h) is amended to replace "Commission on Human Rights" with "Commission" and to specify that if a majority of the Commission does not approve the complaint, the complaint shall be withdrawn by CRD to implement SB 208.

### §819.153. Investigation of a Complaint

Section 819.153(a) is amended to add language further clarifying CRD internal practice.

Section 819.153(d) is amended to remove the phrase "within 10 days of identification" to align with Texas Property Code §301.084 and §301.081(f)(3).

Section 819.153(k) is amended to add "unless it is impracticable to do so" to align with federal Fair Housing Act §810(a)(1)(C).

### §819.156. Reasonable Cause Determination and Issuance of a Charge

Section 819.156(a) is amended to replace "Commission on Human Rights" with "Agency" to implement SB 208. Additionally, "and" is changed to "or" to clarify that reasonable cause determination shall be based solely on the facts concerning the al-

leged discriminatory housing practice, provided by complainant and respondent, or otherwise disclosed during the investigation.

Section 819.156(e) is amended to add "trial of" to align with Texas Property Code §301.092 and federal Fair Housing Act §810(g)(4) and to reflect that a charge may not be issued upon commencement of a trial of a civil action rather than commencement of the civil action itself.

## SUBCHAPTER J. FAIR HOUSING DEFERRAL TO MUNICIPALITIES

The Commission adopts the following amendments to Subchapter J:

### §819.171. Deferral

Section 819.171 is amended to reflect that CRD may defer proceedings and refer complaints to a municipality that is currently certified by the U.S. Department of Housing and Urban Development (HUD) by adding the phrase "as a Fair Housing Assistance Program (FHAP) to investigate fair housing complaints and enforce violations" to (a) and removing subsections (b) and (c).

### §819.172. Memoranda of Understanding

Section 819.172 is repealed in order to eliminate the requirement of memoranda of understanding, thereby streamlining fair housing deferrals to municipalities.

## SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

The Commission adopts the repeal of Subchapter K in its entirety:

### §819.191. Administrative Hearings

### §819.192. Ex Parte Communications

### §819.193. Proposal for Decision and Hearing Officer's Report

### §819.194. Countersignature by the CRD Director

### §819.195. Oral Argument before the Commission on Human Rights

### §819.196. Pleading Before Order

### §819.197. Form and Content of the Order

### §819.198. Final Order

### §819.199. Rehearing

### §819.200. Judicial Review

### §819.201. Prohibited Interference, Coercion, Intimidation, or Retaliation

## SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

The Commission adopts new Subchapter K:

Subchapter K is being repealed and replaced to streamline, update, and clarify the rules governing administrative proceedings for adjudication of fair housing complaints as required in Texas Property Code, Chapter 301.

New Subchapter K aligns with APA, as amended by SB 1267 and HB 2154, regarding notices of hearing, proposals for decision, motions for rehearing, and suits for judicial review.

### §819.191. Administrative Hearings

New §819.191 provides that FHA hearings will be conducted by the Agency's Special Hearings Department in accordance with Texas Government Code, Chapter 2001.

#### §819.192. Parties

New §819.192 sets forth requirement and time frame in regards to parties.

#### §819.193. Evidence and Prehearing Conference

New §819.193 provides for the admissibility of evidence and handling of exhibits.

#### §819.194. Notice of Hearing

New §819.194 sets forth the requirements and time frames for issuing a notice of hearing.

#### §819.195. Postponement and Continuance

New §819.195 provides that a hearing may be postponed at the discretion of the hearing officer.

#### §819.196. Default

New §819.196 sets forth the procedures to be followed if a party does not appear for a hearing.

#### §819.197. Ex Parte Communications

New §819.197 generally prohibits communication between parties and a Commission member or Agency employee outside of the hearing process.

#### §819.198. Proposal for Decision

New §819.198 sets forth the procedures for drafting and exchanging the proposal for decision and exceptions to the proposal.

#### §819.199. Commission Decision

New §819.199 sets forth the procedures for issuing the Commission decision and when the decision becomes final.

#### §819.200. Motion for Rehearing

New §819.200 describes the procedures and deadlines for filing a motion for rehearing.

#### §819.201. Judicial Review

New §819.201 sets forth the right to appeal the Commission decision to a court under Texas Government Code, Chapter 2001.

### SUBCHAPTER L. FAIR HOUSING FUND

The Commission adopts the following amendments to Subchapter L:

#### §819.221. Fair Housing Fund

Section 819.221(c) is amended to replace "Commission on Human Rights" with "Agency" to implement SB 208.

No comments were received.

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 40 TAC §§819.1 - 819.3

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it

deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Government Code, Chapter 552.

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

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Texas Workforce Commission

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For further information, please call: (512) 475-0829



### SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

#### 40 TAC §819.11, §819.12

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Government Code, Chapter 552.

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

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### SUBCHAPTER C. EQUAL EMPLOYMENT OPPORTUNITY REPORTS, TRAINING, AND REVIEWS

#### 40 TAC §819.22

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeal affects Texas Government Code, Chapter 552.

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

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Texas Workforce Commission

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#### **40 TAC §§819.23 - 819.25**

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Government Code, Chapter 552.

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

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Patricia Gonzalez

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Texas Workforce Commission

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### **SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND APPEALS PROCESS**

#### **40 TAC §§819.46, 819.47, 819.50, 819.52**

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Government Code, Chapter 552.

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

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### **SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS**

#### **40 TAC §819.72**

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Texas Government Code, Chapter 552.

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

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Patricia Gonzalez

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

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For further information, please call: (512) 475-0829



### **SUBCHAPTER G. TEXAS FAIR HOUSING ACT PROVISIONS**

#### **40 TAC §819.112**

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Texas Government Code, Chapter 552.

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

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Patricia Gonzalez

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Texas Workforce Commission

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For further information, please call: (512) 475-0829



### **SUBCHAPTER H. DISCRIMINATORY HOUSING PRACTICES**

#### **40 TAC §§819.122, §819.136**

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Government Code, Chapter 552.

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

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Patricia Gonzalez

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

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## SUBCHAPTER I. TEXAS FAIR HOUSING ACT COMPLAINTS AND APPEALS PROCESS

### 40 TAC §§819.151, 819.153, 819.156

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Government Code, Chapter 552.

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

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Texas Workforce Commission

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## SUBCHAPTER J. FAIR HOUSING DEFERRAL TO MUNICIPALITIES

### 40 TAC §819.171

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Texas Government Code, Chapter 552.

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### 40 TAC §819.172

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeal affects Texas Government Code, Chapter 552.

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## SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

### 40 TAC §§819.191 - 819.201

The repeals are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeals affect Texas Government Code, Chapter 552.

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

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### 40 TAC §§819.191 - 819.201

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Government Code, Chapter 552.

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## SUBCHAPTER L. FAIR HOUSING FUND

### 40 TAC §819.221

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Texas Government Code, Chapter 552.

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# 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: 1 TAC §354.1667(e)(10)(B)

PY3 QISMC Goal Setting for Category 3 P4P Outcomes		
Direction	Baseline	PY3 Goal
Positive (higher rates indicate improvement)	Below the MPL	baseline + .15*(HPL - MPL)
	Between the MPL & HPL	the greater of: baseline + .25*(HPL - baseline); or baseline + .10*(HPL - MPL) †
	Above the HPL	the lesser of: baseline + .125*(1-baseline); or baseline + .10*(HPL - MPL) †
Negative (lower rates indicate improvement)	Above the MPL	baseline - .15*(MPL - HPL)
	Between the MPL & HPL	the lesser of: baseline - .25*(baseline - HPL); or baseline - .10*(MPL - HPL) †
	Below the HPL	the greater of: baseline - .125*(baseline); or baseline - .10*(MPL - HPL) †
† Goal set using the improvement floor		

Figure: 1 TAC §354.1667(e)(11)(B)

Percent of Goal Achieved for Category 3 P4P Outcomes			
PY	Milestone	Positive Direction (higher rates indicate improvement)	Negative Direction (lower rates indicate improvement)
PY3	DY6A AM-3.x	(PY3 achieved - PY1 goal or equivalent)/(PY3 goal - PY1 goal or equivalent)	(PY1 goal or equivalent - PY3 achieved)/(PY1 goal or equivalent - PY3 goal)
PY4	Carry forward of DY6A AM-3.x	(PY4 achieved - PY1 goal or equivalent)/(PY3 goal - PY1 goal or equivalent)	(PY1 goal or equivalent - PY4 achieved)/(PY1 goal or equivalent - PY3 goal)

### Texas Department of Agriculture Structural Pest Control Service Penalty Matrix

Tables S1, S2, and S3 represent the Hazard or Potential Hazard (HPH) associated with the noncompliance issues listed throughout the Structural Pest Control Penalty Matrix (matrix). Within the tables, the Minor, Moderate, or Major designations take into consideration the Nature, Circumstances, Extent, and Gravity (NCEG) of the situation, which resulted in the noncompliant finding.

\*The tables show the maximum penalties that may be imposed for a given violation. All penalties are up to the designated amount/penalty indicated and shall be determined by the Department at its discretion.

**Table S1 – Low Hazard Potential\***

	Minor	Moderate	Major
1 <sup>st</sup> Violation	Warning	\$150	\$300
2 <sup>nd</sup> Violation	\$150	\$300	\$450
3 <sup>rd</sup> & subsequent violations	\$300	\$450	\$600

**Table S2 – Moderate Hazard Potential\***

	Minor	Moderate	Major
1 <sup>st</sup> Violation	\$300	\$750	\$1500
2 <sup>nd</sup> Violation	\$500	\$1000	\$2000
3 <sup>rd</sup> & subsequent violations	\$750 Revocation/Suspension	\$1500 Revocation/Suspension	\$3000 Revocation/Suspension

**Table S3 – High Hazard Potential\***

	Minor	Moderate	Major
1 <sup>st</sup> Violation	\$500	\$1000	\$2000
2 <sup>nd</sup> Violation	\$1000	\$2000	\$4000
3 <sup>rd</sup> & subsequent violations	\$1500 Revocation/Suspension	\$3000 Revocation/Suspension	\$5000 Revocation/Suspension

**Table S4 – Maximum Hazard Potential\***

	Minor	Moderate	Major
1 <sup>st</sup> Violation	\$1000	\$1500	\$2000
2 <sup>nd</sup> Violation	\$2000	\$2500	\$3000
3 <sup>rd</sup> & subsequent violations	\$3000 Revocation/Suspension	\$4000 Revocation/Suspension	\$5000 Revocation/Suspension

ALL ACTIONS IN RESPONSE TO NONCOMPLIANCE WITH CHAPTER 7, SUBCHAPTER H OF THE TEXAS ADMINISTRATIVE CODE ARE AUTHORIZED UNDER CHAPTER 12 OF THE TEXAS AGRICULTURE CODE.

<b>Violation</b>	<b>Texas Administrative Code Section Number(s)</b>	<b>Table Violation</b>
<b>DIVISION 2—LICENSES</b>		
Operating without a license	7.121	S4
No known address or incorrect address for business/noncommercial	7.122	S1
Insurance lapse/No insurance	7.123	S3
Cheating/unauthorized assistance on exams	7.125(10)-(15)	S3
Failure to notify change of address: Business/Noncommercial	7.126(e); 7.161(17)	S1
Failure to notify change of employers- Certified applicator/technician	7.126 / 7.142	S1
Failure to notify of loss of responsible certified applicator	7.128	S2
Non-commercial doing business as commercial or more than one employer without additional license(s)	7.131	S3
Refusal to release training records on employment change	7.133(j)	S1
Performing work w/out supervision in a category an apprentice is not properly trained in 7.133(h)	7.133(h)	S3
Failure to maintain technician and/or apprentice training records	7.133	S2
Failure to meet minimum continuing education/technician requirements	7.133(h)/7.134(b)	S2
<b>DIVISION 3—COMPLIANCE AND ENFORCEMENT</b>		
No TPCL numbers or magnetic numbers on vehicle	7.141	S1
Failure to register an employee	7.142(b)	S2
Failure to supervise an employee	7.143/7.133	S3
Use records incomplete	7.144	S1
Failure to maintain use records	7.144	S2
No business name, location address or mailing address, business license number (TPCL), or telephone number on contracts	7.145	S1
No business name, business license number and letter, location or mailing address, telephone number, or statement that the business is licensed and regulated by the Texas Department of Agriculture on a contract, warranty, termite disclosure document or guarantee (or incomplete/incorrect)	7.145(a); 7.161(16)	S1
Failure to post/provide a pest control sign	7.146	S1
Failure to provide consumer information sheet	7.147	S1
Failure to make consumer information sheet available upon request	7.147	S1
Failure of school or daycare to notify parents	7.148	S1
Failure to maintain emergency waivers	7.148(d)	S1
Failure of apartment management or employers to post notice and provide consumer information sheets	7.148	S1
Use inconsistent with labeling	7.150	S3
Any FIFRA violation--unlabeled container	7.151	S3
Any violation of label instructions regarding storage or disposal	7.151	S3
Advertising violations	7.152	S3
Failure to cooperate/allow inspection or provide information/records or providing false information	7.156	S3

<b>DIVISION 4—UNLAWFUL ACTS AND GROUNDS FOR REVOCATION</b>		
Misrepresentation, deceit, or fraud for the purpose of inducing others to act thereon to their damage	7.161(1)	S4
Operating out of category	7.161(10)	S3
Misrepresentation in any application for license	7.161(2)	S4
Any violation of the label which causes environmental problem	7.161	S4
Working in a manner which could be injurious	7.161(8)	S3
Use of cancelled or unregistered pesticides not approved under Texas Agriculture Code §76.041	7.161(12)	S3
Failure to surrender license as Department ordered	7.162	S3
<b>DIVISION 5—TREATMENT STANDARDS</b>		
Application/service performed inconsistent with treatment disclosure	7.172(c)	S2
Post-construction treatment at less than label volume/rate	7.172(a)	S3
Failure to post WDIR/Termite Post-Treatment Sticker	7.172(d) and 7.177	S2
Pre-construction treatment made at less than label volume/rate	7.173(b)	S3
Failure to provide SPCS/D-2 form	7.174(b)(8)	S2
Incomplete termite treatment disclosure documents/termite disclosure document violations	7.174	S2
Apprentice performing WDI Report	7.175(a)	S3
Failure to provide accurate/incomplete WDIR Inspection	7.175	S2
Any fumigation violation besides label violations	7.178	S3
<b>DIVISION 7—INTEGRATED PEST MANAGEMENT PROGRAM FOR SCHOOL DISTRICTS</b>		
Any violation regarding IPM Program essential elements	7.201	S2
Failure to comply with IPM in schools	7.201	S2
Making a pesticide application inconsistent with pesticide use in schools	7.202	S3
<b>OTHER VIOLATIONS</b>		
First time (and subsequent) offenders that operate without the proper license after a demonstration of prior knowledge of the SPCS requirements. (Not including late renewal)		S4
Fraud		S4
Grossly negligent or intentional poisoning of a person or animal		S4
Repetitive or unreasonable refusal to allow the Department to exercise its legal authority to inspect licensees and/or investigate complaints		S4
Violations involving institutional disregard for compliance		S4

Figure: 16 TAC §402.205(i)

If	Then
Bingo Cards/Paper	Organization transferring from, unit transferring to, series number, serial number, #on/#up, total number of sets/sheets transferred, signature of an officer, director or the bingo chairperson.
Bingo Equipment	Organization transferring from, unit transferring to, equipment type, manufacturer, model and/or serial number, signature of an officer, director or the bingo chairperson.
Pull-tab Bingo Tickets	Organization transferring from, unit transferring to, form number, name of game, series number, total number of pull-tab bingo tickets transferred, signature of an officer, director or the bingo chairperson.

Figure: 16 TAC §402.411(e)

Number of Days Late	Percentage of Estimated License Fee
1-14	10%
15-28	20%
29-42	30%
43-56	40%
57-60	50%

Figure: 16 TAC §402.420

Religious Society:	
Qualifications and Requirements	Necessary Documentation
Must be organized primarily for religious purposes.	<p>A signed and dated copy of the most recent version of all of the organization's organizing instrument(s);</p> <p>Or</p> <p>A copy of the page from the applicant's parent organization religious directory that lists the applicant organization's information.</p> <p>The name of the applicant organization must match the name of the organization on the documents submitted.</p>
Must have been organized in Texas for at least three years.	<p>If the applicant is affiliated with a state or national organization, Verification by Parent for Charitable Organization Conductor.</p> <p>If the applicant is not affiliated with a state or national organization, a copy of a listing in a publication such as a national roster or newspaper article naming the organization;</p> <p>Or</p> <p>A letter to the applicant from a government agency.</p> <p>The document submitted must reflect the applicant's name, Texas address, and either be dated three years prior to the application date or establish the date the organization was founded.</p>
Must demonstrate that the organization has made significant progress toward the accomplishment of its purposes during the 12 months preceding the date of application.	<p>At least three (3) different types of acceptable documents as proof that your organization was continuously engaged in furthering your charitable purpose for the time period beginning one year prior to the date the application was signed.</p> <p>Examples of acceptable documentation include:</p> <ol style="list-style-type: none"> <li>1. a letter from the diocese,</li> <li>2. notices of church services, and/or church bulletins,</li> <li>3. canceled checks for clergy salaries, religious books, materials and/or supplies, maintenance of religious building(s), and</li> </ol>

	<p>4. records of marriages performed, or records of funerals performed.</p> <p>To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been continuously engaged in furthering its charitable purpose throughout the past twelve months.</p> <p>All documents must be dated and indicate the name of the organization.</p>
<p>Must appoint only the organization's members to serve as operators for the organization.</p>	<p>A current membership list with all officers and directors noted. Officers would include a priest, pastor, rabbi, or other head of the church. Membership list will be compared to persons listed on the application to confirm that only members have been named as operators.</p>
<p>Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and, have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.</p>	<p>A signed and dated copy of the most recent version of all of the organization's organizing instruments(s) that list the officer and director positions;</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors, and operators.</p> <p>Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
<p>Section 2001.102 License Application Requirements.</p>	<p>Most recent copy of IRS Form 990 if organization is required to file it with the Internal Revenue Service.</p> <p>Indicate on application if organization is not required to file Form 990;</p>

	<p>And</p> <p>If the organization is organized under the law of this state, the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.</p>
<b>Non-Profit Medical Organization:</b>	
<b>Qualifications and Requirements</b>	<b>Necessary Documentation</b>
Main activities must be in support of medical research or treatment programs.	<p>A signed and dated copy of the most recent version of all of the organization's organizing instruments.</p> <p>The name of the applicant organization must match the name of the organization on the organizing instruments.</p>
Must have had a governing body or officers elected by the vote of the members or delegates elected by the members for at least three years.	<p>Copies of meeting minutes recording officer elections for the past three years showing the date of each meeting and signature of an officer;</p> <p>Or</p> <p>A dated list of officers and positions held for each year of the past three years.</p> <p>A statement signed by an officer indicating which positions were left open if the organization had positions defined in organizing instrument(s) that the organization did not fill.</p> <p>Organizing instrument(s) will be reviewed to ensure that the organization has members who elect officers and to confirm the officer positions.</p>
Must have been affiliated with a state or national organization organized to perform the same purposes for at least three years.	Verification by Parent for Charitable Organization Conductor
Must hold a valid 501(c) exemption through the Internal Revenue Service.	If the Commission is unable to validate directly with the Internal Revenue Service that the organization has a 501(c) designation, the Commission will request additional documentation from the applicant.
May not distribute any income to members,	Most recent copy of IRS Form 990 if organization is required to file it with the Internal Revenue Service.

<p>officers, or governing body except as reasonable compensation for services.</p>	<p>Indicate on application if organization is not required to file Form 990.</p> <p>A signed and dated copy of the most recent version of all of the organization's organizing instruments.</p>
<p>Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.</p>	<p>At least three (3) different types of acceptable documents as proof that organization was engaged in furthering its charitable purpose for the time period beginning one year prior to the date the application was signed. Acceptable documentation may include:</p> <ol style="list-style-type: none"> <li>1. canceled checks in support of medical treatment or research programs, i.e., American Cancer Society, Muscular Dystrophy Association, or other recognized organizations dedicated to the elimination of disease;</li> <li>2. canceled checks for the purchase of medical equipment or to provide medical care for the needy;</li> <li>3. letters of appreciation from individuals or organizations receiving benefits for treatment;</li> <li>4. IRS Form 990; and</li> <li>5. newspaper articles.</li> </ol> <p>To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been engaged in furthering its charitable purposes throughout the past twelve months.</p> <p>All documents must be dated and indicate the name of the organization.</p>
<p>May appoint only the organization's members to serve as operators.</p>	<p>A current membership list with officers and directors noted. Membership list will be compared to the persons listed on the application to confirm that only members have been named as operators.</p>
<p>Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling</p>	<p>A signed and dated copy of the most recent version of all of the organization's organizing instruments that list the officer and director positions;</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing</p>

<p>or gambling-related offense; and, have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.</p>	<p>instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors, and operators.</p> <p>Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
<p>Section 2001.102 License Application Requirements.</p>	<p>If the organization is organized under the law of this state, the organization must be in good standing with the Secretary of State (SOS) The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.</p>
<p>Volunteer Fire Department:</p>	
<p><b>Qualifications and Requirements</b></p>	<p><b>Necessary Documentation</b></p>
<p>Organized primarily to provide fire-fighting services.</p>	<p>Proof of membership in a professional fire fighting organization;</p> <p>Or</p> <p>Copy of a publication that lists the organization and its phone number to call in case of fire;</p> <p>Or</p> <p>A letter from a local government agency recognizing the organization as a volunteer fire department;</p> <p>Or</p> <p>A copy of all organizing instrument(s) which list this purpose for the organization;</p> <p>Or</p> <p>A dated newspaper article which details the organization's</p>

	<p>activities.</p> <p>The name of the applicant organization must match the name of the applicant on the documents submitted.</p>
<p>Must have been organized in Texas for at least three years.</p>	<p>If the applicant is affiliated with a state or national organization, Verification by Parent for Charitable Organization Conductor.</p> <p>If the applicant is not affiliated with a state or national organization, a copy of a listing in a publication such as a national roster or newspaper article naming the organization;</p> <p>Or</p> <p>A letter to the applicant from a government agency.</p> <p>The document submitted must reflect the applicant's name, Texas address, and either be dated three years before the application date or establish the date the organization was founded.</p>
<p>Must operate fire-fighting equipment.</p>	<p>Pictures of fire equipment reflecting the name of the volunteer fire department;</p> <p>Or</p> <p>Copies of canceled checks or invoices for fire-fighting equipment.</p>
<p>May not pay members other than nominal compensation.</p>	<p>Most recent copy of IRS Form 990 if organization is required to file it with the Internal Revenue Service.</p> <p>Indicate on application if organization is not required to file Form 990.</p> <p>If not required to file Form 990, a copy of a volunteer fire fighter application;</p> <p>Or</p> <p>Copy of an organizing instrument that describes compensation of members.</p>
<p>Must demonstrate significant progress toward the accomplishment of the organization's purposes</p>	<p>Call List which shows the type of incident and location for the 12 month period prior to the date the application was signed.</p>

during the 12 months preceding the date of application.	
May appoint only the organization's members to serve as operators.	Current membership list with all officers and directors noted. Membership list will be compared to the persons listed on application to confirm that only members have been named as operators.
Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and, have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.	A signed and dated copy of the most recent version of all of the organization's organizing instruments that list the officer and director positions;  Or  If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.  If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.  The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed.  The Department of Public Safety will conduct a criminal history check on all officers, directors and operators.  Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.
Section 2001.102 License Application Requirements.	A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.  If the organization is organized under the law of this state the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.
Volunteer Fire Department:	
<b>Qualifications and Requirements</b>	<b>Necessary Documentation</b>

<p>Organized primarily to provide fire-fighting services.</p>	<p>Proof of membership in a professional fire fighting organization;</p> <p>Or</p> <p>Copy of a publication that lists the organization and its phone number to call in case of fire;</p> <p>Or</p> <p>A letter from a local government agency recognizing the organization as a volunteer fire department;</p> <p>Or</p> <p>A copy of all organizing instrument(s) which list this purpose for the organization;</p> <p>Or</p> <p>A dated newspaper article which details the organization's activities.</p> <p>The name of the applicant organization must match the name of the applicant on the documents submitted.</p>
<p>Must have been organized in Texas for at least three years.</p>	<p>If the applicant is affiliated with a state or national organization, Verification by Parent for Charitable Organization Conductor.</p> <p>If the applicant is not affiliated with a state or national organization, a copy of a listing in a publication such as a national roster or newspaper article naming the organization;</p> <p>Or</p> <p>A letter to the applicant from a government agency.</p> <p>The document submitted must reflect the applicant's name, Texas address, and either be dated three years before the application date or establish the date the organization was founded.</p>
<p>Must operate fire-fighting equipment.</p>	<p>Pictures of fire equipment reflecting the name of the volunteer fire department;</p> <p>Or</p>

	Copies of canceled checks or invoices for fire-fighting equipment.
May not pay members other than nominal compensation.	<p>Most recent copy of IRS Form 990 if organization is required to file it with the Internal Revenue Service.</p> <p>Indicate on application if organization is not required to file Form 990.</p> <p>If not required to file Form 990, a copy of a volunteer fire fighter application;</p> <p>Or</p> <p>Copy of an organizing instrument that describes compensation of members.</p>
Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.	Call List which shows the type of incident and location for the 12 month period prior to the date the application was signed.
May appoint only the organization's members to serve as operators.	<p>Current membership list with all officers and directors noted.</p> <p>Membership list will be compared to the persons listed on application to confirm that only members have been named as operators.</p>
Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and, have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.	<p>A signed and dated copy of the most recent version of all of the organization's organizing instruments that list the officer and director positions;</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed.</p>

	<p>The Department of Public Safety will conduct a criminal history check on all officers, directors and operators.</p> <p>Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
Section 2001.102 License Application Requirements.	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.</p> <p>If the organization is organized under the law of this state the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.</p>
Veteran Organization:	
<b>Qualifications and Requirements</b>	<b>Necessary Documentation</b>
Must be an unincorporated association or corporation.	<p>A signed copy of the organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.</p> <p>The name of the applicant organization must match the name of the organization on the organizing instruments.</p>
<p>Must hold a valid 501(c) exemption through the Internal Revenue Service.</p> <p>Must have been organized in Texas for at least three years.</p>	<p>If the Commission is unable to validate directly with the Internal Revenue Service that the organization has a 501(c) designation, the Commission will request additional documentation from the applicant.</p> <p>Verification by Parent for Charitable Organization Conductor.</p>
May not distribute any income to members, officers, or governing body except as reasonable compensation for services.	<p>Most recent copy of IRS Form 990 if organization is required to file it with the Internal Revenue Service.</p> <p>Indicate on application if organization is not required to file Form 990.</p>
Members must be veterans or dependents of veterans of the United States armed forces.	Verification by Parent for Charitable Organization Conductor

<p>Must be chartered by the United States Congress.</p>	<p>The Commission will review the list of chartered veteran organizations maintained by the United States Department of Veteran Affairs. Its website link is:  <a href="http://www1.va.gov/vso/index.cfm?template=view">http://www1.va.gov/vso/index.cfm?template=view</a>.</p>
<p>Must be organized to advance the interest of veterans or active duty personnel of the US armed forces and their dependents.</p>	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.</p> <p>The name of the applicant organization must match the name of the organization on the organizing instruments.</p>
<p>Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.</p>	<p>At least three (3) different types of acceptable documents as proof that organization was engaged in furthering its charitable purpose for the time period beginning one year prior to the date the application was signed. Examples of acceptable documentation include copies of:</p> <ol style="list-style-type: none"> <li>1. activity reports filed with the state and/or national organization,</li> <li>2. monetary donations to Veterans Administration (VA) hospitals,</li> <li>3. letters of appreciation from veterans and/or organizations receiving benefits,</li> <li>4. support of and/or contributions to veterans' funerals and/or their families,</li> <li>5. visits to veteran's hospitals,</li> <li>6. newspaper articles, and</li> <li>7. Form 990.</li> </ol> <p>To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been engaged in furthering its charitable purpose throughout the past twelve months.</p> <p>All documents must be dated and indicate the name of the organization.</p>
<p>May appoint only the organization's members to serve as operators.</p>	<p>A current membership list with all officers and directors noted. Membership list will be compared to the persons listed on the</p>

	application to confirm that only members have been named as operators.
Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and, have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation that list the officer and director positions;</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors and operators</p> <p>Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
Section 2001.102 License Application Requirements.	If the organization is organized under the law of this state the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.
Fraternal Organization:	
<b>Qualifications and Requirements</b>	<b>Necessary Documentation</b>
Must be an Unincorporated Association or Corporation.	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.</p> <p>The name of the applicant organization must match the name of the organization on the organizing instruments.</p>
Must be organized to perform and engage in charitable work.	A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.

	The name of the applicant organization must match the name of the organization on the organizing instruments.
Must hold a valid 501(c) exemption through the Internal Revenue Service.	If the Commission is unable to validate directly with the Internal Revenue Service that the organization has a 501(c) designation, the Commission will request additional documentation from the applicant.
May not distribute any income to members, officers, or governing body except as reasonable compensation.	Most recent copy of Internal Revenue Service (IRS) Form 990 if organization is required to file it with the IRS.  Indicate on application if organization is not required to file Form 990.  A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.
Must have been organized in Texas for at least three years.	Verification by Parent for Charitable Organization Conductor if affiliated with a state or national organization;  Or  A copy of a listing in a publication such as a national roster or newspaper article if not affiliated with a state or national organization;  Or  A letter to the applicant from a government agency. The document submitted to confirm the requirement must reflect organization's name, Texas address, and be either dated prior to the three year period or establish the date the organization was founded.
Must have a bona fide membership.	Current membership list with all officers and directors noted.
Membership actively and continuously engaged in furthering its authorized purposes for the past three years.	Organizing instrument(s) describing the organization's purposes.  Copies of minutes from three annual membership meetings reflecting that the organization voted on the election of officers and reported on matters related to furthering the organization's purpose.  Collectively, the three meeting minutes must encompass a (36) thirty-six month period (i.e. one per year).

	The meeting minutes must be dated and signed by an officer of the organization.
May not authorize or support a public office candidate.	Organizing instrument(s) reflecting that organization has not authorized support or opposition of a public office candidate.
Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.	<p>At least three (3) different types of acceptable documents as proof that organization was engaged in furthering its charitable purpose for the time period beginning one year prior to the date the application was signed. Examples of acceptable documentation include copies of:</p> <ol style="list-style-type: none"> <li>1. canceled checks,</li> <li>2. newspaper articles,</li> <li>3. brochures,</li> <li>4. receipts,</li> <li>5. meeting minutes, and</li> <li>6. IRS Form 990.</li> </ol> <p>All documents must be dated and indicate the organization's name.</p> <p>To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been engaged in furthering its charitable purposes throughout the past twelve months.</p>
May appoint only the organization's members to serve as operators.	A current membership list with all officers and directors noted. Membership list will be compared to the persons listed on the application to confirm that only members have been named as operators.
Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and, have not been convicted of a	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation that list the officer and director positions;</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p>

<p>criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.</p>	<p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed. The Department of Public Safety will conduct a criminal history check on all officers, directors and operators.</p> <p>Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
<p>Section 2001.102 License Application Requirements.</p>	<p>If the organization is organized under the law of this state, the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.</p>
<p>Volunteer Emergency Medical Services Provider:</p>	
<p><b>Qualifications and Requirements</b></p>	<p><b>Necessary Documentation</b></p>
<p>Must have been organized in Texas for at least three years.</p>	<p>If the applicant is affiliated with a state or national organization, Verification by Parent for Charitable Organization Conductor.</p> <p>If the applicant is not affiliated with a state or national organization, a copy of a listing in a publication such as a national roster or newspaper article naming the organization;</p> <p>Or</p> <p>A letter to the applicant from a government agency.</p> <p>The document submitted must reflect the applicant's name, Texas address, and either be dated three years before the application date or establish the date the organization was founded.</p>
<p>Must demonstrate that the organization has made significant progress toward the accomplishment of its purposes during the 12 months</p>	<p>A Call List which shows the type of incident and location for the 12 month period prior to the date the application was signed.</p>

preceding the date of application.	
Must appoint only the organization's members to serve as operators for the organization.	A current membership list with all officers and directors noted. Membership list will be compared to the persons listed on the application to confirm that only members have been named as operators.
Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and, have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation, that list the officer and director positions;</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors and operators.</p> <p>Any officer, director or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
Section 2001.102 License Application Requirements.	<p>Most recent copy of Internal Revenue Service (IRS) Form 990 if organization is required to file it with the IRS.</p> <p>Indicate on application if organization is not required to file Form 990;</p> <p>And</p> <p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation;</p> <p>And</p> <p>If the organization is organized under the law of this state the</p>

	organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.
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### Standard Administrative Penalty Chart

**Category 1**

**\$0 (Warning) to \$1,000 for the 1<sup>st</sup> offense, except a 1<sup>st</sup> offense for Violation No. 6 involving gambling devices may result in up to \$1000 administrative penalty and/or license suspension, revocation or denial, or registry removal or denial**

**\$0 (Warning) to \$1,000 and/or license suspension, revocation or denial, or registry removal or denial for the 2<sup>nd</sup> offense**

No.	Violation
1	A person knowingly participated in the award of a prize to a bingo player in a manner that disregarded the random selection of numbers or symbols.
2	A person made a false statement in an application for a license.
3	A person falsified or made false entries in books and records.
4	A person conducted, promoted, or administered bingo without a license.
5	The licensee or a person designated as an agent for a unit failed to timely produce for inspection or audit any book, record, document, or other form of information requested by the Commission.
6	A person conducted or allowed a game of chance at a bingo premises during a bingo occasion, except as permitted under Occupations Code §2001.416 and 16 TAC §402.211.

**Category 2**

**\$0 (Warning) to \$600 for the 1<sup>st</sup> offense**

**\$0 (Warning) to \$800 for the 2<sup>nd</sup> offense**

**\$0 (Warning) to \$1,000 and/or license suspension, revocation or denial, or registry removal or denial for the 3<sup>rd</sup> offense**

No.	Violation
7	The organization conducted bingo outside of the licensed time.
8	The organization sold pull-tab bingo tickets at an unauthorized time.
9	The organization conducted bingo at an unauthorized location.
10	The organization that is a member of a unit did not conduct its bingo games separately from the bingo games of the other members of the unit.
11	The unit with an agent designated under Section 2001.438(b) failed to immediately notify the Commission of any change in the designated agent.

12	The organization allowed a person other than a bona fide member of the licensed authorized organization to conduct, promote, or administer, or assist in conducting, promoting, or administering, bingo.
13	The organization failed to have an authorized operator present at the bingo occasion.
14	A person not listed on the registry of approved bingo workers acted as an operator, manager, cashier, usher, caller, or salesperson for an organization.
15	The organization allowed a person(s) under the age of 18 to conduct or assist in the conduct of bingo.
16	The organization or unit failed to comply with the charitable distribution requirement.
17	The organization obtained by purchase or other manner bingo equipment, devices or supplies from a person other than a licensed distributor (except as provided in Section 2001.257(b)).

**Category 3**

**\$0 (Warning) to \$400 for the 1<sup>st</sup> offense**

**\$0 (Warning) to \$600 for the 2<sup>nd</sup> offense**

**\$0 (Warning) to \$800 for the 3<sup>rd</sup> offense (Violation Nos. 18, 22, 23 – 28)**

**\$0 (Warning) to \$1,000 and/or license suspension, revocation or denial, or registry removal or denial for the 3<sup>rd</sup> offense (Violation Nos. 19, 20, 21, & 24)**

No.	Violation
18	The licensee failed to report to the Commission in writing within ten (10) working days of the date of any change respecting any facts set forth in the application.
19	The licensee failed to respond, or timely respond, in writing to all relevant audit findings and recommendations in the draft audit report presented at the exit conference.
20	The organization failed to withhold prize fees.
21	The organization or unit failed to deposit in the bingo account all funds derived from the conduct of bingo, less the amount awarded as cash prizes.
22	The organization incurred or paid items of expense in connection with the conduct of a game of bingo that were not reasonable or necessary to conduct bingo.
23	Proceeds given to a person for a charitable purpose were used by the donee to pay for services rendered or materials purchased in connection with the conduct of bingo by the donor organization.
24	The net proceeds of any game of bingo and of any rental of premises for bingo were not used exclusively for charitable purpose or were used by the donee for an activity that would not constitute a charitable purpose, if the activity were conducted by the donor organization.

25	A person failed to maintain records that fully and truly record all transactions connected with the conduct of Bingo, the leasing of premises to be used for the conduct of bingo, or the manufacture, sale, or distribution of bingo supplies or equipment.
26	A commercial lessor licensed to conduct bingo, did not properly deposit in its bingo checking account all rental payments from authorized organizations conducting bingo at the location of the lessor.
27	Rent for premises used for the conduct of bingo that was paid to the lessor was not paid in a lump sum that included all expenses authorized by the Bingo Enabling Act, Section 2001.458.
28	Deposits were made later than the end of the second business day following the day of the bingo occasion on which the receipts were obtained, except as provided by Subsection (b-1).

#### Category 4

**\$0 (Warning) to \$300 for the 1<sup>st</sup> offense**

**\$0 (Warning) to \$450 for the 2<sup>nd</sup> offense**

**\$0 (Warning) to \$600 for the 3<sup>rd</sup> offense**

No.	Violation
29	The organization or unit deposited funds, other than from the conduct of bingo, in the bingo account.
30	The organization failed to clearly identify the conductor, by name exactly as it is shown on the license, on an advertisement or promotion of a bingo occasion.
31	Check(s) or slip(s) were made payable to 'cash', 'bearer', or to a fictitious payee.
32	Checks did not contain the required information.

#### Category 5

**\$0 (Warning) to \$200 for the 1<sup>st</sup> offense**

**\$0 (Warning) to \$300 for the 2<sup>nd</sup> offense**

**\$0 (Warning) to \$400 for the 3<sup>rd</sup> offense**

No.	Violation
33	Funds from the sale of a bingo gift certificate were not maintained separately from bingo funds until the certificate was redeemed for a bingo card, pull-tab bingo or a card-minding device.
34	The organization failed to have required information imprinted on each bingo gift certificate.

**Category 6**

**\$0 (Warning) to \$100 for the 1<sup>st</sup> offense**

**\$0 (Warning) to \$150 for the 2<sup>nd</sup> offense**

**\$0 (Warning) to \$200 for the 3<sup>rd</sup> offense**

<b>No.</b>	<b>Violation</b>
35	The organization failed to withdraw funds from the bingo account by preprinted, consecutively numbered checks or withdrawal slips.
36	The organization failed to keep and account for all checks, including voided checks and slips.

**Category 7**

**\$0 (Warning) for the 1<sup>st</sup> offense**

**\$0 (Warning) for the 2<sup>nd</sup> offense**

**\$0 (Warning) to \$1,000 for the 3<sup>rd</sup> offense**

<b>No.</b>	<b>Violation</b>
37	The organization failed to obtain, maintain, keep current and make available for review to any person upon request a copy of the Bingo Enabling Act and the Rules of the Commission.

Figure: 16 TAC §402.707(g)

**Expedited Administrative Penalty Chart**

<b>Violation</b>	<b>Penalty</b>
The organization conducted bingo outside of the licensed time.	1 <sup>st</sup> Offense - \$200 2 <sup>nd</sup> Offense - \$300 3 <sup>rd</sup> Offense - \$500
The organization sold pull-tab bingo tickets at an unauthorized time.	1 <sup>st</sup> Offense - \$200 2 <sup>nd</sup> Offense - \$300 3 <sup>rd</sup> Offense - \$500
The organization that is a member of a unit did not conduct its bingo games separately from the bingo games of the other members of the unit.	1 <sup>st</sup> Offense - Warn 2 <sup>nd</sup> Offense - \$300 3 <sup>rd</sup> Offense - \$500
The organization failed to have an authorized operator present at the bingo occasion.	1 <sup>st</sup> Offense - \$200 2 <sup>nd</sup> Offense - \$300 3 <sup>rd</sup> Offense - \$500
The limit of \$750.00 was exceeded on a single prize for regular or pull-tab bingo.	1 <sup>st</sup> Offense - \$200 2 <sup>nd</sup> Offense - \$300 3 <sup>rd</sup> Offense - \$500
Prizes with an aggregate value of more than \$2,500.00 for bingo games other than pull-tab bingo and prizes of \$50 or less, as described in §2001.420(b)(2) of the Occupations Code, were offered or awarded for a single bingo occasion.	1 <sup>st</sup> Offense - \$200 2 <sup>nd</sup> Offense - \$300 3 <sup>rd</sup> Offense - \$500
The organization failed to prevent bingo workers from playing bingo.	1 <sup>st</sup> Offense - \$150 2 <sup>nd</sup> Offense - \$225 3 <sup>rd</sup> Offense - \$375
The organization offered or provided to a person the opportunity to play bingo without charge.	1 <sup>st</sup> Offense - \$150 2 <sup>nd</sup> Offense - \$225 3 <sup>rd</sup> Offense - \$375
The organization or lessor failed to conspicuously display the license issued at the place where the game was conducted at all times during the conduct of the game.	1 <sup>st</sup> Offense - \$100 2 <sup>nd</sup> Offense - \$150 3 <sup>rd</sup> Offense - \$250
The organization failed to have required information imprinted on each bingo gift certificate, specifically: the name and address of the licensed location(s) where the certificate may be redeemed for bingo paper, pull-tab bingo or card-minding devices; the monetary value of the certificate; the name of the licensed organization(s) authorized to accept the certificate; or the expiration date or blank space	1 <sup>st</sup> Offense - \$50 2 <sup>nd</sup> Offense - \$75 3 <sup>rd</sup> Offense - \$125

for the organization or unit to fill in an expiration date.	
A door prize with a value of more than \$250.00 was offered or awarded.	1 <sup>st</sup> Offense - \$50 2 <sup>nd</sup> Offense - \$75 3 <sup>rd</sup> Offense - \$125
The organization failed to conspicuously display during a bingo occasion a sign indicating the operator in charge, the sign contained letters less than one (1) inch in height, the sign failed to inform the players that they should direct any questions or complaints regarding the conduct of the bingo occasion to the operator listed on the sign, or the sign failed to state that if the player is not satisfied with the operators response that the player has the right to file a formal complaint with the Commission.	1 <sup>st</sup> Offense - \$30 2 <sup>nd</sup> Offense - \$45 3 <sup>rd</sup> Offense - \$75
The organization failed to verify winning bingo cards by someone at another table or location other than the winners, or by an electronic verifier system, winning cards were not shown on a monitor visible to all players, or the disposable card(s) or electronic representation of the card, was not posted for inspection for at least 30 minutes after the completion of the last game of that organization's occasion.	1 <sup>st</sup> Offense - \$30 2 <sup>nd</sup> Offense - \$45 3 <sup>rd</sup> Offense - \$75
The organization failed to obtain, maintain, keep current and make available for review to any person upon request a copy of the Bingo Enabling Act and the Rules of the Commission.	1 <sup>st</sup> Offense - Warn 2 <sup>nd</sup> Offense - Warn 3 <sup>rd</sup> Offense - \$75
<b>Violations by a Worker</b>	
A person not listed on the registry of approved bingo workers acted as an operator, manager, cashier, usher, caller, or salesperson for an organization.	1 <sup>st</sup> Offense - Warn 2 <sup>nd</sup> Offense - \$45 3 <sup>rd</sup> Offense - \$75
A registered worker or operator for an organization did not wear, present, visibly display, or list the individuals name and unique registration number in a legible manner on his/her prescribed identification card, while on duty.	1 <sup>st</sup> Offense - Warn 2 <sup>nd</sup> Offense - \$20 3 <sup>rd</sup> Offense - \$35

Figure: 16 TAC §402.708(c)(3)

If:	Then:
Licensed Authorized Organization	Officer/director or bingo chairperson
Unit with Trustee Organization	Trustee organization officer/director or bingo chairperson and designated agent
Unit with Designated Agent	Designated agent and officer/director or bingo chairperson for each member organization
Unit with Unit Manager	Unit manager
Commercial Lessor	Officer, Director, or Owner

Figure: 16 TAC §402.708(g)

If:	Required to attend:	May attend:
Licensee	Officer, director or bingo chairperson and primary operator	Any officer or director, other persons designated by the licensee including legal counsel, bookkeeper, or accountant
Unit with Trustee Organization	Trustee organization officer, director or bingo chairperson, primary operator, and designated agent	Other member organizations' bingo chairperson, any officer or director, other persons designated by the licensee including legal counsel, bookkeeper, or accountant
Unit with Designated Agent	Designated agent, officer, director or bingo chairperson for member organizations, primary operators for member organizations.	Any officer or director for member organizations, other persons designated by the licensee including legal counsel, bookkeeper, or accountant
Unit with Unit Manager	Unit manager	Bingo chairperson, primary operator and any officer or director for member organizations, other persons designated by the licensee including legal counsel, bookkeeper, or accountant
Commercial Lessor	Officer, director, or owner	Other persons designated by the licensee including legal counsel, bookkeeper, or accountant

# IN ADDITION

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

## Comptroller of Public Accounts

### Certification of the Average Closing Price of Gas and Oil - June 2016

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of crude oil for reporting period June 2016 is \$29.52 per barrel for the three-month period beginning on March 1, 2016, and ending May 31, 2016. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of June 2016 from a qualified low-producing oil lease is eligible for a 25% credit on the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period June 2016 is \$1.10 per mcf for the three-month period beginning on March 1, 2016, and ending May 31, 2016. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of June 2016 from a qualified low-producing well is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of June 2016 is \$48.84 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of June 2016 from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of June 2016 is \$2.63 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of June 2016 from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201603537

Lita Gonzalez  
General Counsel  
Comptroller of Public Accounts  
Filed: July 18, 2016



### Notice of Request for Proposals

Pursuant to Chapters 403 and 2116 of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces the issuance of its Request for Proposals No. 218h ("RFP") from qualified, independent firms interested in providing services related to the establishment, operation and maintenance of the Texas Bullion Depository.

The successful respondent will be expected to begin performance of the contract(s), if any, awarded under this RFP on or about December 1, 2016.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, July 29, 2016, after 10:00 a.m., Central Time ("CT"). Parties interested in a hard copy of the RFP should contact Jason Frizzell, Interim Deputy General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Questions: All written questions must be received at the above-referenced address not later than 2:00 p.m. CT on Friday, August 19, 2016. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or e-mail Questions to (512) 463-3669 or [contracts@cpa.texas.gov](mailto:contracts@cpa.texas.gov) to ensure timely receipt. On or about Friday, August 26, 2016, Comptroller expects to post responses to questions as an addendum to the Electronic State Business Daily notice on the issuance of the RFP.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Friday, September 30, 2016. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of their proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller shall make the final decision on any contract award or awards resulting from the RFP. Comptroller reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. Comptroller is not obligated to award or execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - July 29, 2016, after 10:00 a.m. CT; Questions Due - August 19, 2016, 2:00 p.m. CT; Official Responses to Questions posted August 26, 2016, or as soon thereafter as practical; Proposals Due - September 30, 2016, 2:00 p.m. CT; Contract Execution - December 1, 2016, or as soon thereafter as practical; and Commencement of Project Activities - on or after December 1, 2016. Any amendment to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Proposal.

TRD-201603545

Jason Frizzell  
Interim Deputy General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: July 18, 2016



## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/25/16 - 07/31/16 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/25/16 - 07/31/16 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/16 - 08/31/16 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/16 - 08/31/16 is 5.00% for commercial over \$250,000.

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

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

TRD-201603557

Leslie Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 19, 2016

## Credit Union Department

### Application to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from Associated Credit Union of Texas, League City, Texas to expand its field of membership. The proposal would permit persons who live, work, worship or attend school within a ten mile radius of the ACUTX office located at 2509 Becker Drive, Brenham, Texas 77833, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-charter-applications>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201603580

Harold E. Feeney

Commissioner

Credit Union Department

Filed: July 20, 2016

### Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

EECU, Fort Worth, Texas (Amended) - Residents of the Dallas-Fort Worth-Arlington, Texas Metropolitan Statistical Area who are members of America's Charities.

First Service Credit Union, Houston, Texas (Amended) - Persons who live, work, worship, or attend school in, businesses and other legal entities located within the geographical boundaries of the Conroe Independent School District or the Magnolia Independent School District.

TRD-201603581

Harold E. Feeney

Commissioner

Credit Union Department

Filed: July 20, 2016

## Texas Education Agency

### Request for Applications Concerning 2016-2020 Texas Title I Priority Schools Grant, Cycle 5

Filing Date. July 20, 2016

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-16-105 is authorized as the School Improvement Grants program by P.L. 107-110, Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, Section 1003(g).

The U.S. Department of Education (USDE) published final requirements for the School Improvement Grants program in the *Federal Register* on October 28, 2010 (<http://www.gpo.gov/fdsys/pkg/FR-2010-10-28/pdf/2010-27313.pdf>). In 2015, the USDE revised the final requirements to implement language in the Consolidated Appropriations Act, 2014, and the Consolidated and Further Continuing Appropriations Act, 2015.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-16-105 from campuses that qualify as Title I priority schools and Title I focus schools and are not currently receiving Texas Title I Priority Schools (TTIPS) funds.

Campuses identified as priority and as focus in the state of Texas flexibility waiver are exempt from specific provisions from the USDE Elementary and Secondary Education Act. A list of eligible priority or focus campuses is posted on the TEA Grant Opportunities web page at <http://burleson.tea.state.tx.us/GrantOpportunities/forms>, along with all documents pertaining to this RFA.

Description. The purpose of the 2016-2020 Texas Title I Priority Schools Grant is to provide funding to local education agencies (LEAs) for use in eligible schools in order to substantially raise the achievement of their students and enable the schools to meet annual goals and program-term measurable objectives. Funding is intended for LEAs that demonstrate the greatest need for the funds and the strongest commitment to provide adequate resources to support schools in meeting the criteria to exit priority or focus status.

The TTIPS grant program strives to achieve lasting positive reforms in the state's most struggling campuses through highest-quality implementation of strong evidence-based interventions. These interventions are designed within a framework of one of seven school reform models.

The LEA must describe how it will use school improvement funds in its priority/focus schools to plan and effectively implement one of the following school reform models:

1. Transformation model, which addresses specific areas critical to transforming persistently lowest-achieving schools;
2. Texas state-design model, in which the campus must deliver a comprehensive school improvement strategy for all students in the school that improves student achievement or attainment. The strategy must address school leadership, teaching and learning in academic content areas, professional learning for educators, and student non-academic supports. Additionally, the strategy will be consistent with the Texas concept for developing an Early College High School (ECHS). In doing so, the LEA/campus will (1) pursue designation as a Texas ECHS with a target of earning TEA ECHS designation and full operation as an ECHS no later than the start of the second year of the TTIPS grant implementation period; (2) provide a rigorous course of study that enables students to receive a high school diploma and complete the Texas Higher Education Coordinating Board's core curriculum, an associate's degree, or at least 60 credit hours toward a baccalaureate degree during Grades 9-12; and (3) provide college credit earned through the high school years for all students at no cost, including tuition, fees, and textbook costs;
3. Early learning intervention model, in which a campus addresses specific areas critical to transforming a persistently low-achieving elementary school and additionally offers full-day kindergarten and a pre-kindergarten program that meets the requirements of a high-quality preschool program, as defined in the USDE's Preschool Development Grants program;
4. Turnaround model, which includes, among other actions, replacing the principal and rehiring no more than 50% of the school's staff, adopting a new governance structure, and implementing an instructional program that is research based and vertically aligned from one grade to the next as well as aligned with Texas' academic standards;
5. Whole-school reform model, in which the campus must implement an evidence-based whole-school reform in partnership with a model developer. The model developer is an entity or individual that either has proprietary rights to the model or an entity or individual that has a demonstrated record of success in implementing whole-school reform models in one or more low-achieving schools that are comparable on several variables to the TTIPS applicant;
6. Restart model, in which an LEA converts the school or closes and reopens it under the management of a charter school operator, a charter management organization, or an education management organization that has been selected through a rigorous review process;
7. School closure, in which an LEA closes the school and enrolls the students who attended the school in other, higher-achieving schools within the LEA; or
8. Optional modification: rural LEA applicant flexibility, in which an applicant proposes to modify one element of the Transformation or Turnaround model but only in a manner that the modification meets the original intent and purpose of the element and does not eliminate the element from the resulting implementation plan.

Prospective applicants can see a full description of all elements within each of the school intervention models in the Program-Specific Provisions and Assurances section of the Standard Application System of RFA #701-16-105.

Dates of Project. Applicants should plan for a project that will operate in a pre-implementation period from February 1, 2017, through July 31, 2017; in full implementation during the school years of 2017-2018, 2018-2019, and 2019-2020. Funding is available to grantees through all periods.

The timeline for this project is contingent upon the final approval from USDE for the Texas school improvement grant program state plan. Approval is recognized as final on the date a Grant Award Notification is issued from USDE to TEA.

Project Amount. The total amount of funding for this project is approximately \$81 million. Each awarded project could receive up to a maximum of \$8 million for operation through the school years of 2016-2017, 2017-2018, 2018-2019, and 2019-2020. A maximum funding per year for any applicant is \$2 million.

This project is funded 100% from federal funds.

Note that funding availability and final terms for this project are contingent upon approval from USDE for the Texas school improvement grant program state plan. Funding and approval are recognized as final on the date a Grant Award Notification is issued from USDE to TEA.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding.

Applications will be scored using the standard review criteria, as described in TEA Grants Administration General and Fiscal Guidelines at [http://tea.texas.gov/Finance\\_and\\_Grants/Grants/Administering\\_a\\_Grant/General\\_and\\_Fiscal\\_Guidelines/](http://tea.texas.gov/Finance_and_Grants/Grants/Administering_a_Grant/General_and_Fiscal_Guidelines/). In addition to the standard review criteria, applications will be scored on the following grant-specific criteria:

1. Level of ability to benefit from grant resources, as demonstrated through district commitments and vision for school reform and existing structures that will allow reform to take hold;
2. Family and community member involvement in project planning, intervention selection, and ongoing program engagement;
3. Methods for selecting highest-quality staff and external providers for the project and methods for providing rigorous oversight of external providers;
4. Level of capacity gains that will create lasting, positive change to campus practices and can be sustained beyond the grant period; and
5. Quality of intervention design and strength at which interventions fulfill all requirements of the federal School Improvement Grant model selected.

Special consideration (or priority) will be given to certain applicants. TEA will give priority to campuses that have not met state accountability ratings for two or more years as of August 2016 and to campuses that select the state-designed or early-learning model. Ten priority points will be given to each LEA/campus applying to serve schools that meet any of these criteria.

TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The announcement letter, complete RFA, and additional applicant resources will be posted on the TEA Grant Opportunities web page at <http://burlleson.tea.state.tx.us/GrantOppor->

tunities/forms for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Karyn Gukeisen, Division of Grants Administration, Texas Education Agency, by email at [karyn.gukeisen@tea.texas.gov](mailto:karyn.gukeisen@tea.texas.gov) or by telephone at (512) 463-8525.

In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in the Program Guidelines of the RFA. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) at <http://burlson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, September 15, 2016, to be eligible to be considered for funding.

Issued in Austin, Texas, on July 20, 2016

TRD-201603588

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: July 20, 2016

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is August 29, 2016. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on August 29, 2016. Written comments may also be sent by facsimile machine to the en-

forcement 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: A + BATTERY AND CHARGER SERVICE, INCORPORATED; DOCKET NUMBER: 2016-0038-IHW-E; IDENTIFIER: RN108789942; LOCATION: Lancaster, Dallas County; TYPE OF FACILITY: battery and charger service facility; RULES VIOLATED: 30 TAC §335.2(a), by failing to not cause, suffer, allow, or permit the unauthorized storage, processing, and disposal of municipal solid waste (MSW) and municipal hazardous waste (MHW); 30 TAC §335.9(a)(1), by failing to maintain records of all MSW and MHW activities; 30 TAC §§335.62, 335.503(a), and 335.504 and 40 Code of Federal Regulations (CFR) §262.11, by failing to conduct hazardous waste determinations and waste classifications; and 40 CFR §268.7(a)(2), by failing to submit a one-time Land Disposal Restriction notification; PENALTY: \$20,250; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Anadarko E and P Onshore LLC; DOCKET NUMBER: 2016-0604-AIR-E; IDENTIFIER: RN102585965; LOCATION: Carthage, Panola County; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §116.615(2) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O739/General Operating Permit Number 514, Site-wide Requirements (b)(9)(E)(ii), and Standard Permit Registration Number 74457, by failing to comply with the permitted hourly and permitted annual emission rates; PENALTY: \$73,200; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: Aqua Texas, Incorporated; DOCKET NUMBER: 2016-0319-MWD-E; IDENTIFIER: RN102343662; LOCATION: Rhome, Denton County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014186001, Operational Requirements Number 1 and Permit Condition Number 2.g., by failing to prevent the unauthorized discharge of untreated wastewater from the collection system into or adjacent to any water in the state; PENALTY: \$10,500; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: ARROWHEAD HILL WATER SUPPLY CORPORATION; DOCKET NUMBER: 2016-0565-PWS-E; IDENTIFIER: RN101243020; LOCATION: Belton, Bell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(f)(1), (4) and (5), by failing to provide a water purchase contract that authorizes a maximum daily purchase rate, or a uniform purchase rate to meet a minimum production capacity of 0.6 gallon per minute (gpm) per connection and that authorizes a maximum hourly purchase rate plus the actual service pump capacity of at least 2.0 gpm per connection or at least 1,000 gpm and able to meet peak hourly demands, which ever is less for systems which purchase water under direct pressure; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.46(z), by failing to create a nitrification action plan

for systems distributing chloraminated water; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; and 30 TAC §290.110(c)(5)(B)(i) and (D)(i), by failing to conduct required monitoring for chloraminated water; PENALTY: \$500; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: BASF Corporation; DOCKET NUMBER: 2016-0534-AIR-E; IDENTIFIER: RN100218049; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical manufacturer; RULES VIOLATED: 30 TAC §§101.20(2) and (3), 113.620, 116.115(c), and 122.143(4), 40 Code of Federal Regulations §63.1219(a)(5)(i), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1927, Special Terms and Conditions Number 1A, and New Source Review Permit Numbers 9513A and PSDTX641M1, Special Conditions Number 4, by failing to comply with the carbon monoxide concentration limit of 100 parts per million by volume dry corrected to 7% oxygen; PENALTY: \$7,387; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: BSW INVESTMENTS LLC d/b/a Bay City Food Mart; DOCKET NUMBER: 2015-1817-PST-E; IDENTIFIER: RN102790961; LOCATION: Bay City, Matagorda County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.76, by failing to perform an initial response action within 24 hours of a release from an underground storage tank (UST) system; and 30 TAC §334.77 and §334.78, by failing to initiate required abatement measures and submit a report to the TCEQ within 20 days after a release of a regulated substance from a UST system; PENALTY: \$32,063; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: City of Byers; DOCKET NUMBER: 2016-0548-MWD-E; IDENTIFIER: RN101720415; LOCATION: Byers, Clay County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010890001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$9,062; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: City of Calvert; DOCKET NUMBER: 2015-0903-PWS-E; IDENTIFIER: RN101392355; LOCATION: Calvert, Robertson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(f)(3) and Texas Health and Safety Code, §341.031(a), by failing to comply with the maximum contaminant level (MCL) for total coliform during the month of May 2015; 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(A) and (f), by failing to collect raw groundwater source *Escherichia coli* samples from all active sources within 24 hours of notification of a distribution total coliform-positive result for a routine sample during the months of July 2013 and October 2013 and failing to provide public notifications and submit a copy of the notifications to the executive director (ED) regarding the failure to collect raw groundwater source samples following notification of a coliform-positive result on a routine sample during the months of July 2013 and October 2013; 30 TAC §290.122(b)(2)(A) and (f), by failing to timely provide public notification and submit a copy of the public notification to the ED regarding the failure to com-

ply with the MCL for total coliform during the month of July 2013; 30 TAC §290.117(i)(6) and (j), by failing to timely mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failing to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements for the 2014 monitoring period; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect a set of repeat distribution total coliform samples within 24 hours of being notified of a total coliform-positive sample result on a routine sample collected in September 2014; PENALTY: \$675; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: City of Midland; DOCKET NUMBER: 2016-0636-PST-E; IDENTIFIER: RN102244068; LOCATION: Midland, Midland County; TYPE OF FACILITY: fleet fueling facility; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(10) COMPANY: City of Sherman; DOCKET NUMBER: 2016-0813-PST-E; IDENTIFIER: RN102348638; LOCATION: Sherman, Grayson County; TYPE OF FACILITY: fleet fueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Drillchem Drilling Solutions, LLC; DOCKET NUMBER: 2016-0707-IHW-E; IDENTIFIER: RN108839960; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: drilling lubricant storage and distribution warehouse; RULE VIOLATED: 30 TAC §335.2(b), by failing to not cause, suffer, allow, or permit the disposal of industrial solid waste at an unauthorized facility; PENALTY: \$1,575; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Flint Hills Resources Houston Chemical, LLC; DOCKET NUMBER: 2016-0243-AIR-E; IDENTIFIER: RN102576063; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1251, Special Terms and Conditions Number 11 and General Terms and Conditions, and New Source Review Permit Numbers 18999, PSDTX755, and N210, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$12,000; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Harris County Water Control and Improvement District Number 21; DOCKET NUMBER: 2016-0352-PWS-E; IDENTIFIER: RN101409415; LOCATION: Channelview, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$330; ENFORCEMENT COOR-

DINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Huber and Associates LLC; DOCKET NUMBER: 2016-0115-MLM-E; IDENTIFIER: RN108789827; LOCATION: Argyle, Denton County; TYPE OF FACILITY: printscreen shop; RULES VIOLATED: 30 TAC §330.15(a) and (c), and §335.4 and TWC, §26.121(a), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste and industrial solid waste; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: INEOS USA LLC; DOCKET NUMBER: 2016-0391-AIR-E; IDENTIFIER: RN100238708; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: chemical manufacturer; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1353, Special Terms and Conditions Number 13 and General Terms and Conditions, and New Source Review Permit Numbers 95 and PSDTX854M2, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$13,125; Supplemental Environmental Project offset amount of \$5,250; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Jonathan Quick; DOCKET NUMBER: 2016-1068-WOC-E; IDENTIFIER: RN109163014; LOCATION: Austin, Travis County; TYPE OF FACILITY: landscape irrigation system; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(17) COMPANY: Ronald Hays, Jr. and Matthew Tamplen Construction, LLC; DOCKET NUMBER: 2016-0501-MSW-E; IDENTIFIER: RN109027615; LOCATION: Vernon, Wilbarger County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULE VIOLATED: 30 TAC §330.15(c), by failing to not cause, suffer, allow or permit the unauthorized disposal of MSW; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Jessica Bland, (512) 239-4967; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(18) COMPANY: Rudisill Properties, LLC; DOCKET NUMBER: 2016-0572-MSW-E; IDENTIFIER: RN109088252; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: unauthorized waste disposal site; RULE VIOLATED: 30 TAC §330.15(a), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; PENALTY: \$938; ENFORCEMENT COORDINATOR: Catherine Grutsch, (512) 239-2607; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: S.S.G. FUEL SERVICE, INCORPORATED d/b/a Exxon Food Mart; DOCKET NUMBER: 2016-0605-PST-E; IDENTIFIER: RN102950565; LOCATION: Baytown, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$11,250; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Steven A. Campbell; DOCKET NUMBER: 2016-1067-LII-E; IDENTIFIER: RN103384764; LOCATION: Frisco, Collin County; TYPE OF FACILITY: landscape irrigation; RULES VIOLATED: 30 TAC §344.24(a) and §344.35(d)(2) and (3), by failing to comply with local landscape irrigation regulations for permitting or inspections as required by the city, town, county, special purpose district, public water supply, or political subdivision of the state; PENALTY: \$175; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Texas A&M AgriLife Research; DOCKET NUMBER: 2015-0778-IWD-E; IDENTIFIER: RN101701928; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: research and processing center; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §§305.42(a), 305.65, and 305.125(2), by failing to obtain authorization to discharge wastewater into or adjacent to any water in the state; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(22) COMPANY: Trinity River Authority of Texas; DOCKET NUMBER: 2016-0556-MWD-E; IDENTIFIER: RN102655560; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: wastewater collection system; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010303001, Permit Conditions Number 2.g., by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: \$5,775; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201603554

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 19, 2016



#### Enforcement Orders

An agreed order was adopted regarding Blue Flamingo IV, LP d/b/a Montana Vista Mobile Home Park, Docket No. 2014-1595-MWD-E on July 19, 2016, assessing \$1,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting David A. Terry, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mary Regina Hunt, Docket No. 2015-0705-MSW-E on July 19, 2016, assessing \$3,937 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Complete Lube N Repair Inc. d/b/a Econo Lube N Tune and Brakes, Docket No. 2015-0776-PST-E on July 19, 2016, assessing \$3,506 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Meaghan Bailey, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RANGER UTILITY COMPANY, Docket No. 2015-0820-PWS-E on July 19, 2016, assessing \$659 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Meaghan Bailey, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Darrell Hall, Docket No. 2015-1155-PWS-E on July 19, 2016, assessing \$890 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Charanjit S Khattria d/b/a Food Fast 1006, Docket No. 2015-1389-PST-E on July 19, 2016, assessing \$3,504 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Como, Docket No. 2014-1023-MWD-E on July 19, 2016, assessing \$3,000 in administrative penalties with \$600 deferred. Information concerning any aspect of this order may be obtained by contacting Herbert Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HOUSTON FMC - IREIC, L.L.C. and FMC TECHNOLOGIES, INC., Docket No. 2014-1152-IWD-E on July 19, 2016, assessing \$4,725 in administrative penalties with \$945 deferred. Information concerning any aspect of this order may be obtained by contacting Sandra Lopez Hernandez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PM Country Store LLC d/b/a Circle M Country Store, Docket No. 2015-1388-PST-E on July 19, 2016, assessing \$2,548 in administrative penalties with \$509 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Stump, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Dustin Martinez d/b/a Martinez Ranch Subdivision, Docket No. 2015-1480-MLM-E on July 19, 2016, assessing \$1,610 in administrative penalties with \$322 deferred. Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of China, Docket No. 2015-1562-MWD-E on July 19, 2016, assessing \$6,525 in administrative penalties with \$1,305 deferred. Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Clyde, Docket No. 2015-1805-PWS-E on July 19, 2016, assessing \$690 in administrative penalties with \$138 deferred. Information concerning any aspect of this order may be obtained by contacting Sarah Kim, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Krum, Docket No. 2016-0014-WQ-E on July 19, 2016, assessing \$1,250 in administrative penalties with \$250 deferred. Information concerning any aspect

of this order may be obtained by contacting James Boyle, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Peter Wilfridus Deridder d/b/a DeRidder Dairy, Docket No. 2016-0102-AGR-E on July 19, 2016, assessing \$3,875 in administrative penalties with \$775 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Barry Matthews, Docket No. 2016-0238-OSS-E on July 19, 2016, assessing \$262 in administrative penalties with \$52 deferred. Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MF & JR Investments, LLC, Docket No. 2016-0254-PWS-E on July 19, 2016, assessing \$518 in administrative penalties with \$103 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TARIQ ENTERPRISES, INC. d/b/a S&S Fina Mart, Docket No. 2016-0295-PST-E on July 19, 2016, assessing \$2,438 in administrative penalties with \$487 deferred. Information concerning any aspect of this order may be obtained by contacting Catherine Grutsch, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Santa Rita KC, LLC, Docket No. 2016-0311-EAQ-E on July 19, 2016, assessing \$5,025 in administrative penalties with \$1,005 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kids Shoppe International, LLC, Docket No. 2016-0330-PST-E on July 19, 2016, assessing \$876 in administrative penalties with \$175 deferred. Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Olmos Contracting I, LLC, Docket No. 2016-0340-WQ-E on July 19, 2016, assessing \$5,000 in administrative penalties with \$1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Melissa Castro, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding G4J Materials LLC, Docket No. 2016-0369-WQ-E on July 19, 2016, assessing \$1,250 in administrative penalties with \$250 deferred. Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Micah S. West, Docket No. 2016-0379-LII-E on July 19, 2016, assessing \$175 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Ovidio Saldivar, Docket No. 2016-0396-WOC-E on July 19, 2016, assessing \$175 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding David Roesler, Docket No. 2016-0397-WOC-E on July 19, 2016, assessing \$175 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Edward Hykel Jr, Docket No. 2016-0840-WOC-E on July 19, 2016, assessing \$175 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Jacob S. Phariss, Docket No. 2016-0841-WOC-E on July 19, 2016, assessing \$175 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201603589

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 20, 2016



#### Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 141212

APPLICATION. Lauren Concrete Inc., 2001 Picadilly Drive, Round Rock, Texas 78664-9511 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 141212 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 6975 U.S. 281 North, Burnet, Burnet County, Texas 78611. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.84641&lng=-98.23574&zoom=13&type=r>. This application was submitted to the TCEQ on June 13, 2016. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on June 27, 2016.

PUBLIC COMMENT/PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.texas.gov/about/comments.html](http://www.tceq.texas.gov/about/comments.html). 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.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. Written comments about this application may also be submitted at any time during the hearing. The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. The public hearing is not an evidentiary proceeding.

The Public Hearing is to be held:

Monday, August 22, 2016 at 6:00 p.m.

Herman Brown Library

100 East Washington Street

Burnet, Texas 78611

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Austin Regional Office, located at 12100 Park 35 Circle Bldg A Rm 179, Austin, Texas 78753-1808, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. *Si desea información en español, puede llamar al (800) 687-4040.*

Further information may also be obtained from Lauren Concrete, Inc., 2001 Picadilly Drive, Round Rock, Texas 78664-9511, or by calling Mr. Paul W. Henry, Engineer, Henry Environmental Services at (512) 281-6555.

TRD-201603584

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 20, 2016



#### Notice of Deletion of the EmChem Corporation Proposed State Superfund Site from Its Proposed-for-Listing Status on the State Superfund Registry

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ) is issuing this notice of deletion of the EmChem Corporation proposed state Superfund site (the site) from its pro-

posed-for-listing status on the state Superfund registry (registry). The registry is the list of state Superfund sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The site is being deleted from the registry because the ED has determined that the site has been accepted into the Voluntary Cleanup Program. Therefore, the site is eligible for deletion from the state registry of Superfund sites as provided by 30 Texas Administrative Code (TAC) §335.344(c). Notice of this deletion will be filed in the real property records in Brazoria County.

The site was originally proposed for listing on the state Superfund registry in the December 13, 2013, issue of the *Texas Register* (38 TexReg 9090). The site, including all land, structures, appurtenances, and other improvements, is located at 4308 Rice Dryer Road, Pearland, Brazoria County, Texas. The site also included any areas where hazardous substances had come to be located as a result, either directly or indirectly, of releases of hazardous substances from the site.

In accordance with 30 TAC §335.344(b), the TCEQ held a public meeting to receive comment on this proposed deletion from the registry on June 9, 2016, at the City of Pearland, Council Chambers, 3519 Liberty Drive, Pearland, Texas. The TCEQ's notice regarding this public meeting and background information for the site was published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3335). The notice was also published in the *Reporter News* newspaper on May 4, 2016.

The complete public file, including a transcript of the public meeting, may be viewed during regular business hours at the TCEQ's Central File Room Customer Service Center, Mail Code 213, Building E, First Floor, Room 103, 12100 Park 35 Circle, Austin, Texas 78753. Phone: (800) 633-9363 or (512) 239-2900. Fees are charged for photocopying information.

TRD-201603553  
Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: July 19, 2016



## Notice of Hearing

### City of Pearland

SOAH Docket No. 582-16-5061

TCEQ Docket No. 2016-0160-WR

Application No. 13071

### APPLICATION

City of Pearland, 3519 Liberty Drive, Pearland, Texas 77581, Applicant, seeks a Water Use Permit pursuant to Texas Water Code §§11.121, 11.042, and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) §295.1, et seq.

City of Pearland has applied for a Water Use Permit to use the bed and banks of an unnamed tributary of Clear Creek and Clear Creek, San Jacinto-Brazos Coastal Basin, Brazoria County to convey return flows from the City's Far Northwest Wastewater Treatment Facility for off-channel recreation storage and subsequent diversion.

The Applicant has applied for a Water Use Permit to divert and use not to exceed 280 acre-feet per year of those historically discharged surface water and groundwater-based return flows from the Far Northwest Wastewater Treatment Facility permitted under TPDES Permit No. WQ0010134008. The Applicant also seeks to use the bed and

banks of an unnamed tributary of Clear Creek and Clear Creek, San Jacinto-Brazos Coastal Basin to convey return flows.

The return flows will be diverted from a point on Clear Creek at a maximum diversion rate of 1.546 cfs (694 gpm) for storage in off-channel recreation reservoirs and subsequent diversion for agricultural purposes to irrigate 280 acres of land in Brazoria County, Texas.

The Applicant estimates that a maximum of 60% of the return flows originate from surface water.

The Applicant and Country Place Master Community Association (CPMCA) have entered into a Transferred Water Agreement by and between Country Place Master Community Association and City of Pearland, Texas, as CPMCA owns the land inundated by the off-channel reservoirs and the land to be irrigated. The reservoirs are located approximately 29 miles north, northeast of the City of Angleton in Brazoria County, and described as follows:

Amenity Lake No. 1, is located at 29.584942°N Latitude, 95.375078°W Longitude also bearing N 80°W, 1,442.31 feet from the southeast corner of the F. Drake Original Survey, Abstract No. 503.

Amenity Lake No. 2, is located at 29.583788°N Latitude, 95.383122°W Longitude also bearing N 80°W, 1,442.31 feet from the southeast corner of the F. Drake Original Survey, Abstract No. 503.

Amenity Lake No. 3, is located at 29.582515°N Latitude, 95.364149°W Longitude also bearing S 74°E, 2,153.98 feet from the southeast corner of the F. Drake Original Survey, Abstract No. 503.

Lake No. 1, is located at 29.579256°N Latitude, 95.375280°W Longitude also bearing S 42°W, 2,378.17 feet from the southeast corner of the F. Drake Original Survey, Abstract No. 503.

Lake No. 10/11, is located at 29.582545°N Latitude, 95.368908°W Longitude also bearing S 42°E, 847.47 feet from the southeast corner of the F. Drake Original Survey, Abstract No. 503.

The proposed discharge point is located on an unnamed tributary of Clear Creek at 29.579967°N Latitude, 95.409467°W Longitude also bearing S 74°E, 969 feet from the northwest corner of the T.C.R.R Co Original Survey, Abstract No. 678, approximately 28.5 miles north of the City of Angleton in Brazoria County, Texas.

The proposed diversion point is located on Clear Creek at 29.585118°N Latitude, 95.366299°W Longitude also bearing N 79°E, 1,395.60 feet from the southeast corner of the F. Drake Original Survey, Abstract No. 503, approximately 28.8 miles north of the City of Angleton in Brazoria County, Texas.

The application was received on August 1, 2013, and additional information and fees were received on December 13, 2013, February 25, 2014, and June 3, 2015. The application was declared administratively complete and filed with the Office of the Chief Clerk on March 7, 2014.

The Executive Director has prepared a draft permit, which, if approved, would contain special conditions, including but not limited to, streamflow restrictions and recorded daily measurement of return flows. The application and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas 78753.

### CONTESTED CASE HEARING.

SOAH will conduct a preliminary hearing on this application at:

**10:00 a.m. - August 15, 2016**

**William P. Clements Building**

**300 West 15th Street, 4th Floor**

## Austin, Texas 78701

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, allow an opportunity for settlement discussions, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding will be similar to a civil trial in state district court.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 11, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155.

The applicant is automatically a party in this hearing. If anyone else wishes to be a party to the hearing, he or she must attend the hearing and show how he or she would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and any person may request to be a party. Only persons named as parties may participate at the hearing.

### INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at <http://www.tceq.texas.gov/>.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: July 13, 2016

TRD-201603583

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 20, 2016



### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is August 29, 2016. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's

central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on August 29, 2016. 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: AIZ CORPORATION d/b/a King Food Mart; DOCKET NUMBER: 2015-1287-PST-E; TCEQ ID NUMBER: RN103143608; LOCATION: 7111 Martin Luther King Boulevard, Houston, Harris 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); PENALTY: \$4,500; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: KRZ Texas Enterprise Inc. d/b/a County Line Trading Post; DOCKET NUMBER: 2015-1305-PST-E; TCEQ ID NUMBER: RN105487599; LOCATION: 5777 United States Highway 380, Caddo Mills, Hunt 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), (2), (2)(A)(i)(III), and (d)(9)(A)(iii), 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), provide release detection for the pressurized piping associated with the UST system by failing to conduct the annual piping tightness and line leak detector tests, and assure that a monthly analysis report is received from the Statistical Inventory Reconciliation vendor in no more than 15 calendar days following the last day of the calendar month for which the analysis is performed; 30 TAC §334.42(i), by failing to inspect all sumps, manways, overflow 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; 30 TAC §334.45(c)(3)(A), by failing to securely anchor the emergency shutoff valves at the base of the dispensers; TWC, §26.3475(c)(2) and 30 TAC §334.51(b)(2)(B)(ii), by failing to equip the spill containment device with a liquid-tight lid or cover; TWC, §26.3475(d) and 30 TAC §334.49(b)(2), by failing to provide corrosion protection to all underground metal components of a UST system which is designed or used to convey, contain, or store regulated substances; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A, B, and C - for the facility; PENALTY: \$14,859; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: MIDWAY AUTOMOTIVE, INC.; DOCKET NUMBER: 2015-1526-PST-E; TCEQ ID NUMBER: RN101783181; LOCATION: 6737 United States Highway 181 North, Floresville, Wilson County; TYPE OF FACILITY: underground storage tank (UST) system and an automotive repair shop; 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 from the date of the occurrence of the change or addition; TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A, B, and C - for the facility; PENALTY: \$8,500; STAFF ATTORNEY: Amanda Patel, Litigation Division, MC 175, (512) 239-3990;

REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Ranch Hand Apartments, LLC; DOCKET NUMBER: 2015-1854-PWS-E; TCEQ ID NUMBER: RN108863192; LOCATION: 10570 West United States Highway 60 near Canyon, Randall County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.035(a) and 30 TAC §290.39(e)(1), (h)(1), and (m), by failing to submit plans and specifications to the executive director for review and approval prior to the construction of a new public water system and notify the executive director of the startup of a new public water system; and 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; PENALTY: \$550; STAFF ATTORNEY: Eric Grady, Litigation Division, MC 175, (512) 239-0655; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(5) COMPANY: Rathana Sarey Khey d/b/a Blue Diamond Convenience Store; DOCKET NUMBER: 2015-1487-PST-E; TCEQ ID NUMBER: RN101900678; LOCATION: 711 West Pinecrest Drive, Marshall, Harrison County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, B, and C; PENALTY: \$32,073; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: Thomas H. Stone; DOCKET NUMBER: 2015-1027-MSW-E; TCEQ ID NUMBER: RN106268055; LOCATION: 1.5 miles northeast on US 277 Business, 0.10 miles east on BW Stone Ranch Road, 0.10 miles south on dirt road, near Holliday, Archer County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(c) and TCEQ AO Docket Number 2012-0214-MLM-E, Ordering Provision Number 2.b., by causing, suffering, allowing, or permitting the dumping or disposal of MSW; PENALTY: \$337,500; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-201603551

Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: July 19, 2016



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 29, 2016**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 29, 2016**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Affordable Sand and Material LLC; DOCKET NUMBER: 2015-1695-MSW-E; TCEQ ID NUMBER: RN106038656; LOCATION: 8488 County Road 2400, Quinlan, Hunt County; TYPE OF FACILITY: sand and soil mining operation; RULES VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized collection, storage and/or disposal of municipal solid waste; and TWC, §26.0291 and 30 TAC §205.6, by failing to pay outstanding General Permit Storm Water fees for TCEQ Financial Account Number 20039171; PENALTY: \$1,312; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Roger Alan Biggs; DOCKET NUMBER: 2015-1712-LII-E; TCEQ ID NUMBER: RN103232138; LOCATIONS: 1200 Farm-to-Market Road 720, Frisco, Denton County and 3120 Osceola Drive, Plano, Collin County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §344.71(b), by failing to include all required information in written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system; 30 TAC §344.42(a) and §344.71(a), by failing to include all required information in a contract to install an irrigation system; and 30 TAC §344.24(a) and §344.35(d)(2) and (3), by failing to comply with local landscape irrigation regulations for permitting or inspections as required by the city, town, county, special purpose district, public water supply, or political subdivision of the state; PENALTY: \$609; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Dallas-Fort Worth

Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201603552

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 19, 2016



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of C & C ERAE, Inc. d/b/a Agape Cleaners

SOAH Docket No. 582-16-4933

TCEQ Docket No. 2015-1436-MLM-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - August 18, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed April 14, 2016, concerning assessing administrative penalties against and requiring certain actions of C & C ERAE, INC. d/b/a AGAPE CLEANERS, for violations in Tarrant County, Texas, of: Tex. Health & Safety Code §374.102 and 30 Tex. Admin. Code §§335.62, 335.503(a), 335.504, 337.10 and 10(b), 337.11, 337.20(e)(3)(A) and (e)(6)(B), 337.21(b), 337.70(a) and (b), and 40 C.F.R. §262.11.

The hearing will allow C & C ERAE, INC. d/b/a AGAPE CLEANERS, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford C & C ERAE, INC. d/b/a AGAPE CLEANERS, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of C & C ERAE, INC. d/b/a AGAPE CLEANERS to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** C & C ERAE, INC. d/b/a AGAPE CLEANERS, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and ch. 7, Tex. Health & Safety Code chs. 361 and 374, and 30 Tex. Admin. Code chs. 70, 335, and 337; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §§70.108 and 70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jacquelyn Boutwell, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: July 19, 2016

TRD-201603582

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 20, 2016



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Saguaro, Corp. d/b/a El Paso C&D Recycling Plant

SOAH Docket No. 582-16-5119

TCEQ Docket No. 2015-1544-MSW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - August 18, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed April 22, 2016, concerning assessing administrative penalties against and requiring certain actions of Saguaro, Corp. d/b/a El Paso C&D Recycling Plant, for violations in El Paso County, Texas, of: 30 Tex. Admin. Code §§37.8021; 305.125(1); 330.9(a); 330.503(a)(1) and (a)(2); and MSW Registration No. 40237, Part II, Section E-Maximum Volume Available for Storage.

The hearing will allow Saguaro, Corp. d/b/a El Paso C&D Recycling Plant, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Saguaro, Corp. d/b/a El Paso C&D Recycling Plant, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to es-

establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Saguaro, Corp. d/b/a El Paso C&D Recycling Plant to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Saguaro, Corp. d/b/a El Paso C&D Recycling Plant, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and ch. 7; Tex. Health & Safety Code ch. 361; and 30 Tex. Admin. Code chs. 70, 305, and 330; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting David A. Terry, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: July 19, 2016

TRD-201603585

Bridget C. Bohac  
Chief Clerk

Texas Commission on Environmental Quality

Filed: July 20, 2016



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of the Dynamite Inc. d/b/a Country Food Mart

SOAH Docket No. 582-16-5120

TCEQ Docket No. 2015-1656-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

**10:00 a.m. - August 18, 2016**

**William P. Clements Building**

**300 West 15th Street, 4th Floor**

**Austin, Texas 78701**

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed May 24, 2016, concerning assessing administrative penalties against and requiring certain actions of THE DYNAMITE INC d/b/a Country Food Mart, for violations in Montgomery County, Texas, of: Tex. Water Code §26.3475(c)(1) and 30 Tex. Admin. Code §334.50(b)(1)(A).

The hearing will allow THE DYNAMITE INC d/b/a Country Food Mart, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford THE DYNAMITE INC d/b/a Country Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of THE DYNAMITE INC d/b/a Country Food Mart to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** THE DYNAMITE INC d/b/a Country Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and Tex. Water Code chs. 7 and 26 and 30 Tex. Admin. Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Adam Taylor, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: July 19, 2016

TRD-201603586



### Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit Major Amendment Permit Number 692B

APPLICATION. The City of Temple, 3210 East Avenue H, Building A, Suite 130, Temple, Bell County, Texas 76501, Owner and Site Operator of the Temple Recycling and Disposal Facility, a Type I municipal solid waste (MSW) facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Type I MSW permit major amendment. The major amendment requests authorization for a lateral and vertical expansion of the existing facility. The Temple Recycling and Disposal facility is located at 706 Landfill Road, Temple, Bell County, Texas 76501-8429. TCEQ received this application on June 21, 2016. The permit application is available for viewing and copying at the City of Temple Public Library, 100 W. Adams Avenue, Temple, Bell County, Texas 76501, and may be viewed online at <http://www0.wm.com/wm/texas/permits.asp>. The following website which provides an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=31.0725&lng=-97.3025&zoom=13&type=r>. For the exact location of the facility, refer to the 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; a list of all disputed issues of fact that you submit during the comment period; 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 by name and physical address 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 may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All public comments and requests must be submitted either electronically at [www.tceq.texas.gov/about/comments.html](http://www.tceq.texas.gov/about/comments.html) or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from the City of Temple at the address stated above or by calling Ms. Nicole Torralva, P.E., Director of Public Works, City of Temple, at (254) 298-5621.

TRD-201603578  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: July 20, 2016



### Notice of Water Quality Application

The following notices were issued on June 28, 2016, through July 13, 2016.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (10) DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

HAYS COUNTY MUNICIPAL UTILITY DISTRICT No. 5 has applied for a minor amendment to the Texas Commission on Environmental Quality (TCEQ) Permit No. WQ0014358001 to authorize the addition of 220,000 gallons per day Interim phase II. The existing permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day via subsurface drip irrigation of 68.87 acres of public access land in the Final phase. The maximum daily average flow currently authorized will not change. This permit will not authorize a discharge of pollutants into water in the state. The wastewater treatment facility and disposal site are located approximately 2.3 miles south of U.S. Highway 290 and approximately 6,500 feet east of Sawyer Ranch Road. The disposal sites are located throughout the Highpoint Subdivision. The entrance to the subdivision is located on the east side of Sawyer Ranch Road, approximately 1.7 miles along Sawyer Ranch Road, south of the intersection of U.S. Highway 290 and Sawyer Ranch Road. Sawyer Ranch Road is located 8.2 miles west of the intersection of U.S. Highway 290 and Texas Highway 71 (the "Y" in Oak Hill), and 5.5 miles east of Dripping Springs, in Hays County, Texas 78737.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

SHERWIN ALUMINA COMPANY, LLC has applied for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0004788000 to clarify in the facility description of the permit, the disposal of wastewater treatment plant (WWTP) sludge and water treatment plant (WTP) sludge via the use of spray application in addition to the current approved method of piping over the disposal site. The draft permit authorizes the disposal of WWTP sludge and WTP sludge on 3,149 acres. The sludge disposal site is located approximately 8.7 miles northeast of the City of Gregory, along State Highway 188 and bisected by Copano Retreat Road in San Patricio and Aransas counties, Texas 78359.

TRD-201603577  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: July 20, 2016



Notice of Water Rights Application

Notice issued July 19, 2016

APPLICATION NO. 12-2936B; US Department of the Army, Building 4622 Engineer Dr., Fort Hood, Texas 76544-5000, Applicant, seeks to amend Certificate of Adjudication No. 12-2936 to maintain three existing dams and reservoirs on an unnamed tributary of House Creek and unnamed tributaries of Clear Creek, to divert and use 360 acre-feet of the previously authorized water for agricultural purposes to irrigate land in Coryell County. The application was received on March 7, 2011. Additional information and fees were received on May 27, June 22, July 13, and September 23, 2011. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on September 29, 2011. The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions, including but not limited to streamflow restrictions. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief

Clerk, 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at [www.tceq.texas.gov/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.texas.gov/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement (I/we) request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov). Si desea información en español, puede llamar al (800) 687-4040.

TRD-201603579  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: July 20, 2016



Texas Facilities Commission

Request for Proposals #303-7-20575

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-7-20575. TFC seeks a five (5) or ten (10) year lease of approximately 7,765 square feet of office space in Brownsville, Texas.

The deadline for questions is August 9, 2016, and the deadline for proposals is August 23, 2016, at 3:00 p.m. The award date is September 21, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=125990](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=125990).

TRD-201603559

Kay Molina

General Counsel

Texas Facilities Commission

Filed: July 19, 2016



### Request for Proposals #303-8-20576

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety - Driver's License Office (DPS), announces the issuance of Request for Proposals (RFP) #303-8-20576. TFC seeks a five (5) or ten (10) year lease of approximately 23,840 square feet of office space in Northwest San Antonio, Texas.

The deadline for questions is August 18, 2016, and the deadline for proposals is August 25, 2016, at 3:00 p.m. The award date is November 1, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=125993](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=125993).

TRD-201603561

Kay Molina

General Counsel

Texas Facilities Commission

Filed: July 19, 2016



## Texas Health and Human Services Commission

### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 26, 2016, at 3 p.m. to receive public comments on proposed blended rates for Single Source Continuum Contractors (SSCC) under Foster Care Redesign (FCRD) in the 24 Hour Residential Child Care (24 RCC) program. The 24 RCC program is operated by the Texas Department of Family and Protective Services (DFPS).

The hearing will be held in compliance with Texas Human Resources Code §32.0282 and Title 1 of the Texas Administrative Code (1 TAC), §355.7103(a)(2), which require that public hearings be held on proposed reimbursement rates before such rates are approved by HHSC.

The public hearing will be held in the Public Hearing Room of the Brown Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through Security at the front of the building facing Lamar Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

**Proposal.** HHSC proposes to increase the Region 3 blended rate for the SSCCs. The proposed rate accounts for actual and projected increases in the case-mix of the children served by the SSCC. The new

blended rate for Region 3 is proposed to be adopted effective September 1, 2016.

HHSC also proposes a blended rate and an exceptional care rate for the SSCCs for the proposed expansion of FCRD into Region 2. The proposed rates will be included in the Request for Proposals (RFP) for the expansion of FCRD for use by entities interested in submitting a proposal. The rates for Region 2 are proposed to be adopted effective September 30, 2016.

**Methodology and Justification.** The proposed rates were determined in accordance with the rate setting methodologies codified at 1 TAC §355.7103(a), relating to Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements.

**Briefing Package.** A briefing package describing the proposed payment rates will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on July 29, 2016. Interested parties may obtain a copy of the briefing package before the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by email at [RAD-LTSS@hhsc.state.tx.us](mailto:RAD-LTSS@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [LTSS@hhsc.state.tx.us](mailto:LTSS@hhsc.state.tx.us). In addition, written comment may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751-2316.

TRD-201603571

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: July 19, 2016



### Public Notice - August 16, 2016 STAR Kids Client Information Session

The Texas Health and Human Services Commission (HHSC) will hold two client information sessions at the Chase Tower, 201 East Main St., Suite 600, Board Room, El Paso, Texas 79901 on August 16, 2016, from 9:00 a.m. to 11:00 a.m. and from 6:00 p.m. to 8:00 p.m. These information sessions are related to the transition of various Medicaid services to the STAR Kids managed care program. Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities 20 years of age and younger who receive Supplemental Security Income Medicaid or Supplemental Security Income and Medicare, receive services through the Medicaid Buy-in for Children, live in a community-based intermediate care facility for individuals with an intellectual disability or related condition (ICF/IID) or nursing facility, or are enrolled in home and community-based services waiver programs, including:

Medically Dependent Children Program

Home and Community-based Services

Community Living Assistance and Support Services

Deaf Blind with Multiple Disabilities

Texas Home Living

## Youth Empowerment Services

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more. Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

Questions regarding content or meeting arrangements should be directed to Heather Kuhlman, Communications Specialist, Health and Human Services Commission, (512) 438-6356, [Heather.Kuhlman@hhsc.state.tx.us](mailto:Heather.Kuhlman@hhsc.state.tx.us).

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201603506

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: July 15, 2016



## Public Notice - August 16, 2016 STAR Kids Provider Information Session

The Texas Health and Human Services Commission (HHSC) will hold a provider information session at the Chase Tower, 201 East Main St., Suite 600, Board Room, El Paso, Texas 79902 on August 16, 2016, from 2:00 p.m. to 4:00 p.m. This information session is related to the transition of various Medicaid services to the STAR Kids managed care program. Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities 20 years of age and younger who receive Supplemental Security Income Medicaid or Supplemental Security Income and Medicare, receive services through the Medicaid Buy-in for Children, live in a community-based intermediate care facility for individuals with an intellectual disability or related condition (ICF/IID) or nursing facility, or are enrolled in home and community-based services waiver programs, including:

Medically Dependent Children Program

Home and Community-based Services

Community Living Assistance and Support Services

Deaf Blind with Multiple Disabilities

Texas Home Living

Youth Empowerment Services

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more. Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

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TRD-201603507

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: July 15, 2016



## Public Notice - August 18, 2016 STAR Kids Client Information Session

The Texas Health and Human Services Commission (HHSC) will hold two client information sessions at McLane Children's Hospital, Multipurpose Room 1.105, 1901 SW H.K. Dodgen Loop, Temple, Texas 76502 on August 18, 2016, from 9:00 a.m. to 11:00 a.m. and from 6:00 p.m. to 8:00 p.m. These information sessions are related to the transition of various Medicaid services to the STAR Kids managed care program. Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities 20 years of age and younger who receive Supplemental Security Income Medicaid or Supplemental Security Income and Medicare, receive services through the Medicaid Buy-in for Children, live in a community-based intermediate care facility for individuals with an intellectual disability or related condition (ICF/IID) or nursing facility, or are enrolled in home and community-based services waiver programs, including:

Medically Dependent Children Program

Home and Community-based Services

Community Living Assistance and Support Services

Deaf Blind with Multiple Disabilities

Texas Home Living

Youth Empowerment Services

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more. Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

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This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

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TRD-201603508

Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: July 15, 2016



### Public Notice - August 18, 2016 STAR Kids Provider Information Session

The Texas Health and Human Services Commission (HHSC) will hold a provider information session at McLane Children's Hospital, Multipurpose Room 1.105, 1901 SW H.K. Dodgen Loop, Temple, Texas 76502 on August 18, 2016, from 2:00 p.m. to 4:00 p.m. This information session is related to the transition of various Medicaid services to the STAR Kids managed care program. Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities 20 years of age and younger who receive Supplemental Security Income Medicaid or Supplemental Security Income and Medicare, receive services through the Medicaid Buy-in for Children, live in a community-based intermediate care facility for individuals with an intellectual disability or related condition (ICF/IID) or nursing facility, or are enrolled in home and community-based services waiver programs, including:

- Medically Dependent Children Program
- Home and Community-based Services
- Community Living Assistance and Support Services
- Deaf Blind with Multiple Disabilities
- Texas Home Living
- Youth Empowerment Services

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more. Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

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TRD-201603509

Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: July 15, 2016



### Public Notice - August 19, 2016 STAR Kids Client Information Session

The Texas Health and Human Services Commission (HHSC) will hold a client information session at The University of Texas Rio Grande

Valley, Auditorium Room 1.100, 2102 Treasure Hills Blvd., Harlingen, Texas 78550 on August 19, 2016, from 11:00 a.m. to 1:00 p.m. This information session is related to the transition of various Medicaid services to the STAR Kids managed care program. Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities 20 years of age and younger who receive Supplemental Security Income Medicaid or Supplemental Security Income and Medicare, receive services through the Medicaid Buy-in for Children, live in a community-based intermediate care facility for individuals with an intellectual disability or related condition (ICF/IID) or nursing facility, or are enrolled in home and community-based services waiver programs, including:

- Medically Dependent Children Program
- Home and Community-based Services
- Community Living Assistance and Support Services
- Deaf Blind with Multiple Disabilities
- Texas Home Living
- Youth Empowerment Services

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more. Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

Questions regarding content or meeting arrangements should be directed to Heather Kuhlman, Communications Specialist, Health and Human Services Commission, (512) 438-6356, [Heather.Kuhlman@hhsc.state.tx.us](mailto:Heather.Kuhlman@hhsc.state.tx.us).

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201603510

Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: July 15, 2016



### Public Notice - August 19, 2016 STAR Kids Provider Information Session

The Texas Health and Human Services Commission (HHSC) will hold a provider information session at The University of Texas Rio Grande Valley, Auditorium Room 1.100, 2102 Treasure Hills Blvd., Harlingen, Texas 78550 on August 19, 2016, from 2:00 p.m. to 4:00 p.m. This information session is related to the transition of various Medicaid services to the STAR Kids managed care program. Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities 20 years of age and younger who receive Supplemental Security Income Medicaid or Supplemental Security Income and Medicare, receive services through the Medicaid Buy-in for Children, live in a community-based intermediate care facility for individuals with an intellectual disability or related condition (ICF/IID) or nursing facility, or are enrolled in home and community-based services waiver programs, including:

Medically Dependent Children Program  
Home and Community-based Services  
Community Living Assistance and Support Services  
Deaf Blind with Multiple Disabilities  
Texas Home Living  
Youth Empowerment Services

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more. Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

Questions regarding content or meeting arrangements should be directed to Heather Kuhlman, Communications Specialist, Health and Human Services Commission, (512) 438-6356, [Heather.Kuhlman@hhsc.state.tx.us](mailto:Heather.Kuhlman@hhsc.state.tx.us).

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201603511  
Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: July 15, 2016



## Texas Department of Housing and Community Affairs

Notice of Public Hearing and Public Comment Period on the Draft National Housing Trust Fund Allocation Plan, Draft Amended 2015-2019 State of Texas Consolidated Plan, and Draft Amended 2016 One-Year Action Plan

The Texas Department of Housing and Community Affairs ("TDHCA") will hold a public hearing to accept public comment on the Draft National Housing Trust Fund ("NHTF") Allocation Plan, Draft Amended 2015-2019 State of Texas Consolidated Plan ("Con Plan"), and Draft Amended 2016 One-Year Action Plan ("OYAP").

The public hearing will take place as follows:

Thursday, August 4, 2016  
1:30 p.m. Austin local time  
Stephen F. Austin Building  
1700 North Congress Avenue, Room 170  
Austin, Texas 78701

TDHCA compiled the Draft NHTF Allocation Plan and drafted substantial amendments to the 2015-2019 Con Plan, and the 2016 OYAP in accordance with 24 CFR §91.220(1)(5) as a result of the State receiving its first annual allocation of the NHTF. The Draft Amended 2015-2019 Con Plan, and the Draft Amended 2016 OYAP now include the State's administration of NHTF Program by TDHCA and reflect the intended uses of NHTF received by the State of Texas from the U.S. Department

of Housing and Urban Development for Program Year 2016. The Program Year begins on February 1, 2016, and ends on January 31, 2017.

The Draft Amended 2015-2019 Con Plan and the Draft Amended 2016 OYAP also illustrate the State's strategies in addressing the priority needs and specific goals and objectives for the NHTF as identified in the 2015-2019 State of Texas Consolidated Plan.

The public comment period for the Draft NHTF Allocation Plan, Draft Amended 2015-2019 Con Plan and the Draft Amended 2016 OYAP will be open from July 15, 2016, through August 15, 2016. Anyone may submit comments regarding specific changes to these plans as a result of NHTF funding in written form or oral testimony at the August 4, 2016 public hearing. Written comments concerning the plans may be submitted by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, by email to [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us), or by fax to (512) 475-0070. Comments must be received no later than August 15, 2016, at 6:00 p.m. Austin local time.

Individuals who require auxiliary aids or services at the public hearing should contact Ms. Gina Esteves, ADA responsible employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters at the public hearing should contact Elena Peinado by phone at (512) 475-3814 or by email at [elena.peinado@tdhca.state.tx.us](mailto:elena.peinado@tdhca.state.tx.us) at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 o enviarle un correo electrónico a [elena.peinado@tdhca.state.tx.us](mailto:elena.peinado@tdhca.state.tx.us) por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201603555  
Timothy K. Irvine  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: July 19, 2016



## Texas Department of Licensing and Regulation

Public Notice - Criminal Conviction Guidelines

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that, at its regularly scheduled meeting held June 22, 2016, the Commission adopted amendments to the Texas Department of Licensing and Regulation's (Department's) Criminal Conviction Guidelines pursuant to Texas Occupations Code §53.025(a). The Criminal Conviction Guidelines are updated from the original guidelines published on December 5, 2003 (28 TexReg 11018) to include the Orthotics and Prosthetics program.

The Criminal Conviction Guidelines (guidelines) describe the process by which the Department determines whether a criminal conviction renders an applicant an unsuitable candidate for the license, or whether a conviction warrants revocation or suspension of a license previously granted. The guidelines present the general factors that are considered in all cases and the reasons why particular crimes are considered to relate to each type of license issued by the Department.

Senate Bill 202, 84th Legislature, Regular Session (2015), transferred the Orthotics and Prosthetics program from the Texas Department of State Health Services to the Texas Department of Licensing and Regulation and amended Texas Occupations Code, Chapter 605. The statutory changes were effective September 1, 2015; the adopted rules will be effective October 1, 2016; and the Department will officially com-

mence all regulatory functions for the Orthotics and Prosthetics program on October 3, 2016.

The Criminal Conviction Guidelines for the Orthotics and Prosthetics program will become a part of the overall guidelines that are already in place for other Department programs. The Department presented the applicable guidelines to the Orthotists and Prosthetists Advisory Board at its meeting on May 19, 2016, and received the Board's recommendation of approval.

The Criminal Conviction Guidelines for the Orthotics and Prosthetics program are as follows:

Crimes against the person such as homicide, kidnapping and assault.

*Reasons:*

1. Licensees interact with adults, the elderly, the disabled and children in a medical provider/patient role. Persons who have a history of committing such crimes would pose a danger to the patients or others.
2. These occupations involve close proximity to and physical contact with patients and their caregivers, family and friends in residences and private offices.
3. These occupations provide persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving prohibited sexual conduct.

*Reasons:*

1. Licensees interact with adults, the elderly, the disabled and children in a medical provider/patient role. Persons who have a history of committing such crimes would pose a danger to the patients or others.
2. These occupations involve close proximity to and physical contact with patients and their caregivers, family and friends in residences and private offices.
3. These occupations provide persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving children, the elderly or the disabled as victims.

*Reasons:*

1. Licensees interact with adults, the elderly, the disabled and children in a medical provider/patient role. Persons who have a history of committing such crimes would pose a danger to the patients or others.
2. These occupations involve close proximity to and physical contact with patients and their caregivers, family and friends in residences and private offices.
3. These occupations provide persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes against property such as theft or burglary.

*Reasons:*

1. Licensees interact with adults, the elderly, the disabled and children in a medical provider/patient role. Persons who have a history of committing such crimes would pose a risk to the property of the patients.
2. These occupations involve close proximity to and physical contact with patients and their caregivers, family and friends in residences and private offices.
3. Licensees would have access to the property of patients and their caregivers, family and friends.
4. These occupations provide persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving fraud or deceptive trade practices.

*Reasons:*

1. Licensees interact with adults, the elderly, the disabled and children in a medical provider/patient role. Persons who have a history of committing such crimes would pose a danger to the patients and their property.
2. These occupations involve close proximity to and physical contact with patients and their caregivers, family and friends in residences and private offices.
3. Licensees would have access to the property of patients and their caregivers, family and friends in residences and offices.
4. Licensees are potentially involved in the billing of clients, filing of insurance claims and filing of government documents.
5. These occupations provide persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving the possession, possession with intent to deliver, possession with intent to distribute, delivery, distribution or manufacture of drugs.

*Reasons:*

1. Licensees interact with adults, the elderly, the disabled and children in a medical provider/patient role. Persons who have a history of committing such crimes would pose a danger to the patients or others.
2. These occupations involve close proximity to and physical contact with patients and their caregivers, family and friends in residences and private offices.
3. Children and adult patients who use pain medication or other medications are potentially vulnerable to someone who may wish to illegally sell or otherwise distribute drugs, or to enlist the aid of a patient in obtaining drugs for the licensee.
4. Persons who have a history of drug possession or dealing could potentially have drugs in their systems which would make them a danger to themselves or others.
5. These occupations provide persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving being under the influence of alcohol or drugs.

*Reasons:*

1. Licensees interact with adults, the elderly, the disabled and children in a medical service provider/patient role. Persons who have a history of committing such crimes would pose a danger to the patients or others.
2. These occupations involve close proximity to and/or physical contact with patients and their caregivers, family and friends in residences and private offices.
3. While working with patients, licensees use dangerous instruments such as knives, scalpels and other blades.
4. Persons with this type of criminal history could potentially have alcohol or drugs in their systems which would make them a danger to their patients or others.

A copy of the complete Criminal Conviction Guidelines is posted on the Department's website and may be obtained at [www.tdlr.texas.gov](http://www.tdlr.texas.gov). You may also contact the Enforcement Division at (512) 539-5600 or by email at [enforcement@tdlr.texas.gov](mailto:enforcement@tdlr.texas.gov) to obtain a copy of the complete guidelines.

TRD-201603587



## Public Notice - Criminal Conviction Guidelines

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that, at its regularly scheduled meeting held June 22, 2016, the Commission adopted amendments to the Texas Department of Licensing and Regulation's (Department's) Criminal Conviction Guidelines pursuant to Texas Occupations Code §53.025(a). The Criminal Conviction Guidelines are updated from the original guidelines published on December 5, 2003 (28 TexReg 11018) to include the Athletic Trainers program.

The Criminal Conviction Guidelines (guidelines) describe the process by which the Department determines whether a criminal conviction renders an applicant an unsuitable candidate for the license, or whether a conviction warrants revocation or suspension of a license previously granted. The guidelines present the general factors that are considered in all cases and the reasons why particular crimes are considered to relate to each type of license issued by the Department.

Senate Bill 202, 84th Legislature, Regular Session (2015), transferred the Athletic Trainers program from the Texas Department of State Health Services to the Texas Department of Licensing and Regulation and amended Texas Occupations Code, Chapter 451. The statutory changes were effective September 1, 2015; the adopted rules will be effective October 1, 2016; and the Department will commence all regulatory functions for the Athletic Trainers program on October 3, 2016.

The Criminal Conviction Guidelines for the Athletic Trainers program will become a part of the overall guidelines that are already in place for other Department programs. The Department presented the applicable guidelines to the Advisory Board of Athletic Trainers at its meeting on May 23, 2016, and received the Board's recommendation of approval.

The Criminal Conviction Guidelines for the Athletic Trainers program are as follows:

Crimes against the person such as homicide, kidnapping and assault.

### *Reasons:*

1. Licensees physically interact with adults and children in an athletic trainer/client role. Individuals who have committed crimes of this nature would pose a potential danger to the clients.
2. Licensees are in a relationship of trust with their clients.
3. The occupation involves close proximity to and physical contact with clients, sometimes in a private setting, and thereby provides an opportunity to engage in further similar conduct.

Crimes involving prohibited sexual conduct.

### *Reasons:*

1. Licensees physically interact with adults and children in an athletic trainer/client role. Individuals who have committed crimes of this nature would pose a potential danger to the clients.
2. A majority of athletic trainers can and do have contact with minors.
3. Licensees are in a relationship of trust with their clients.
4. The occupation involves regular close proximity to and regular physical contact with clients, sometimes in a private setting.

5. The interaction sometimes lasts for extended periods of time and bonds of friendship sometimes develop.

6. The occupation provides an opportunity to engage in further similar conduct.

Crimes involving children as victims.

### *Reasons:*

1. Licensees physically interact with adults and children in an athletic trainer/client role. Individuals who have committed crimes of this nature would pose a potential danger to the clients.
2. A majority of athletic trainers can and do have contact with minors.
3. Licensees are in a relationship of trust with their clients.
4. The occupation involves regular close proximity to and regular physical contact with clients, sometimes in a private setting.
5. The interaction sometimes lasts for extended periods of time and bonds of friendship sometimes develop.

Crimes against property such as theft or burglary.

### *Reasons:*

1. Licensees interact with adults and children in an athletic trainer/client role. Individuals who have committed such crimes would pose a potential danger to the clients' property.
2. Licensees would potentially have access to the property of clients.
3. Licensees are in a relationship of trust with their clients.
4. The occupation provides an opportunity to engage in further similar conduct.

Crimes involving fraud or deceptive trade practices

### *Reasons:*

1. Licensees interact with adults and children in an athletic trainer/client role. Individuals who have committed such crimes would pose a potential danger to the clients' property.
2. Licensees are in a relationship of trust with their clients and employers.
3. Licensees are sometimes involved in the billing of clients and others, such as, school districts, hospitals and clinics.
4. Licensees are sometimes involved in the filing of insurance claims.
5. Licensees may be in a position to advertise or otherwise make representations about services, products, insurance benefits, costs, and other matters related to athletic training services.
6. The occupation provides an opportunity to engage in further similar conduct.

Crimes involving the possession, possession with intent to deliver, possession with intent to distribute, delivery, distribution or manufacture of drugs.

### *Reasons:*

1. Licensees interact with adults and children in an athletic trainer/client role. Individuals who have committed crimes of this nature would pose a potential danger to the clients.
2. A majority of athletic trainers can and do have contact with minors.
3. Licensees are in a relationship of trust with their clients.

4. The occupation involves close proximity to and physical contact with clients, sometimes in a private setting, and thereby provides an opportunity to engage in further similar conduct.
5. The interaction sometimes lasts for extended periods of time and bonds of friendship sometimes develop.
6. Children and adult clients who use pain medications or other medications are potentially vulnerable to someone who may wish to illegally sell or otherwise distribute drugs or to enlist the aid of a client in obtaining drugs for the licensee.
7. Licensees at times may have access to controlled substances at treatment locations.
8. This occupation provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving being under the influence of alcohol or drugs.

*Reasons:*

1. Licensees interact with adults and children in an athletic trainer/client role. Individuals who have committed crimes of this nature would pose a potential danger to the clients.
2. The occupation involves close proximity to and physical contact with clients.
3. Persons with this type of criminal history could potentially have alcohol or drugs in their systems while providing athletic training services, which would make them a danger to their clients or others.
4. This occupation provides an opportunity to engage in further similar conduct.

A copy of the complete Criminal Conviction Guidelines is posted on the Department's website and may be obtained at [www.tdlr.texas.gov](http://www.tdlr.texas.gov). You may also contact the Enforcement Division at (512) 539-5600 or by email at [enforcement@tdlr.texas.gov](mailto:enforcement@tdlr.texas.gov) to obtain a copy of the complete guidelines.

TRD-201603591

William H. Kuntz, Jr.  
Executive Director

Texas Department of Licensing and Regulation  
Filed: July 20, 2016



**Public Notice - Criminal Conviction Guidelines**

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that, at its regularly scheduled meeting held June 22, 2016, the Commission adopted amendments to the Texas Department of Licensing and Regulation's (Department's) Criminal Conviction Guidelines pursuant to Texas Occupations Code §53.025(a). The Criminal Conviction Guidelines are updated from the original guidelines published on December 5, 2003 (28 TexReg 11018) to include the Hearing Instrument Fitters and Dispensers program.

The Criminal Conviction Guidelines (guidelines) describe the process by which the Department determines whether a criminal conviction renders an applicant an unsuitable candidate for the license, or whether a conviction warrants revocation or suspension of a license previously granted. The guidelines present the general factors that are considered in all cases and the reasons why particular crimes are considered to relate to each type of license issued by the Department.

Senate Bill 202, 84th Legislature, Regular Session (2015), transferred the Hearing Instrument Fitters and Dispensers program from the Texas Department of State Health Services to the Texas Department of Li-

censing and Regulation and amended Texas Occupations Code, Chapter 402. The statutory changes were effective September 1, 2015; the adopted rules will be effective October 1, 2016; and the Department will officially commence all regulatory functions for the Hearing Instrument Fitters and Dispensers program on October 3, 2016.

The Criminal Conviction Guidelines for the Hearing Instrument Fitters and Dispensers program will become a part of the overall guidelines that are already in place for other Department programs. The Department presented the applicable guidelines to the Hearing Instrument Fitters and Dispensers Advisory Board at its meeting on May 24, 2016, and received the Board's recommendation of approval.

The Criminal Conviction Guidelines for the Hearing Instrument Fitters and Dispensers program are as follows:

Crimes against the person such as homicide, kidnapping and assault.

*Reasons:*

1. Licensees interact with adults, the elderly, the disabled and children in a provider/patient role. Persons who have a history of committing such crimes would pose a danger to the patients or others.
2. These occupations involve close proximity to and physical contact with patients and their caregivers, family, friends, and others in residences, private offices, and assisted living facilities.
3. These occupations provide persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving prohibited sexual conduct.

*Reasons:*

1. Licensees interact with adults, the elderly, the disabled and children in a provider/patient role. Persons who have a history of committing such crimes would pose a danger to the patients or others.
2. These occupations involve close proximity to and physical contact with patients and their caregivers, family, friends, and others in residences, private offices, and assisted living facilities.
3. These occupations provide persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving children, the elderly or the disabled as victims.

*Reasons:*

1. Licensees interact with adults, the elderly, the disabled and children in a provider/patient role. Persons who have a history of committing such crimes would pose a danger to the patients or others.
2. These occupations involve close proximity to and physical contact with patients and their caregivers, family, friends, and others in residences, private offices, and assisted living facilities.
3. These occupations provide persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes against property such as theft or burglary.

*Reasons:*

1. Licensees interact with adults, the elderly, the disabled and children in a provider/patient role. Persons who have a history of committing such crimes would pose a risk to the property of the patients.
2. These occupations involve close proximity to and physical contact with patients and their caregivers, family, friends, and others in residences, private offices, and assisted living facilities.
3. Licensees would have access to the property of patients and their caregivers, family, friends, and others.

4. These occupations provide persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving fraud or deceptive trade practices.

*Reasons:*

1. Licensees interact with adults, the elderly, the disabled and children in a provider/patient role. Persons who have a history of committing such crimes would pose a danger to the patients and their property.

2. These occupations involve close proximity to and physical contact with patients and their caregivers, family, friends, and others in residences, private offices, and assisted living facilities.

3. Licensees would have access to the property of patients and their caregivers, family, friends and others in residences, private offices, and assisted living facilities.

4. Licensees are potentially involved in the billing of clients, filing of insurance claims and filing of government documents.

5. These occupations provide persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving the possession, possession with intent to deliver, possession with intent to distribute, delivery, distribution or manufacture of drugs.

*Reasons:*

1. Licensees interact with adults, the elderly, the disabled and children in a provider/patient role. Persons who have a history of committing such crimes would pose a danger to the patients or others.

2. These occupations involve close proximity to and physical contact with patients and their caregivers, family and friends in residences, private offices, and assisted living facilities.

3. Persons who have a history of drug possession or dealing could potentially have drugs in their systems which would make them a danger to themselves or others.

4. These occupations provide persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving being under the influence of alcohol or drugs.

*Reasons:*

1. Licensees interact with adults, the elderly, the disabled and children in a provider/client role. Persons who have a history of committing such crimes would pose a danger to the patients or others.

2. These occupations involve close proximity to and physical contact with patients and their caregivers, family and friends in residences, private offices, and assisted living facilities.

3. Persons with this type of criminal history could potentially have alcohol or drugs in their systems which would make them a danger to their patients or others.

A copy of the complete Criminal Conviction Guidelines is posted on the Department's website and may be obtained at [www.tdlr.texas.gov](http://www.tdlr.texas.gov). You may also contact the Enforcement Division at (512) 539-5600 or by email at [enforcement@tdlr.texas.gov](mailto:enforcement@tdlr.texas.gov) to obtain a copy of the complete guidelines.

TRD-201603592

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: July 20, 2016

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Public Notice - Criminal Conviction Guidelines

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that, at its regularly scheduled meeting held June 22, 2016, the Commission adopted amendments to the Texas Department of Licensing and Regulation's (Department's) Criminal Conviction Guidelines pursuant to Texas Occupations Code §53.025(a). The Criminal Conviction Guidelines are updated from the original guidelines published on December 5, 2003 (28 TexReg 11018) to include the Speech-Language Pathologists and Audiologists program.

The Criminal Conviction Guidelines (guidelines) describe the process by which the Department determines whether a criminal conviction renders an applicant an unsuitable candidate for the license, or whether a conviction warrants revocation or suspension of a license previously granted. The guidelines present the general factors that are considered in all cases and the reasons why particular crimes are considered to relate to each type of license issued by the Department.

Senate Bill 202, 84th Legislature, Regular Session (2015), transferred the Speech-Language Pathologists and Audiologists program from the Texas Department of State Health Services to the Texas Department of Licensing and Regulation and amended Texas Occupations Code, Chapter 401. The statutory changes were effective September 1, 2015; the adopted rules will be effective October 1, 2016; and the Department will officially commence all regulatory functions for the Speech-Language Pathologists and Audiologists program on October 3, 2016.

The Criminal Conviction Guidelines for the Speech-Language Pathologists and Audiologists program will become a part of the overall guidelines that are already in place for other Department programs. The Department presented the applicable guidelines to the Speech-Language Pathologists and Audiologists Advisory Board at its meeting on May 23, 2016, and received the Board's recommendation of approval.

The Criminal Conviction Guidelines for the Speech-Language Pathologists and Audiologists program are as follows:

Crimes against the person such as homicide, kidnapping and assault.

*Reasons:*

1. Licensees interact with adults, the elderly, the disabled, and children in a variety of settings. Speech-language pathologists interact with students in schools, and with clients in their homes or in clinical settings. Audiologists interact with patients in a clinical or school setting.

2. These occupations involve close proximity to and physical contact with students, clients and patients, as well as their caregivers, family members and friends.

3. Persons who have a history of committing such crimes would pose a danger to the students, clients and patients, as well as their caregivers, family members and friends.

4. These occupations provide persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving prohibited sexual conduct.

*Reasons:*

1. Licensees interact with adults, the elderly, the disabled, and children in a variety of settings. Speech-language pathologists interact with students in schools, and with clients in their homes or in clinical settings. Audiologists interact with patients in a clinical or school setting.

2. These occupations involve close proximity to and physical contact with students, clients and patients, as well as their caregivers, family members and friends.

3. Persons who have a history of committing such crimes would pose a danger to the students, clients and patients, as well as their caregivers, family members and friends.

4. These occupations provide persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving children, the elderly or the disabled as victims.

*Reasons:*

1. Licensees interact with adults, the elderly, the disabled, and children in a variety of settings. Speech-language pathologists interact with students in schools, and with clients in their homes or in clinical settings. Audiologists interact with patients in a clinical or school setting.

2. These occupations involve close proximity to and physical contact with students, clients and patients, as well as their caregivers, family members and friends.

3. Persons who have a history of committing such crimes would pose a danger to the students, clients and patients, as well as their caregivers, family members and friends.

4. These occupations provide persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes against property such as theft or burglary.

*Reasons:*

1. Licensees interact with adults, the elderly, the disabled, and children in a variety of settings. Speech-language pathologists interact with students in schools, and with clients in their homes or in clinical settings. Audiologists interact with patients in a clinical or school setting.

2. These occupations involve close proximity to and physical contact with students, clients and patients, as well as their caregivers, family members and friends.

3. Licensees would have access to the property of students, clients and patients, and their care givers, family, friends and others.

4. Persons who have a history of committing such crimes would pose a danger to the property of students, clients and patients, as well as their caregivers, family members and friends.

5. These occupations provide persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving fraud or deceptive trade practices.

*Reasons:*

1. Licensees interact with adults, the elderly, the disabled, and children in a variety of settings. Speech-language pathologists interact with students in schools, and with clients in their homes or in clinical settings. Audiologists interact with patients in a clinical or school setting.

2. These occupations involve close proximity to and physical contact with students, clients and patients, as well as their caregivers, family members and friends.

3. Licensees would have access to the property of students, clients and patients, and their care givers, family, friends and others.

4. Licensees are potentially involved in the billing of students, clients and patients, filing of insurance claims and filing of government documents.

5. Persons who have a history of committing such crimes would pose a danger to the property of students, clients and patients, as well as their caregivers, family members and friends.

6. These occupations provide persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving the possession, possession with intent to deliver, possession with intent to distribute, delivery, distribution or manufacture of drugs.

*Reasons:*

1. Licensees interact with adults, the elderly, the disabled, and children in a variety of settings. Speech-language pathologists interact with students in schools, and with clients in their homes or in clinical settings. Audiologists interact with patients in a clinical or school setting.

2. These occupations involve close proximity to and physical contact with students, clients and patients, as well as their caregivers, family members and friends.

3. Persons who have a history of committing such crimes would pose a danger to the students, clients and patients, as well as their caregivers, family members and friends.

4. These occupations provide persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving being under the influence of alcohol or drugs.

*Reasons:*

1. Licensees interact with adults, the elderly, the disabled, and children in a variety of settings. Speech-language pathologists interact with students in schools, and with clients in their homes or in clinical settings. Audiologists interact with patients in a clinical or school setting.

2. These occupations involve close proximity to and physical contact with students, clients and patients, as well as their caregivers, family members and friends.

3. Persons with this type of criminal history could potentially have alcohol or drugs in their systems which would make them a danger to their students, clients and patients, and others.

A copy of the complete Criminal Conviction Guidelines is posted on the Department's website and may be obtained at [www.tdlr.texas.gov](http://www.tdlr.texas.gov). You may also contact the Enforcement Division at (512) 539-5600 or by email at [enforcement@tdlr.texas.gov](mailto:enforcement@tdlr.texas.gov) to obtain a copy of the complete guidelines.

TRD-201603593

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: July 20, 2016

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**Texas Lottery Commission**

Scratch Ticket Game Number 1808 "Bonus Break the Bank"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1808 is "BONUS BREAK THE BANK". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1808 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1808.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21,

22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, MONEY STACK SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$500, \$1,000, \$7,500 and \$100,000.

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. 1808 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
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
40	FRTY
<b>MONEY STACK SYMBOL</b>	<b>WIN</b>
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$50.00	FFTY\$

\$100	ONHN
\$500	FVHN
\$1,000	ONTH
\$7,500	75HN
\$100,000	100TH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of \$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 \$1,000, \$7,500 or \$100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1808), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1808-0000001-001.

K. Pack - A Pack of the "BONUS BREAK THE BANK" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Scratch Ticket 001 and back of 075 while the other fold will show the back of Scratch Ticket 001 and front of 075.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Game Ticket, Scratch Ticket or Ticket - Texas Lottery "BONUS BREAK THE BANK" Scratch Ticket Game No. 1808.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "BONUS BREAK THE BANK" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 38 (thirty-eight) Play Symbols. If any of YOUR NUMBERS Play Symbols match any of the 3 LUCKY NUMBERS Play Symbols within the same GAME, the player wins the prize for that number. If a player reveals a "MONEY STACK" Play Symbol, the player wins the prize for that symbol instantly. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 38 (thirty-eight) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut and have exactly 38 (thirty-eight) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 38 (thirty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 38 (thirty-eight) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

D. No matching LUCKY NUMBERS Play Symbols on a Ticket.

E. A Ticket may have up to three (3) matching non-winning Prize Symbols unless restricted by other parameters, play action or prize structure.

F. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 5 and \$5).

H. The "MONEY STACK" (WIN) Play Symbol will never appear more than once in a game, but may appear once in both games on Tickets that win 2 or more times.

I. No YOUR NUMBERS Play Symbol in one game will match a LUCKY NUMBERS Play Symbol in the other game.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS BREAK THE BANK" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BONUS BREAK THE BANK" Scratch Ticket Game prize of \$1,000, \$7,500 or \$100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim

Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BONUS BREAK THE BANK" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "BONUS BREAK THE BANK" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "BONUS BREAK THE BANK" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is

placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 18,000,000 Scratch Tickets in Scratch Ticket Game No. 1808. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1808 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	1,560,000	11.54
\$10	1,320,000	13.64
\$15	600,000	30.00
\$20	360,000	50.00
\$50	300,000	60.00
\$100	54,000	333.33
\$500	3,000	6,000.00
\$1,000	450	40,000.00
\$7,500	60	300,000.00
\$100,000	12	1,500,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.29. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1808 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1808, 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-201603590

Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: July 20, 2016

**Panhandle Regional Planning Commission**

Legal Notice

The Panhandle Regional Planning Commission (PRPC) is requesting proposals for a contract to provide general building maintenance services for the Workforce Solutions Panhandle offices located at 1206 W. 7th Street in Amarillo, Texas and 1315 W. Wilson in the North Park Shopping Center in Borger, Texas.

A copy of the Request for Proposals (RFP) can be obtained Monday through Friday, 8:00 a.m. to 5:00 p.m., at 415 Southwest Eighth Ave., Amarillo, Texas 79101 or by contacting Leslie Hardin, PRPC's Workforce Development Facilities Coordinator at (806) 372-3381 or

*lhardin@theprpc.org*. Proposals must be received at PRPC by 3:00 p.m. on Friday, August 12, 2016.

TRD-201603505

Leslie Hardin

WFD Contracts Coordinator

Panhandle Regional Planning Commission

Filed: July 14, 2016

◆ ◆ ◆  
**Texas Department of Public Safety**

**Request for Proposals**

Pursuant to §2167.054, Texas Government Code, the Texas Department of Public Safety (TXDPS) announces the issuance of Request for Proposal (RFP) #405-16-R047402. TXDPS seeks a lease with an initial term that is effective from date of award until August 31, 2022, for warehouse and office space in close proximity to McAllen, Texas, Hidalgo County, to allow quick response time to the Rio Grande River in the general McAllen area. The awarded lease will have two (2) two (2) year options to renew.

The deadline for questions is August 04, 2016, at 5:00 p.m. CT and the deadline for proposals is August 22, 2016, at 3:00 p.m. CT. TXDPS reserves the right to accept or reject any or all proposals submitted. TXDPS 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 TXDPS to pay for any costs incurred prior to the award of a contract.

Parties interested in obtaining a hard copy of the RFP should contact Deborah Goree, CTCM, PMP, Procurement & Contract Services, at (512) 462-6136 or *Deborah.Goree@dps.texas.gov*. The RFP will be released and available electronically on the Electronic State Business Daily at <http://esbd.cpa/state/tx/us> on July 29, 2016. Interested parties should periodically check the ESBD for updates to the RFP prior to submitting a response.

TRD-201603550

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Filed: July 19, 2016

◆ ◆ ◆  
**Public Utility Commission of Texas**

**Notice of Application for a Service Provider Certificate of Operating Authority**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 18, 2016, for a service provider certificate of operating authority, pursuant to the Public Utility Regulatory Act. Applicant intends to provide facilities-based and resale services in the services areas of all incumbent local exchange companies in Texas.

Docket Title and Number: Application of Sonic Communication, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 46182.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than August 5, 2016. Hearing and speech impaired individuals with text telephones (TTY) may contact the com-

mission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46182.

TRD-201603595

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 20, 2016

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**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 July 14, 2016, for designation as a low-income eligible telecommunications carrier (ETC) in the State of Texas pursuant to 16 TAC §26.418.

Docket Title and Number: Application of Plains Internet, LLC for Designation as an Eligible Telecommunications Carrier for the Limited Purpose of Offering Lifeline Service, Docket Number 46166.

The Application: Plains Internet, LLC filed an application with the Public Utility Commission of Texas for designation as an eligible telecommunications carrier (ETC), pursuant to 47 U.S.C. §214(e) and 16 Tex. Admin. Code §26.418. The Commission designates qualified carriers as ETCs pursuant to 47 U.S.C. §214(e)(2).

Plains is a facilities-based telecommunications carrier that seeks designation as an ETC for the purpose of offering Lifeline service to eligible customers in certain areas of Texas. Plains' requested designated ETC service area is its wireless coverage area, as shown in Exhibits A, B, and C attached to the application.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by August 18, 2016. 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 telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46166.

TRD-201603549

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 18, 2016

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**Notice of Application for Exempt Utility Registration**

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on October 16, 2015, of an application for exempt utility registration.

Docket Style and Number: Application of House Hahl Commercial Owners Association for Exempt Utility Registration, Docket Number 45266.

The Application: House Hahl Commercial Owners Association (House Hahl) filed an application for exempt utility registration pursuant to Texas Water Code §13.242(c) and 16 Texas Administrative Code §24.103(d). House Hahl has less than 15 potential service connections.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas

78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45266.

TRD-201603556  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 19, 2016



#### Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 14, 2016, pursuant to the Texas Water Code.

Docket Style and Number: Application of Las Playa and Simply Aquatics, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in San Augustine County, Docket Number 46168.

The Application: Las Playa Subdivision Water System and Simply Aquatics, Inc. filed an application for the sale, transfer, or merger of facilities and certificate rights in San Augustine County. Specifically, Simply Aquatics seeks approval to acquire all of the water system assets of Las Playa held under water certificate of convenience and necessity (CCN) number 11701, and the certificate itself.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 46168.

TRD-201603546  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 18, 2016



#### Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 14, 2016, pursuant to the Texas Water Code.

Docket Style and Number: Application of El Pinion Water Supply and Simply Aquatics, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in San Augustine County, Docket Number 46169.

The Application: El Pinion Water Supply (El Pinion) and Simply Aquatics, Inc. filed an application for the sale, transfer, or merger of facilities and certificate rights in San Augustine County. Specifically, Simply Aquatics seeks approval to acquire all of the water system assets of El Pinion held under water certificate of convenience and necessity (CCN) No. 12206, and the certificate itself. The total area being requested includes approximately 25 acres and serves 76 current customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as

an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 46169.

TRD-201603547  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 18, 2016



#### Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 14, 2016, pursuant to the Texas Water Code.

Docket Style and Number: Application of Vista Verde Water Systems, Inc. and Simply Aquatics, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Montgomery County, Docket Number 46170.

The Application: Vista Verde Water Systems, Inc. and Simply Aquatics, Inc. filed an application for the sale, transfer, or merger of facilities and certificate rights in Montgomery County. Specifically, Simply Aquatics seeks approval to acquire all of the water system assets of Vista Verde held under water certificate of convenience and necessity (CCN) No. 13034, and the certificate itself. The total area being requested includes approximately 25 acres and serves 45 current customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 46170.

TRD-201603548  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 18, 2016



#### Notice of Application to Amend a Service Provider Certificates of Operating Authority

On July 18, 2016, UCN, Inc., inContact, Inc., and NICE Systems, Inc. filed a joint application with the Public Utility Commission of Texas for approval of an amendment to service provider certificate of operating authority number 60714 for a change in name and a change in ownership/control.

Docket Style and Number: Joint Application of UCN, Inc., inContact, Inc., and NICE Systems, Inc. for an Amendment to a Service Provider Certificate of Operating Authority, Docket Number 46175.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than August 5, 2016. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46175.

TRD-201603596  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 20, 2016



#### Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on July 11, 2016, for an amendment to certificated service area boundaries within Walker County, Texas.

Docket Style and Number: Joint Application of Entergy Texas, Inc. and Mid-South Synergy to Amend a Certificate of Convenience and Necessity for Electric Service Area Boundaries within Walker County. Docket Number 46149.

The Application: Entergy Texas, Inc. and Mid-South Synergy filed a joint application for a service area boundary exception to amend their certificated boundaries in a new development being platted so that services may be provided without duplication of facilities and allow each utility to provide services in an efficient and cost effective manner. There are currently no consumers in the affected areas of the proposed boundary change.

Persons wishing to comment on the action sought or intervene should contact the commission no later than July 29, 2016, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46149.

TRD-201603504  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 14, 2016



#### Notice of Application to Amend Certificates of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend water and sewer certificates of convenience and necessity (CCNs) in Chambers County.

Docket Style and Number: Application of Aqua Texas, Inc. d/b/a Aqua Texas (Aqua Texas) to Amend Certificates of Convenience and Necessity in Chambers County, Docket Number 46181.

The Application: Aqua Texas filed an application to amend its water certificate of convenience (CCN) No. 13203 and sewer CCN No. 21065 in Chambers County to include 93.49 acres and no current cus-

tomers to its service area. Aqua Texas proposes the amendment for provision of services to the proposed Joseph's Cove development.

Persons wishing to intervene or comment on the action sought should contact the Commission by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46181.

TRD-201603570  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 19, 2016



#### Notice of Application to Amend Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend water and sewer certificates of convenience and necessity (CCN) in Liberty County, Texas.

Docket Style and Number: Application of Quadvest, L.P. to Amend its Water and Sewer Certificates of Convenience and Necessity and to Decertify a Portion of Orchard Crossing's Water and Sewer Certificates in Liberty County, Docket Number 46135.

The Application: Quadvest, L.P. filed an application to amend its water CCN No. 11612 and sewer CCN No. 20952 and to decertify a portion of Orchard Crossing's water CCN No. 12671 and sewer CCN No. 20765 in Liberty County, Texas. Quadvest seeks to amend its CCNs to provide water and sewer utility services to Camino Real Subdivision, Sections 1-3, a planned subdivision consisting of 1,698.65 acres with zero current customers.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46135.

TRD-201603503  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 14, 2016



#### Notice of Petition for Amendment to Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on July 11, 2016, a petition to amend a certificate of convenience and necessity (CCN) by expedited release in Hays County by expedited release.

Docket Style and Number: Petition of Las Colinas San Marcos Phase I LLC to Amend Crystal Clear Special Utility District's Certificate of Convenience and Necessity in Hays County by Expedited Release, Docket Number 46148.

The Application: Las Colinas San Marcos filed an application for expedited release of approximately 79.964 acres from the Crystal Clear Special Utility District's water CCN No. 10297 in Hays County pursuant to Tex. Water Code §13.254(a-5) and 16 Tex. Admin. Code §24.113(r).

Persons wishing to comment on the action sought should contact the Commission no later than August 11, 2016, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46148.

TRD-201603533  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 15, 2016

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**Texas Department of Transportation**

**Public Notice - Photographic Traffic Signal Enforcement  
Systems: Municipal Reporting of Traffic Crashes**

The Texas Department of Transportation (department) is requesting that each municipality subject to the requirements contained in Transportation Code, §707.004 provide the required data to the department **no later than October 28, 2016**, in order for the department to meet the mandated deadline for an annual report to the Texas Legislature.

Pursuant to Transportation Code, §707.004, each municipality operating a photographic traffic signal enforcement system or planning to install such a system must compile and submit to the department certain statistical information. Before installing such a system, the municipality is required to submit a written report on the number and type of traffic crashes that have occurred at the intersection over the last 18 months prior to installation. The municipality is also required to provide annual reports to the department after installation showing the number and type of crashes that have occurred at the intersection.

The department is required by Transportation Code, §707.004 to produce an annual report of the information submitted to the department by December 1 of each year.

The department has created a web page detailing municipal reporting requirements and to allow the required data to be submitted electronically:

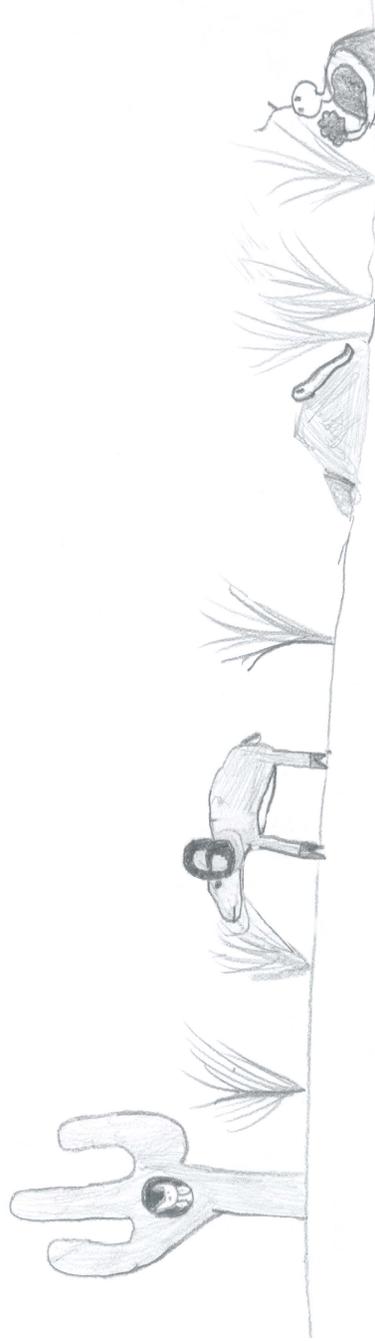
<http://www.txdot.gov/driver/laws/red-light.html>

For additional information, contact the Texas Department of Transportation, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483 or call (512) 486-5702.

TRD-201603560  
Angie Parker  
Associate General Counsel  
Texas Department of Transportation  
Filed: July 19, 2016

◆ ◆ ◆

*Trey Pardue*



## How to Use the Texas Register

**Information Available:** The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Review of Agency Rules** - notices of state agency rules review.

**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.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “40 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 40 TexReg 3.”

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

**TITLE 1. ADMINISTRATION**  
**Part 4. Office of the Secretary of State**  
**Chapter 91. Texas Register**  
1 TAC §91.1.....950 (P)

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