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

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Open Meetings

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

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

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

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

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

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

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

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

Requests for Opinions

RQ-0128-KP

Requestor:

The Honorable Charles Perry

Chair, Committee on Agriculture, Water & Rural Affairs

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether adoption of the American Bar Association's Model Rule of Professional Conduct 8.4(g) would constitute a violation of an attorney's statutory or constitutional rights.

(RQ-0128-KP)

Briefs requested by October 20, 2016.

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-201604867

Amanda Crawford

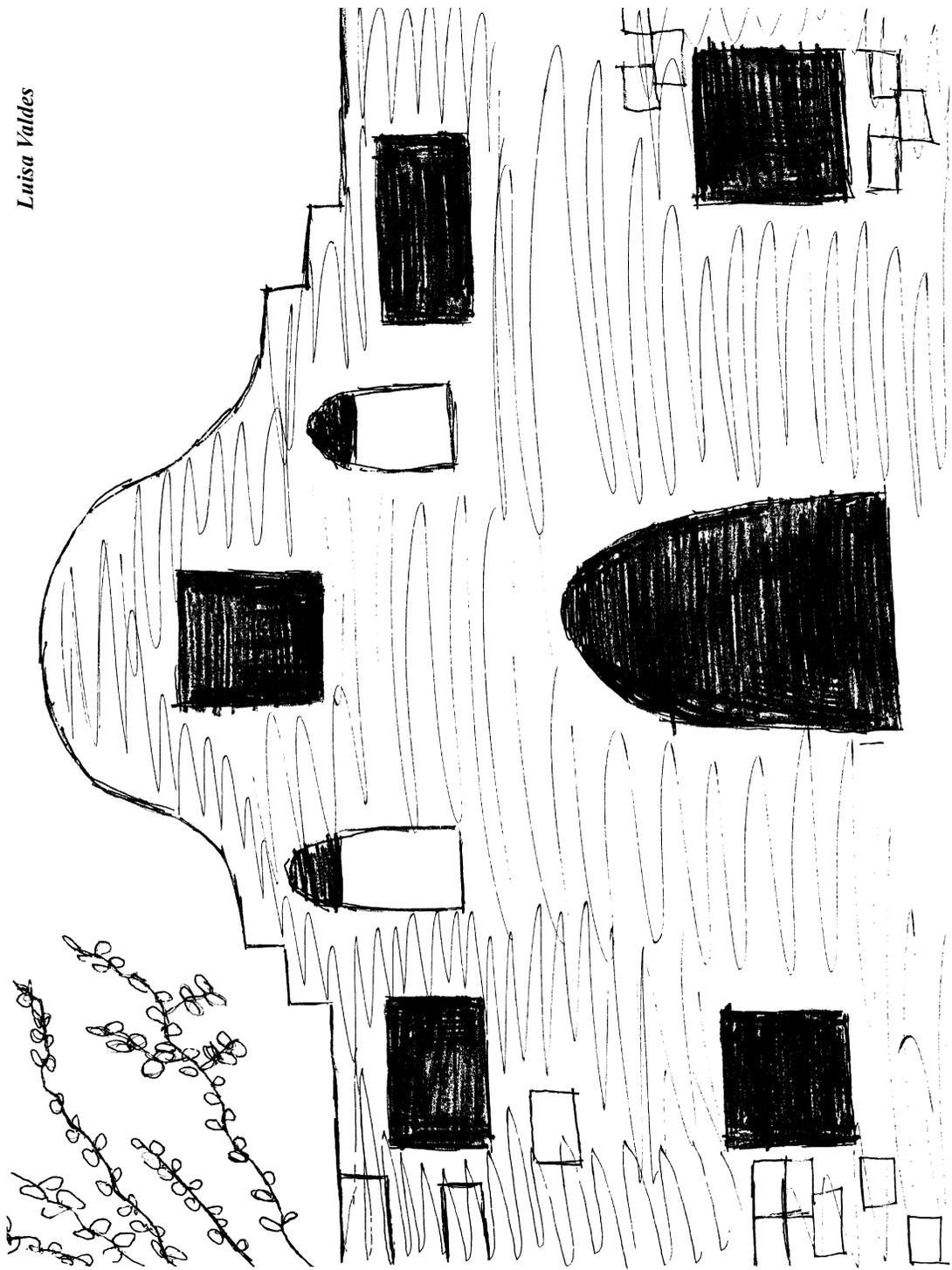
General Counsel

Office of the Attorney General

Filed: September 20, 2016



Luisa Valdes



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 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 7. ADMINISTRATION

22 TAC §7.10

The Texas Board of Architectural Examiners (Board) proposes the amendment of §7.10, pertaining to General Fees.

First, the proposed amendment would modify the fee schedule in §7.10(b) to implement a change in the additional cost to pay fees through the internet. Online payment services are provided by Texas.gov, a third-party provider under contract with the Texas Department of Information Resources. The cost of providing and maintaining online payment services is covered by a surcharge which is added to such payments and retained by Texas.gov. These charges apply to payments made by credit card and through the Automated Clearing House Network (commonly referred to as "ACH"). Currently, Texas.gov charges \$1.00 to process payments by ACH, but this amount is decreasing to \$0.25. Therefore, it is necessary to modify the fee schedule in §7.10, which currently reflects a surcharge of \$1.00 to make a payment through ACH.

Additionally, in order to simplify the Board's fee schedule and reduce the need for rulemaking in response to any subsequent changes to the fees charged by Texas.gov, the Board proposes to delete two columns in the fee schedule that identify the total amount charged for payments by credit card and ACH, and instead adopt new subsection (b), which states, "Applicants and registrants who submit payments online through Texas.gov will be subject to convenience fees set by the Department of Information Resources, that are in addition to the fees listed in subsection (b)."

Second, the Board proposes to amend §7.10 to institute a surcharge to fund the examination fee scholarship program. Under Occupations Code §1051.651, the Board is required to administer a scholarship program to offset the cost of the examination fee for qualifying applicants for architectural registration. The law requires this program to be funded through fees collected at the time of renewal for architectural registrations held by Texas residents. To this end, the Board proposes to modify the fee schedule in §7.10(b) to implement an additional \$3 fee to renew an active or inactive architectural registration held by a state resident. Additionally, the Board proposes to adopt §7.10(c), which states, "As authorized under §1051.355 and §1051.651 of the Texas Occupations Code, the fee schedule in subsection (b) includes a \$3 fee to be collected from each Texas resident who renews an active or inactive registration as an architect, to fund the

examination fee scholarship program under § 1051.653, Texas Occupations Code."

FISCAL NOTE

Lance Brenton, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

PUBLIC BENEFIT/COST OF COMPLIANCE

For the first five-year period the amended rule is in effect, the proposed rule change will result in a benefit to those registrants who utilize ACH transfers to Texas.gov to pay fees to the Board. The charge for such service will drop from \$1.00 to \$0.25.

Additionally, the expected public benefit includes the Board's satisfaction of a legal requirement to fund the examination fee scholarship program as created by the Texas Legislature. In creating the program, the legislature identified the following public benefits to be served by the program: promoting the professional needs of the state, increasing the number of highly trained and educated architects available to serve the residents of the state, improving the state's business environment and encouraging economic development, and identifying, recognizing, and supporting outstanding applicants who plan to pursue careers in architecture. Individuals who receive a scholarship will benefit from a decrease in the cost to complete the registration examination.

The implementation of the \$3 scholarship surcharge will result in an economic cost of \$3 per year for in-state active and inactive architects who renew a registration. The rule does not regulate small or micro-businesses, and will have no negative fiscal impact on such business. Therefore, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

PUBLIC COMMENT

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337. Comments must be received by November 1, 2016.

STATUTORY AUTHORITY

The amendment of §7.10 is proposed under §§1051.202, 1051.302, 1051.305, 1051.355, 1051.357, 1051.651, 1051.653, 1051.705, 1052.054, 1052.154, 1052.155, 1053.052, and 1053.156 of the Texas Occupations Code. The cited statutes provide the Board with obligations and authorizations with respect to collection of fees, as follows:

Section 1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Section 1051.305 authorizes the Board to set a fee in a reasonable and necessary amount to cover the cost of processing and investigating an application for registration by reciprocity.

Section 1051.355 requires the Board to prescribe a renewal fee for a registrant on inactive status. The law requires the Board to set the fee at an amount determined by the board as reasonable and necessary to cover the costs of administering inactive registrations and, for architect registrants, an additional amount required to fund the examination fee scholarship program as described under §1051.651.

Section 1051.357 requires the Board to set a renewal fee for architect registrants on emeritus status in an amount reasonable and necessary to recover the costs to administer such registrations.

Section 1051.651 authorizes the Board to set a fee for a board action involving an administrative expense in an amount that is reasonable and necessary to cover the cost of administering Chapter 1051 (Architects), and requires the Board to set the renewal fee for architect registrants. For residents of Texas, the Board is directed to set the renewal fee the amount determined by the board as reasonable and necessary to cover administrative costs, and an amount determined annually by the board as reasonable and necessary for the administration of the examination fee scholarship program under Section §1051.653. For non-residents, the Board is directed to set the fee in an amount determined by the Board. Additionally, §1051.651 authorizes the Board to accept payment of a fee by electronic means, and to charge a fee for such collection in an amount that is reasonably related to the expense incurred by the board in processing the payment.

Section 1051.653 directs the Board to administer a scholarship program for applicants for architect registration, and to fund the program with the amount added to each renewal fee under §1051.651.

Section 1051.705 requires the Board to set an examination fee in an amount reasonable and necessary to cover the cost of the examination for architect registration, and under §1051.302, the board may delegate the collection of any examination fee prescribed by the board to the person who conducts the examination.

Section 1052.054 authorizes the Board to set a fee for a board action involving an administrative expense in an amount that is reasonable and necessary to cover the cost of administering Chapter 1052 (Landscape Architects), and requires the Board to set the renewal fee for landscape architect registrants. Additionally, §1052.054 authorizes the Board to accept payment of a fee by electronic means, and to charge a fee for such collection in an amount that is reasonably related to the expense incurred by the board in processing the payment.

Section 1052.154 requires the Board to set an examination fee in an amount reasonable and necessary to cover the cost of the examination for landscape architect registration, and under §1051.302, the board may delegate the collection of any examination fee prescribed by the board to the person who conducts the examination.

Section 1052.155 requires the Board to set a renewal fee for landscape architect registrants on emeritus status in an amount

reasonable and necessary to recover the costs to administer such registrations.

Section 1053.052 requires the Board to set certain fees, in amounts that are reasonable and necessary to cover the costs of administering Chapter 1053 (Interior Designers), including a registration application fee, an annual registration renewal fee, a reciprocal registration fee and an examination fee. Furthermore, §1053.052 authorizes the Board to set fees for other services, in amounts that are reasonable and necessary to cover the costs of administering Chapter 1053, including providing a duplicate certificate of registration, providing a roster of interior designers, reinstating a revoked or suspended certificate of registration, and performing any other board action involving an administrative expense. Additionally, §1053.052 authorizes the Board to accept payment of a fee by electronic means, and to charge a fee for such collection in an amount that is reasonably related to the expense incurred by the board in processing the payment.

Section 1053.156 requires the Board to set a renewal fee for interior designer registrants on emeritus status in an amount reasonable and necessary to recover the costs to administer such registrations.

CROSS REFERENCE TO STATUTE

The proposed amendments to these rules do not affect any other statutes.

§7.10. General Fees.

(a) FAILURE TO TIMELY PAY A REGISTRATION RENEWAL WILL RESULT IN THE AUTOMATIC CANCELLATION OF REGISTRATION BY OPERATION OF LAW.

(b) The following fees shall apply to services provided by the Board in addition to any fee established elsewhere by the rules and regulations of the Board or by Texas law. [Payment of fees through the Internet is an online service provided by Texas.gov, the official Web site of the State of Texas. The following additional payments for the online service are not retained by the Board:]

Figure: 22 TAC §7.10(b)

~~[(1) A person who uses the online service to pay fees with a credit card must pay an additional \$.25 plus 2.25% of the sum of the fee and \$.25.]~~

~~[(2) A person who uses online services to pay fees by utilizing the Automated Clearing House Network ("ACH" sometimes referred to as an "electronic check" or a "direct bank draft") must pay \$1.00 per transaction instead of the fee referenced in paragraph (1) of this subsection.]~~

[Figure: 22 TAC §7.10(b)(2)]

(c) As authorized under §1051.355 and §1051.651 of the Texas Occupations Code, the fee schedule in subsection (b) includes a \$3 fee to be collected from each Texas resident who renews an active or inactive registration as an architect, to fund the examination fee scholarship program under §1051.653, Texas Occupations Code.

(d) Applicants and registrants who submit payments online through Texas.gov will be subject to convenience fees set by the Department of Information Resources in addition to the fees listed in subsection (b).

~~(e) [(e)] The Board cannot accept cash as payment for any fee.~~

~~(f) [(f)] An official postmark from the U.S. Postal Service or other delivery service receipt may be presented to the Board to demonstrate the timely payment of any fee.~~

(g) [(e)] If a check is submitted to the Board to pay a fee and the bank upon which the check is drawn refuses to pay the check due to insufficient funds, errors in routing, or bank account number, the fee shall be considered unpaid and any applicable late fees or other penalties accrue. The Board shall impose a processing fee for any check that is returned unpaid by the bank upon which the check is drawn.

(h) [(f)] Payment of fees for a military service member, military veteran, or military spouse.

(1) In this subsection, the terms "military service member," "military veteran," and "military spouse" shall have the meanings defined in §§1.29, 3.29, and 5.39 of the Board Rules.

(2) A military service member who is a registrant in Good Standing or was in Good Standing at the time the Registrant entered into military service shall be exempt from the payment of any fee during any period of active duty service. The exemption under this subsection shall continue through the remainder of the fiscal year during which the Registrant's active duty status expires.

(3) A military service member or military veteran whose military service, training, or education substantially meets all requirements of a license shall be exempt from payment of license application and examination fees paid to the state.

(4) A military service member, military veteran or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for registration in this state shall be exempt from payment of license application and examination fees paid to the state.

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

Filed with the Office of the Secretary of State on September 13, 2016.

TRD-201604794

Lance Brenton

General Counsel

Texas Board of Architectural Examiners

Earliest possible date of adoption: October 30, 2016

For further information, please call: (512) 305-8519



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS SUBCHAPTER K. DEFINITION, TREATMENT, AND DISPOSITION OF SPECIAL WASTE FROM HEALTH CARE-RELATED FACILITIES

25 TAC §§1.132 - 1.137

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§1.132 - 1.137, concerning the definition, treatment, and disposition of special waste from health care-related facilities.

BACKGROUND AND PURPOSE

The rule amendments provide language and offer clarification to enhance the understanding of the rules, as well as to update outdated references, terminology, and disposition methods. Texas Government Code, §2001.039 requires a review of rules, including an assessment of whether the reasons for initially adopting the rules continue to exist. Chapter 1, Subchapter K of Title 25 of the Texas Administrative Code was originally adopted in 1989, and amendments were made in 1991 and 1994. Additionally, the department has reviewed §§1.131 - 1.137 and has determined that the reasons for adopting the rules continues to exist because the rules on this subject are needed. However, there are no changes being proposed to §1.131 in this rulemaking.

SCOPE OF THE PROPOSED RULES

The scope of the proposed rules encompasses the following provisions of the rules in Subchapter K of Chapter 1, Miscellaneous Provisions, relating to special waste from health care-related facilities:

§1.132. Definitions.

§1.133. Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously approved by the Texas Department of Health.

§1.134. Application.

§1.135. Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities.

§1.136. Approved Methods of Treatment and Disposition.

§1.137. Enforcement.

SECTION-BY-SECTION SUMMARY

Amendments to §1.132, Definitions, are proposed to update references to the department; define the terms cremation, executive commissioner, and fetal tissue; remove the definition for the term cremated remains; update references to Texas Commission on Environmental Quality (TCEQ); correct a mathematical unit for "log₁₀;" and necessitates the renumbering of subsections.

Amendments to §1.133, Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of Health, are proposed to update references to the department and a legal reference.

Amendments to §1.134, Application, are proposed to update references to facilities providing mental health and intellectual disability services; and add freestanding emergency medical care facilities to the list of health care-related facilities to which this rule applies.

Amendments to §1.135, Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities, are proposed to update references to the department and correct a mathematical unit to "log₁₀."

Amendments to §1.136, Approved Methods of Treatment and Disposition, are proposed to update references to the department; update terminology regarding the Texas Administrative Code; update references to TCEQ and its rules; clarifying disposition methods for fetal tissue; clarifying disposition methods for fetal tissue and other tissues that are products of spontaneous or induced human abortion; and clarifying that disposition methods for anatomical remains are established in 25 TAC §479.4.

Amendments to §1.137, Enforcement, are proposed to reflect the Executive Commissioner's role in rulemaking; remove home and community support services agencies from the list of the department's regulatory programs; and add end-stage renal disease facilities and freestanding emergency medical centers to the list of the department's regulatory programs.

FISCAL NOTE

Jennifer Sims, Deputy Commissioner, has determined that for each year of the first five years that the sections will be in effect, there will not be fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS AND ECONOMIC COSTS TO PERSONS

Ms. Sims estimates that 236 healthcare facilities that may be small or micro-businesses, and handle tissue resulting from induced or spontaneous abortions, may be affected by these requirements. Based on the current rules and information available to the department, healthcare facilities required to comply with the rules, currently provide for or contract for the disposition of fetal tissue. The proposed rule amendments prescribe alternative methods of disposition of fetal tissue. These proposed alternatives may have a cost but that cost is expected to be off-set by the cost currently being expended for disposition. However, the department does not estimate that the proposed rules will result in increased total costs for healthcare facilities required to comply with the rules. Different costs may arise based on a healthcare facility's decisions regarding the use of burial, cremation or other forms of interment of fetal remains. The proposed rules allow the disposition of remains together, thereby reducing costs to an amount estimated to be commensurate with current methods used for disposition. The department notes that in comments previously submitted, private parties have offered to bury fetal remains without charge. Other parties may also offer discounted or free services associated with the disposition of fetal tissue. For these reasons, the department estimates no fiscal impact.

The purpose of specifying disposition standards for specific types of tissue relates to the protection of the health and safety of the public pursuant to Texas and Health Safety Code, Chapter 81. All healthcare facilities handling that type of tissue, whether a small or micro-business or a larger organization, face the same risks associated with handling this specific type of tissue and as a result, are required to be held to the same standard for disposition. The rules and amendments to the rules, authorize alternative methods among which facilities, including small and micro-businesses can choose for disposition, thereby including regulatory flexibility within the rule. The department considered separate compliance and different standards for small and micro-businesses such as alternative disposition methods or exemption from the disposition requirements, however, because the need to handle disposition consistently for specific types of tissue as required in the rule exists for both small and large businesses, alternative methods or an exemption from the required methods, was not feasible and would be in conflict with the purpose of the requirements. As a result, the department knows of no feasible alternative means by which this purpose could be achieved, other than the requirements and regulatory flexibility set out in the proposed rules, and thus there are no legal alternatives to provide flexibility for small or micro-businesses for the department to consider.

IMPACT ON LOCAL EMPLOYMENT

There is no anticipated impact on local employment.

PUBLIC BENEFIT

Ms. Sims has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of adopting and enforcing these rules will be enhanced protection of the health and safety of the public by ensuring that the disposition methods specified in the rules continue to be limited to methods that prevent the spread of disease.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not 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 Texas Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to the Department of State Health Services, Mail Code 1919, P.O. Box 149347, Austin, Texas 78714, or by email to TissueRules@dshs.texas.gov. Please specify "Comments on special waste from health care-related facilities" in the subject line. The department intends by this section to invite public comment on each of the amendments to the rules. Comments are 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 rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The rule review and amendments are authorized by Texas Government Code, §2001.039, requiring that each agency periodically review its rules to determine that the reason for the rules continue to exist; §531.0055; Texas Health and Safety Code, §12.001, and Texas 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 Texas Health and Safety Code, Chapter 1001. The rule review and amendments are also authorized by Texas and Safety Code, §81.004, which authorizes the Executive Commissioner to adopt rules necessary for the effective administration of Texas Health and Safety Code, Chapter 81, concerning the control of communicable disease; by Texas Health and Safety Code, Chapter 241, concerning the licensing of hospitals; by Chapter 243, concerning the licens-

ing of ambulatory surgical centers; by Chapter 244, concerning the licensing of birthing centers; by Chapter 245, concerning the licensing of abortion facilities; by Chapter 251, concerning the licensing of end stage renal disease facilities; by Chapter 254, concerning the licensing of freestanding emergency medical care facilities; and by Chapter 773, concerning the licensing of emergency medical services.

The rule review and amendments implement Texas Government Code, Chapter 531 and §2001.039; and Texas Health and Safety Code, Chapters 12, 81, 241, 243, 244, 245, 251, 254 and 773.

Additional provisions considered include: Texas Penal Code, §1.07(26) relating to criminal penalties for harm to unborn person; Texas Civil Practice and Remedies Code, §71.001(4) relating to civil liability for killing unborn person; Texas Estates Code, §1054.007 relating to guardianship representation for unborn persons in a guardianship proceeding; Texas Estates Code, §1002.002 regarding the definition of "attorney ad litem" which includes representation of an "unborn person;" Texas Property Code, §115.014 relating to authority of a court to appoint a guardian ad litem to represent the interest of an unborn; Texas Health and Safety Code, §241.010 relating to requirement that hospitals release to a parent remains of an unborn child who dies as a result of an unintended, intrauterine death; Preamble of House Bill (HB) 2, 83rd Legislature, Second Called Session, 2013, effective October 29, 2013, relating to the compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that an unborn child is capable of feeling pain is intended to be separate from and independent of the compelling state interest in protecting the lives of unborn children from the stage of viability, and neither state interest is intended to replace the other; Texas Health and Safety Code, §170.002 relating to the prohibition against a person intentionally or knowingly performing an abortion on a woman who is pregnant with a viable unborn child during the third trimester of the pregnancy; and Texas Health and Safety Code, §171.012 relating to requirement for sonograms of pre-viable unborn children before abortion.

§1.132. *Definitions.*

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

(1) - (2) (No change.)

(3) Approved alternate treatment process--A process for waste treatment which has been approved by the department [Texas Department of Health] in accordance with §1.135 of this title (relating to Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities).

(4) - (17) (No change.)

(18) Cremation--The irreversible process of reducing tissue or remains to ashes or bone fragments through extreme heat and evaporation.

[(18) Cremated remains--The bone fragments remaining after the cremation process, which may include the residue of any foreign materials that were cremated with the pathological waste.]

(19) - (26) (No change.)

(27) Executive Commissioner--In this title, Executive Commissioner means the Executive Commissioner of the Health and Human Services Commission.

(28) Fetal Tissue--A fetus, body parts, organs or other tissue from a pregnancy. This term does not include the umbilical cord, placenta, gestational sac, blood or body fluids.

(29) [(27)] Grave--A space of ground in a burial park that is used, or intended to be used for the permanent interment in the ground of pathological waste.

(30) [(28)] Grinding--That physical process which pulverizes materials, thereby rendering them as unrecognizable, and for sharps, reduces the potential for the material to cause injuries such as puncture wounds.

(31) [(29)] Immersed--A process in which waste is submerged fully into a liquid chemical agent in a container, or that a sufficient volume of liquid chemical agent is poured over a containerized waste, such that the liquid completely surrounds and covers the waste item(s) in the container.

(32) [(30)] Incineration--That process of burning SWFHCRF in an incinerator as defined in 30 TAC Chapter 101 under conditions in conformance with standards prescribed in 30 TAC Chapter 111 by the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission].

(33) [(31)] Interment--The disposition of pathological waste by cremation, entombment, burial, or placement in a niche.

(34) [(32)] Log₁₀ [Log_{sub}10/sub]--Logarithm to the base ten.

(35) [(33)] Log₁₀ [Log_{sub}10/sub] reduction--A mathematically defined unit used in reference to level or degree of microbial inactivation. A 4 log₁₀ [log_{sub}10/sub] reduction represents a 99.99% reduction in the numbers of active microorganisms, while a 6 log₁₀ [log_{sub}10/sub] reduction represents a 99.9999% reduction in the numbers of active microorganisms.

(36) [(34)] Mausoleum--A structure or building of most durable and lasting fireproof construction used, or intended to be used, for the entombment pathological waste.

(37) [(35)] Microbial inactivation--Inactivation of vegetative bacteria, fungi, lipophilic/hydrophilic viruses, parasites, and mycobacteria at a 6 log₁₀ [log_{sub}10/sub] reduction or greater; and inactivation of Bacillus subtilis endospores or Bacillus stearothermophilus endospores at a 4 log₁₀ [log_{sub}10/sub] reduction or greater.

(38) [(36)] Microbiological waste--Microbiological waste includes:

(A) discarded cultures and stocks of infectious agents and associated biologicals;

(B) discarded cultures of specimens from medical, pathological, pharmaceutical, research, clinical, commercial, and industrial laboratories;

(C) discarded live and attenuated vaccines, but excluding the empty containers thereof;

(D) discarded, used disposable culture dishes; and

(E) discarded, used disposable devices used to transfer, inoculate or mix cultures.

(39) [(37)] Moist heat disinfection--The subjection of:

(A) internally shredded waste to moist heat, assisted by microwave radiation under those conditions which effect disinfection; or

(B) unshredded waste in sealed containers to moist heat, assisted by low-frequency radiowaves under those conditions which effect disinfection, followed by shredding of the waste to the extent that the identity of the waste is unrecognizable.

(40) [(38)] Niche--A recess or space in a columbarium used, or intended to be used, for the permanent interment of the cremated remains of pathological waste.

(41) [(39)] Parametric controls--Measurable standards of equipment operation appropriate to the treatment equipment including, but not limited to pressure, cycle time, temperature, irradiation dosage, pH, chemical concentrations, or feed rates.

(42) [(40)] Pathological waste--Pathological waste includes but is not limited to:

(A) human materials removed during surgery, labor and delivery, autopsy, embalming, or biopsy, including:

- (i) body parts;
- (ii) tissues or fetuses;
- (iii) organs; and
- (iv) bulk blood and body fluids;

(B) products of spontaneous or induced human abortions, regardless of the period of gestation, including:

- (i) body parts;
- (ii) tissues or fetuses;
- (iii) organs; and
- (iv) bulk blood and body fluids;

(C) laboratory specimens of blood and tissue after completion of laboratory examination; and

(D) anatomical remains.

(43) [(41)] Saturated--Thoroughly wet such that liquid or fluid flows freely from an item or surface without compression.

(44) [(42)] Sharps--Sharps include, but are not limited to the following materials:

(A) when contaminated:

- (i) hypodermic needles;
- (ii) hypodermic syringes with attached needles;
- (iii) scalpel blades;
- (iv) razor blades, disposable razors, and disposable scissors used in surgery, labor and delivery, or other medical procedures;
- (v) intravenous stylets and rigid introducers (e.g., J wires);
- (vi) glass pasteur pipettes, glass pipettes, specimen tubes, blood culture bottles, and microscope slides;
- (vii) broken glass from laboratories; and
- (viii) tattoo needles, acupuncture needles, and electrolysis needles;

(B) regardless of contamination:

(i) hypodermic needles; and

(ii) hypodermic syringes with attached needles.

(45) [(43)] Shredding--That physical process which cuts, slices, or tears materials into small pieces.

(46) [(44)] Special waste from health care-related facilities--A solid waste which if improperly treated or handled may serve to transmit an infectious disease(s) and which is comprised of the following:

- (A) animal waste;
- (B) bulk blood, bulk human blood products, and bulk human body fluids;
- (C) microbiological waste;
- (D) pathological waste; and
- (E) sharps.

(47) [(45)] Steam disinfection--The act of subjecting waste to steam under pressure under those conditions which effect disinfection. This was previously called steam sterilization.

(48) [(46)] Thermal inactivation--The act of subjecting waste to dry heat under those conditions which effect disinfection.

(49) [(47)] Unrecognizable--The original appearance of the waste item has been altered such that neither the waste nor its source can be identified.

§1.133. *Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of State Health Services.*

(a) Exemptions.

(1) (No change.)

(2) These sections do not apply to:

(A) (No change.)

(B) human tissue, including fetal tissue, donated for research or teaching purposes, with the consent of the person authorized to consent as otherwise provided by law, to an institution of higher learning, medical school, a teaching hospital affiliated with a medical school, or to a research institution or individual investigator subject to the jurisdiction of an institutional review board required by 42 United States Code [Codes] 289;

(C) - (F) (No change.)

(b) Minimum parametric standards for waste treatment technologies previously approved by the department [Texas Department of Health].

(1) - (5) (No change.)

§1.134. *Application.*

These sections apply to special waste from health care-related facilities generated by the operation of the following publicly or privately owned or operated health care-related facilities, including but not limited to:

(1) - (11) (No change.)

(12) freestanding emergency medical care facilities;

(13) [(42)] funeral establishments;

(14) [(43)] home and community support services agencies;

(15) [(44)] hospitals;

- (16) [(15)] long term care facilities;
- (17) [(46)] facilities providing mental health and intellectual disability services, [mental health and mental retardation facilities;] including but not limited to hospitals, schools, and community centers;
- (18) [(17)] minor emergency centers;
- (19) [(18)] occupational health clinics and clinical laboratories;
- (20) [(19)] pharmacies;
- (21) [(20)] pharmaceutical manufacturing plants and research laboratories;
- (22) [(21)] professional offices, including but not limited to the offices of physicians, [and] dentists, and acupuncturists;
- (23) [(22)] special residential care facilities;
- (24) [(23)] tattoo studios; and
- (25) [(24)] veterinary clinical and research laboratories.

§1.135. Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities.

All manufacturers of commercially-available alternate technologies, equipment, or processes designed or intended for the treatment of special waste from health care-related facilities, except those meeting the standards of §1.133(b) of this title (relating to Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of State Health Services), shall apply to the department [Texas Department of Health (department)] on forms prescribed by the department for approval of said technologies, equipment, or processes to ensure that established performance standards are met.

(1) Levels of microbial inactivation.

(A) (No change.)

(B) All manufacturers of commercially-available alternate technologies, equipment, or processes designed and intended for the treatment of special waste from health care-related facilities shall provide specific laboratory evidence that demonstrates:

(i) inactivation of representative samples of vegetative bacteria, mycobacteria, lipophilic/hydrophilic viruses, fungi, and parasites at a level of 6 \log_{10} [log[sub]10[/sub]] reduction or greater, as determined by the department; and

(ii) inactivation of *Bacillus stearothermophilus* endospores or *Bacillus subtilis* endospores at a level of 4 \log_{10} [log[sub]10[/sub]] reduction or greater, as determined by the department.

(C) - (E) (No change.)

(2) Documentation requirements.

(A) (No change.)

(B) Documentation must be submitted to the department [Texas Department of Health, Bureau of Environmental Health] on [these] forms provided by the department.

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

§1.136. Approved Methods of Treatment and Disposition.

(a) Introduction. The following treatment and disposition methods for special waste from health care-related facilities are

approved by the department [Texas Board of Health (board)] for the waste specified. Where a special waste from a health care-related facility is also subject to the sections in Chapter 289 of this title (relating to Radiation Control), the sections in Chapter 289 shall prevail over the sections in this subchapter [undesignated head]. Disposal of special waste from health care-related facilities in sanitary landfills or otherwise is under the jurisdiction of the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission] and is governed by its rules found in 30 TAC Chapter 326 (relating to Medical Waste Management) and Chapter 330 (relating to Municipal Solid Waste) [Title 30, Texas Administrative Code, Chapter 330].

(1) - (2) (No change.)

(3) Microbiological waste. Microbiological waste shall be subjected to one of the following methods of treatment and disposal.

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

(D) Discarded disposable culture dishes shall be subjected to one of the following methods of treatment and disposal.

(i) All discarded, unused disposable culture dishes shall be disposed of in accordance with 30 TAC Chapters 326 and 330 [Title 30, Texas Administrative Code, Chapter 330].

(ii) (No change.)

(E) (No change.)

(4) Pathological waste. Pathological waste shall be subjected to one of the following methods of treatment and disposal.

(A) Human materials removed during surgery, labor and delivery, autopsy, embalming, or biopsy shall be subjected to one of the following methods of treatment and disposal:

(i) body parts, other than fetal tissue:

(I) interment;

(II) incineration followed by deposition of the residue in a sanitary landfill;

(III) steam disinfection followed by interment;

(IV) moist heat disinfection, provided that the grinding/shredding renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(V) chlorine disinfection/maceration, provided that the grinding/shredding renders the item as unrecognizable, followed by deposition in a sanitary landfill; or

(VI) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(ii) tissues, other than fetal tissue [or fetuses]:

(I) incineration followed by deposition of the residue in a sanitary landfill;

(II) grinding and discharging to a sanitary sewer system;

(III) interment;

(IV) steam disinfection followed by interment;

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(iii) organs, other than fetal tissue:

(I) incineration followed by deposition of the residue in a sanitary landfill;

(II) grinding and discharging to a sanitary sewer system;

(III) interment;

(IV) steam disinfection followed by interment;

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(iv) bulk human blood and bulk human body fluids removed during surgery, labor and delivery, autopsy, embalming, or biopsy:

(I) discharging into a sanitary sewer system;

(II) steam disinfection followed by deposition in a sanitary landfill;

(III) incineration followed by deposition of the residue in a sanitary landfill;

(IV) thermal inactivation followed by deposition in a sanitary landfill;

(V) thermal inactivation followed by grinding and discharging into a sanitary sewer system;

(VI) chemical disinfection followed by deposition in a sanitary landfill;

(VII) chemical disinfection followed by grinding and discharging into a sanitary sewer system;

(VIII) moist heat disinfection followed by deposition in a sanitary landfill;

(IX) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(X) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;[-]

(v) fetal tissue, regardless of the period of gestation:

(I) interment;

(II) cremation;

(III) incineration followed by interment; or

(IV) steam disinfection followed by interment.

(B) The products of spontaneous or induced human abortion shall be subjected to one of the following methods of treatment and disposal:

(i) fetal tissue, [body parts, tissues, or organs] regardless of the period of gestation:

~~[(I) grinding and discharging to a sanitary sewer system;]~~

~~(I) ~~[(H)]~~ incineration followed by interment [deposition of the residue in a sanitary landfill];~~

~~(II) ~~[(H)]~~ steam disinfection followed by interment;~~

~~(III) ~~[(IV)]~~ interment; or~~

~~(IV) cremation;~~

~~~~[(V)]~~ moist heat disinfection followed by deposition in a sanitary landfill;]~~

~~~~[(VI)]~~ chlorine disinfection/maceration followed by deposition in a sanitary landfill; or]~~

~~~~[(VII)]~~ an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;]~~

(ii) blood and body fluids:

(I) discharging into a sanitary sewer system;

(II) steam disinfection followed by deposition in a sanitary landfill;

(III) incineration followed by deposition of the residue in a sanitary landfill;

(IV) thermal inactivation followed by deposition in a sanitary landfill;

(V) thermal inactivation followed by grinding and discharging into a sanitary sewer system;

(VI) chemical disinfection followed by deposition in a sanitary landfill;

(VII) chemical disinfection followed by grinding and discharging into a sanitary sewer system;

(VIII) moist heat disinfection followed by deposition in a sanitary landfill;

(IX) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(X) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(iii) any other tissues, including placenta, umbilical cord and gestational sac:

(I) grinding and discharging to a sanitary sewer system;

(II) incineration followed by deposition of the residue in a sanitary landfill;

(III) steam disinfection followed by interment;

(IV) interment;

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill.

(C) Discarded laboratory specimens of blood and/or tissues shall be subjected to one of the following methods of treatment and disposal:

(i) grinding and discharging into a sanitary sewer system;

(ii) steam disinfection followed by deposition in a sanitary landfill;

(iii) steam disinfection followed by grinding and discharging into a sanitary sewer system;

(iv) incineration followed by deposition of the residue in a sanitary landfill;

(v) moist heat disinfection followed by deposition in a sanitary landfill;

(vi) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(vii) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill.

(D) Anatomical remains shall be disposed of in a manner specified by §479.4 of this title (relating to Final Disposition of the Body and Disposition of Remains). [subjected to one of the following methods of treatment and disposal:]

~~{(i) interment;}~~

~~{(ii) incineration followed by interment; or}~~

~~{(iii) steam disinfection followed by interment}.~~

(5) Sharps.

(A) All discarded unused sharps shall be disposed of in accordance with 30 TAC Chapters 326 and 330 [Title 30, Texas Administrative Code, Chapter 330].

(B) (No change.)

(b) Records. The facility treating the wastes shall maintain records to document the treatment of the special waste from health care-related facilities processed at the facility as to method and conditions of treatment in accordance with 30 TAC [Title 30, Texas Administrative Code,] Chapter 326 [330].

(c) (No change.)

#### §1.137. Enforcement.

The appropriate regulatory programs of the department shall incorporate the definition and methodology contained in these provisions into their respective general program rules and shall formulate and present for the Executive Commissioner's [board's] consideration such additional rules as are necessary for the internal collection, storage, handling, movement, and treatment of special waste from health care-related facilities generated within or by the following facilities or activities:

- (1) abortion clinics;
- (2) ambulatory surgical centers;
- (3) birthing centers;
- (4) emergency medical service providers;
- (5) end stage renal disease facilities;
- (6) freestanding emergency medical care facilities;
- ~~{(5) home and community support services agencies;}~~

~~(7) [(6)] hospitals;~~

~~(8) [(7)] special residential care facilities; and~~

~~(9) [(8)] tattoo studios.~~

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

Filed with the Office of the Secretary of State on September 19, 2016.

TRD-201604843

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: October 30, 2016

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



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

##### SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

The Texas Department of Insurance (TDI) proposes amendments to Subchapter E, Division 7 Inspections for Windstorm and Hail Insurance, §§5.4603; and new §§5.4601, 5.4604, 5.4608 - 5.4610, 5.4612, 5.4615, 5.4620 - 5.4623, 5.4625, 5.4626, 5.4640, and 5.4642; and the repeal of §§5.4601, 5.4602, 5.4604, and 5.4608. These amendments, new sections, and repeals would implement HB 2439, 84th Legislature, Regular Session (2015).

TDI proposes the repeal of Subchapter E, Division 9 Windstorm Building Code Advisory Committee on Specifications and Maintenance, §5.4800. This repeal would conform TDI rules to HB 4409, 81st Legislature, Regular Session (2009), which abolished the Windstorm Building Code Advisory Committee on Specifications and Maintenance referenced in §5.4800.

EXPLANATION. The proposed amendments, repeals, and new sections would implement HB 2439, which made changes to the inspections process for eligibility for windstorm and hail insurance through the Texas Windstorm Insurance Association (association).

HB 2439 created a two-path system to certify that a structure complies with the applicable windstorm building code. The pre-HB 2439 certification system requires that, to be eligible for association coverage, all construction, alteration, remodeling, enlargement, and repair of, or addition to a structure in the catastrophe area be verified by a qualified inspector as complying with the applicable windstorm building code. Upon receipt of a verification, TDI issues a Certificate of Compliance, Form WPI-8, which certifies the structure's eligibility for windstorm insurance through the association. Qualified inspectors, under the immediate prior version of Insurance Code §2210.254 (Acts 2005, 79th Leg., ch. 727, §2, 2005 Tex. Gen. Laws 1941

(amended 2011)), include persons TDI deemed qualified by training or experience, Texas-licensed professional engineers who qualified for placement on a roster maintained by the Texas Board of Professional Engineers, or persons certified by one of several code councils. Most inspections under the pre-HB 2439 certification system are carried out by Texas-licensed professional engineers who are on the Texas Board of Professional Engineers roster and appointed by TDI as qualified inspectors. A fraction of inspections under the pre-HB 2439 certification system are carried out by TDI-employed inspectors deemed qualified by training or experience to inspect component or cladding items.

HB 2439's two-path system creates different certification procedures for ongoing and completed construction. Ongoing construction is inspected by appointed qualified inspectors who may be Texas-licensed engineers, but need not be. Appointed qualified inspectors may inspect new structures, additions, repairs, alterations, and re-roof applications and submit their findings to TDI for a TDI-issued Certificate of Compliance. TDI must issue a Certificate of Compliance if the appointed qualified inspector has inspected the ongoing improvement in accordance with TDI rules and has affirmed that the ongoing improvement meets one of two criteria. The ongoing improvement must either conform to a design that complies with the applicable building code and that has a seal affixed by a Texas-licensed professional engineer, or, in cases involving ongoing improvements that ordinarily do not call for plans, such as reroofs, must comply with the wind load requirements of the applicable building code. HB 2439 repealed the requirement that Texas-licensed engineers be listed on a roster maintained by the Texas Board of Professional Engineers to be qualified inspectors.

Completed construction is certified only by Texas-licensed engineers who may send either a signed and sealed design or postconstruction evaluation report directly to the association for a Certificate of Compliance to be issued by the association.

Under HB 2439, TDI must adopt and enforce rules on how qualified inspectors conduct windstorm inspections. HB 2439 gives TDI exclusive authority over all matters relating to the appointment and oversight of qualified inspectors for the purposes of Chapter 2210 and to the physical inspection of ongoing improvements, including determining whether to issue the Certificate of Compliance. But HB 2439 prohibits the adoption or enforcement of a rule that requires Texas-licensed engineers to seal inspection forms submitted to TDI.

Under HB 2439, TDI must prescribe the form on which a person applies to the association for a Certificate of Compliance for a completed improvement. The proposal describes the information Texas-licensed engineers must send to the association when they verify that completed construction meets the applicable windstorm building codes.

Proposed §§5.4609, 5.4610, and 5.4612 describe the requirements for appointment as a qualified inspector and renewal of that appointment. Under the proposed rules, only Texas-licensed professional engineers may apply for appointment as qualified inspectors. Proposed §5.4621 and §5.4623 describe the information that appointed qualified inspectors will be responsible for gathering as they inspect ongoing construction to determine if it conforms to an engineer-sealed design and complies with the applicable windstorm building code. Proposed §5.4642 describes disciplinary proceedings the commissioner of insurance may bring against appointed qualified inspectors. Proposed §5.4608 describes the procedure by which qualified

inspectors who are TDI employees may verify the windstorm building code compliance of ongoing improvements to certain components.

HB 2439 requires TDI to adopt rules effective December 31, 2016, to implement the bill. The changes HB 2439 enacts apply to association policies delivered, issued, or renewed on or after January 1, 2017. Current law continues in effect for association policies delivered, issued, or renewed before January 1, 2017. TDI adopted its current rules on qualified inspectors under the authority of pre-HB 2439 statutes. The proposed rules would amend or replace TDI's current rules governing qualified inspectors to implement HB 2439. Because the rules under which qualified inspectors were appointed will be amended or replaced, individuals who are appointed qualified inspectors as of the effective date of rules implementing HB 2439 will not be able to continue their appointment after December 31, 2016. The proposed rules require these individuals to submit a new application for appointment as qualified inspectors. TDI considered proposing rules that would allow the submission of a renewal application, which is shorter, but this would not be appropriate because the individuals would never have held an appointment under the new rules and the changes to these appointments required under HB 2439. One cannot renew an appointment one has never had.

Under proposed §5.4610, qualified inspectors would be appointed for a two-year term. The proposed rule requires appointed qualified inspectors to submit a renewal application before the end of their term. The renewal application in the proposed rules is brief and requiring renewal has the advantage of keeping the list of appointed qualified inspectors-which the public consults when seeking windstorm inspections-current.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Steve Thompson, chief engineer, Engineering Services Program, has determined that for each year of the first five years the proposed new sections, amendments, and repeals will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will not be any measurable effect on local employment or the local economy as a result of the proposal.

**PUBLIC BENEFIT AND COST NOTE.** Mr. Thompson has determined that for each year of the first five years the proposed new sections, amendments, and repeals are in effect, there will be public benefits resulting from the proposal and costs to appointed qualified inspectors, who are required to comply with the proposal.

*A. Anticipated Public Benefits.*

Adopting amended §5.4603; new §§5.4601, 5.4604, 5.4608 - 5.4610, 5.4612, 5.4615, 5.4620 - 5.4623, 5.4625, 5.4626, 5.4640, and 5.4642; and repealing §§5.4601, 5.4602, 5.4604, and 5.4608 will implement HB 2439. The amended and new sections describe the types of structures appointed qualified inspectors may inspect under the new statute and what information they must gather to certify that a structure meets the wind-load requirements of the applicable building code. The proposed rules will provide a clear inspection process which will benefit consumers.

Repealing §5.4800 will simplify the association rules by removing outdated text.

*B. Estimated Costs to Comply with this Proposal.*

Costs associated with implementing HB 2439 include the costs to retain information substantiating a verification for five years

from the date of the most recent inspection verification form submitted on an ongoing improvement, the costs to apply for appointment as a qualified inspector or to renew an appointment, costs to provide a notification and a verification of a structure's noncompliance, and the costs to attend or view a TDI orientation program. The proposed rules retain but do not add to the current rule requirements for conducting inspections and gathering substantiating information; therefore, this cost note does not consider these costs.

The costs of storing the substantiating information on an ongoing improvement for five years after the submission of the most recent inspection verification form will vary depending on the amount of substantiating information, the method of storage, and the costs of converting the information into the form in which it will be stored. The amount of substantiating information will vary depending on the size and complexity of the ongoing improvement inspected.

TDI estimates that inspecting a reroof or another ongoing improvement that is a component of a structure will result in approximately 12 to 24 pages of substantiating information. Inspecting an entire structure will likely result in a greater amount of substantiating information; TDI estimates as many as 100 pages of substantiating information for a residential structure and as many as 250 pages for a commercial structure, depending on its size.

TDI anticipates that most appointed qualified inspectors will gather and generate most of the substantiating information in digital form, so storing it in that form will not impose conversion costs. The conversion cost estimates in the following two paragraphs assume all substantiating information will need to be converted from paper to digital form for storage and so represent an upper limit for these costs.

If substantiating information is scanned in portable document format, one gigabyte will hold around 10,000 pages; other formats will allow more pages per gigabyte. Scanners today range in price from around \$45 for portable models to around \$450 for self-loading models. According to the U.S. Bureau of Labor Statistics, the mean hourly wage in the Coastal Plains Region of Texas nonmetropolitan area for civil engineers is \$35.45; for civil engineering technicians, \$18.99; and for secretaries and administrative assistants, \$14.08. *Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment Statistics, May 2015 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates, Coastal Plains Region of Texas nonmetropolitan area*, accessed July 13, 2016, [www.bls.gov/oes/current/oes\\_4800006.htm](http://www.bls.gov/oes/current/oes_4800006.htm). According to the U.S. Bureau of Labor Statistics, the mean hourly wage in the Houston area for civil engineers is \$52.96; for civil engineering technicians, \$25.10; and for secretaries and administrative assistants, \$17.28. *Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment Statistics, May 2015 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates, Houston-The Woodlands-Sugarland, Texas metropolitan area*, accessed July 13, 2016, [www.bls.gov/oes/current/oes\\_26420.htm](http://www.bls.gov/oes/current/oes_26420.htm).

The cost of scanning substantiating information for storage will vary depending on who scans the information, the number of pages being scanned, and the scanner speed. TDI estimates that scanning 24 pages of information from a reroof will take an average of less than an hour, while scanning 100 pages from a residential structure will take an average of three hours.

The cost of storing hard copies of substantiating information will depend on where the copies are stored.

The costs of application and renewal will be the costs of mailing and printing several pages, if an applicant chooses to submit the documents through first class U.S. mail, and the time cost of providing the information required. While an applicant could email the application and renewal, TDI uses the cost of first class U.S. mail in its cost analysis because that method is available to everyone interested in applying for appointment as a qualified inspector. TDI anticipates that each person will use the most cost-effective method of compliance. Considering the costs of printing pages containing the information required in proposed \$5.4609 or \$5.4610, a one-ounce standard envelope, and postage for the envelope, TDI estimates the cost of application or renewal to be less than \$1.

TDI also anticipates that providing the information required for application will take approximately an hour and a half of an applicant's time. TDI assumes that the summary of an applicant's education and experience related to windstorm design required for an application can be modified from an existing resume. The proposed rule on appointment renewal requires only a statement affirming the currency and nonrestricted status of the appointed qualified inspector's license with the Texas Board of Professional Engineers, and TDI anticipates that renewal will take half an hour. The proposed rules require that an appointment be renewed every two years.

The costs of notifying a person seeking a certification for an ongoing improvement that the ongoing improvement does not meet the applicable windstorm building code standard will be the costs of mailing and printing several pages, if the notification is through first class U.S. mail, and the cost in time for an appointed qualified inspector to write the notice of noncompliance. The time required to prepare the notice of noncompliance will depend on the type of ongoing improvement and the reasons for its noncompliance. If the ongoing improvement is not brought into compliance, the proposed rules require the appointed qualified inspector to inform TDI by submitting a verification of noncompliance. The costs of submitting the verification of noncompliance will be the costs of postage and printing and the time cost of writing the verification. It is difficult to separate the time necessary to prepare a verification of noncompliance from the time spent performing an inspection because the information needed for the verification is gathered as part of the inspection.

The cost to attend or view a TDI orientation for qualified inspector applicants will be the time costs of doing so and any associated travel costs, which will vary. TDI anticipates that the orientation will be conducted via webinar and will last approximately one hour.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.** Government Code §2006.002(c) requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on these businesses, and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than \$6 million in annual gross receipts. Government Code §2006.001(1) defines "micro

business" similarly to "small business" but specifies that such a business may not have more than 20 employees.

The vast majority of the 306 current qualified inspectors are small or micro businesses. Under HB 2439 and the proposed rules, they and the rest of the over 56,000 Texas-licensed professional engineers will be eligible to apply for appointment as qualified inspectors. Because each of these persons is licensed and appointed in an individual capacity, TDI presumes that each applicant or qualified inspector under the proposed rules is a small business or micro business for the purpose of this analysis.

As stated in the Public Benefit/Cost Note in this proposal, TDI anticipates that each person acting as a qualified inspector or applying for or renewing an appointment as a qualified inspector would incur some costs because of this proposal. Those costs would result from mailing an application, renewal, or notification or verification of noncompliance; from attending or viewing a TDI orientation; or from storing substantiating information.

TDI, in accordance with Government Code §2006.002(c-1), has considered methods of reducing the adverse impact of the proposed rules implementing HB 2439 on small or micro businesses.

One method would be to exempt small or micro businesses from some of the requirements likely to lead to costs. However, because the majority of qualified inspectors qualify as small or micro businesses, the exemptions would apply to most of the regulated entities, defeating the purpose of revising the regulation. For example, TDI could exempt qualified inspector applicants from having to view or attend a TDI orientation if they are employed by small or micro businesses and have previously inspected structures for compliance with windstorm building codes. But this exemption would result in the requirement not being applied to most of the applicants. For this reason, TDI rejected this option.

A second method would be to exempt small or micro businesses from all of the requirements likely to lead to costs. However, again, because the majority of appointed qualified inspectors would qualify as small or micro businesses, the exemptions would apply to most of the regulated entities, defeating the purpose of revising the regulation. It would also lead to uneven enforcement of the certification program, as the few appointed qualified inspectors who would not qualify as small or micro businesses would be held to standards that the rest would not be. For these reasons, TDI rejected this option.

A third method of reducing the adverse impact of the proposed rules implementing HB 2439 on small or micro businesses would be to not adopt rules at all. But not adopting rules would mean that the new certification system that HB 2439 created would go into effect without a framework to implement it. Such a framework is necessary so that the new system can function successfully. The association, potential appointed qualified inspectors, and consumers need to know what is required to certify a structure under the new two-path system. Potential appointed qualified inspectors will need to know their specific responsibilities under the new system. For this reason, TDI rejected this option.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TDI invites the public to comment on this proposal. Submit your written comments on the proposal no later than 5 p.m., Central time, on October 31, 2016. Send written comments by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to [chiefclerk@tdi.texas.gov](mailto:chiefclerk@tdi.texas.gov). You must simultaneously submit an additional copy of the comment by mail to Steve Thompson, Chief Engineer, MC 104-ENG, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to [steve.thompson@tdi.texas.gov](mailto:steve.thompson@tdi.texas.gov).

The commissioner will consider the rule proposal in a public hearing under Docket Number 2791, scheduled for 9:30 a.m., Central time, on October 21, 2016, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. Written comments and public testimony presented at the hearing will be considered.

## **DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE**

### **28 TAC §§5.4601, 5.4602, 5.4604, 5.4608**

**STATUTORY AUTHORITY.** The repeal of §§5.4601, 5.4602, 5.4604, and 5.4608 is proposed under Insurance Code §§36.001, 2210.008, 2210.251, 2210.252, 2210.2515, 2210.254, and 2210.2551.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules to implement Chapter 2210.

Section 2210.251(b) states that for geographic areas specified by the commissioner, the commissioner must adopt by rule the 2003 *International Residential Code* and may adopt subsequent editions of that code and amendments to that code. Section 2210.251(g) states that a certificate of compliance issued by TDI or the association under §2210.2515 demonstrates compliance with the applicable building code under the plan of operation.

Section 2210.2515 gives TDI the authority to prescribe a form on which a person may apply to the association for a certificate of compliance for a completed structure and to prescribe a form on which a person may apply to TDI for a certificate of compliance for an ongoing improvement. Under §2210.2515, TDI must issue a certificate of compliance for an ongoing improvement if a qualified inspector inspects it in accordance with TDI rules and affirms that the improvement meets certain standards.

Section 2210.252 states that for geographic areas specified by the commissioner, the commissioner by rule may supplement the association's plan of operation building specifications with the structural provisions of the *International Residential Code*. Under §2210.252, the commissioner by rule may adopt an edition of the *International Residential Code* and a supplement published by the International Code Council or an amendment to that code.

Section 2210.254 states that a qualified inspector includes a licensed professional engineer, authorizes TDI to establish an annual renewal period for individuals appointed as qualified inspectors, and states that a qualified inspector must be approved and appointed or employed by TDI.

Section 2210.2551 gives TDI exclusive authority over all matters relating to the appointment and oversight of qualified inspectors and to the physical inspection of structures for the purpose of determining whether to issue a certificate of compliance under §2210.2515(d).

CROSS REFERENCE TO STATUTE. The repeal of §§5.4601, 5.4602, 5.4604, and 5.4608 implements Insurance Code §§2210.251, 2210.252, 2210.2515, 2210.254, and 2210.2551.

§5.4601. *Short Title.*

§5.4602. *Windstorm Inspection Manual.*

§5.4604. *Appointment of Engineers as Qualified Inspectors.*

§5.4608. *Texas Board of Professional Engineers Roster.*

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

Filed with the Office of the Secretary of State on September 19, 2016.

TRD-201604852

Norma Garcia

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: October 30, 2016

For further information, please call: (512) 676-6584



**28 TAC §§5.4601, 5.4603, 5.4604, 5.4608 - 5.4610, 5.4612, 5.4615, 5.4620 - 5.4623, 5.4625, 5.4626, 5.4640, 5.4642**

STATUTORY AUTHORITY. New §§5.4601, 5.4604, 5.4608 - 5.4610, 5.4612, 5.4615, 5.4620 - 5.4623, 5.4625, 5.4626, 5.4640, and 5.4642 and the amendments to §5.4603 are proposed under Insurance Code §§36.001, 2210.008, 2210.251, 2210.252, 2210.2515, 2210.254, and 2210.2551.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules to implement Chapter 2210.

Section 2210.251(b) states that for geographic areas specified by the commissioner, the commissioner must adopt by rule the 2003 *International Residential Code* and may adopt subsequent editions of that code and amendments to that code. Section 2210.251(g) states that a certificate of compliance issued by TDI or the association under §2210.2515 demonstrates compliance with the applicable building code under the plan of operation.

Section 2210.2515 gives TDI the authority to prescribe a form on which a person may apply to the association for a certificate of compliance for a completed structure and to prescribe a form on which a person may apply to TDI for a certificate of compliance for an ongoing improvement. Under §2210.2515, TDI must issue a certificate of compliance for an ongoing improvement if a qualified inspector inspects it in accordance with TDI rules and affirms that the improvement meets certain standards.

Section 2210.254 states that a qualified inspector includes a licensed professional engineer, authorizes TDI to establish an annual renewal period for individuals appointed as qualified inspec-

tors, and states that a qualified inspector must be approved and appointed or employed by TDI.

Section 2210.2551 gives TDI exclusive authority over all matters relating to the appointment and oversight of qualified inspectors and to the physical inspection of structures for the purpose of determining whether to issue a certificate of compliance under §2210.2515(d).

CROSS REFERENCE TO STATUTE. Proposed §5.4601 implements Insurance Code §§2210.251, 2210.252, and 2210.2515. Proposed §5.4603 implements Insurance Code §§2210.2515, 2210.254, and 2210.2551. Proposed §5.4604 and §5.4608 implement Insurance Code §§2210.2515, 2210.2551, and 2210.258. Proposed §§5.4609, 5.4610, and 5.4612 implement Insurance Code §2210.254 and §2210.2551. Proposed §5.4615 and §5.4620 implement Insurance Code §2210.2551. Proposed §§5.4621 - 5.4623, 5.4625, and 5.4626 implement Insurance Code §2210.2515 and §2210.2551. Proposed §5.4640 implements Insurance Code §2210.2551. Proposed §5.4642 implements Insurance Code §2210.256.

§5.4601. *Definitions.*

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

(1) Applicant--A person who submits a new or renewal application for appointment as an appointed qualified inspector.

(2) Appointed qualified inspector--An engineer licensed by the Texas Board of Professional Engineers and appointed by TDI as a qualified inspector under Insurance Code §2210.254(a)(2).

(3) Appointed qualified inspector number--A number TDI assigns to each appointed qualified inspector.

(4) Association--The Texas Windstorm Insurance Association.

(5) Constructed or construction--The act of building or erecting a structure or altering, remodeling, enlarging, adding to, or repairing, including reroofing, an existing structure.

(6) Completed improvement--

(A) An improvement in which the original transfer of title from the builder to the initial owner of the improvement has occurred; or

(B) if a transfer under subparagraph (A) of this paragraph is not contemplated, an improvement that is substantially completed.

(7) Improvement--The construction of or repair, including reroofing, alteration, remodeling, or enlargement of a structure to which the plan of operation applies.

(8) Ongoing improvement--

(A) An improvement in which the original transfer of title from the builder to the initial owner of the improvement has not occurred; or

(B) if a transfer under subparagraph (A) of this paragraph is not contemplated, an improvement that is not substantially completed.

(9) Substantially completed--An improvement for which the final framing stage, including attachment of component and cladding items and installation of windborne debris protection, has been completed.

(10) TDI inspector--A qualified inspector authorized under Insurance Code §2210.254(a)(1) and employed by TDI.

(11) TDI--The Texas Department of Insurance.

(12) Windstorm building code standards-- The requirements for building construction in §§5.4007 - 5.4011 of this title (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made Prior to September 1, 1998; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After February 1, 2003 and before January 1, 2005; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2005, and before January 1, 2008; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008; respectively).

§5.4603. Windstorm Inspection Forms [Forms for Windstorm Inspections:].

(a) Inspection Verification, Form WPI-2-BC-5. TDI [The Texas Department of Insurance] adopts by reference the Inspection Verification, Form WPI-2-BC-5, effective January 1, 2008, [following forms] for use in windstorm inspection.[:]

{(1) Application for Certificate of Compliance, Form WPI-1, effective January 1, 2005;}

{(2) Inspection Verification, Form WPI-2-BC-1, effective January 1, 2008;}

{(3) Inspection Verification, Form WPI-2-BC-2, effective January 1, 2008;}

{(4) Inspection Verification, Form WPI-2-BC-3, effective January 1, 2008;}

{(5) Inspection Verification, Form WPI-2-BC-4, effective January 1, 2008;}

{(6) Inspection Verification, Form WPI-2-BC-5, effective January 1, 2008;}

{(7) Design Certification, Form WPI-2D, effective January 1, 2008;}

{(8) Field Form, Form WPI-7, effective January 1, 2005;}

{(9) Certificate of Compliance, Form WPI-8, as amended October 1, 1998.}

(b) Application, inspection, and renewal forms. TDI will make available the following forms on its website:

(1) Qualified Inspector Appointment Application Form, Form AQI-1, effective XXXXXXXX XX, 20XX;

(2) Qualified Inspector Appointment Renewal Application Form, Form AQI-R, effective XXXXXXXX XX, 20XX;

(3) Application for Certificate of Compliance, Form WPI-1, effective XXXXXXXX XX, 20XX; and

(4) Inspection Verification Form, Form WPI-2-BC-15, effective XXXXXXXX XX, 20XX.

{(b) These forms are published by and available from the Texas Department of Insurance. Copies of these forms may be

obtained from the Windstorm Inspections Section of the Inspections Division, Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, MC 103-3A, Austin, Texas 78714-9104 and the Texas Department of Insurance website at www.state.tx.us.}

(c) TDI inspection and certification forms. When appropriate, TDI will issue the following forms:

(1) Field Form, Form WPI-7, effective XXXXXXXX XX, 20XX; and

(2) Certificate of Compliance, Form WPI-8, effective XXXXXXXX XX, 20XX.

§5.4604. Certification Form for Completed Improvement.

(a) Professional engineers licensed by the Texas Board of Professional Engineers must submit the following information when applying to the association for a certificate of compliance for a completed improvement on a structure:

(1) the physical address (including street, street number, city, county, and ZIP code);

(2) the wind zone location;

(3) whether the structure is in a Coastal Barrier Resource Zone;

(4) the owner's name and contact information;

(5) the name and contact information of the builder or contractor making the completed improvement;

(6) the name and contact information of the engineer certifying the completed improvement;

(7) the date construction of the completed improvement began;

(8) the date of application for the certificate of compliance for the completed improvement;

(9) the name of the person submitting the application for the certificate of compliance for the completed improvement;

(10) the type of structure to which the completed improvement is being made, including the structure's name or number and number of units, if applicable;

(11) the subject of the inspection (for example, entire structure, addition, alteration, or repair);

(12) the building code standard and applicable wind load standard under which the completed improvement was designed or inspected;

(13) an affirmation that the completed improvement complies with the applicable building code standard;

(14) either:

(A) the plan or drawing number for the design of the completed improvement; or

(B) the title, date, and number of the postconstruction evaluation report relied on to certify the completed improvement;

(15) the wind speed conditions that the completed improvement is designed to withstand;

(16) the risk category of the structure;

(17) the exposure category of the structure;

(18) information on the protection of exterior openings from windborne debris;

(19) the dates the completed improvement was inspected;  
and

(20) the signature and Texas Board of Professional Engineers registration number of the engineer certifying the completed improvement.

(b) The association will make available a form on which the information in subsection (a) of this section may be provided.

§5.4608. Certification by TDI-Employed Windstorm Inspectors.

This section describes the procedure for the certification of ongoing improvements to certain components inspected by TDI-employed inspectors.

(1) Eligible components.

(A) TDI-employed inspectors may inspect ongoing construction on certain alterations, repairs, and reroofs including components such as:

(i) roofs;

(ii) exterior wall coverings;

(iii) exterior doors;

(iv) windows;

(v) skylights;

(vi) garage doors; and

(vii) devices protecting exterior openings from windborne debris;

(B) TDI-employed inspectors may inspect components of the kind described in subparagraph (A) of this paragraph for which TDI has received the following information:

(i) the physical address (including street, street number, city, county, and ZIP code);

(ii) the wind zone location;

(iii) the type of structure the improvement is or is a part of, including the structure's name or number, and number of units, if applicable;

(iv) the subject of the inspection (for example, entire structure, addition, alteration, or repair);

(v) The name and contact information of the builder or contractor making the improvement;

(vi) the storm code, if applicable;

(vii) the date construction of the improvement began;

(viii) the date of application for the certificate of compliance for the improvement;

(ix) the name of the person submitting the application for the certificate of compliance for the improvement;

(x) the owner's name and contact information;

(xi) whether the structure is located inside or outside city limits; and

(xii) whether the structure is in a Coastal Barrier Resource Zone.

(2) Application for Certificate of Compliance, Form WPI-1. TDI will make available on its website the Application for

Certificate of Compliance, Form WPI-1, on which the information required by paragraph (1)(B) of this section may be provided.

(3) Verification of compliance or noncompliance. After inspecting the improvement, the TDI-employed inspector will document the following information:

(A) the information in paragraph (1)(B)(i) - (vi) of this section;

(B) whether the improvement meets the applicable windstorm building code standard;

(C) the dates and times the improvement was inspected;

(D) the length of the inspection or inspections;

(E) the inspection number;

(F) the structure's roof pitch;

(G) component and cladding loads;

(H) the structure's mean roof height;

(I) roof decking information;

(J) the field office performing the inspection;

(K) the application number from TDI; and

(L) comments.

(4) Field Form, Form WPI-7, effective XXXXXXXX XX, 20XX. TDI will use the Field Form, Form WPI-7, on which TDI-employed inspectors will provide the information in paragraph (3) of this section.

(5) Certification. If TDI determines that the ongoing improvement meets the windstorm building code standards, TDI will issue a form with the following information:

(A) the information in paragraph (1)(B)(i) - (iv) of this section;

(B) the building code standard and applicable wind load standard with which the improvement complies;

(C) the date construction of the improvement began;

(D) whether the occupancy type is considered residential, commercial, agricultural, or religious;

(E) the certification date;

(F) TDI's certification number; and

(G) the type of inspector.

(6) Certificate of Compliance, Form WPI-8, effective XXXXXXXX XX, 20XX. When appropriate, TDI will issue the Certificate of Compliance, Form WPI-8, with the information in paragraph (5) of this section.

(7) Availability of inspection results. TDI will make the results of inspections under this section available to builders, contractors, and owners.

§5.4609. Application for Qualified Inspector Appointment.

(a) Appointed qualified Inspector application. To apply for appointment as a qualified inspector, an applicant must provide TDI with:

(1) the applicant's name and contact information;

(2) the applicant's Texas Board of Professional Engineers registration number;

(3) a summary of the applicant's education and experience related to windstorm design; and

(4) state whether the applicant has attended an orientation program as described in subsection (d) of this section or is an engineer described in subsection (c) of this section.

(b) Form AQI-1. TDI will make available the Qualified Inspector Appointment Application Form, Form AQI-1, on which applicants can provide the information required by subsection (a) of this section.

(c) Engineers appointed as of the effective date of this section. Texas-licensed professional engineers who, as of the effective date of this section, are appointed as qualified inspectors under the immediate prior version of Insurance Code §2210.254(a)(2) (Acts 2005, 79th Leg., Ch. 727, §2, 2005 Tex. Gen. Laws 1941 (amended 2011)), must submit the information required by subsection (a) of this section on or before December 31, 2016, to be appointed as qualified inspectors under current Insurance Code §2210.254(a)(2).

(d) Orientation program. Within the 180-day period immediately preceding the date TDI receives the application, an applicant must have attended or viewed a TDI-sponsored orientation program on TDI procedures and rules relating to windstorm and hail inspections.

(e) Orientation program for engineers appointed as of the effective date of this section. Texas-licensed professional engineers who, as of the effective date of this section, are appointed as qualified inspectors under the immediate prior version of Insurance Code §2210.254(a)(2), must have attended or viewed the TDI-sponsored orientation program on TDI procedures and rules relating to windstorm and hail inspections within the 90-day period immediately following December 31, 2016.

§5.4610. Renewal of Qualified Inspector Appointment.

(a) Appointment term. The commissioner will appoint a qualified inspector to a two-year term.

(b) Renewal timelines.

(1) No less than 30 days before the end of the term, an appointed qualified inspector must submit to TDI an affirmation of the currency and nonrestricted status of the appointed qualified inspector's license with the Texas Board of Professional Engineers.

(2) If an appointed qualified inspector does not submit the renewal information required by this subsection within 30 days after the end of the term, the inspector must submit a new application.

(3) TDI will make available the Qualified Inspector Appointment Renewal Application Form, Form AQI-R, effective XXXXXXXX XX, 20XX, on which the inspector can provide the information required by this subsection.

(c) Surrender. An appointed qualified inspector may voluntarily surrender an appointment at any time by giving written notice to TDI. The surrender will be effective on the date that TDI receives the notice or on the date stated in the notice.

(d) Continuation. If an appointed qualified inspector submits the information required by subsection (b)(1) of this section, the appointed qualified inspector's appointment will continue until TDI either grants or denies the renewal application. If an appointed qualified inspector does not submit a renewal application as required by subsection (b)(1) of this section, the appointed qualified inspector's appointment ends at the end of the term.

§5.4612. Appointment as Qualified Inspector.

(a) No deemed appointment. The commissioner must affirmatively appoint an applicant before the appointment is effective. No applicant will be deemed appointed.

(b) Denial. The commissioner may deny an application or a renewal application because:

(1) the application is incomplete;

(2) the applicant is not qualified; or

(3) for any of the reasons described in §5.4642(a) of this title (relating to Disciplinary Action).

(c) Notice.

(1) TDI will notify the applicant whether the commissioner has approved or denied the appointment or renewal application.

(2) Any communication of denial will state the reasons for denial and will notify the applicant that the applicant has 30 days from the date of the communication to make a written request for hearing.

(3) If the applicant makes a timely request for hearing, the request will be granted and the procedures for a contested case under the Government Code, Chapter 2001, Administrative Procedure Act, will apply.

§5.4615. General Responsibilities of Appointed Qualified Inspectors. An appointed qualified inspector must:

(1) maintain a current license with the Texas Board of Professional Engineers;

(2) notify TDI in writing not later than 30 days after a change in the appointed qualified inspector's:

(A) legal name;

(B) mailing address;

(C) telephone number; or

(D) email address;

(3) notify TDI in writing not later than 30 days after a change in the appointed qualified inspector's employment status. The appointed qualified inspector must include, as applicable, the:

(A) full legal trade or business name of employer;

(B) physical location and mailing address of the employer's business office;

(C) telephone number of the employer's business office;

(D) employer's type of business (corporation, assumed name, partnership, or self-employment through use of own name);

(E) legal relationship to and position in the employer's business; and

(F) effective date of this change in employment status;

(4) respond to TDI requests to authenticate inspection verification forms bearing the appointed qualified inspector's name and appointed qualified inspector number; and

(5) respond to other TDI requests for information made under Insurance Code §38.001.

§5.4620. Accountability of Appointed Qualified Inspector.

(a) Appointed qualified inspector accountability. An appointed qualified inspector is solely accountable for inspections performed under the appointed qualified inspector's name.

(b) Failure to comply. An appointed qualified inspector is strictly accountable for any failure to comply with Insurance Code Chapter 2210 and all of the responsibilities outlined in this chapter without regard to whether the failure to comply is the result of the actions of the appointed qualified inspector or a designated representative of the appointed qualified inspector.

§5.4621. Certification of Ongoing Improvements Inspected by Appointed Qualified Inspectors.

This section describes the procedure for the certification of ongoing improvements inspected by appointed qualified inspectors.

(1) Eligible structures. An appointed qualified inspector or a designated representative of an appointed qualified inspector may only inspect an ongoing improvement for which TDI has received the following information:

(A) the physical address (including street, street number, city, county, and ZIP code);

(B) the wind zone location;

(C) the type of structure the ongoing improvement is or is a part of, including the structure's name or number, and number of units, if applicable;

(D) the subject of the inspection (for example, entire structure, addition, alteration, or repair);

(E) the name and contact information of the appointed qualified inspector inspecting the ongoing improvement, or whose designated representative is inspecting the ongoing improvement;

(F) the storm code, if applicable;

(G) the date construction of the ongoing improvement began;

(H) the date of application for the certificate of compliance for the ongoing improvement;

(I) the name of the person submitting the application for the certificate of compliance for the ongoing improvement;

(J) the owner's name and contact information;

(K) the name and contact information of the builder or contractor making the ongoing improvement;

(L) whether the structure is located inside or outside city limits; and

(M) whether the structure is in a Coastal Barrier Resource Zone.

(2) Application for Certificate of Compliance, Form WPI-1. TDI will make available the Application for Certificate of Compliance, Form WPI-1, on which the information in paragraph (1) of this section may be provided.

(3) Inspection. The appointed qualified inspector or a designated representative of the appointed qualified inspector must inspect for compliance with the applicable building code standard each ongoing improvement during each major construction phase, including the foundation stage; rough framing stage; final framing stage, including attachment of component and cladding items and installation of windborne debris protection; and installation of mechanical equipment. The appointed qualified inspector's designated representatives may assist in conducting inspections, but the appointed qualified inspector must closely monitor and provide direct supervision of any designated representative assisting with the inspection process.

(4) Report. The appointed qualified inspector or a designated representative of the appointed qualified inspector must prepare all necessary construction inspection reports under §5.4625 of this title (relating to Inspection Reports).

(5) Verification of compliance. If the appointed qualified inspector determines that the ongoing improvement meets the applicable windstorm building code standard, the appointed qualified inspector must submit the following information to TDI:

(A) the information required by paragraph (1)(A) - (F) of this section;

(B) the building code standard and applicable wind load standard with which the ongoing improvement complies;

(C) the wind speed conditions the ongoing improvement is certified to withstand;

(D) the dates the ongoing improvement was inspected;

(E) the exposure category of the structure;

(F) information on the protection of exterior openings from windborne debris;

(G) the risk category of the structure;

(H) the appointed qualified inspector's appointment number; and

(I) the application number from TDI.

(6) Inspection Verification Form, Form WPI-2. TDI will make available the Inspection Verification Form, Form WPI-2, on which the inspector can provide the information required by paragraph (5) of this section.

(7) Notification of noncompliance. If the appointed qualified inspector determines that the ongoing improvement does not meet the applicable windstorm building code standard, the appointed qualified inspector must inform the person seeking certification in writing. The notice must:

(A) list specific deficiencies in the construction and deviations from the design;

(B) list other items of concern relating to the windstorm inspection and certification; and

(C) describe remedial actions required for compliance.

(8) Verification of noncompliance. If the remedial actions described in the notification of noncompliance in paragraph (7)(C) of this section are not taken, the appointed qualified inspector must submit the information required by paragraph (5) of this section to TDI, certifying that the ongoing improvement does not meet the applicable windstorm building code standard.

(9) Review. TDI will review the submitted information, and any other relevant information including information requested under §5.4626 of this title (relating to Substantiating Information), to determine whether the ongoing improvement meets the applicable windstorm building code standard.

(10) Certification. If TDI determines that the ongoing improvement meets the windstorm building code standards, TDI will issue a form with the following information:

(A) the information described in paragraph (1)(A) - (C) of this section;

(B) the subject of the certification (for example, entire structure, addition, alteration, or repair);

(C) the building code standard and applicable wind load standard with which the ongoing improvement complies;

(D) the date construction of the ongoing improvement began;

(E) whether the occupancy type is considered residential, commercial, agricultural, or religious;

(F) the certification date;

(G) TDI's certification number; and

(H) the type of inspector.

§5.4622. Inspection Verification.

In submitting an Inspection Verification, Form WPI-2, an appointed qualified inspector verifies that:

(1) the ongoing improvement either:

(A) complies with the wind load requirements of the applicable building code; or

(B) conforms to a design of the ongoing improvement that complies with the applicable building code under the plan of operation and that has a seal affixed by a professional engineer licensed by the Texas Board of Professional Engineers; and

(2) the appointed qualified inspector is able to provide TDI with information and evidence substantiating the verification.

§5.4623. Information Required to Inspect to Design Documents.

(a) To verify that a design of an ongoing improvement complies with the applicable building code under the plan of operation, an appointed qualified inspector must review design documents sealed by the engineer of record for the ongoing improvement, including design criteria, wind loads, plans, and building product specifications, which must include the following information:

(1) design criteria, including:

(A) the building code standard applicable to the improvement;

(B) the live loads on the structure's floor and roof;

(C) the basic wind speed the improvement is designed to withstand;

(D) the wind importance factor or risk category of the structure;

(E) the exposure category of the structure;

(F) the structure's mean roof height;

(G) the 'a' distance, measuring the width of a zone of wind pressure; and

(H) the structure's internal pressure coefficient.

(2) a summary of wind loads the structure is designed to withstand, including:

(A) the main wind force-resisting system loads;

(B) the component and cladding loads;

(C) the uplift loads and components used to transfer uplift loads from the roof to the foundation; and

(D) the lateral loads, the type of lateral resisting system used, and the components used to transfer lateral loads from the roof to the foundation;

(3) plans, including:

(A) the details and dimensions of each type of foundation system, including:

(i) for monolithic slab on grade foundations:

(I) details on reinforcement;

(II) the type and size of anchor bolts and wash-

ers;

(III) the placement of holddown anchors;

(IV) the dowel requirements for masonry construction; and

(V) any offsets necessary for masonry or masonry veneer walls (proper brick ledge);

(ii) for piling foundations:

(I) the pile embedment depths;

(II) the size and spacing of piles;

(III) details on concrete pile reinforcement;

(IV) details and specifications for wood piles;

(V) details on the anchorage of beams to piles;

(VI) the size and location of beams;

(VII) the span, size, and spacing of floor joists;

(VIII) details on the anchorage of floor joists to beams;

(IX) the height of the structure's lowest structural member;

(X) the elevation of the ground floor, or in an elevated structure, the first floor; and

(XI) whether the ground floor walls are designed as breakaway walls;

(iii) for pier and beam foundations:

(I) the size and depth of footings;

(II) the size of piers;

(III) details of pier reinforcement;

(IV) details of concrete masonry unit reinforcement;

(V) the size and location of beams;

(VI) details on the anchorage of sills- or beams-to-piers and piers-to-footings;

and

(VII) the span, size, and spacing of floor joists;

(VIII) details on the anchorage of floor joists to beams and sills or to beams or sills;

(B) details on floor plans, including:

(i) dimensions; and

(ii) door and window opening sizes and locations;

(C) details on roof plans, including:

(i) dimensions; and

(ii) header schedule on plans showing size;

(D) standard notes for windstorm construction; and

(E) additional notes for special construction or special conditions; and

(4) building product specifications, including:

(A) building product information;

(B) model code product evaluation reports;

(C) product evaluations from other agencies;

(D) manufacturers' test reports if product evaluations are not available; and

(E) other data to document compliance with codes and design criteria.

(b) To verify that an ongoing improvement conforms to design documents, an appointed qualified inspector must gather information, including:

(1) the details of connections to transfer wind loads from the roof to the foundation;

(2) the specifications of roof-cladding components, including:

(A) a description of roof coverings (these may include shingles, tile, metal roofs, modified bitumen, and low slope roof assemblies);

(B) the attachment methods of roof anchorages (fastener type and spacing, or other attachment methods); and

(C) the material of which soffits are made and their anchorage method (fastener type and spacing);

(3) the roof and floor diaphragm systems, including:

(A) the roof deck type and anchorage method (fastener type and spacing);

(B) the collectors;

(C) the drag struts;

(D) the diaphragm boundary elements;

(E) the roof-to-wall connections;

(F) the wall-to-floor diaphragms and framing; and

(G) the wall-to-floor connections;

(4) the horizontal wind force-resisting systems, including:

(A) the braced frames;

(B) the moment frames;

(C) the shear walls and hold downs; and

(D) the wind-force-resisting system connections to foundation;

(5) the specifications of exterior wall coverings, including:

(A) the materials of which exterior wall coverings are made (these may include brick veneer, vinyl siding, fiber cement siding, wood siding, stucco, exterior insulation and finish systems, or stone veneer); and

(B) the high-wind-specific installation methods for the exterior wall coverings (anchorage or other attachment methods);

(6) the specifications of exterior opening products;

(A) the exterior opening products (these may include windows, skylights, curtain walls, exterior doors, or garage doors); and

(B) the high wind-specific installation methods for exterior opening products (anchorage or other attachment methods); and

(7) information on the protection of exterior openings from windborne debris, when applicable.

(c) For ongoing improvements without plans, such as roofs or replacement of exterior openings, information necessary for an appointed qualified inspector to verify that the ongoing improvement complies with the wind load requirements of the applicable building code may include information listed in subsections (a) and (b) of this section.

#### §5.4625. Inspection Reports.

An appointed qualified inspector or a designated representative under the appointed qualified inspector's supervision must prepare a written inspection report for each inspection. All inspection reports must include the following:

(1) the complete physical address of the inspected property (including street, street number, city, county, and ZIP code);

(2) the subject of the inspection (for example, entire structure, addition, alteration, or repair);

(3) the type of construction inspected (for example, commercial tilt wall or residential wood frame);

(4) information indicating where actual inspections occurred, including, at the appointed qualified inspector's discretion:

(A) the plan or sketches, with inspection notes on whichever the appointed qualified inspector chooses; and

(B) the plan or sketches, with notes on whichever the appointed qualified inspector chooses showing the location of photographs taken as part of the inspection;

(5) the wind zone location (Inland I, Inland II, or Seaward) (initial inspection only);

(6) the exposure category of the structure (initial inspection only);

(7) the structure's mean roof height (initial inspection only);

(8) a complete description of the building products used, including:

(A) the manufacturer's name and product name;

(B) product testing information or product evaluation;

(C) the manufacturer's installation instructions, including any special instructions for high wind areas;

(D) fastener type, length, type of corrosion resistance, and placement; and

(E) the contractor's means and methods used to install the product;

(9) all discrepancies between the ongoing improvement's as-built construction and the design documents and specifications;

(10) all discrepancies between the building products specified and the building products installed;

(11) legible copies of labels of all installed components and other manufacturer information, including shingle wrappers;

(12) a description of any action taken to remedy any discrepancies described in paragraphs (9) and (10) of this section;

(13) the status of the inspection, indicating whether the appointed qualified inspector approved or disapproved the structure; and

(14) the date and printed name and signature of the appointed qualified inspector or the designated representative of the appointed qualified inspector.

§5.4626. Substantiating Information.

(a) Upon request from TDI, an appointed qualified inspector must provide information and evidence necessary to substantiate the appointed qualified inspector's verification that an ongoing improvement complies with the wind load requirements of the applicable building code.

(b) The appointed qualified inspector may provide the information and evidence described in subsection (a) of this section to TDI in the form of:

(1) product information on building components including manufacturer name, testing information, installation instructions, and model code evaluation reports or other building information as described in §5.4623 of this title (relating to Information Required to Inspect to Design Documents);

(2) information in windstorm plans, as described in §5.4623 of this title;

(3) inspection verification forms and other documents previously filed with TDI;

(4) as-built drawings;

(5) shop drawings;

(6) building product submittal information;

(7) photographs; and

(8) inspection reports, as described in §5.4625 of this title (relating to Inspection Reports).

(c) For each structure inspected, an appointed qualified inspector must retain the substantiating evidence and information described in this section for five years from the date of the most recent inspection verification form submitted on the structure.

§5.4640. Oversight.

(a) Inspection oversight. An appointed qualified inspector is subject to the regulatory authority of TDI, which includes oversight inspections conducted by TDI. TDI oversees all aspects of the inspection and notification of compliance of ongoing improvements by an appointed qualified inspector under Insurance Code Chapter 2210 and this chapter.

(b) Certificate of compliance oversight. As part of TDI's oversight, TDI may audit the inspections on structures for which it has received an Application for Windstorm Inspection Certificate of Compliance, Form WPI-1, or an Inspection Verification, Form WPI-2, including structures for which TDI has issued a Certificate of Compliance, Form WPI-8. If TDI determines that a structure does not meet the windstorm building code standards, TDI will not issue a Form WPI-8; or if TDI has issued a Form WPI-8 on a structure that is subsequently found not to be in compliance with the windstorm building code standards, TDI may rescind the Form WPI-8.

(c) Types of oversight audits. TDI may conduct an oversight audit of an appointed qualified inspector by any one, or a combination, of the following methods:

(1) TDI may conduct an audit of an appointed qualified inspector based on documents and other information submitted to TDI; or

(2) TDI may conduct an on-site audit at the appointed qualified inspector's place of employment or ongoing improvement for which TDI has received a Form WPI-1, or a Form WPI-2.

(d) Notification of audits.

(1) In conducting oversight audits of new structures and additions, TDI will give appointed qualified inspectors advance notice of no less than 10 business days before beginning the audit.

(2) In conducting oversight audits of components and cladding such as roofs, exterior wall coverings, exterior doors, windows, skylights, garage doors, and devices protecting exterior openings from windborne debris, TDI will give appointed qualified inspectors advance notice of no less than two business days before beginning the audit.

(3) The appointed qualified inspector may request a shorter time frame if a notice period in this subsection would cause a delay in the construction schedule. The notice periods in this subsection do not apply if TDI has received a complaint about a structure on which it has a Form WPI-1.

(e) Information for oversight audits. In the process of conducting an oversight audit, TDI may require the appointed qualified inspector to provide:

(1) documentation described in §5.4626 of this title (relating to Substantiating Information); and

(2) any other information maintained by the appointed qualified inspector that will demonstrate that the ongoing improvement complies with the appropriate windstorm building code standards, and that the ongoing improvement is eligible for association insurance.

(f) Burden of proof. With respect to audits, the appointed qualified inspector bears the burden of verifying, as set forth in §5.4622 of this title (relating to Inspection Verification), that the ongoing improvement complies with the wind load requirements of the applicable building code.

(g) Requirement to provide information. The appointed qualified inspector must provide information related to an audit in the same manner and time frame as required in §5.4615(5) of this title (relating to General Responsibilities of Appointed Qualified Inspectors). Failure to provide the information requested by TDI under this section may result in the nonissuance or rescission of a Form WPI-8 for the subject structure, and the appointed qualified inspector may be subject to disciplinary action by TDI, as described in §5.4642 of this title (relating to Disciplinary Action).

§5.4642. Disciplinary Action.

(a) Revocation or denial of appointment. After notice and opportunity for hearing, the commissioner may revoke an appointed qualified inspector's appointment or deny an appointed qualified inspector's application for appointment if:

(1) the applicant or appointed qualified inspector violates or fails to comply with the Insurance Code or any rule in this chapter;

(2) the applicant has made a material misrepresentation in the appointment application;

(3) the applicant has attempted to obtain an appointment by fraud or misrepresentation; or

(4) the applicant or appointed qualified inspector has made a material misrepresentation in any form or report required to be filed with TDI, including an Application for Windstorm Inspection Certificate of Compliance, Form WPI-1; a construction inspection report; or an Inspection Verification, Form WPI-2.

(b) Cease and desist order. The commissioner, ex parte, may enter an emergency cease and desist order under Insurance Code Chapter 83 against an appointed qualified inspector, or a person acting as an appointed qualified inspector, if:

(1) the commissioner believes that:

(A) the appointed qualified inspector has:

(i) failed to demonstrate, through submitting or failing to submit to TDI substantiating information as described in §5.4626 of this title (relating to Substantiating Information), that an ongoing improvement or a portion of an ongoing improvement subject to inspection meets the requirements of Insurance Code Chapter 2210 and TDI rules; or

(ii) refused to comply with requirements imposed under this chapter or TDI rules; or

(B) a person acting as an appointed qualified inspector is acting without appointment under Insurance Code §2210.254 or §2210.255; and

(2) the commissioner determines that the conduct described by paragraph (1) of this subsection is fraudulent, hazardous, or creates an immediate danger to the public.

(c) Alternative sanctions. Under Insurance Code §2210.2551(b) and §2210.256(b), the commissioner, instead of revocation or denial, may impose one or more of the following sanctions if the commissioner determines from the facts that the alternative sanction would be fair, reasonable, or equitable:

(1) suspension of the appointment for a specific period, not to exceed one year; or

(2) issuance of an order directing the appointed qualified inspector to cease and desist from the specified activity or failure to act determined to be in violation of Insurance Code Chapter 2210, Subchapter F, or rules of the commissioner adopted under Insurance Code Chapter 2210, Subchapter F.

(d) Failure to comply with order. Under Insurance Code §2210.2551(b) and §2210.256(d), if the commissioner finds, after notice and a hearing, that an appointed qualified inspector has failed to comply with an order issued under subsection (a), (b), or (c) of this section, the commissioner will, unless the commissioner's order is lawfully stayed, revoke the appointed qualified inspector's appointment.

(e) Informal disposition. The commissioner may informally dispose of any matter under this section or under §5.4612 of this title (relating to Appointment as Qualified Inspector) by consent order or default.

(f) Automatic cancellation. If the Texas Board of Professional Engineers revokes or suspends an engineer's license, the engineer's appointment as an appointed qualified inspector is automatically canceled.

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

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Norma Garcia

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6584



## DIVISION 9. WINDSTORM BUILDING CODE ADVISORY COMMITTEE ON SPECIFICATIONS AND MAINTENANCE

### 28 TAC §5.4800

STATUTORY AUTHORITY. The repeal of §5.4800 is proposed under Insurance Code §§36.001, 2210.008(b), 2210.251, and 2210.252.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules to implement Chapter 2210.

Section 2210.251(b) states that for geographic areas specified by the commissioner, the commissioner must adopt by rule the 2003 *International Residential Code* and may adopt subsequent editions of that code and amendments to that code. Section 2210.251(g) states that a certificate of compliance issued by TDI or the association under §2210.2515 demonstrates compliance with the applicable building code under the plan of operation.

Section 2210.252 states that for geographic areas specified by the commissioner, the commissioner by rule may supplement the association's plan of operation building specifications with the structural provisions of the *International Residential Code*. Under §2210.252, the commissioner by rule may adopt an edition of the *International Residential Code* and a supplement published by the International Code Council or an amendment to that code.

CROSS REFERENCE TO STATUTE. The proposed repeal of §5.4800 implements Insurance Code §2210.251 and §2210.252.

*§5.4800. Form Promulgated for Use in Proposing a Change to Windstorm Building Requirements or Procedures in the Texas Windstorm Insurance Association Plan of Operation.*

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

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General Counsel

Texas Department of Insurance

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## TITLE 31. NATURAL RESOURCES AND CONSERVATION

## PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

### CHAPTER 51. EXECUTIVE

The Texas Parks and Wildlife Department proposes amendments to §§51.204, 51.208, 51.213, 51.350, 51.304, and 51.750. The proposed amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The proposed amendment to §51.204, concerning Notice of Claim of Breach of Contract, would replace the reference to a "unit's chief administrative officer" in subsection (b) with the term "division director," which more accurately describes the department's organizational structure. Similarly, the proposed amendment would replace the reference to "unit" in subsection (c) with "department" to more accurately describe the addressee of the required notice.

The proposed amendment to §51.208, concerning Timetable, would replace the references to "unit" in subsections (a) and (c) with "department" to more accurately describe the addressee the process and capitalize the initial word of subsection (c) to maintain grammatical parallelism.

The proposed amendment to §51.213, concerning Request for Contested Case Hearing, would replace the references to "unit" in subsections (a) with "department" to more accurately describe the addressee the process, and would replace the term "chief administrative officer" with "executive director" to more accurately refer to the department's organizational structure.

The proposed amendment to §51.304, concerning Exceptions, would alter subsection (a) by adding language to paragraph (2) to clarify that the department may disclose certain information to governmental entities, including law enforcement entities, to carry out a government purpose and adding new paragraph (5) to clarify that records made or kept by the department under Parks and Wildlife Code, §31.039 and §31.0391 (concerning vessel ownership) are considered public records. The proposed amendment also would eliminate subsection (b), which provides for the verification of certain customer information upon request. The department has determined that the proposed amendments are necessary to protect information about customers as allowed by Parks and Wildlife Code, §11.030.

The proposed amendment to §51.350, concerning Vendor Dispute Resolution, would replace the reference to "Director of Purchasing, Contracting, and Distribution Services" with "Purchasing and Contracting Director" to more accurately reflect the department's organizational structure.

The proposed amendment to §51.750 regarding Promotional Drawings would modify subsection (a)(1) to clarify that the \$5,000 limit on the value of prizes does not include items donated to the department.

Ann Bright, General Counsel, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Ms. Bright also has determined that for each of the first five years that the rules as proposed are in effect, the public ben-

efit anticipated as a result of enforcing or administering the proposed rules will be clearer, better organized, and more accurate regulations governing the processes and entities administered under the provisions of Chapter 51, including the protection of customer information.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the rules will not directly affect small businesses and/or micro-businesses. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Robert Macdonald, Regulations Coordinator, e-mail: [robert.macdonald@tpwd.texas.gov](mailto:robert.macdonald@tpwd.texas.gov). Comments also may be submitted via the department's website at [http://www.tpwd.texas.gov/business/feedback/public\\_comment/](http://www.tpwd.texas.gov/business/feedback/public_comment/).

### SUBCHAPTER J. CONTRACT DISPUTE RESOLUTION

#### 31 TAC §§51.204, 51.208, 51.213

The amendments are proposed under the authority of Government Code, §2260.052(c), which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of contract claims against the state, and Parks and Wildlife Code, §11.0171, which requires the commission to adopt by rule policies and procedures for soliciting and awarding contracts.

The proposed amendments affect Government Code, Chapter 2260 and Parks and Wildlife Code, Chapter 11.

*§51.204. Notice of Claim of Breach of Contract.*

(a) (No change.)

(b) The notice of claim shall:

(1) (No change.)

(2) be delivered by hand, certified mail return receipt requested, or other verifiable delivery service, to the officer of the depart-

ment designated in the contract to receive a notice of claim of breach of contract under Government Code, Chapter 2260; if no person is designated in the contract, the notice shall be delivered to the division director [~~unit's chief administrative officer~~], and shall state in detail:

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

(c) In addition to the mandatory contents of the notice of claim as required by subsection (b) of this section, the contractor may submit supporting documentation or other tangible evidence to facilitate the department's [~~unit's~~] evaluation of the contractor's claim.

(d) (No change.)

§51.208. *Timetable.*

(a) Following receipt of a contractor's notice of claim, the executive director of the department or other representative designated in the contract shall review the contractor's claim(s) and the department's [~~unit's~~] counterclaim(s), if any, and initiate negotiations with the contractor to attempt to resolve the claim(s) and counterclaim(s).

(b) (No change.)

(c) ~~The~~ [the] department may delay negotiations until after the 180th day after the date of the event giving rise to the claim of breach of contract by:

(1) (No change.)

(2) delivering written notice to the contractor when the department [~~unit~~] is ready to begin negotiations.

(d) - (f) (No change.)

(g) The contractor may request a contested case hearing before the State Office of Administrative Hearings ("SOAH") pursuant to §51.213 of this title (relating to Request for Contested Case Hearing) after the 270th day after the department [~~unit~~] receives the contractor's notice of claim, or the expiration of any extension agreed to under subsection (f) of this section.

(h) - (i) (No change.)

§51.213. *Request for Contested Case Hearing.*

(a) If a claim for breach of contract is not resolved in its entirety through negotiation, mediation or other assisted negotiation process in accordance with this chapter on or before the 270th day after the department [~~unit~~] receives the notice of claim, or after the expiration of any extension agreed to by the parties pursuant to §51.208(f) of this title (relating to Timetable), the contractor may file a request with the department for a contested case hearing before SOAH.

(b) A request for a contested case hearing shall state the legal and factual basis for the claim, and shall be delivered to the executive director [~~chief administrative officer~~] of the department or other officer designated in the contract to receive notice within a reasonable time after the 270th day or the expiration of any written extension agreed to pursuant to §51.208(f) of this subchapter.

(c) - (d) (No change.)

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

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TRD-201604847

Ann Bright  
General Counsel  
Texas Parks and Wildlife Department  
Earliest possible date of adoption: October 30, 2016  
For further information, please call: (512) 389-4775

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## SUBCHAPTER K. DISCLOSURE OF CUSTOMER INFORMATION

### 31 TAC §51.304

The amendment is proposed under Parks and Wildlife Code, §11.030, which requires the commission to adopt policies by rule relating to the release of the customer information; the use of the customer information by the department; and the sale of a mailing list consisting of the names and addresses of persons who purchase customer products, licenses, or services.

The proposed amendment affects Parks and Wildlife Code, Chapter 11.

§51.304. *Exceptions.*

(a) Unless otherwise prohibited by law, the department may disclose the recreational customer, personal customer information or confidential customer information as follows:

(1) (No change.)

(2) Recreational customer information, personal information or confidential customer information may be disclosed to another governmental body, including, but not limited to a law enforcement entity, as needed to carry out a governmental purpose [~~that agrees to maintain the confidentiality of the information~~].

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

(5) Records made or kept by the department that are considered public records under Parks and Wildlife Code, §31.039 and §31.0391.

~~[(b) If a requestor provides a recreational customer's name or other identifying information, the department may verify information about a recreational customer as specified in this subsection; however, the department may require that the requestor complete and submit a separate written form for each recreational customer about which the department is requested to verify information.]~~

~~[(1) The department may verify whether a recreational customer holds a specified license or permit.]~~

~~[(2) The department may verify whether a recreational customer was a visitor to a state park or other department facility.]~~

~~[(3) The department may verify whether a recreational customer purchased a state parks annual pass or made a reservation at a park or other department facility.]~~

~~[(4) The department may verify whether a recreational customer purchased an item or product from the department.]~~

~~(b) [(e)] Information that is rented under this subchapter may be used by the requestor no more than one time. The department will take appropriate steps to verify that rented information is used no more than one time.~~

~~(c) [(d)] The department may follow industry standards, including, but not limited to standards regarding the exclusion or inclusion of magazine customer information on a list of magazine customers that is rented or sold.~~

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

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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## SUBCHAPTER L. VENDOR DISPUTE RESOLUTION

### 31 TAC §51.350

The amendment is proposed under Government Code, §2155.076, which requires the department as a state agency to adopt rules for resolving vendor protests relating to purchasing issues.

The proposed amendment affects Government Code Chapter 2155.

*§51.350. Vendor Dispute Resolution.*

(a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the Purchasing and Contracting Director [~~Director of Purchasing, Contracting, and Distribution Services~~]. Such protests must be in writing and received in the director's office within ten working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. Copies of the protest must be mailed or delivered by the protesting party to the department and other interested parties. For the purpose of this section "other interested persons" means at least all vendors who have submitted bids or proposals for the contract involved.

(b) - (h) (No change.)

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## SUBCHAPTER Q. PROMOTIONAL DRAWINGS

### 31 TAC §51.750

The amendment is proposed under Parks and Wildlife Code, §11.0271, which authorizes the department to conduct public drawings to select applicants for public hunting privileges; §11.0272, which authorizes the department to conduct public drawings to select applicants for special fishing or other special programs, packages, or events; Parks and Wildlife Code, §13.015, which authorizes the commission to establish park user fees; Parks and Wildlife Code, §42.012, which authorizes the commission to waive hunting license fees for a resident who is participating in an event sponsored or co-sponsored by the department with the approval of the executive director; Parks and Wildlife Code, §46.002, which exempts a person who is participating in an event sponsored or co-sponsored by the department with the approval of the executive director from fishing license requirements; Parks and Wildlife Code, §50.001, which requires the commission to establish combination licenses or license packages for hunting, fishing, or other activities and authorizes the commission to establish fees for combination license or license packages, provided the fee is less than the fees for the individual components of the package; and Parks and Wildlife Code, §81.403, which authorizes the department to issue a permit authorizing access to public hunting land or for specific hunting, fishing, recreational, other used of public hunting land or a wildlife management area and requires the commission to prescribe the fees and conditions of the issuance and use of such permits by rule.

The proposed amendment affects Parks and Wildlife Code, Chapters 11, 13, 42, 46, 50, and 81.

*§51.750. Promotional Drawings.*

(a) The executive director of the department may approve specific promotional event packages to be made available to individual members of the public by means of random drawing as provided in this section. Prior to approval of any promotional event package under this section, the executive director shall ensure that:

(1) the aggregate value of the packages offered does not exceed \$5,000 for any fiscal year, excluding items donated to the department;

(2) - (3) (No change.)

(b) - (g) (No change.)

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

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## CHAPTER 52. STOCKING POLICY

### 31 TAC §52.104, §52.401

The Texas Parks and Wildlife Department proposes amendments to §52.104 and §52.401. The proposed amendments are a result of the department's review of its regulations under the

provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The proposed amendment to §52.104, concerning Policy of the Department, would alter subsection (b) by eliminating the initial capitalization of the term "annual operational plan." The capitalization suggests that there is a specific document titled "Annual Operational Plan." Eliminating the capitalization more accurately describes the plan.

The proposed amendment to §52.401, concerning Fish Stocking in Private Waters, would alter subsection (b)(4) to clarify that an agreement regarding the stocking of fish in private waters must be signed by the department's executive director. Since fish may be stocked in private waters only as part of a department project associated with investigation, propagation, distribution, scientific, educational, or other valid management purposes, it is appropriate for the executive director to be the signatory on such agreements to ensure that such purposes are being served. Similarly, the amendment would further clarify that the stocking of any private waters not be associated with pay-to-fish operations.

Ken Kurzawski, Program Director, Inland Fisheries Division, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Kurzawski also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be clearer, better organized, and more accurate regulations governing the processes administered under the provisions of Chapter 52.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the rules will not directly affect small businesses and/or micro-businesses. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposal may be submitted to Ken Kurzawski (Inland Fisheries) at (512) 389-4591, e-mail: ken.kurzawski@tpwd.texas.gov. Comments also may be submitted via the department's website at [http://www.tpwd.texas.gov/business/feedback/public\\_comment/](http://www.tpwd.texas.gov/business/feedback/public_comment/).

The amendment is proposed under the Parks and Wildlife Code, §§1.012, 12.001, 12.013 - 12.015, and 66.015, which provide the Parks and Wildlife Commission with the authority to promulgate regulations governing the stocking of wildlife in the state.

The proposed amendment affects Parks and Wildlife Code, Chapters 1, 12, and 66.

*§52.104. Policy of the Department.*

(a) (No change.)

(b) Departmental stocking of fish and wildlife on public lands and in public waters shall be consistent with the annual operational plan [Annual Operational Plan].

(c) - (e) (No change.)

*§52.401. Fish Stocking in Private Waters.*

(a) (No change.)

(b) Conditions for stocking fish.

(1) - (3) (No change.)

(4) A written agreement must be executed and signed by the executive director.

(5) During the time period specified in the written agreement required by paragraph (4) of this subsection, private waters stocked under this subchapter shall not be subject to fishing in exchange for money or anything of value.

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

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Ann Bright

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CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

**31 TAC §53.15**

The Texas Parks and Wildlife Department proposes an amendment to §53.15, concerning Miscellaneous Fisheries and Wildlife Licenses and Permits. The proposed amendment would eliminate references to fees for certificates of location (oyster lease rentals). In another rulemaking published elsewhere in this issue

of the *Texas Register*, the department proposes rules intended to address deleterious environmental conditions and negative impacts of harvest on oyster populations and habitat. The cumulative impacts of these recent events (hurricanes, drought, etc.) have contributed to the declining trends in oyster resources in Texas. The toll of these events and their impacts make it necessary for the department to take action to protect and restore oysters and oyster habitat, which include a fee increase for areas that the department has issued certificates of location for private oyster beds. That fee increase is addressed in proposed amendments to 31 TAC §58.30, published elsewhere in this issue, and contains an economic and cost analysis of the proposed fee increase, including impacts to small businesses, microbusinesses, and persons required to comply. Because the fees for certificates of location are being addressed by the proposed rulemaking affecting Chapter 58, Subchapter A (Statewide Oyster Fishery Proclamation), it is no longer necessary to refer to them in Chapter 53; thus, the proposed amendment would remove them.

Mr. Robin Riechers, Coastal Fisheries Division Director, has determined that for each of the first five years the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Riechers also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the elimination of potential confusion by placing the fees for certificates of location in a single regulation.

There will be no adverse economic effect on persons required to comply with the rule as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the rule will not directly affect small businesses and/or micro-businesses. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006. (Any impact on small or micro-businesses would result from the proposed rules affecting Chapter 58, Subchapter A (Statewide Oyster Fishery Proclamation), published elsewhere in this issue of the *Texas Register*.)

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Dr. Tiffany Hopper, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4333; tiffany.hopper@tpwd.texas.gov, or via the department's website at [http://tpwd.texas.gov/business/feedback/public\\_comment/](http://tpwd.texas.gov/business/feedback/public_comment/).

The amendment is proposed under Parks and Wildlife Code, §§76.017, 76.018, and 76.020 which, respectively, authorize the commission to establish the annual rental fee for the areas established under the certificate of location, to determine oyster location renewal procedures, and to require the recovery of oyster shell or other suitable cultch material to maintain or enhance public oyster reefs.

The proposed amendment affects Parks and Wildlife Code, Chapter 76.

§53.15. *Miscellaneous Fisheries and Wildlife Licenses and Permits.*

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

(h) Miscellaneous fees:

(1) - (6) (No change.)

~~[(7) oyster lease rental--\$6 per acre of location per year;]~~

~~[(7) [(8)] oyster lease renewal/transfer/sale--\$200; and~~

~~[(8) [(9)] double-crested cormorant control permit--\$13.~~

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

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CHAPTER 57. FISHERIES  
SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION  
DIVISION 3. STATEWIDE COMMERCIAL FISHING PROCLAMATION

**31 TAC §57.994**

The Texas Parks and Wildlife Department proposes an amendment to §57.994, concerning Individual Fishing Quota (IFQ). The proposed amendment would update references to federal rules adopted by reference and clarify that the federal rules apply in state waters.

The IFQ is a federal regulatory program governing the commercial harvest of certain species of fish in federal waters. Federal rules require a federal permit and a federal Individual Fishing

Quota (IFQ) vessel endorsement for the harvest of Gulf of Mexico Reef Fish. The IFQ is an allocation of a percentage of the total allowable harvest to individuals engaged in commercial fishing for certain species in federal waters, who in turn must comply with certain documentation and reporting requirements. The amendment is necessary to allow enforcement of these requirements in state as well as federal jurisdiction and to insure that fish landed in Texas are landed in compliance with federal limits.

In 2013 the National Oceanic and Atmospheric Administration, the federal agency responsible for regulating fisheries resources and habitats in federal waters, nonsubstantively reorganized the provisions of 50 CFR Part 622 (78 FR 22949). As a result of that reorganization, the references to federal rules in §57.994 are inaccurate and should be updated.

Mr. Robin Riechers, Coastal Fisheries Division Director, has determined that for each of the first five years the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Riechers also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be a single enforcement standard that eliminates potential confusion in enforcement and compliance.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. The department has determined that since under federal law it is illegal to land red snapper, grouper, or tilefish in Texas that are not harvested, possessed, transported, or landed in compliance with federal law, there is no direct adverse economic effect on small or micro-businesses or persons required to comply as a result of the proposed rule, since it creates a state regulation mirroring the federal regulations that must be complied with anyway.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Dr. Tiffany Hopper, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4333; [tiffany.hopper@tpwd.texas.gov](mailto:tiffany.hopper@tpwd.texas.gov), or via the department's website at [http://tpwd.texas.gov/business/feedback/public\\_comment/](http://tpwd.texas.gov/business/feedback/public_comment/).

The amendment is proposed under Parks and Wildlife Code, §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish that the department considers necessary to manage the species.

The proposed amendment affects Parks and Wildlife Code, Chapter 67.

§57.994. *Individual Fishing Quota (IFQ).*

(a) The Texas Parks and Wildlife Department adopts by reference the provisions of 50 CFR §622.21, 622.22, and 622.30, which shall govern the commercial take, possession, transportation, and landing of red snapper, grouper, and tilefish in Texas waters.

(b) No person for commercial purposes may take, possess, land, or sell red snapper, grouper, or tilefish in or via state waters unless that person possesses a valid federal Commercial Vessel Permit with applicable endorsements (if required) as provided by 50 CFR §622.20. [The Texas Parks and Wildlife Department adopts by reference the provisions of 50 CFR §§622.16 and 622.20, which shall govern the take, possession, transportation, and landing of red snapper, grouper, and tilefish in Texas waters.]

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

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## CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

### SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

#### 31 TAC §§58.10, 58.11, 58.30, 58.40, 58.50, 58.60

The Texas Parks and Wildlife Department proposes amendments to §§58.10, 58.11, 58.30, 58.40, 58.50, and 58.60, concerning the Statewide Oyster Fishery Proclamation.

The proposed amendments are intended, collectively, to maximize oyster production and protect public health by renewing areas under certificates of location and allowing oysters to be translocated from Restricted Areas (areas containing high levels of bacteria) to beds located in Approved Areas to depurate. Oysters feed by filtering large volumes of water. In contaminated waters, this can result in the concentration of harmful toxins and pathogens in the oysters. Relocating oysters to areas free of environmental contamination allows the oysters to purge toxins and pathogens from their systems, a process known as depuration. The proposed amendments will affect 42 certificates of location (leases) totaling 2,300 acres, all located in Galveston Bay. The proposed amendments also standardize terminology, increase fees for acreage under a certificate of location and provide for the adjustment of those fees at three-year intervals, and remove a redundant reporting requirement for harvest information.

Parks and Wildlife Code, §76.006 provides that any citizen of the United States or domestic corporation may file a written application with the department for a certificate authorizing the applicant to plant oysters and make a private oyster bed in the public water of the state ("certificate of location," popularly referred to as a "lease"). The fee for a certificate of location is currently \$6.00 per acre. Currently, the term for a certificate of location is 15 years, set to expire on February 28, 2017. Renewal of certifi-

cates of location provides economic value to the state of Texas and the oyster industry by providing a means for oysters to be harvested and sold for human consumption following depuration. An additional benefit is accrued because translocation of oysters prevents them from being unlawfully harvested in areas where harvest is restricted by the Department of State Health Services to protect human health and safety.

The proposed amendments remove the words "lease," "leases," "private oyster lease," "private oyster leases," "leaseholder," and "leaseholders" wherever they occur in §§58.10, 58.11, 58.30, 58.40, 58.50, and 58.60, and where appropriate, replace those terms with more accurate descriptors implicating the certificate of location. The nonsubstantive change is intended to eliminate confusion and ambiguity. Additionally, the proposed amendments remove outdated reference to a shellfish program at the Department of State Health Services and simply replace it with a reference to that agency, as well as replace references to the entire name of that agency with an acronym.

The proposed amendment to §58.11, concerning Definitions, consists of several components.

The proposed amendment to §58.11 would add new paragraph (3) to define the term "Certificate of Location" as "a department-issued certificate authorizing a person or domestic corporation to plant oysters in a specifically delineated area of the public water of the state for the purpose of establishing a private oyster bed." Because the proposed amendments replace references to "lease," "leaseholders," etc., and replace them with references to "certificate of location," which is the technical term used in Parks and Wildlife Code, Chapter 76, a definition of that term is necessary.

The proposed amendment to §58.11 would alter current paragraph (4) to remove an unnecessary reference to the composition of the Texas Parks and Wildlife Commission.

The proposed amendment to §58.11 would alter current paragraph (6) to remove a redundancy. The phrase "refers to" is unnecessary.

The proposed amendment to §58.11 would add new paragraph (7) to define the term "cultch" as "material deposited in order to provide points of attachment for juvenile oysters (spat)." In addition to being the accepted technical term for oyster growth media, employing the word "cultch" reduces the need for repetition of awkward descriptive language.

The proposed amendment to §58.11 would redesignate current paragraphs (16) and (17) as new paragraphs (10) and (9), respectively, in order to preserve the alphabetical order of the terms in the section.

The proposed amendment to §58.11 would add new paragraph (11) to define "location" as "the acreage of public water for which a certificate of location has been issued." As mentioned previously in this preamble, the proposed amendments, collectively, would eliminate references to the term "lease" and replace them with references to the term "certificate of location." Thus, terms such as "location" are invested with a specialized meaning and must be defined for purposes of compliance, administration, and enforcement.

The proposed amendment to §58.11 would add new paragraph (12) to define "location term" as "the 15-year term of a certificate of location," which is necessary to provide a convenient term for ease of reference.

The proposed amendment to §58.11 would add new paragraph (13) to define the term "locator" as "a person or domestic corporation to whom or which a certificate of location has been issued," which is necessary to provide a convenient term for ease of reference.

The proposed amendment to §58.11 would eliminate the definition of "private oyster lease" in current paragraph (11) because, as discussed elsewhere in this preamble, references to "lease" are being eliminated throughout the subchapter.

The proposed amendment to §58.11 would alter current paragraph (14) (redesignated as new paragraph (20)) to remove an outdated reference to a shellfish program at the Department of State Health Services and simply replace it with a reference to that agency.

The proposed amendment to §58.11 would add new paragraph (22) to define "under location" as "an area subject to a certificate of location," which, for reasons previously discussed in this preamble, is necessary to create a convenient reference.

The proposed amendment to §58.30, concerning Private Oyster Leases, would establish minimum activity standards for areas under a certificate of location. Within the first five years of the location term, a locator would be required to deposit a minimum of 25 cubic yards per acre of department-approved cultch onto the location. For years 6-15 of the location term, a locator would be required to deposit, at locations specified by the department, a volume of department-approved cultch equivalent to at least 33-1/3 percent of the volume of oyster shell harvested by the locator during the immediately preceding calendar year. The proposed amendment is intended to address deleterious environmental conditions and negative impacts of harvest on oyster populations and habitat. The cumulative impacts of recent events have contributed to the declining trends in oyster resources in Texas. Hurricane Ike (2008) resulted in the loss of approximately 50% of the oyster reefs in Galveston Bay. Increased salinities during the 2010 and early 2015 drought resulted in increased oyster mortality due to parasites and disease. Coast-wide flooding in 2015 and 2016 further impacted oyster reefs as losses occurred due to low salinity. Coinciding high harvest pressure exacerbated the condition of Texas' oyster reefs. The cumulative toll of these events and their impacts make it necessary for the department to take action to protect and restore oysters and oyster habitat.

The proposed amendment also would increase the acreage-based fee for certificates of location, from the current \$6 per acre to \$60 per acre, and would provide for automatic proportional adjustment of the fee every three years, based on changes in the Consumer Price Index, updates to the administrative cost-recovery analysis, or both.

The proposed amendment to §58.50, concerning Oyster Harvest Permits, would specify that monthly harvest report forms required by the current rules to be submitted to the department's commercial landings program by the 10th of the month following the month in which harvest occurred. The current rule specifies that the reports be filed with the department by the 15th of the month following the month in which harvest occurred; however, other department rules require all commercial landings of aquatic marine life to be submitted by the 10th of each month, which includes oysters. The removal of the redundant reporting requirement will result in greater administrative efficiency for both the department and the regulated community.

Lance Robinson, Deputy Director of the Coastal Fisheries Division, has determined that for each of the first five years the rules as proposed are in effect there will be fiscal implications to state government as a result of enforcing or administering the rules. The proposed amendment to §58.30 would increase fees for locators and would result in an estimated revenue increase of approximately \$125,377.20 per year to the department, assuming the number of locations remains stable.

The rules as proposed will not affect other units of state and local government.

Mr. Robinson also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be the maintenance of a sustainable and healthy oyster fishery by ensuring that areas under a certificate of location are maximally managed by the department to generate substrate for oyster habitat regeneration for public use and enjoyment.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the rules as proposed will result in adverse economic impacts to small and microbusinesses and persons required to comply. For the purposes of this analysis, the department assumes that all entities to whom certificates of location have been issued qualify as a small or microbusiness. The department also notes that this analysis addresses adverse economic impacts over the 15-year length of a location term, because there are adverse economic impacts that are not manifested in the first five years of the location term.

At the current time the department has issued 42 individual certificates of location, ranging in size from 11 to 100 acres, to a total of 20 locators. Locators may hold multiple certificates of location; thus, the smallest acreage controlled by a single locator is 22.4 acres and the largest acreage controlled by a single locator is 290 acres. The rules as proposed would result in adverse economic impacts for all locators as a result of increased location fees and the costs associated with the required deposition of cultch under the rules.

In determining the appropriate location fees to enable cost-recovery by the department for administering the program, the department used the method provided in the 2000 State Auditor's Report, "A Joint Study Report on the Parks and Wildlife Department's Commercial Fishery Programs and the General Land Office's Leases of State-Owned Lands" (<https://www.sao.texas.gov/Reports/Main/01-011.html>). For the purposes of this proposal, the estimated costs to the department for managing the private oyster bed program were adjusted to 2015 costs and used to calculate a per acre cost-recovery fee

of \$60.00 per acre per year. The impact of the proposed per acre location increase from \$6.00 to \$60.00 would result in an increase of \$594 per year for the smallest (location) and an increase of \$5,400 per year for the largest (location). In terms of impacts to individual locators, the fee increase would result in a cost of between \$1,209.60 (for the locator controlling 22.4 acres) and \$15,660 (for the locator controlling 290 acres).

The proposed amendment to §58.30 would require locators to deposit a minimum of 25 cubic yards per acre onto each of the locator's areas under location by the end of the fifth year of the location term. In each year of the remainder of the location term, locators would be required to deposit a minimum amount of cultch, based on the shell harvest data for each location, upon areas designated by the department.

The department estimates that the adverse economic impact of requiring a minimum of 25 cubic yards per acre will be a cost of between \$8,960 per year (for the locator controlling 22.4 acres) and \$116,000 per year (for the locator controlling 290 acres). These figures were derived based on the current cost to the department for purchasing and deploying cultch materials (\$80 per cubic yard) for departmental restoration efforts. The department notes that the practice of placing cultch onto locations is common amongst current locators and frequently exceeds the 25 cubic yards per acre minimum stipulated in the proposed rule, so for those locators who already place more than 25 cubic yards of cultch for each acre under location, the proposed rule would not impose an adverse economic impact in the first five years of the location term. The proposed amendment to §58.30 also would require locators to deposit cultch in department-specified areas annually in years 6-15 of the location term. The department estimates that the adverse economic impacts resulting from this portion of the rule would be between \$2,867.20 per year (for the locator controlling 22.4 acres) and \$37,120 per year (for the locator controlling 290 acres). The department derived these values by using department harvest data to calculate the average oysters harvested per acre from existing locations over the last nine years (2007-2015), dividing by three (representing a volume equivalent to 33.3 percent of the volume of shell harvested from the location in the previous year, which yields a value of 1.6 cubic yards per acre), and then multiplying that value by \$80 (as noted previously, the current cost to the department for purchasing and deploying cultch materials for departmental restoration efforts is approximately \$80 per acre).

The department estimates that over the maximum period of a location term (15 years) the total adverse economic impacts to small and microbusinesses and persons required to comply would be between \$93,632 (for the locator controlling 22.4 acres) and \$1,212,200 (for the locator controlling 290 acres). Again, the department notes that the practice of placing cultch onto locations is common amongst current locators and frequently exceeds the 25 cubic yards per acre minimum stipulated in the proposed rule for the first 5 years of the location term, and thus the amounts presented above represent the maximum impact to current activities if the locator had not been actively placing in material on their location.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

The department has determined that the proposed rules are in compliance with Government Code §505.11 (Actions and Rule Amendments Subject to the Coastal Management Program).

Comments on the proposal may be submitted to Dr. Tiffany Hopper, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4650; email: tiffany.hopper@tpwd.texas.gov

The amendments are proposed under Parks and Wildlife Code, §§76.017, 76.018, and 76.020 which, respectively, authorize the commission to establish the annual rental fee for the areas established under the certificate of location, to determine oyster location renewal procedures, and to require the recovery of oyster shell or other suitable cultch material to maintain or enhance public oyster reefs.

The proposed amendments affect Parks and Wildlife Code, Chapter 76.

#### §58.10. Application.

(a) (No change.)

(b) This subchapter also applies to activities authorized under a certificate of location [private oyster leases] including the permitting and marking of, as well as transplant of oysters to, and harvest of oysters pursuant to a certificate of location [from private oyster leases].

#### §58.11. Definitions.

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

(1) - (2) (No change.)

(3) Certificate of Location--A department-issued certificate authorizing a person or domestic corporation to plant oysters in a specifically delineated area of the public water of the state for the purpose of establishing a private oyster bed.

(4) ~~[(3)]~~ Conditionally approved area--The classification of a shellfish growing area determined by the Texas Department of State Health Services (TDSHS) to meet approved area criteria for a predictable period. The period is conditional upon established performance standards specified in a management plan. A conditionally approved area is a restricted area when the area does not meet the approved growing area criteria.

(5) ~~[(4)]~~ Commission--The [Refers to the nine member] Texas Parks and Wildlife Department Commission.

(6) ~~[(5)]~~ Culling--The process of separating undersized oysters from oysters that are lawful to possess.

(7) Cultch--Material deposited in order to provide points of attachment for juvenile oysters (spat).

(8) ~~[(6)]~~ Department--The [Refers to the] Texas Parks and Wildlife Department.

(9) Director--The executive director of the department.

(10) Harvester/Shell Recovery Tag--An identifying marker that must be affixed to the outside of each sack of oysters at the time of harvest, in the location of harvest, containing information required by the TDSHS under the NSSP, and remain affixed during transportation of the oysters to a dealer.

(11) Location--The acreage of public water for which a certificate of location has been issued.

~~(12)~~ Location term--The 15-year term of a certificate of location.

~~(13)~~ Locator--A person or domestic corporation to whom or which a certificate of location has been issued.

~~(14)~~ ~~[(7)]~~ Natural oyster bed (reef)--As defined in Parks and Wildlife Code, §76.051, a natural oyster bed is an area where at least five barrels of oysters are found within 2,500 square feet of any position on a reef or bed.

~~(15)~~ ~~[(8)]~~ Open season--A period during which it is lawful to take oysters.

~~(16)~~ ~~[(9)]~~ Oyster--That species of molluscan shellfish identified as the Eastern oyster, *Crassostrea virginica* and its subspecies. No other species of molluscan shellfish are included within this proclamation.

~~(17)~~ ~~[(10)]~~ Possess--The act of having in possession or control, keeping, detaining, restraining, or holding as owner, or as an agent, bailee, or custodian of another.

~~[(11)]~~ Private oyster lease--Those state water bottoms leased from the state for the purpose of producing oysters to individuals or corporations incorporated under the laws of this state.

~~(18)~~ ~~[(12)]~~ Prohibited area--The classification of a shellfish growing area determined by the TDSHS to be unacceptable for the transplanting, gathering for depuration, or harvesting of shellfish. The only shellfish removal permitted from a prohibited area is for the purpose of depletion, as defined in the Control of Harvesting Section of Part 1 of the NSSP.

~~(19)~~ ~~[(13)]~~ Public oyster bed (reef)--As defined in Parks and Wildlife Code, §76.002, all natural oyster beds (reefs) are public. All oyster beds not designated as private are public.

~~(20)~~ ~~[(14)]~~ Restricted area--The classification of a shellfish growing area determined by the TDSHS to be unacceptable for harvesting of shellfish for direct marketing, but which is acceptable for transplanting or gathering for depuration. A restricted area may be closed for transplanting or gathering for depuration when the TDSHS [Seafood and Aquatic Life Group] determines that the area does not meet the restricted area criteria established in the NSSP.

~~(21)~~ ~~[(15)]~~ Sack of oysters--A volume of oysters, including dead oyster shell that weighs no more than 110 pounds including the sack.

~~[(16)]~~ Harvester/Shell Recovery Tag--An identifying marker that must be affixed to the outside of each sack of oysters at the time of harvest, in the location of harvest, contain information required by the TDSHS under the NSSP, and remain affixed during transportation of the oysters to a dealer.

~~[(17)]~~ Director--The executive director of the department.

~~(22)~~ Under location--An area subject to a certificate of location.

#### §58.30. Certificate of Location [Private Oyster Leases].

(a) General Rules.

(1) No certificate of location [lease] will be issued for:

(A) a natural oyster bed as prescribed in Parks and Wildlife Code, §76.001;

(B) an area that has been fished as a public reef within eight years of an application of a certificate of location [the lease application] as prescribed in Parks and Wildlife Code, §76.003;

(C) a bay shore area within 100 yards of the shore as prescribed in Parks and Wildlife Code, §76.004;

(D) an area subject to an exclusive riparian right as provided under Parks and Wildlife Code, §76.004 and §76.005;

(E) an area already under location [~~certification as a private lease~~]; or

(F) an area within 1,000 feet of a location [~~an established lease~~] not owned or controlled by the applicant.

(2) The term of a certificate of location [~~the lease~~] is 15 years as prescribed in Parks and Wildlife Code, §76.018.

(3) In accordance with the Oyster Fishery Management Plan the Department may accept [~~oyster lease~~] applications certificates of location.

(b) Active Use Criteria.

(1) The department shall conduct an annual review of each area under location in order to determine active use during the previous year.

(2) A locator must meet the following criteria for the area under location to be considered in active use:

(A) within the first five years of the location term, a locator must deposit a minimum of 25 cubic yards per acre of department-approved cultch onto the area under location; and

(B) beginning with the sixth year of the location term and continuing annually until the 15th year of the location term, a locator must deposit department-approved cultch equivalent to at least 33-1/3 percent (by volume) of oyster shell taken by the locator holder from each location during the immediately preceding calendar year. The site(s) of a deposit or deposits required under this paragraph shall be specified by the department.

(c) [~~(b)~~] Application For Certificate of Location [Oyster Lease].

(1) If applications for certificates of location [~~private oyster leases~~] are being accepted by the department, they shall be accompanied by a nonrefundable application fee of \$200.

(2) The applicant shall mark the proposed location [~~lease~~] site or sites with temporary poles and/or buoys in such a manner that the outline of the site or sites can be clearly determined.

(3) Each application shall contain:

(A) applicant's name and address;

(B) affirmation that applicant is a United States citizen as prescribed in Parks and Wildlife Code, §76.006;

(C) a description of the acreage to be authorized by the certificate of location [~~lease~~], including a plat showing approximate size and location in relation to state land tracts; and

(D) signed letters each from the U.S. Army Corps of Engineers, General Land Office, and TSDHS [~~the Seafood and Aquatic Life Group of the Texas Department of State Health Services~~] indicating approval for the proposed location [~~lease~~] site.

(4) An authorized employee(s) of the department shall inspect the proposed location [~~lease~~] site or sites to determine its location with respect to:

(A) natural oyster reefs;

(B) shoreline;

(C) areas restricted or prohibited by the TSDHS [~~Texas Department of State Health Services~~];

(D) spoil disposal areas;

(E) other areas subject to a certificate of location [~~private leases~~];

(F) riparian rights;

(G) presence of exposed shell; and

(H) presence of live oysters.

(d) [~~(e)~~] Public Hearing on Application.

(1) After having determined the proposed location [~~lease~~] site meets location and exposed shell requirements, the department shall:

(A) hold a public hearing to determine if the site has been publicly fished within eight years of the [~~lease~~] application for a certificate of location;

(B) publish a notification of the date, time, and purpose of the public hearing at least once in a newspaper of general circulation in the county closest to the proposed location [~~in which the proposed lease site is located~~];

(C) publish the notification between ten and 20 days prior to the public hearing;

(D) make available to the public information about the proposed application for a certificate of location [~~lease site~~] ten days prior to the date of the hearing; and

(E) present the investigation report at the public hearing.

(2) Persons objecting to the proposed certificate of location [~~lease~~] must submit a sworn affidavit or testify under oath at the public hearing stating reasons for the objection.

(3) The department shall review findings of the public hearing and submit recommendations to the Coastal Fisheries Division Director for approval.

(4) The applicant will be notified within ten days after the hearing of either approval or denial of the [~~lease~~] application for a certificate of location.

(5) The application approved by the department will be forwarded to the Coastal Coordination Council for final approval.

(e) [~~(d)~~] Approved [Lease] Procedures for Applicant.

(1) Applicant shall be responsible for having a final survey of the approved location [~~lease~~] conducted by a registered surveyor who will furnish the department with survey notes and a plat [~~of the lease~~] showing:

(A) the location [~~of the lease~~] in relation to state land tract boundaries; and

(B) latitude and longitude coordinates for all location corner [~~lease~~] markers.

(2) The applicant shall mark the boundaries of the location [~~lease~~] with buoys or other permanent markers at the time of the final survey and maintain buoys or other permanent markers until [~~lease~~] termination of the certificate of location. Supplemental markers may be required along the [~~lease~~] boundaries if one corner marker is not clearly visible from another corner marker.

(A) All marker buoys or other permanent markers must be:

- (i) at least six inches in diameter;
- (ii) at least three feet out of the water at mean high tide;

(iii) of a shape and color that is visible for at least 1/2 mile under normal weather conditions;

(iv) marked with the certificate of location [lease] number (Buoys or other permanent markers common to two or more locations [leases] must be marked with all [lease] numbers of the certificate of location);

(v) marked with at least two-inch high letters in plain Arabic block letters in a location where it will not be obscured by water or marine growth; and

(vi) marked with all required U.S. Coast Guard markings.

(B) Buoys must be anchored by:

(i) A screw anchor with a minimum one-inch galvanized sucker rod and 12-inch head inserted ten feet into the bottom; or

(ii) two anchors per buoy and each anchor having a minimum weight of 300 pounds.

(C) If replacement of buoys or other permanent markers is necessary, original latitude and longitude coordinates of the final survey must be used to relocate markers.

(3) An authorized employee(s) of the department shall inspect and verify latitude and longitude coordinates.

(4) The department shall return approved application for appropriate registration by applicant with the county clerk in the county of location.

(5) Rental Fee.

(A) The holder of a certificate of location shall pay to the department (\$60) [~~\$6.00~~] per acre of location per year. The fee established by this subparagraph shall be recalculated at three-year intervals beginning on the effective date of this section and proportionally adjusted to any change in the Consumer Price Index, the department's cost-recovery needs, or both.

(B) Rental fees are due annually by March 1 as prescribed in Parks and Wildlife Code, §76.017.

(C) The holder of a certificate shall pay the department a late penalty fee equal to 10 percent of the amount due for any rental, transfer, sale, or renewal fee that is not paid when due as prescribed in Parks and Wildlife Code, §76.017.

(D) Failure to pay any rental, transfer, sale, renewal, or late penalty fee within 90 days of the due date terminates the (certification of location) [lease] as prescribed in Parks and Wildlife Code, §76.017.

(6) [Lease] Renewal of Certificate of Location.

(A) As prescribed in Parks and Wildlife Code, §76.018, at the end of a location [lease] term the department shall determine the need for continuation of the certificate of location [lease] based on:

(i) the need for depuration of oysters from non-approved areas; and

(ii) other considerations as specified in §58.12 of this title (relating to Oyster Fishery Management Plan).

(B) If the certificate of location [lease] is to be renewed under the conditions of the department as prescribed in Parks and Wildlife Code, §76.018, the holder of the certificate of location [~~lease-holder of record~~] shall be offered the first right of refusal for renewal as prescribed in Parks and Wildlife Code, §76.018.

(C) If there is any alteration to the boundaries of a location, the [~~The~~] holder of a certificate of location shall be responsible for having the location [lease] resurveyed by a registered surveyor who will provide the department with survey notes and a plat of the location [lease] showing:

(i) the location [~~of the lease~~] in relation to state land tract boundaries; and

(ii) latitude and longitude coordinates for all [lease] corner markers.

(D) The survey will be conducted and provided to the department within one year of [~~the lease~~] renewal of the certificate of location;

(7) [Lease] Auction Procedures.

(A) The department may auction a location [lease] that is not renewed as prescribed by Parks and Wildlife Code, §76.018.

(B) The department may determine a minimum acceptable bid based on:

(i) bid offers from previous auctions;

(ii) established open market prices; and

(iii) other relevant factors.

(C) The department may refuse all bids below the minimum acceptable bid.

(D) The department must follow prescribed bid guidelines for state agencies.

(8) [Lease] Transfers or Sale as prescribed in Parks and Wildlife Code, §76.019.

(A) A transfer or sale of a location [lease] does not change location [~~the~~] terms [~~of a lease~~].

(B) A payment of \$200 will be due upon transfer or sale of a location [lease].

(C) A transfer fee will not be required when a location [lease] is inherited.

(D) A completed transfer form prescribed by the department will be required at time of transfer.

§58.40. *Oyster Transplant Permits.*

(a) Oysters for transplanting pursuant to certificate of location [~~to a private oyster lease~~] may be taken only under a permit issued by the department.

(b) Oyster Transplant Application.

(1) The application for a transplant permit must include the following information:

(A) oyster certificate of location [lease] number;

(B) name and address of the holder of the certificate of location [lease holder] and/or that of his designated agent;

(C) name, if documented, and/or registration number of all boats to be used in transplanting operations;

(D) as prescribed in Parks and Wildlife Code, §76.031, the quantity of unculled oysters requested, and a description of areas from which the oysters are requested to be taken; and

(E) beginning and ending dates of transplant operations.

(2) Written applications for transplant permits must be received by the department two business days prior to the beginning of transplanting operations.

(3) Written applications for transplant permit amendments must be received by the department at least two business days prior to the desired effective date of the amendment.

(4) No more than four transplant permits for a certificate of location [lease] will be issued during a one month period.

(5) No transplant permit will be issued for an oyster certificate of location [lease] while a harvest permit for the same certificate of location [lease] is in effect.

(6) A valid transplant permit must be on the vessel during any transplanting activities.

(7) A transplant permit will not be issued to any certificate of location holder [leaseholder] who has not paid any rental, transfer, sale, renewal or late penalty fees that are owed to the department.

(8) The number of boats that may be allocated to a certificate of location [lease] for transplanting oysters shall be based on:

(A) the total number of boats that the department determines may be used to transplant oysters during that specific season, and

(B) the total number of active certificates of location [leases] during that season.

(9) Boat allocations may be transferred between certificates of location [leases] so long as those transfers occur before Private Oyster Transplant Permits are issued for those specific certificates of location [leases] and must be identified and included on the transplant permit request.

(c) Oyster Transplant Season and Times.

(1) The department shall establish the oyster transplant season giving consideration to information furnished to the department by certificate of location holders [leaseholders].

(2) All transplanting operations shall begin after sunrise and shall be completed before sunset each day.

(3) No transplanting will be permitted on Saturdays, Sundays, major holidays, or on the same days that harvest operations are permitted.

(d) Transplant Restrictions.

(1) Transplanting of oysters is subject to the conditions and provisions described in the permit issued by the department.

(2) Oysters taken for the purposes of transplanting pursuant to a certificate of location [to a private oyster lease] may be taken only from areas designated by the department as prescribed in Parks and Wildlife Code, §76.033.

(3) Oysters may not normally be taken for the purpose of transplanting from the following areas:

(A) public oyster reefs in areas approved for oyster harvest and which have been subjected to any degree of oyster fishing in recent years;

(B) near-shore reefs around public or private fishing piers where a conflict of interest has arisen or might arise;

(C) reefs or areas in which the incidence of diseases, parasites, and/or predators have been judged potentially dangerous to the public reef fishery if the oysters are transplanted to other areas; or

(D) areas declared to be unsuitable for transplanting by TDSHS [the Texas Department of State Health Services] because of the presence of persistent chemicals or diseases that might be dangerous to public health.

(4) All oysters obtained under a transplant permit must be deposited upon the acreage under location [lease] identified in the permit.

(5) The cargo of oysters transplanted will consist of unculled oysters and shell, unless specified otherwise.

(6) The permit may require oysters to be culled on the reef from which they are taken if the department determines that the reef area may be protected or improved by such action.

(7) The permit holder may cull the cargo of oysters harvested pursuant to a certificate of location [on his oyster lease].

(8) Oysters may be transplanted only to acreage under location [a private oyster lease] which is properly marked at all corners.

(9) No oysters may be transplanted to acreage under location that is [a lease] adjacent to or adjoining acreage under location [a lease] approved for harvest.

(e) Reporting Requirement. Weekly transplant reports must be prepared by the permittee and submitted to the department each Monday following the week of transplant.

§58.50. Oyster Harvest Permits.

(a) Oysters may be harvested pursuant to a certificate of location [from a private lease] only under a permit issued by the department.

(b) Oyster Harvest Application.

(1) Written application for a harvest permit must be received two business days prior to the requested harvest dates and include the following:

(A) the oyster certificate of location [lease] number;

(B) the name of the holder of the certificate of location [lease holder] and/or that of his designated agent;

(C) the name and/or registration number of all boats to be used in harvesting operations; and

(D) beginning and ending dates for the permit.

(2) No more than four harvest permits for a certificate of location [lease] will be issued during a one month period.

(3) A harvest permit will not be valid until 15 days after expiration of a transplant permit for the same certificate of location [lease] or certificates of location [leases] adjacent thereto and with approval of the TDSHS [Texas Department of State Health Services].

(4) A valid harvest permit must be on the vessel during any harvesting activities.

(c) Harvest of oysters pursuant to a certificate of location [from a private lease] is subject to conditions as provided in the department issued permit.

(d) Reporting Requirement. Monthly harvest report forms must be prepared by the permittee at the end of each month and supplied to the department's commercial landings program [department]

by the (10th) [~~15th~~] of the month following the month in which harvest occurred.

(e) A harvest permit will not be issued to any certificate of location holder [~~leaseholder~~] who has not paid any rental, transfer, sale, renewal or late penalty fees that are owed to the department.

§58.60. *Transplant or Harvest Permit Cancellation.*

(a) Violations of the transplanting or harvesting procedures include, but are not limited to, the following:

(1) harvesting oysters from areas under a certificate of location [~~or leases~~] other than covered under permit;

(2) harvesting oysters from restricted or prohibited areas as designated by TDSHS [~~Texas Department of State Health Services~~];

(3) transplanting oysters from unauthorized areas or to areas not authorized under a certificate of location [~~unauthorized leases~~];

(4) transplanting oysters without a valid transplanting permit;

(5) harvesting oysters without a valid harvesting permit;

(6) transplanting on or harvesting oysters pursuant to a certificate of location from a location [~~from a lease~~] which is not properly marked;

(7) failure to adhere to any conditions of the permit;

(8) failure to amend a transplant or harvest permit to include additions or deletions of boats; or

(9) failure to submit weekly transplant reports or monthly harvest reports.

(10) failure to have a valid permit on the vessel during authorized activities.

(b) Violations of paragraphs (1) and (2) of subsection (a) of this section shall result in a one year cancellation and withholding of all permits for the affected certificates of location [~~leases~~].

(c) Violations of paragraphs (3), (4), and (5) of subsection (a) of this section, shall result in a 45-calendar-day cancellation and withholding of all permits for the affected certificate of location [~~leases~~] beginning on the next approved harvest or transplant day.

(d) Violations of paragraphs (6), (7), (8), (9), and (10) of subsection (a) of this section, or the other provisions in the permits, shall result in a five-calendar-day cancellation and withholding of all permits for the affected certificate of location [~~leases~~] beginning on the next approved harvest or transplant day.

(e) In the event a transplant or harvest permit is canceled, the holder of the certificate of location [~~lease holder~~] may appeal to the executive director within five days, stating, in writing, why the permit should be reinstated.

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

Filed with the Office of the Secretary of State on September 19, 2016.

TRD-201604844

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: October 30, 2016

For further information, please call: (512) 389-4775



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER V. FRANCHISE TAX

###### 34 TAC §3.598

The Comptroller of Public Accounts proposes amendments to §3.598, concerning margin: tax credit for certified rehabilitation of certified historic structures. The amendments implement House Bill 3230, 84th Legislature, 2015, and memorialize recent policy determinations made by the comptroller. Additionally, amendments are made to include the titles of statutes referenced in this section.

Subsection (a) is amended to provide that the effective date is January 1, 2015, unless it is otherwise noted.

Subsection (b)(1), which defines the term "Audited cost report," is amended to incorporate the definition of "certified public accountant" in the Occupations Code as someone who holds a certificate issued under Occupations Code, Chapter 901 (Accountants) or who is an out-of-state practitioner with substantially equivalent qualifications, rather than simply referencing the definition.

Subsection (b)(2), which defines a "certificate of eligibility," is amended to identify the information contained in the certificate.

Subsection (b)(4) is amended to capitalize the title "Secretary of the Interior."

Subsection (b)(6) is amended to implement House Bill 3230, which expanded the definition of "eligible costs and expenses" in Tax Code, §171.901(4) (Definitions) to include costs and expenses incurred by a nonprofit entity exempt from federal income tax, effective January 1, 2016. Subsection (b)(6) is also amended to remove the reference to the Texas Historical Commission's definition of "eligible costs and expenses" provided in 13 TAC §13.1. The comptroller has determined that the reference is unnecessary. The Commission's definition, which includes a reference to 26 C.F.R. §1.48 - 12(c) (Definition of Qualified Rehabilitation Expenditures), does not provide any additional information, as the definition of "Internal Revenue Code" in Tax Code, §171.0001(9) (General Definitions) already includes related regulations adopted by the Internal Revenue Service.

Subsection (b)(7) is amended to correct a typographical error.

Subsection (b)(8) is amended to delete the cross-reference to Tax Code, §101.003 (Definitions).

Subsection (h)(2) is amended to provide that a credit for eligible costs and expenses that a pass-through entity allocates to its partners, members, or shareholders may be further allocated, sold, or assigned. This is based on the comptroller's interpretation of Tax Code, §171.908 (Sale or Assignment of Credit).

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

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

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This amendment is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §171.901 (Definitions).

§3.598. *Margin: Tax Credit for Certified Rehabilitation of Certified Historic Structures.*

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 2015, except as otherwise noted.

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

(1) Audited cost report--A report [~~issued by a certified public accountant, as defined by Occupations Code, §901.002,~~] that itemizes the eligible costs and expenses incurred by the entity in the certified rehabilitation of the certified historic structure and that is issued by a certified public accountant who holds a certificate issued under Occupations Code, Chapter 901 (Accountants) or is an out-of-state practitioner with substantially equivalent qualifications as provided by Occupations Code, §901.462 (Practice by Out-of-State Practitioner with Substantially Equivalent Qualifications).

(2) Certificate of eligibility--The certification issued by the commission in accordance with Tax Code, §171.904 (Certification of Eligibility), confirming that the property to which the eligible costs and expenses relate is a certified historic structure and that the rehabilitation qualifies as a certified rehabilitation; and specifying the date the historic structure was first placed in service after the rehabilitation.

(3) Certified historic structure--A property in this state that is:

(A) listed individually in the National Register of Historic Places;

(B) designated as a Recorded Texas Historic Landmark under Government Code, §442.006 (State Historical Marker Program), or as a state archeological landmark under Natural Resources Code, Chapter 191 (Antiquities Code); or

(C) certified by the commission as contributing to the historic significance of:

(i) a historic district listed in the National Register of Historic Places; or

(ii) a local district certified by the United States Department of the Interior in accordance with 36 Code of Federal Regulations, §67.9 (Certification of State or Local Historic District).

(4) Certified rehabilitation--The rehabilitation of a certified historic structure that the commission has certified as meeting the United States Secretary of the Interior's [~~secretary of the interior's~~] Standards for Rehabilitation as defined in 36 Code of Federal Regulations, §67.7 (Standards of Rehabilitation).

(5) Commission--The Texas Historical Commission.

(6) Eligible costs and expenses--Qualified rehabilitation expenditures, as defined by Internal Revenue Code, §47(c)(2) (Rehabilitation Credit), incurred by the entity establishing the credit. Effective for reports due on or after January 1, 2016, the provisions of Internal Revenue Code, §47(c)(2)(B)(i) (Straight-line depreciation must be used) and (v) (Tax-exempt use property) do not apply to costs and expenses incurred by an entity exempted under Tax Code, §171.063 (Exemptions-Nonprofit Corporation Exempt from Federal Income Tax) if the other provisions of Internal Revenue Code, §47(c)(2) are satisfied. [See also 13 TAC §13.1.]

(7) Placed-in-service date--The date specified on the certificate of eligibility issued by the commission. See also 13 TAC §13.1.

(8) Year--A calendar year[; as assigned by Tax Code, §101.003].

(c) Qualifications for credit. An entity may qualify for a credit for eligible costs and expenses incurred by the entity in the rehabilitation of a certified historic structure provided in this section if:

(1) the rehabilitated certified historic structure is placed in service on or after September 1, 2013;

(2) the entity has an ownership interest in the certified historic structure in the year during which the structure is placed in service after the rehabilitation;

(3) the total amount of eligible costs and expenses incurred by the entity exceeds \$5,000; and

(4) the entity received a Certificate of Eligibility from the commission.

(d) Establishing the credit.

(1) Required documentation. The entity that incurred the eligible costs and expenses in the certified rehabilitation of a certified historic structure must submit the following documentation to the comptroller to establish the credit:

(A) a Texas Franchise Tax Historic Structure Credit Registration, or any successor to the form promulgated by the comptroller, which includes an attestation of the total eligible costs and expenses incurred by the entity on the rehabilitation of the certified historic structure;

(B) a Certificate of Eligibility issued by the commission. The certificate must confirm:

(i) the property to which the eligible costs and expenses relate is a certified historic structure;

(ii) the rehabilitation qualifies as a certified rehabilitation; and

(iii) the date the certified historic structure was first placed in service after the rehabilitation; and

(C) an audited cost report.

(2) Submission of documentation. The documentation required in paragraph (1) of this subsection may be submitted to the comptroller:

(A) on or with the franchise tax report for the period for which the tax credit is claimed; or

(B) upon receipt of the Certificate of Eligibility issued by the commission.

(3) The burden of establishing eligibility for the credit is on the entity incurring the eligible costs and expenses.

(4) The comptroller will rely on the audited cost report. It is the responsibility of the certified public accountant hired by the entity claiming the credit to make a determination on whether items qualify as eligible costs and expenses.

(5) The credit must be established within the statute of limitations based on the due date of the first report on which the credit may be claimed under subsection (f)(1) of this section.

(6) Texas Franchise Tax Historic Structure Credit Certificate. Upon receipt of the required documentation, the comptroller will issue to the entity that incurred the eligible costs and expenses a Texas Franchise Tax Historic Structure Credit Certificate indicating the entity as the owner of the credit and the amount of credit available to that entity.

(e) Amount of credit.

(1) The total amount of the credit that may be claimed with respect to the certified rehabilitation of a single certified historic structure may not exceed 25% of the total eligible costs and expenses incurred in the certified rehabilitation of the certified historic structure. For purposes of approving the credit, the comptroller will rely on the audited cost report provided by the entity that requested the credit.

(2) The total credit claimed for a report, including the amount of any carryforward under subsection (g) of this section, may not exceed the amount of franchise tax due for the report after any other applicable tax credits.

(3) Eligible costs and expenses may only be counted once in determining the amount of the credit available, and more than one entity may not claim a credit for the same eligible costs and expenses.

(f) Claiming the credit.

(1) The first report on which the credit may be claimed is the report based on the accounting period during which the rehabilitated structure is placed in service. Rehabilitated historic structures placed in service between September 1, 2013, and December 31, 2013, are considered to be placed in service January 1, 2014, for purposes of this paragraph only. For example, a 2015 report with an accounting year of January 1 through December 31, 2014, may claim a credit for historic structures placed in service within the 2014 accounting year.

(2) An entity shall file with every report on which the credit is claimed the Texas Franchise Tax Historic Structure Credit Certificate issued to the entity by the comptroller, or any successor to the form promulgated by the comptroller.

(3) The reporting entity for a combined group may claim the credit for each member entity that has established a credit under this section.

(4) The burden of establishing the value of the credit is on the entity claiming the credit.

(g) Carryforward.

(1) If an entity is eligible for a credit that exceeds the limitations under subsection (e)(2) of this section, the entity may carry the unused credit forward and apply the credit to the tax imposed by this chapter in any of the succeeding five report years following the first report year after the certified historic structure is placed in service.

(2) A carryforward is considered the remaining portion of a credit that cannot be claimed in the current year because of the limitation under subsection (e)(2) of this section.

(3) The sale, assignment, or allocation of a credit in accordance with subsection (h) of this section does not extend the period for which a credit may be carried forward and does not increase the total amount of the credit that may be claimed.

(4) For example, for a structure placed in service in 2014, a credit may be claimed on the 2015 report and the credit carryforward may be applied to the following five consecutive reports: the 2016, 2017, 2018, 2019, and 2020 reports. The credit expires after the 2020 report.

(h) Sale, assignment, or allocation of credit.

(1) Sale or assignment. An entity that incurs eligible costs and expenses may sell or assign all or part of the credit that may be claimed for those costs and expenses to one or more entities, and any entity to which all or part of the credit is sold or assigned may sell or assign all or part of the credit to another entity. There is no limit on the total number of transactions for the sale or assignment of all or part of the total credit authorized under this section, however, collectively, all transfers are subject to the maximum total limits provided by subsection (e) of this section.

(2) Allocation. A credit earned or purchased by, or assigned to, a partnership, limited liability company, S corporation, or other pass-through entity may be allocated to the partners, members, or shareholders of that entity [and claimed under this subchapter] in accordance with the provisions of any agreement among the partners, members, or shareholders and without regard to the ownership interest of the partners, members, or shareholders in the rehabilitated certified historic structure. A partner, member, or shareholder to whom a credit is allocated may further allocate all or part of the allocated credit as provided in this paragraph or may sell or assign the allocated credit as provided in paragraph (1) of this subsection. There is no limit on the total number of allocations of all or part of the total credit authorized under this section, however, collectively, all transfers are subject to the maximum credit limits provided by subsection (e) of this section. [; provided that the entity that claims the credit must be subject to the tax imposed under this chapter.]

(3) Documentation.

(A) An entity that sells, assigns, or allocates a credit under this section to another entity shall provide a copy of the certificate of eligibility, together with the audited cost report, to the recipient of the credit.

(B) An entity that sells, assigns, or allocates a credit under this section and the entity to which the credit is sold, assigned, or allocated shall jointly submit:

(i) written notice of the sale, assignment, or allocation to the comptroller on a Texas Franchise Tax Sale, Assignment or Allocation of Historic Structure Credit form, or any successor to the form promulgated by the comptroller, not later than the 30th day after the date of the sale, assignment, or allocation. The notice must include the date of the sale, assignment, or allocation; the amount of the credit sold, assigned, or allocated; the names and federal identification numbers of the entity that sold, assigned, or allocated the credit or part of

the credit and of the entity to which the credit or part of the credit was sold, assigned, or allocated; and the amount of the credit owned by the selling, assigning, or allocating entity before the sale, assignment, or allocation, and the amount the selling, assigning, or allocating entity retained, if any, after the sale, assignment, or allocation; and

(ii) Texas Franchise Tax Historical Structure Credit Certificate.

(C) Until the required documentation under subparagraph (B) of this paragraph is received by the comptroller's office, the recipient entity will not be allowed to claim the credit.

(4) Carryforwards. The sale, assignment, or allocation of a credit in accordance with this section does not extend the period for which a credit may be carried forward and does not increase the total amount of the credit that may be claimed.

(5) Limitation. After an entity claims a credit for eligible costs and expenses, another entity may not use the same costs and expenses as the basis for claiming a credit.

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

Filed with the Office of the Secretary of State on September 13, 2016.

TRD-201604786

Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: October 30, 2016

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



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 16. TEXAS CIVIL COMMITMENT OFFICE

#### CHAPTER 810. CIVIL COMMITMENT SUBCHAPTER A. CIVIL COMMITMENT GENERAL PROVISIONS

##### 37 TAC §810.121

The Texas Civil Commitment Office (TCCO) proposes an amendment to §810.121, concerning Introduction. This amendment is proposed under the authority of the Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed amendment would remove a reference to an outpatient program to make conforming changes in accordance with Senate Bill 746, 84th Texas Legislature. The proposed amendment also removes redundant language that is already contained in Chapter 841.

##### Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to amend this rule to reflect changes made to Chapter 841 of the Texas Health and Safety Code by Senate Bill 746, 84th Texas Legis-

lature. Senate Bill 746 provides that TCCO shall develop and implement a tiered program for the treatment and supervision of civilly committed sexually violent predators (SVPs). Senate Bill 746 removes references to outpatient treatment throughout Chapter 841 to instead refer to a tiered program. The removal of redundant language contained in Chapter 841 makes the rules clearer.

##### Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule will be in effect there will be no fiscal impact to the State government.

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

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of implementing the proposed amendments. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

##### Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the amendment will be in effect, the public benefits expected as a result of this amendment will be to ensure the adopted rule is in compliance with Chapter 841 of the Texas Health and Safety Code.

##### Regulatory Analysis:

TCCO 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 Analysis

TCCO 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 Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to publiccomment@tcco.texas.gov within thirty (30) days after publication of this proposal in the *Texas Register*.

##### Statutory Authority

The amendment is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

##### §810.121. Introduction.

(a) General. This [The provisions of this] chapter governs the policies and [govern the] procedures relating to the civil commitment of sexually violent predators in the State of Texas [and the development of

a case management system, which provides appropriate and necessary treatment and supervision].

(b) Construction. This chapter covers the Texas Civil Commitment Office's (TCCO) requirements to develop and administer policies on the standards of care and case management, and the conditions of supervision and treatment for sexually violent predators. This chapter also describes the tiered program for the supervision and treatment of a committed person. [definitions; criteria for case managers; treatment providers; and biennial examination experts; guidelines for the supervised housing of sexually violent predators; outpatient treatment plans and standards of care; civil commitment requirements; supervision and tracking services; the exchange and release of information relating to sexually violent predators; commitment review procedures; petitions for release; and immunity from liability for good faith conduct.]

[(c) History. The legislature finds that a small but extremely dangerous group of sexually violent predators exist and that those predators have a behavioral abnormality that is not amenable to traditional mental illness treatment modalities and that makes the predators likely to engage in repeated predatory acts of sexual violence. The legislature finds that the existing involuntary commitment provisions of Health and Safety Code § 571.001 et seq., Subtitle C, Title 7, are inadequate to address the risk of repeated predatory behavior that sexually violent predators pose to society. The legislature further finds that treatment modalities for sexually violent predators are different from the traditional treatment modalities for persons appropriate for involuntary commitment under Subtitle C, Title 7. The legislature finds that a civil commitment procedure for the long-term supervision and treatment of sexually violent predators is necessary and in the interest of the state. ]

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

Filed with the Office of the Secretary of State on September 19, 2016.

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Jessica Marsh

General Counsel

Texas Civil Commitment Office

Earliest possible date of adoption: October 30, 2016

For further information, please call: (512) 834-4590



### 37 TAC §810.122

The Texas Civil Commitment Office (TCCO) proposes an amendment to §810.122, concerning Definitions. This amendment is proposed under the authority of the Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed amendment would remove redundant language already contained in Health and Safety Code Chapter 841. The amendment would also define the position of clinical examiner, clarify the qualifications for members of the multidisciplinary team, and to update language to reflect the agency's new name.

#### Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to amend this rule to clarify qualifications for membership on the multidis-

ciplinary team. The amendment also removes defined terms already contained in Health and Safety Code Chapter 841.

#### Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule will be in effect there will be no fiscal impact to the State government.

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

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of implementing the proposed amendments. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

#### Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the amendment will be in effect, the public benefits expected as a result of this amendment will be to ensure the adopted rule is in compliance with Chapter 841 of the Texas Health and Safety Code.

#### Regulatory Analysis:

TCCO 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 Analysis

TCCO 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 Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to [publiccomment@tcco.texas.gov](mailto:publiccomment@tcco.texas.gov) within thirty (30) days after publication of this proposal in the *Texas Register*.

#### Statutory Authority

The amendment is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

#### §810.122. Definitions.

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

(1) Act--Health and Safety Code Chapter 841, Civil Commitment of Sexually Violent Predators.

[(2) Behavioral Abnormality--A congenital or acquired condition that, by affecting a person's emotional or volitional capacity, predisposes the person to commit a sexually violent offense to the

extent that the person becomes a menace to the health and safety of another person.]

~~[(3) Biennial examination expert--A person or persons employed by or under contract with the office to conduct a biennial examination to assess any change in the behavioral abnormality for a person committed under the Act, §841.081.]~~

~~[(4) Case Manager--A person employed by or under contract with the office to perform duties related to outpatient treatment and supervision of a person committed under this chapter.]~~

~~(2) [(5) Case Management Team--All professionals involved in the assessment, treatment, supervision, monitoring, residential housing of the client, or other approved professionals. The case manager assigned by the office shall act as the chairperson of the team.~~

~~(3) Clinical Examiner--A person or persons employed by or under contract with the office to conduct a biennial examination to assess any change in the behavioral abnormality for a person committed under the Act, §841.081.~~

~~(4) [(6) Multidisciplinary Team (MDT)--Members of the Texas Civil Commitment Office [Office of Violent Sex Offender Management] (two), a licensed sex offender treatment provider from the Council on Sex Offender Treatment (one), Texas Department of Criminal Justice Rehabilitation Programs Division - sex offender rehabilitation program (one), Texas Department of Criminal Justice - Victim Service Division (one), a licensed peace officer employed by the Texas Department of Public Safety with at least five years' experience working for that department or the officer's designee (one), and a mental health professional from the Texas Department of State Health Services [Community Mental Health Division] (one). The team assesses whether a person is a repeat sexually violent offender and whether the person is likely to commit a sexually violent offense after release [or discharge]; gives notice of its findings to the Texas Department of Criminal Justice [or to the Department of State Health Services - Community Mental Health Division]; and recommends [to either agency] that the person be assessed for a behavioral abnormality.~~

~~(5) [(7) Office--The Texas Civil Commitment Office (TCCO) [of Violent Sex Offender Management] including the Governing Board (Government Code Chapter 420A).~~

~~[(8) Predatory Act--An act directed toward individuals, including family members, for the primary purpose of victimization.]~~

~~[(9) Sexually Violent Offense]~~

~~[(A) an offense under the Penal Code §§ 21.02, 21.11(a)(1), 22.011, or 22.021]~~

~~[(B) an offense under the Penal Code § 20.04(a)(4), if the defendant committed the offense with the intent to violate or abuse the victim sexually.]~~

~~[(C) an offense under the Penal Code § 30.02 if the offense is punishable under subsection (d) of that section and the defendant committed the offense with the intent to commit an offense listed in subparagraph (A) or (B) of this paragraph;]~~

~~[(D) an offense under Penal Code § 19.02 or § 19.03, that, during the guilt or innocence phase or the punishment phase for the offense, during the adjudication or disposition of delinquent conduct constituting an offense, or subsequently during a civil commitment proceeding under Health and Safety Code Chapter 841 Subchapter D is determined beyond a reasonable doubt to have been based on sexually motivated conduct;]~~

~~[(E) an attempt, conspiracy, or solicitation, as defined by the Penal Code, Chapter 15, to commit an offense listed in subparagraph (A), (B), (C), or (D) of this paragraph;]~~

~~[(F) an offense under prior state law that contains elements substantially similar to the elements of an offense listed in subparagraph (A), (B), (C), (D), or (E) of this paragraph; or]~~

~~[(G) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense listed in subparagraph (A), (B), (C), (D), or (E) of this paragraph.]~~

~~[(10) Sexually Violent Predator (SVP)--A person is a sexually violent predator for the purpose of this chapter if the person: is a repeat sexually violent offender; and suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence.]~~

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

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Jessica Marsh

General Counsel

Texas Civil Commitment Office

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For further information, please call: (512) 834-4590



## SUBCHAPTER B. CIVIL COMMITMENT

### 37 TAC §810.151

The Texas Civil Commitment Office (TCCO) proposes an amendment to §810.151, concerning Administration of the Act. This amendment is proposed under the authority of the Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed amendment would change language to reflect the change of the agency's name in accordance with Senate Bill 746, 84th Texas Legislature. The proposed amendment also removes superfluous language concerning the agency's rule-making authority.

#### Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to amend this rule to reflect changes made to Chapter 841 of the Texas Health and Safety Code by Senate Bill 746, 84th Texas Legislature. Senate Bill 746 changes the agency's name to the Texas Civil Commitment Office. The removal of superfluous language makes the rules clearer.

#### Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule will be in effect there will be no fiscal impact to the State government.

Small Business and Micro-Business Impact Analysis

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of implementing the proposed amendments. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

#### Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the amendment will be in effect, the public benefits expected as a result of this amendment will be to ensure the adopted rule is in compliance with Chapter 841 of the Texas Health and Safety Code.

#### Regulatory Analysis:

TCCO 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 Analysis

TCCO 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 Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to [publiccomment@tcco.texas.gov](mailto:publiccomment@tcco.texas.gov) within thirty (30) days after publication of this proposal in the *Texas Register*.

#### Statutory Authority

The amendment is proposed under Texas Health and Safety Code § 841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

#### §810.151. Administration of the Act.

The Texas Civil Commitment Office [of Violent Sex Offender Management] (office) is responsible for providing appropriate and necessary treatment and supervision through the case management system. The office shall hire [program specialists and/] or contract for the services of case managers, treatment providers, global positioning tracking providers, biennial examination experts, transportation providers, and residential housing providers. [The office by rule shall administer this chapter. Rules adopted by the office under this section must be consistent with the purpose of this chapter. The office by rule shall develop standards of care and case management for persons committed under this chapter.]

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

Filed with the Office of the Secretary of State on September 19, 2016.

TRD-201604828

Jessica Marsh

General Counsel

Texas Civil Commitment Office

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For further information, please call: (512) 834-4590



### 37 TAC §810.152

The Texas Civil Commitment Office (TCCO) proposes to repeal §810.152, concerning Civil Commitment of Sexually Violent Predators. This repeal is proposed under the authority of the Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed repeal would eliminate superfluous language that is already contained in Health and Safety Code §841.081.

#### Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to repeal this rule to remove duplicative language already found in Chapter 841 of the Texas Health and Safety Code.

#### Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule is repealed there will be no fiscal impact to the State government.

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

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of repealing the rule. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule repeal.

#### Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the rule is repealed, the public benefits expected will be in compliance with Chapter 841 of the Texas Health and Safety Code.

#### Regulatory Analysis:

TCCO has determined that this proposal will not repeal 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 will not repeal a rule specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Analysis

TCCO 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 Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to [publiccomment@tcco.texas.gov](mailto:publiccomment@tcco.texas.gov) within thirty (30) days after publication of this proposal in the *Texas Register*.

#### Statutory Authority

This rule repeal is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

#### §810.152. *Civil Commitment of Sexually Violent Predators.*

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

Filed with the Office of the Secretary of State on September 19, 2016.

TRD-201604829

Jessica Marsh

General Counsel

Texas Civil Commitment Office

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For further information, please call: (512) 834-4590



### 37 TAC §810.153

The Texas Civil Commitment Office (TCCO) proposes an amendment to §810.153, concerning Outpatient Treatment and Supervision Program. This amendment is proposed under the authority of the Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed amendment removes a reference to the annual compensation of a treatment provider to conform to changes in accordance with Senate Bill 746, 84th Texas Legislature. The proposed amendment also removes redundant language concerning the agency's treatment and supervision program that is already contained in Chapter 841.

#### Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to amend this rule to reflect changes made to Chapter 841 of the Texas Health and Safety Code by Senate Bill 746, 84th Texas Legislature. Senate Bill 746 provides that TCCO shall develop and implement a tiered program for the treatment and supervision of civilly committed sexually violent predators (SVPs). Senate Bill 746 removes references to the annual compensation of a treatment provider in Chapter 841. The removal of redundant language already contained in Chapter 841 makes the rules clearer.

#### Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule will be in effect there will be no additional fiscal impact to the State government.

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

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of im-

plementing the proposed amendments. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

#### Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the amendment will be in effect, the public benefits expected as a result of this amendment will be to ensure the adopted rule is in compliance with Chapter 841 of the Texas Health and Safety Code.

#### Regulatory Analysis

TCCO 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 Analysis

TCCO 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 Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to [publiccomment@tcco.texas.gov](mailto:publiccomment@tcco.texas.gov) within thirty (30) days after publication of this proposal in the *Texas Register*.

#### Statutory Authority

The amendment is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

#### §810.153. *Tiered [Outpatient] Treatment and Supervision Program.*

The office shall determine the conditions of supervision and treatment [by rule shall develop standards of care and case management] for persons committed under this chapter.

(1) The office shall develop a tiered program policy for the supervision and treatment of a committed person. The tiered program shall provide for the seamless transition of a committed person from a total confinement facility to less restrictive housing and supervision and eventually release based on the person's behavior and progress in treatment. The policy regarding the movement of committed persons between programming tiers shall be in accordance with Chapter 841 of the Texas Health and Safety Code. [approve and contract for the provision of a treatment plan for the committed person to be developed by the treatment provider. A treatment plan may include the monitoring of the person with a polygraph or plethysmograph. The treatment provider may receive annual compensation in an amount not to exceed \$10,000 for providing the required treatment.]

[(2) The case manager shall provide supervision to the person. The provision of supervision shall include a tracking service and, if required by court order, supervised housing.]

{(3) The office shall enter into appropriate memoranda of understanding with the Texas Department of Public Safety for assistance in the preparation of criminal complaints, warrants, and related documents and in the apprehension and arrest of a person.}

(2) [(4)] The office shall enter into appropriate contracts or memoranda of understanding for the provision of any necessary supervised housing and other related services and may enter into appropriate contracts for medical and mental health services and sex offender treatment. [The office shall reimburse the applicable provider for housing costs under this section. The committed person may not be housed for any period of time in a mental health facility, state school, or community center unless the placement results from a commitment of the person to that facility, school, or center by governmental action.]

{(5) The case manager shall coordinate the outpatient treatment and supervision required by this chapter, including performing a periodic assessment of the success of that treatment and supervision. The case manager shall make timely recommendations to the judge on whether to allow the committed person to change residence or leave the state and on any other appropriate matters. The case manager shall provide a report to the office, semiannually or more frequently as necessary, which must include: any known change in the person's status that affects proper treatment and supervision; and any recommendations made to the judge.}

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

Filed with the Office of the Secretary of State on September 19, 2016.

TRD-201604830

Jessica Marsh

General Counsel

Texas Civil Commitment Office

Earliest possible date of adoption: October 30, 2016

For further information, please call: (512) 834-4590



## SUBCHAPTER C. CIVIL COMMITMENT REVIEW

### 37 TAC §810.211

The Texas Civil Commitment Office (TCCO) proposes to repeal §810.211, concerning Biennial Examination. This repeal is proposed under the authority of the Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed repeal would eliminate superfluous language that is already contained in Health and Safety Code §841.101.

#### Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to repeal this rule to remove duplicative language already found in Chapter 841 of the Texas Health and Safety Code.

#### Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule is repealed there will be no fiscal impact to the State government.

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

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of repealing the rule. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule repeal.

#### Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the rule is repealed, the public benefits expected will be in compliance with Chapter 841 of the Texas Health and Safety Code.

#### Regulatory Analysis

TCCO has determined that this proposal will not repeal 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 will not repeal a rule specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Analysis

TCCO 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 Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to [publiccomment@tcco.texas.gov](mailto:publiccomment@tcco.texas.gov) within thirty (30) days after publication of this proposal in the *Texas Register*.

#### Statutory Authority

This repeal is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

§810.211. *Biennial Examination.*

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

Filed with the Office of the Secretary of State on September 19, 2016.

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Jessica Marsh

General Counsel

Texas Civil Commitment Office

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For further information, please call: (512) 834-4590



## SUBCHAPTER D. PETITION FOR RELEASE

### 37 TAC §810.241

The Texas Civil Commitment Office (TCCO) proposes to repeal §841.211, concerning Authorized Petition for release. This repeal is proposed under the authority of the Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed repeal would eliminate superfluous language that is already contained in Health and Safety Code §841.121.

#### Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to repeal this rule to remove duplicative language already found in Chapter 841 of the Texas Health and Safety Code.

#### Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule is repealed there will be no fiscal impact to the State government.

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

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of repealing the rule. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule repeal.

#### Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the rule is repealed, the public benefits expected will be ensuring compliance with Chapter 841 of the Texas Health and Safety Code.

#### Regulatory Analysis

TCCO has determined that this proposal will not repeal 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 will not repeal a rule specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Analysis

TCCO 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 Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to [publiccomment@tcco.texas.gov](mailto:publiccomment@tcco.texas.gov) within thirty (30) days after publication of this proposal in the *Texas Register*.

#### Statutory Authority

This repeal is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

#### §810.241. *Authorized Petition for Release.*

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

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Jessica Marsh  
General Counsel

Texas Civil Commitment Office

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For further information, please call: (512) 834-4590



### 37 TAC §810.242

The Texas Civil Commitment Office (TCCO) proposes to repeal §841.242, concerning Unauthorized Petition for Release. This repeal is proposed under the authority of Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed repeal would eliminate superfluous language that is already contained in Health and Safety Code §841.122.

#### Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to repeal this rule to remove duplicative language already found in Chapter 841 of the Texas Health and Safety Code.

#### Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule is repealed there will be no fiscal impact to the State government.

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

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of repealing the rule. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule repeal.

#### Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the rule is repealed, the public benefits expected will be ensuring compliance with Chapter 841 of the Texas Health and Safety Code.

#### Regulatory Analysis

TCCO has determined that this proposal will not repeal 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 environ-

ment or the public health and safety of a state or a sector of the state. This proposal will not repeal a rule specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Analysis

TCCO 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 Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to [publiccomment@tcco.texas.gov](mailto:publiccomment@tcco.texas.gov) within thirty (30) days after publication of this proposal in the *Texas Register*.

#### Statutory Authority

This repeal is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

§810.242. *Unauthorized Petition for Release.*

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

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Jessica Marsh

General Counsel

Texas Civil Commitment Office

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For further information, please call: (512) 834-4590



## SUBCHAPTER E. MISCELLANEOUS PROVISIONS

### 37 TAC §810.271

The Texas Civil Commitment Office (TCCO) proposes to repeal §841.271, concerning Release or Exchange of Information. This repeal is proposed under the authority of the Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed repeal would eliminate superfluous language that is already contained in Health and Safety Code §841.142.

#### Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to repeal this rule to remove duplicative language already found in Chapter 841 of the Texas Health and Safety Code.

#### Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule is repealed, there will be no fiscal impact to the State government.

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

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of repealing the rule. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule repeal.

#### Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the rule is repealed, the public benefits expected will be ensuring compliance with Chapter 841 of the Texas Health and Safety Code.

#### Regulatory Analysis

TCCO has determined that this proposal will not repeal 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 will not repeal a rule specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Analysis

TCCO 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 Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to [publiccomment@tcco.texas.gov](mailto:publiccomment@tcco.texas.gov) within thirty (30) days after publication of this proposal in the *Texas Register*.

#### Statutory Authority

This repeal is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

§810.271. *Release and Exchange of Information.*

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

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Jessica Marsh  
General Counsel  
Texas Civil Commitment Office  
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For further information, please call: (512) 834-4590



### 37 TAC §810.272

The Texas Civil Commitment Office (TCCO) proposes an amendment to §810.272, concerning Office Appointment of Multidisciplinary Members. This amendment is proposed under the authority of Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed amendment clarifies the appointment of members to the multidisciplinary team.

#### Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to amend this rule to make the rule more clear.

#### Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule will be in effect there will be no fiscal impact to the State government.

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

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of implementing the proposed amendments. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

#### Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the amendment will be in effect, the public benefits expected as a result of this amendment will be to ensure the adopted rule is in compliance with Chapter 841 of the Texas Health and Safety Code.

#### Regulatory Analysis

TCCO 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 Analysis

TCCO 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 Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512)

834-4595, or by email to [publiccomment@tcco.texas.gov](mailto:publiccomment@tcco.texas.gov) within thirty (30) days after publication of this proposal in the *Texas Register*.

#### Statutory Authority

The amendment is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

#### §810.272. Office Appointment of Multidisciplinary Members.

The office shall appoint members of the office [~~and alternates,~~] to serve as members [~~member(s)~~] of the Multidisciplinary Team (team) as defined in the Health and Safety Code, §841.022. The office members [~~member(s) or designee(s)~~] who serve on the team shall keep the office informed of the actions taken by the team by providing the office's Executive Director with periodic reports as required.

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

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Jessica Marsh  
General Counsel  
Texas Civil Commitment Office

Earliest possible date of adoption: October 30, 2016  
For further information, please call: (512) 834-4590



### 37 TAC §810.273

The Texas Civil Commitment Office (TCCO) proposes an amendment to §810.273, concerning Cost of Housing, Treatment, and Tracking Services. This amendment is proposed under the authority of Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed amendment would add language requiring the office to create a housing, treatment, and tracking services policy, which reflects changes made to Chapter 841 of the Texas Health and Safety Code by Senate Bill 746, 84th Legislature.

#### Background and Justification

TCCO, under its authority to adopt rules administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to amend this rule to reflect changes made to Chapter 841 of the Texas Health and Safety Code by Senate Bill 746, 84th Legislature.

#### Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule will be in effect there will be no fiscal impact to the State government.

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

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of implementing the proposed amendments. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

## Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the amendment will be in effect, the public benefits expected as a result of this amendment will be to ensure the adopted rule is in compliance with Chapter 841 of the Texas Health and Safety Code.

## Regulatory Analysis

TCCO 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 Analysis

TCCO 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 Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to [publiccomment@tcco.texas.gov](mailto:publiccomment@tcco.texas.gov) within thirty (30) days after publication of this proposal in the *Texas Register*.

## Statutory Authority

The amendment is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

*§810.273. Cost of Housing, Treatment, and Tracking Services [Service].*

A [Notwithstanding Health and Safety Code §841.146(e), a] civilly committed person who is not indigent is responsible for the cost of housing and treatment services under Chapter 841 of the Health and Safety Code and the cost of the tracking service required by Health and Safety Code §841.082. The office shall create and administer a policy regarding cost recovery for services. The policy shall include the amount and method of payment for the cost recovery and shall not require payment in an amount that exceeds the actual cost of the services.; and monthly shall pay to the office the amount that the office determines will be necessary to defray the cost of operating the service with respect to the person during the subsequent month. The office immediately shall transfer the money to the appropriate service provider.]

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

Filed with the Office of the Secretary of State on September 19, 2016.

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Jessica Marsh

General Counsel

Texas Civil Commitment Office

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For further information, please call: (512) 834-4590



## 37 TAC §810.274

The Texas Civil Commitment Office (TCCO) proposes new §810.274, concerning Contracts Requiring Enhanced Monitoring. The new section implements Senate Bill 20 (84th Legislature, Regular Session, 2015) and §2261.253 of the Texas Government Code. Section 2261.253 of the Texas Government Code requires each agency that enters into contracts to develop a rule to determine a method to identify contracts requiring enhanced monitoring and to submit that information to its governing body.

## Background and Justification

Senate Bill 20 (84th Legislature, Regular Session, 2015) enacted §2261.253(c) of the Texas Government Code which requires each agency that enters into contracts to develop a rule to determine a method to identify contracts requiring enhanced monitoring and to submit that information to its governing body. TCCO proposes new §810.274, Contracts Requiring Enhanced Monitoring, to comply with the requirement of §2261.253 of the Texas Government Code.

## Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule will be in effect there will be negligible fiscal impact to the State government.

## Small Business and Micro-Business Impact Analysis

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of implementing the proposed amendments. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

## Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the amendment will be in effect, the public benefits expected as a result of this amendment will be to ensure the adopted rule is in compliance with Chapter 2261 of the Texas Government Code.

## Regulatory Analysis

TCCO 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 Analysis

TCCO 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 Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to [publiccomment@tcco.texas.gov](mailto:publiccomment@tcco.texas.gov) within thirty (30) days after publication of this proposal in the *Texas Register*.

#### Statutory Authority

This new section is proposed under §841.141 of the Texas Health and Safety Code, which provides the Texas Civil Commitment office with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the office. The proposed rule is required by §2261.253 of the Texas Government Code. No other statutes, articles, or codes are affected by this proposal.

#### §810.274. Contracts Requiring Enhanced Monitoring.

Under §2261.253 of the Texas Government Code, the Texas Civil Commitment Office implements the following procedures for contracts for the purchase of goods or services from private vendors until the contract expires or is completed:

(1) For each contract with a value greater than \$25,000, the office shall evaluate whether enhanced contract or performance monitoring is appropriate. The office may evaluate whether enhanced contract or performance monitoring is appropriate for contracts with a value less than \$25,000. Criteria that may be considered include:

(A) Total cost of the contract, including contract renewals;

(B) Risk of loss to the office under the contract;

(C) Resources available for enhanced contract monitoring or performance monitoring;

(D) Vendor past performance; and

(E) Whether the vendor is a foreign or domestic person or entity.

(2) The office shall consider all contracts valued at over \$1 million dollars and contracts for the treatment of sexually violent predators to be contracts requiring enhanced monitoring.

(3) If enhanced contract monitoring is appropriate, the Executive Director shall report to the Board:

(A) The basis for the determination that enhanced contract or performance monitoring is appropriate;

(B) Any serious issues or risks identified with the contract; and

(C) The plan for carrying out the enhanced contract or performance monitoring.

(4) This rule applies only to contracts for which the solicitation is made public on or after September 1, 2015; or if the contract is exempt from competitive bidding, where the contract is entered into on or after September 1, 2015. This rule does not apply to memoranda of understanding, interagency contracts, interlocal agreements, or contracts that do not involve a cost to the office.

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

Filed with the Office of the Secretary of State on September 19, 2016.

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Jessica Marsh  
General Counsel

Texas Civil Commitment Office

Earliest possible date of adoption: October 30, 2016

For further information, please call: (512) 834-4590



#### 37 TAC §810.275

The Texas Civil Commitment Office (TCCO) proposes new §810.275, concerning Contract Monitoring Responsibilities, to implement §2261.202 of the Texas Government Code. Section 2261.202 of the Texas Government Code requires each state agency that enters into contracts to adopt by rule a policy that clearly defines the contract monitoring roles and responsibilities, if any, of internal audit staff and other inspection, investigative, or audit staff.

#### Background and Justification

Senate Bill 20 (84th Legislature, Regular Session, 2015) enacted §2261.253(c) of the Texas Government Code which requires each agency that enters into contracts to develop a rule to determine a method to identify contracts requiring enhanced monitoring and to submit that information to its governing body. TCCO proposes new §810.274, Contracts Requiring Enhanced Monitoring, to comply with the requirement of §2261.253 of the Texas Government Code.

#### Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule will be in effect there will be no fiscal impact to the State government.

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

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of implementing the proposed amendments. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

#### Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the amendment will be in effect, the public benefits expected as a result of this amendment will be to ensure the adopted rule is in compliance with Chapter 2261 of the Texas Government Code.

#### Regulatory Analysis

TCCO 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 Analysis

TCCO 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 Jessica Marsh, General Counsel, Texas Civil Commitment Office, P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to [publiccomment@tcco.texas.gov](mailto:publiccomment@tcco.texas.gov) within thirty (30) days after publication of this proposal in the *Texas Register*.

#### Statutory Authority

This new section is proposed under §841.141 of the Texas Health and Safety Code which provides the Texas Civil Commitment office with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the office. The proposed rule is required by §2261.202 of the Texas Government Code. No other statutes, articles, or codes are affected by this proposal.

#### §810.275. Contract Monitoring Responsibilities.

Contract monitoring, when applicable, is primarily conducted by the program and administrative staff of the Texas Civil Commitment Office under the authority and direction of §2261.202 of the Texas Government Code. The internal audit function will perform any additional contract monitoring as specifically directed by the Audit Committee of the Texas Civil Commitment Office 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 September 19, 2016.

TRD-201604838

Jessica Marsh

General Counsel

Texas Civil Commitment Office

Earliest possible date of adoption: October 30, 2016

For further information, please call: (512) 834-4590



## SUBCHAPTER F. CRIMINAL BACKGROUND CHECK OF POTENTIAL EMPLOYEES

### 37 TAC §810.281

The Texas Civil Commitment Office (TCCO) proposes to repeal §810.281, concerning Access to Criminal History Records. This repeal is proposed under the authority of the Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed repeal would eliminate superfluous language that is already contained in Government Code Chapter 411.

#### Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to repeal this rule to remove duplicative language already found in Chapter 411 of the Texas Government Code.

#### Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule is repealed there will be no fiscal impact to the State government.

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

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of repealing the rule. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule repeal.

#### Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the rule is repealed, the public benefits expected will be in compliance with Chapter 841 of the Texas Health and Safety Code.

#### Regulatory Analysis:

TCCO has determined that this proposal will not repeal 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 will not repeal a rule specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Analysis

TCCO 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 Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to [publiccomment@tcco.texas.gov](mailto:publiccomment@tcco.texas.gov) within thirty (30) days after publication of this proposal in the *Texas Register*.

#### Statutory Authority

This rule repeal is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

#### §810.281. Access to Criminal History Records.

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

Filed with the Office of the Secretary of State on September 19, 2016.

TRD-201604839

Jessica Marsh  
General Counsel  
Texas Civil Commitment Office  
Earliest possible date of adoption: October 30, 2016  
For further information, please call: (512) 834-4590



### 37 TAC §810.282

The Texas Civil Commitment Office (TCCO) proposes to repeal §810.282, concerning Records. This repeal is proposed under the authority of the Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed repeal would eliminate language concerning the release of public records that is found in Texas Government Code Chapter 552.

#### Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to repeal this rule to remove duplicative language already found in Chapter 552 of the Texas Government Code.

#### Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule is repealed there will be no fiscal impact to the State government.

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

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of repealing the rule. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule repeal.

#### Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the rule is repealed, the public benefits expected will be in compliance with Chapter 841 of the Texas Health and Safety Code.

#### Regulatory Analysis:

TCCO has determined that this proposal will not repeal 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 will not repeal a rule specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Analysis

TCCO 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 Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O.

Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to [publiccomment@tcco.texas.gov](mailto:publiccomment@tcco.texas.gov) within thirty (30) days after publication of this proposal in the *Texas Register*.

#### Statutory Authority

This rule repeal is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

#### §810.282. *Records.*

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

Filed with the Office of the Secretary of State on September 19, 2016.

TRD-201604840  
Jessica Marsh  
General Counsel  
Texas Civil Commitment Office  
Earliest possible date of adoption: October 30, 2016  
For further information, please call: (512) 834-4590



### 37 TAC §810.283

The Texas Civil Commitment Office (TCCO) proposes to repeal §810.283, concerning Destruction of Criminal History Records. This repeal is proposed under the authority of the Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed repeal would eliminate language concerning the maintenance and disposition of public records that is found in Texas Government Code Chapters 411, 441 and 552.

#### Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to repeal this rule to remove duplicative language already found in Chapters 411, 441 and 552 of the Texas Government Code.

#### Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule is repealed there will be no fiscal impact to the State government.

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

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of repealing the rule. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule repeal.

#### Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the rule is repealed, the public benefits expected will be in compliance with Chapter 841 of the Texas Health and Safety Code.

#### Regulatory Analysis:

TCCO has determined that this proposal will not repeal 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 will not repeal a rule specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Analysis

TCCO 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 Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to [publiccomment@tcco.texas.gov](mailto:publiccomment@tcco.texas.gov) within thirty (30) days after publication of this proposal in the *Texas Register*.

#### Statutory Authority

This rule repeal is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

§810.283. *Destruction of Criminal History Records.*

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

Filed with the Office of the Secretary of State on September 19, 2016.

TRD-201604841

Jessica Marsh

General Counsel

Texas Civil Commitment Office

Earliest possible date of adoption: October 30, 2016

For further information, please call: (512) 834-4590



# 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 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 1. MISCELLANEOUS PROVISIONS SUBCHAPTER K. DEFINITION, TREATMENT, AND DISPOSITION OF SPECIAL WASTE FROM HEALTH CARE-RELATED FACILITIES

##### 25 TAC §§1.132 - 1.137

The Department of State Health Services withdraws proposed amendments to §§1.132 - 1.137, which appeared in the July

1, 2016, issue of the *Texas Register* (41 TexReg 4772). The amendments are being re-proposed in this same issue of the *Texas Register*.

Filed with the Office of the Secretary of State on September 19, 2016.

TRD-201604842

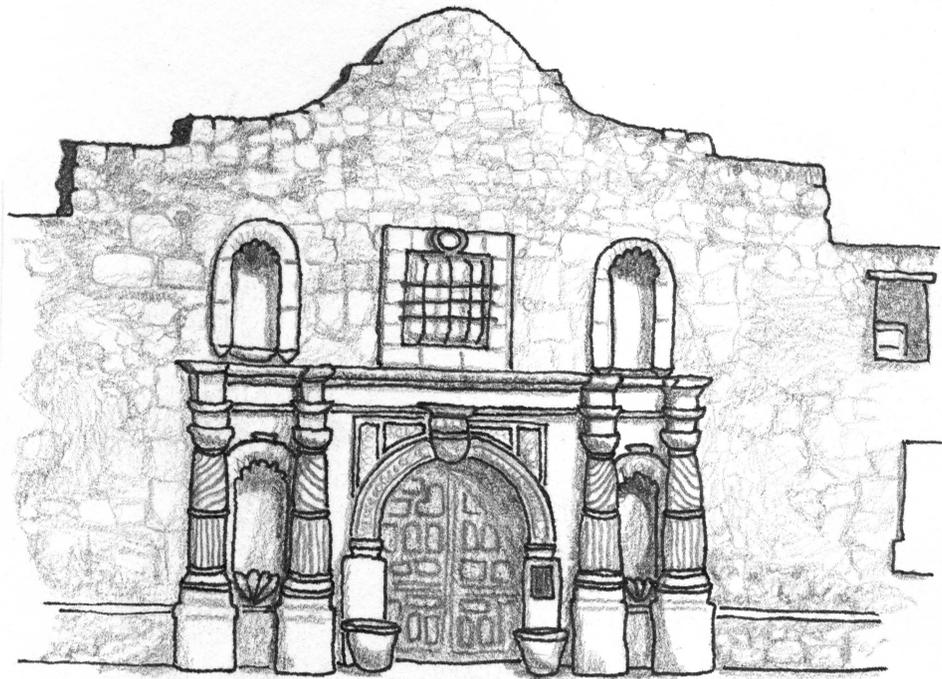
Lisa Hernandez  
General Counsel

Department of State Health Services

Effective date: September 19, 2016

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





# 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 5. TEXAS FACILITIES COMMISSION

#### CHAPTER 115. FACILITIES LEASING PROGRAM

##### Introduction and Background.

The Texas Facilities Commission ("Commission") adopts an amendment to Chapter 115, §115.13, and a new Subchapter B §§115.20 - 115.22. Sections 115.13, 115.20, and 115.21 are adopted without changes. Section 115.22 is adopted with changes. Proposed amendments were published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3215). The revised rules are adopted pursuant to the Commission's rulemaking authority found in Texas Government Code §2167.0021(b) and §2167.008 (West 2008).

##### Justification for the Rule.

During its rule review, published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8915), the Commission reviewed and considered Texas Administrative Code, Title 1, Chapter 115, Facilities Leasing Program, for reoption, revision, or repeal in accordance with Texas Government Code §2001.039 (West 2008). The Commission determined that Chapter 115 was still necessary. Revisions to the rules, however, were necessary to ensure consistency with governing statutes and to provide guidance and clarity to situations where a state lease is cancelled due to lack of funding. Section 115.13 establishes guidelines for determining best value in procurement of leased space. Subsection (b) lists the criteria to be used in the evaluation of qualified sites. Subsection (b)(8) references the "Facilities Master Plan." In order to be consistent with the Commission's governing statutes, Texas Government Code §§2166.101 - 104 (West Supp. 2015), the Commission adopts an amendment to Subsection (b)(8) to reference the "master facilities plan."

In addition to the adopted amendment, the Commission adopts a new Subchapter B concerning the cancellation of a lease due to a lack of funding. Section 115.20 will provide definitions for the subchapter. Section 115.21 sets out the procedure for determining whether a leased facility is an idle facility or has idle capacity. Section 115.22 sets out the procedure for the cancellation of a lease due to a lack of funding. The adopted rules provide a process by which any request to cancel a lease due to a lack of funding is accompanied by a written determination of the facts justifying such a request as well as the approval of the requesting agency's governing body or executive director. Section 115.22 is adopted with changes to address one of the public comments received by the Commission. As discussed below,

the Commission is changing the language at the end of Subsection (c) to "whichever is earlier," as opposed to "whichever is later," as suggested in the proposed language.

##### Public Comments.

At its meeting on April 20, 2016, the commissioners requested that the proposed rules be communicated to state client agencies and current lessors; accordingly, notice of the proposed rules was emailed to 50 state agencies and 605 current lessors and mailed to 12 current lessors.

The 30-day comment period ended on June 5, 2016. During the 30-day comment period, the Commission received one written comment from the Texas Department of Motor Vehicles ("DMV") and two written comments and four phone calls from the general public all of whom were current or prospective lessors. Summary of the written comments and the Commission's response follow:

"The Texas Department of Motor Vehicles (TxDMV) generally concurs with the proposed new rules, but wishes to comment regarding the required minimum 180-day notice for intent to cancel the lease as outlined in §115.22. Specifically, we respectfully request additional information explaining why 180 days was selected for the clause. The proposed change to §115.22(c) states that 'the Commission will serve written notice to the lessor of intent to cancel the lease effective on a date certain at least 180 days prior to the date of the lease cancellation.' It further states that 'Rent shall continue to be paid through the date that the lessee vacates the facilities or through the end of the biennium, whichever is later. . . .' A minimum of 180 days seems like a long time for a 'funding out' to become effective since it is theoretically possible that the Legislature would defund an agency or a part of an agency prior to the end of the biennium."

Commission response: Texas Government Code §2167.101, entitled Certification of Available Money, requires a state agency occupying space leased under this chapter certify to the Commission, at least 60 days before the beginning of each fiscal biennium during the lease term, that money is available to pay for the lease until the end of the next fiscal biennium. Based upon DMV's comment, the Commission changed "whichever is later" to "whichever is earlier" in the adopted language.

The Commission received two written comments and four phone calls from the general public all of whom were current or prospective lessors.

A written comment was received from Mr. Michael Fallek who stated:

"I am very concerned about then new rules changes being proposed, and I urge you to vote against incorporating these new rules provisions into the Code.

Any changes in the Code that adds more uncertainty to the term of leases entered into by the State of Texas will make it harder

for bidders to propose lease space to the State, ultimately resulting in fewer bidders and more expensive lease space for the State. If a bidder cannot count on the State fulfilling its financial commitment made under leases, especially when new buildings are built to house the government agencies, then there will be fewer bidders willing to undertake the risk. It is usually the case that a bidder will have to take on debt, oftentimes with personal guarantees attached, in order to construct facilities to house the government agencies. If the bidder cannot count on getting repaid by way of lease payments over the duration of the expected term of the lease, it makes it a much more difficult decision to take on such risk.

Moreover, banks will be less likely to be willing to extend credit to bidders because of the added uncertainty of repayment. If a bidder cannot get financing for government projects, the projects will languish.

I have bid numerous times for lease facilities, and my companies currently have six state leases in place. These changes would lessen the likelihood that I would bid on any RFPs in which new facilities would either have to be built or in which existing facilities would require significant capital to renovate for the government use. Again, I urge you to reject the proposed rules changes to the Code."

A written comment was received from Mr. George E. Grobowsky, who stated:

"I have been a lessor in two Texas Facilities Commission leases, but under the proposed rules I would not have considered such transactions. Both of my transactions involved "single purpose buildings", which I guess most of yours are. The cancellation before maturity of a lease on a single purpose building would probably cause the lessor to suffer a loss on a property that will be very difficult to re-lease.

If the new rules are adopted, I predict, that you will have difficulty finding interested lessors, and in the long run, you will lose any savings gained by the change to increased rents on new and renewed leases. Investors will certainly want to be paid for the increased risk - and you will be adding a very large risk."

Commission response: In every lease between the private sector, as landlord, and the Commission on behalf of governmental agencies, as tenants, there is a written option to terminate contingent on whether funding for the lease remains available. This flows from the balanced budget, pay-as-you-go, requirements of Article III, Sections 49 and 49a of the Texas Constitution, which was codified in §2167.055(e), Texas Government Code. The lease is contingent upon the continued availability of funds to cover the full term and cost of the lease. If funds that may legally be used to pay for the lease become unavailable, the Commission has the right to terminate the lease, upon written notice to the landlord.

Legally such a provision turns a lease with a multi-year term into a series of one-year leases, which may be an unlikely result as a practical matter, but causes concern during lease procurement. Lenders, upon which landlords almost invariably rely, may discount some of the value otherwise attributed to a lease with a governmental entity that is an otherwise credit-worthy tenant. There is no drafting around this provision, because it is constitutional. The Commission has no authority to enter an agreement barred by the constitution and laws of the State.

The Commission has experienced requests from governmental agencies to cancel a lease based upon lack of funding. These

requests typically result from the loss of federal funds due to idle capacity or idle facilities. In these instances, a governmental agency can provide evidence of lack of funding together with a directive from the federal agency. In other instances, governmental agencies have elected to cancel a lease exercising discretion in managing their appropriations. In these instances, there is no requirement that the governmental agency provide the basis for its request.

The proposed rules lay out a process by which any request to cancel a lease due to lack of funding must be accompanied by a written determination of the facts justifying such request and the approval of the agency's commission or executive director as the case may be.

Commission response to telephone calls: The Commission requested that the telephone callers submit their comments in writing in the manner specified in the notice of proposed rule changes published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3215).

## SUBCHAPTER A. STATE LEASED PROPERTY

### 1 TAC §115.13

Statutory Authority.

The amendment to §115.13 is adopted pursuant to Texas Government Code §2167.0021(b), which directs the Commission to adopt rules establishing guidelines for the determination of best value in a lease contract, and §2167.008, which directs the Commission to adopt rules necessary to administer its duties under Chapter 2167, (West 2008).

Cross Reference to Statute.

The statutory provisions affected by the adoption are those set forth in Chapter 2167 of the Texas Government 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.

Filed with the Office of the Secretary of State on September 13, 2016.

TRD-201604790

Kay Molina

General Counsel

Texas Facilities Commission

Effective date: October 3, 2016

Proposal publication date: May 6, 2016

For further information, please call: (512) 475-2400



## SUBCHAPTER B. CANCELLATION OF LEASE DUE TO LACK OF FUNDING

### 1 TAC §§115.20 - 115.22

Statutory Authority.

The new rules are adopted pursuant to Texas Government Code §2167.008, which directs the Commission to adopt rules necessary to administer its duties under Chapter 2167, (West 2008).

Cross Reference to Statute.

The statutory provisions affected by the adoption are those set forth in Chapter 2167 of the Texas Government Code.

§115.22. *Cancellation of Lease Upon Request by a Governmental Agency Due to Lack of Funding.*

(a) Unless a governmental agency has been abolished by the Legislature, a governmental agency that elects to invoke the Funding Out Clause to cancel a lease due to lack of funding shall request the Commission to either cancel the lease or make the leased premises available to another governmental agency.

(b) A request by a governmental agency to cancel a lease due to lack of funding must have the approval of the governing body of the governmental agency making the request. Any agency under the authority of an individual commissioner or executive director, appointed by or directly accountable to the Governor, must provide evidence of notification to the Office of the Governor in order for such a request to be considered for action by the Commission.

(c) Unless the term of the lease is amended by written agreement between a lessor and the Commission, the Commission will serve written notice to the lessor of intent to cancel the lease effective on a date certain at least 180 days prior to the date of the lease cancellation. Notice to the lessor is effective upon receipt if served by electronic mail directed to the lessor's designated contact on the Commission's database. Rent shall continue to be paid through the date that the lessee vacates the facilities or through the end of the biennium, whichever is earlier, for which funds had been certified pursuant to Texas Government Code §2167.101 (West 2008).

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

Filed with the Office of the Secretary of State on September 13, 2016.

TRD-201604791

Kay Molina

General Counsel

Texas Facilities Commission

Effective date: October 3, 2016

Proposal publication date: May 6, 2016

For further information, please call: (512) 475-2400



## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

#### SUBCHAPTER C. ENROLLMENT, RENEWAL, DISENROLLMENT, AND COST SHARING

##### DIVISION 1. ENROLLMENT AND DISENROLLMENT

###### 1 TAC §370.303

The Texas Health and Human Service Commission (HHSC) adopts amendments to §370.303, concerning Completion of Enrollment, with changes to the proposed text as published in the May 13, 2016, issue of the *Texas Register* (41 TexReg 3389). The text of the rule will be republished.

## BACKGROUND AND JUSTIFICATION

HHSC amended this rule to include consideration of a Children's Health Insurance Program (CHIP) child's managed care history in the algorithm used to assign a managed care organization (MCO) when the applicant has not made a selection. The change is intended to improve continuity of care.

HHSC also amended this rule to include requirements for completion of enrollment when a Medicaid member transitions to CHIP after being determined ineligible for Medicaid, including paying any applicable enrollment fees. Effective January 1, 2014, the modified adjusted gross income (MAGI) methodologies established a 12-month certification period for Medicaid. The first six months are designated as continuous eligibility, and the second six-month period is non-continuous eligibility. Children may not be denied eligibility for excess income during the continuous period. However, during the non-continuous period, children may be determined ineligible for Medicaid but eligible for CHIP. When a child on Medicaid moves to CHIP during the non-continuous eligibility period, there may be a gap in the child's medical coverage, even if the child meets all HHSC deadlines. Children in Medicaid transitioning to CHIP may be required to pay an enrollment fee if their income exceeds a certain amount. Under existing rules, children will not receive CHIP coverage until the enrollment fee is paid. The rule change will allow children in these circumstances to be enrolled in CHIP prior to paying any applicable enrollment fees, minimizing gaps in coverage. However, if the enrollment fee is not paid on or before the due date, the child will be disenrolled from CHIP.

In addition to these changes, HHSC amended the rule to clarify that an applicant must pay an enrollment fee, if one is due, to complete CHIP enrollment. Current Medicaid processes require CHIP applicants to pay applicable enrollment fees prior to enrollment, so the addition of this requirement to the rule is only for clarification and consistency. The proposed amendment was further amended prior to adoption to clarify that for a child transitioning to CHIP from Medicaid, the applicant must pay any applicable enrollment fee by the assigned due date, but the transitioning child may be enrolled into CHIP prior to payment of the enrollment fee. Finally, HHSC made minor changes in terminology from "member" to "child" and from "beneficiary" to "child" as appropriate for clarity.

## COMMENTS

The 30-day comment period ended June 13, 2016. During this period, HHSC did not receive any comments regarding the amended rule.

## STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§370.303. *Completion of Enrollment.*

(a) To complete CHIP enrollment, an applicant must:

(1) select and indicate on the enrollment form a health care MCO and a dental MCO for all eligible children;

(2) select a PCP and a dental home, and place the names on the enrollment form;

(3) if applicable, indicate if an eligible child has special health care needs based on criteria in the member guide;

(4) sign and return the enrollment form; and

(5) pay any applicable enrollment fee on or before the due date.

(b) If an applicant does not pay an applicable enrollment fee as described in subsection (a) of this section, the child is not enrolled in CHIP.

(c) Notwithstanding subsections (a) and (b) of this section, if an application is for a child enrolled in Medicaid transitioning to CHIP after being determined ineligible for Medicaid before the end of the child's Medicaid certification period, the child may be enrolled in CHIP prior to payment of the enrollment fee. However, if the enrollment fee is not paid on or before the due date, the child is disenrolled.

(d) An applicant may select a PCP, dental home, health care MCO, and dental MCO by mail, telephone, or facsimile. Unless the application is for a perinate receiving expedited enrollment in accordance with §370.401 of this chapter (relating to Perinates), the applicant will have 30 calendar days from the date the enrollment packet is mailed to choose a health care MCO, dental MCO, PCP, and dental home. If the applicant does not choose a health care MCO, dental MCO, PCP, or dental home within the time period established by HHSC, HHSC or its designee will assign one using the default assignment methodologies described in this section.

(e) PCP assignment. If an applicant has not selected a PCP, the health care MCO will assign one using an algorithm that considers:

(1) the child's established history with a PCP, as demonstrated by encounter history with the provider in the preceding year, if available;

(2) the geographic proximity of the child's home address to the PCP;

(3) whether the provider serves as a PCP to other members of the child's household;

(4) limitations on default assignment, such as PCP restrictions on age, gender, and capacity; and

(5) other criteria approved by HHSC.

(f) Dental home assignment. If an applicant has not selected a dental home, the dental MCO will assign one using an algorithm that considers:

(1) the child's established history with a dental home, as demonstrated by encounter history with the provider in the preceding year, if available;

(2) the geographic proximity of the child's home address to the dental home;

(3) whether the provider serves as the dental home to other members of the child's household;

(4) limitations on default assignment, such as dental home restrictions on age and capacity; and

(5) other criteria approved by HHSC.

(g) MCO assignment. If an applicant has not selected a health care MCO or dental MCO, HHSC or its administrative services contractor will assign one using an algorithm that considers the child's history, including PCP or dental home when possible. If this is not possible, HHSC or its administrative services contractor will equitably

distribute members among qualified MCOs, using an algorithm that considers one or more of the following factors:

(1) whether the child was previously enrolled in the MCO in Medicaid or CHIP;

(2) whether other members of the child's household are enrolled in the MCO in Medicaid or CHIP;

(3) MCO performance;

(4) the greatest variance between the percentage of elective and default enrollments (with the percentage of default enrollments subtracted from the percentage of elective enrollments);

(5) capitation rates;

(6) market share; and

(7) other criteria determined by HHSC.

(h) Modified default enrollment process. HHSC has the option to implement a modified default enrollment process for MCOs when contracting with a new MCO or implementing managed care in a new service area, or when it has placed an MCO on full or partial enrollment suspension.

(i) Request to change dental home or PCP. There is no limit on the number of times a member can request to change his or her dental home or PCP. A member can request a change in writing or by calling the MCO's toll-free member hotline.

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

Filed with the Office of the Secretary of State on September 19, 2016.

TRD-201604823

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: October 9, 2016

Proposal publication date: May 13, 2016

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



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 174. TELEMEDICINE

##### 22 TAC §174.11

The Texas Medical Board (Board) adopts amendments to §174.11, concerning On-Call Services without changes to the proposed text as published in the July 1, 2016, issue of the *Texas Register* (41 TexReg 4761) and will not be republished.

The amendment to §174.11 amends and adds language referring to Chapter 177 (relating to Business Organizations, also adopted for amendment in this issue of the *Texas Register*) and newly adopted Subchapter E titled "Physician Call Coverage Medical Services," which provides physicians guidance and sets forth the minimum requirements relating to on-call services and agreements. The adopted amendment to relocate the substantive requirements related to the topic of "on-call" services to Chapter 177 results from the Board's meetings with stakehold-

ers who expressed the need for more clarity with respect to the application of the rule and whether it applied to all physicians or just those physicians practicing in the area of telemedicine. The removal of the substantive requirements for "on-call" services from Chapter 174 of this title (relating to Telemedicine), and relocation of the call coverage topic to Chapter 177 of this title will alleviate such confusion and provide more clarity as to the rule's applicability.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The 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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Mari Robinson, J.D.

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## CHAPTER 177. BUSINESS ORGANIZATIONS AND AGREEMENTS

### SUBCHAPTER C. JOINTLY OWNED ENTITIES

#### 22 TAC §177.16

The Texas Medical Board (Board) adopts amendments to §177.16, concerning Physician Assistants, with nonsubstantive changes to the proposed text as published in the July 1, 2016, issue of the *Texas Register* (41 TexReg 4762). The amended text is republished below.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rule at a meeting held on May 2, 2016. The comments were incorporated into the proposed rule.

The amendments eliminate subsection (e) and amend subsection (f) in order to align with a recent 3rd Court of Appeals decision, which invalidated part of the rule relating to the grandfathering clause and business entities solely owned by physician assistants. The rule as written in 2011 was pursuant to HB 2098 (82nd Regular Session) which amended §162.053 and §204.209 of the Texas Occupations Code and stated that "an ownership interest acquired before the effective date of this Act is governed by the law in effect at the time the interest was acquired, and the former law is continued in effect for that purpose." Accordingly, the amendments to this section correct portions of the rule that

were invalidated by the 3rd Court of Appeals decision and bring the rule in line with the intent of HB 2098.

The amendment to the title of Chapter 177, Business Organizations, adds the word "Agreements" to the title in order to accurately reflect the topic of new Subchapter E, thereby resulting in a title that reads "Business Organizations and Agreements."

Minor spelling errors were corrected in subsections (a), (b), and (c) of the text after adoption by the board.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to govern its own proceedings, perform its duties, regulate the practice of medicine in this state, enforce this subtitle, and establish rules related to licensure.

§177.16. *Physician Assistants.*

(a) Corporations.

(1) Pursuant to §22.0561 of the Business Organizations Code, a physician and a physician assistant may form a corporation to perform a professional service that falls within the scope of practice of those practitioners.

(2) A physician assistant may not:

(A) be an officer of the corporation;

(B) contract with or employ a physician to be a supervising physician of the physician assistant or of any physician in the corporation;

(C) direct the activities of a physician in the practice of medicine;

(D) interfere with supervision of physician assistants by a physician owner or supervising physician;

(E) own individually or in combination with other physician assistants more than a minority ownership interest in an entity created under this subsection; or

(F) have an ownership interest that equals or exceeds the ownership interest of any physician owner.

(b) Partnerships.

(1) Pursuant to §152.0551 of the Business Organizations Code, physicians and physician assistants may create a partnership to perform a professional service that falls within the scope of practice of those practitioners.

(2) A physician assistant may not:

(A) be a general partner or participate in the management of the partnership;

(B) contract with or employ a physician to be a supervising physician of the physician assistant or of any physician in the partnership;

(C) direct the activities of a physician in the practice of medicine;

(D) interfere with supervision of physician assistants by a physician owner or supervising physician;

(E) individually or in combination with other physician assistants have more than a minority ownership interest in the partnership; or

(F) have an ownership interest that equals or exceeds the ownership interest of any physician owner.

(3) An organizer of the entity, as defined under §3.004 of the Texas Business Organization Code, must be a physician and ensure that a physician or physicians control and manage the entity.

(c) Professional Associations and Professional Limited Liability Companies.

(1) Pursuant to §301.012 of the Business Organizations Code, physicians and physician assistants may form and own a professional association or professional limited liability company to perform a professional service that falls within the scope of practice of those practitioners.

(2) A physician assistant may not:

(A) be an officer in the professional association or professional limited liability company;

(B) contract with or employ a physician to be a supervising physician of the physician assistant or of any physician in the professional association or professional limited liability company;

(C) direct the activities of a physician in the practice of medicine;

(D) interfere with supervision of physician assistants by a physician owner or supervising physician;

(E) individually or in combination with other physician assistants have more than a minority ownership interest in the professional association or professional limited liability company; or

(F) have an ownership interest that equals or exceeds the ownership interest of any physician owner.

(3) An organizer of the entity, as defined under §3.004 of the Texas Business Organization Code, must be a physician and ensure that a physician or physicians control and manage the entity.

(d) All physicians and physician assistants who jointly own an entity must annually submit a joint form to the Board providing date of formation of the entity, each licensee's ownership interest in the entity, proof of ownership, and proof of date of formation, along with required fees as provided in Chapter 175 of this title (relating to Fees and Penalties).

(e) Restrictions on ownership interests, shall apply only to those entities formed on or after June 17, 2011. An ownership interest acquired before the effective date of this Act is governed by the law in effect at the time the interest was acquired.

(f) This section shall not apply to pain management clinics owned and operated pursuant to Chapter 195 of this title (relating to Pain Management Clinics).

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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Mari Robinson, J.D.

Executive Director

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**SUBCHAPTER E. PHYSICIAN CALL  
COVERAGE MEDICAL SERVICES**

**22 TAC §§177.18 - 177.20**

The Texas Medical Board (Board) adopts new Subchapter E, Physician Call Coverage Medical Services, §§177.18 - 177.20 without changes to the proposed text as published in the July 1, 2016, issue of the *Texas Register* (41 TexReg 4763). The new rules will not be republished.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on May 2, 2016. The comments were incorporated into the proposed rules.

*Title Change to Chapter 177, Relating to Business Organizations*

The amendment to the title of Chapter 177, Business Organizations, adds the word "Agreements" to the title in order to accurately reflect the topic of new Subchapter E, thereby resulting in a title that reads "Business Organizations and Agreements."

*Background*

The call coverage rule has been located in Chapter 174, relating to telemedicine, for a number of years. However, such location caused undue confusion about call coverage in general, and who could provide such coverage.

*General Intent and Purpose*

Call coverage has never been limited only to telemedicine and has been and is currently utilized by all types of physicians and practices. The purpose of the newly adopted rules is to:

1. eliminate strict reciprocity and same practice requirements;
2. recognize traditional call coverage arrangements in Texas; and
3. recognize methods of call coverage facilitated by technological advances to allow greater access and flexibility for physicians to procure call coverage services/arrangements for their patients.

*Summary of New Rules*

New Subchapter E, "Physician Call Coverage Medical Services," is added to Chapter 177, to include three new sections: §§177.18 - 177.20.

New §177.18, concerning Purpose and Scope, sets forth the purpose, scope and applicability of Subchapter E.

New §177.19, concerning Definitions, defines the "Act" and the "Board" as is used throughout Subchapter E.

New §177.20, concerning Call Coverage Minimum Requirements, sets forth specific minimum requirements for physician call coverage agreements generally, and further delineates the parameters and requirements for two call coverage models:

"Non-Reciprocal Call Coverage Model", and "Reciprocal Call Coverage Model."

#### *Summary of Comments*

The Board received written comments from Teladoc, Inc., American Well, and Texas E-Health Alliance (TeHA). No one appeared to testify at the public hearing held on August 25, 2016, regarding §§177.18 - 177.20.

#### *Comment No. 1: Texas E-Health Alliance*

The commenter expressed support for the new rules, stating:

On behalf of our board of directors, I would like to convey our support for the finalization of this rule so that it can take effect. We have a number of TeHA members that plan to use this new provision to better support their clients and businesses.

I would also like to thank the Board and its staff for meeting with stakeholders throughout the rule development process, and for continuing to take into account the ongoing developments in the use of technology for the delivery of telemedicine.

#### *Comment No. 2: American Well*

The commenter expressed support for the new rules, stating:

We would like to convey our formal support for the adoption of this rule. Not only will it clarify and support vital, traditional "on-call" relationships, but it will also create a pathway for innovative technologies and other models of care to open access to much needed specialty clinicians and after hours capacity.

#### *Comment No. 3: Teladoc, Inc.*

The commenter opposed the rules on various grounds. The Board believes the commenter is mistaken about the intent and effect of the rules.

#### *Response to Comment*

*Point No. 1: The commenter states that there presently exists no confusion regarding the applicability of call coverage within the physician community.*

*Response:* Despite the commenter's assertion that there is no confusion in the physician community about the applicability of the call coverage rule, practitioners, including physician stakeholders, have expressed concern to the Board that traditional call coverage was not allowed under the existing rules. The revisions adopted clearly establish that call coverage rules pertain to all physicians, as the rules have been re-located from the chapter pertaining to telemedicine to another chapter of general applicability.

*Point No. 2: The commenter maintains that stakeholders are confused as to why the Board did not simply revise the call coverage rule in Chapter 174.*

*Response:* As stated above, there were concerns about the applicability and limitations on call coverage arrangements under the existing rule and the requirements of "reciprocity" and "same specialty." The stakeholders expressed a need for a rule that provided the same clarity to all physicians, not just telemedicine physicians, using call coverage arrangements. The rules provide guidance regarding the parameters for permissible use of such call coverage arrangements relating to all physicians. This need for clarification to facilitate expanded coverage is illustrated in the following comment made by a member of the Board's telemedicine stakeholder group during the May 2, 2016 stakeholder meeting:

"That's how the issue came onto our radar screen, was folks calling us and saying, 'I can't find anybody to do call coverage for me. I would love it if I could use a service or I could contract with someone from another city. But if I don't have any partners to begin with, then I don't have anybody to cover for me. I can't do reciprocal because there's no one to do an exchange with.' So that, to us, was a significant barrier that we submitted as a formal comment during two rounds of rule-making. I think it was the 2015 round of rule-making. So this new model, then, would provide that dermatologist the chance to contract with a dermatologist in another city without necessarily having to take that person's call."

The relocation of the rule from Chapter 174, which is limited to the subject of telemedicine, to Chapter 177, which pertains to business organizations connected to all medicine, clearly establishes that the rule pertaining to "on-call" coverage applies to all physicians, rather than just those physicians utilizing telemedicine in their practice. This clarification is illustrated in the following exchange made during the stakeholder meeting on May 2, 2016 between a stakeholder and Ms. Robinson, the Executive Director for the Board:

DR. PHILLIPS:

"So in that answer, it actually prompted my next question, and that is, this process moved from the telemedicine rules Chapter 174 to a new set of rules, Chapter 177. Again, I don't want to go into a lot of detail, but what was the context for expanding to all coverage rather than focusing on the telemedicine coverage?"

MS. ROBINSON:

"Because we realized that there was a generalized standard and it applied to all medicine."

*Point No. 3: The rules limit patient choice and prevent a patient from using an ER, urgent care, or retail clinic.*

*Response:* Such claims are erroneous and demonstrate this commenter's misunderstanding of the new rule's intent and effect. This rule has no effect on a patient's ability to freely select a medical service provider, whether it is an ER, urgent care or retail clinic.

The adopted rule addresses a physician's mechanism and need to provide continued patient care when the physician is absent. This rule does not limit the patient's choice to seek care from any other physician or at an ER, urgent care, or retail clinic.

Call coverage has traditionally been understood to apply to those situations in which one physician asks another physician to cover any potential medical issues during an absence. Again, this rule does not impact a patient's choice to seek care elsewhere during his/her primary care physician's absence.

*Point No. 4: The commenter addressed the absence of the phrase "mutual responsibility" in the rule.*

*Response:* The commenter pointed out that the adopted rule lacks the phrase "mutual responsibility," a term included in an earlier version of rules that has since been withdrawn by the board as the result of several comments received in opposition to the phrase.

The new adopted rule provides that the physician providing coverage is responsible for the care provided during the time of coverage. This rule satisfies the prior concerns expressed by TMA and TOMA regarding the phrase "mutual responsibility" by eliminating such language. No comments have been received from

TMA, TOMA, or any other individual in opposition to this most recent change, other than the commenter.

The rule's requirement of having a written agreement in a non-reciprocal arrangement is intended to ensure communication between the physicians who are parties to the call coverage agreement/arrangement.

The rule allows for innovative call coverage models by removal of the "same specialty" and "reciprocity" requirements, while simultaneously ensuring patient safety through the requirement to memorialize, in the patient's record, the care provided during the coverage period. The manner of memorializing the care provided is also flexible. This requirement ensures patient continuity of care and safety.

In the new rule, the written agreement provision simply ensures that both the primary and covering physician agree to provision of call coverage services. Further, upon conclusion of the coverage period, the care provided by the covering physician, if any, is memorialized in the patient's record. The Board certainly understands the problem of fragmented medical records, and the new rule actually reduces such fragmentation by requiring such care to be documented in the patient's record. This memorialization of care allows a patient and/or the primary care physician to access information about the care of a patient, including who to contact about such information or care, in the event of confusion or concerns regarding the care provided during the coverage period.

*Point No. 5: The commenter asserts that the rules are vague and confusing, and takes issue that certain terms are not defined in the rules.*

*Response:* The rules contain terms that are clear on their face and are commonly understood within the medical community. No stakeholders, other than the commenter, have expressed confusion regarding any of these terms.

*Point No. 6: The commenter makes several unsupported arguments regarding Rule 190.8.*

*Response:* These comments are unrelated in any manner to the adopted call coverage rule. Moreover, the enforcement or amendment of the rule in Chapter 174 has never been enjoined by any court. A large portion of the commenter's remarks focus on pending litigation between the commenter and the Board that is framed entirely in terms of Rule 190.8. The commenter claims that this new rule cannot be passed without empirical evidence. However, such is not the standard and, again, the commenter's focus is misplaced as it refers to Rule 190.8 rather than Chapter 174.

The new rules are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The 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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Mari Robinson, J.D.

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## PART 10. TEXAS FUNERAL SERVICE COMMISSION

### CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

#### SUBCHAPTER A. LICENSING

##### 22 TAC §203.5, §203.7

The Texas Funeral Service Commission adopts amendments to 22 TAC §203.5 and §203.7 without changes to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4944).

The amendments clarify questions regarding the provisional license program. The amended rules provide clarification on education waivers, the mortuary law exam expiration, and what is required for re-applications for a provisional license.

The amendment to §203.5(a) clarifies the educational waiver provided for in statute is only good for an applicant who has never held a provisional license. The amendment to §203.5(b) clarifies that a person who has completed coursework and "filed for graduation" but has not graduated may continue to hold a provisional license. The amendment to §203.5(n) clarifies the mortuary law exam expiration date is tied to filing an application by requiring an examinee to apply for a provisional license within six months of taking the exam or the exam score is invalid.

The amendment to §203.7 clarifies a new application for a provisional license (even if the person previously had a license) triggers both a new criminal background check and the requirement for a new mortuary law exam.

No comments were received regarding the amendments to §203.5 and §203.7.

These amendments are adopted under Cemetery and Crematory Services, Funeral Directing and Embalming Act, Texas Occupations Code §651.152, which authorizes the Commission to adopt rules considered necessary for carrying out the Commission's work and Texas Occupations Code Subchapter G (§§651.301 - 651.306), which authorizes the Commission to issue provisional licenses.

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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TRD-201604815

Janice McCoy  
Executive Director  
Texas Funeral Service Commission  
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For further information, please call: (512) 936-2469



## 22 TAC §203.9

The Texas Funeral Service Commission adopts an amendment to 22 TAC §203.9 without changes to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4945). The amendment provides that change of ownership affidavits may require the new owner to submit a fee along with the affidavit. With the amendment, the Commission could but would not be required to adopt a fee to accompany the ownership affidavit.

No comments were received regarding the amendment to §203.9(c).

This amendment is adopted under Cemetery and Crematory Services, Funeral Directing and Embalming Act, Texas Occupations Code §651.152, which authorizes the Commission to adopt rules considered necessary for carrying out the Commission's work and Texas Occupations Code §651.154 which authorizes the Commission to adopt fees.

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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Janice McCoy  
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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

#### CHAPTER 97. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §97.2 and §97.527, in Chapter 97, Licensing Standards for Home and Community Support Services Agencies. The amendments to §97.2 and §97.527 are adopted with changes to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 5025).

The purpose of the adoption is to make terminology used in Chapter 97 consistent with terminology used in Title 42, Code of Federal Regulations, Part 488, Subparts I and J. Specifically, the adoption replaces the term "informal review of deficiencies" (IRoD) with the term "informal dispute resolution" (IDR). Currently, IRoD is available for all violations and deficiencies, but the adoption provides that IDR is available for violations and only for deficiencies that rise to the condition level, which are deficiencies that substantially limit the capacity of a home and community support services agency to furnish adequate care or that adversely affect the health or safety of patients. Additional amendments provide that DADS does not grant an agency's request for IDR if DADS cited the violation or deficiency at the agency's immediately preceding survey and DADS has cited the violation or deficiency again, with no new findings.

DADS received no comments regarding adoption of the amendments.

The agency made changes to §97.2 to reflect the previous adoption of the section as published in the August 26, 2016, issue of the *Texas Register* (41 TexReg 6501).

## SUBCHAPTER A. GENERAL PROVISIONS

### 40 TAC §97.2

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS, and Texas Health and Safety Code, §142.0011 which authorizes the HHSC executive commissioner to adopt rules relating to the licensing and regulation of home and community support services agencies.

#### §97.2. Definitions.

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

(1) Accessible and flexible services--Services that are delivered in the least intrusive manner possible and are provided in all settings where individuals live, work, and recreate.

(2) Administration of medication--The direct application of any medication by injection, inhalation, ingestion, or any other means to the body of a client. The preparation of medication is part of the administration of medication and is the act or process of making ready a medication for administration, including the calculation of a client's medication dosage; altering the form of the medication by crushing, dissolving, or any other method; reconstitution of an injectable medication; drawing an injectable medication into a syringe; preparing an intravenous admixture; or any other act required to render the medication ready for administration.

(3) Administrative support site--A facility or site where an agency performs administrative and other support functions but does not provide direct home health, hospice, or personal assistance services. This site does not require an agency license.

(4) Administrator--The person who is responsible for implementing and supervising the administrative policies and operations of a home and community support services agency and for administratively supervising the provision of all services to agency clients on a day-to-day basis.

(5) ADS--Alternate delivery site. A facility or site, including a residential unit or an inpatient unit.

(A) that is owned or operated by an agency providing hospice services;

(B) that is not the hospice's principal place of business, which for the purposes of this definition, means it is not the parent agency;

(C) that is located in the geographical area served by the hospice; and

(D) from which the hospice provides hospice services.

(6) Advanced practice nurse--An advanced practice registered nurse.

(7) Advanced practice registered nurse--A person licensed by the Texas Board of Nursing as an advanced practice registered nurse. The term is synonymous with "advanced practice nurse."

(8) Advisory committee--A committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup, established for the purpose of obtaining advice or recommendations on issues or policies that are within the scope of a person's responsibility.

(9) Affiliate--With respect to an applicant or license holder that is:

(A) a corporation--means each officer, director, and stockholder with direct ownership of at least 5.0 percent, subsidiary, and parent company;

(B) a limited liability company--means each officer, member, and parent company;

(C) an individual--means:

(i) the individual's spouse;

(ii) each partnership and each partner thereof of which the individual or any affiliate of the individual is a partner; and

(iii) each corporation in which the individual is an officer, director, or stockholder with a direct ownership or disclosable interest of at least 5.0 percent.

(D) a partnership--means each partner and any parent company; and

(E) a group of co-owners under any other business arrangement--means each officer, director, or the equivalent under the specific business arrangement and each parent company.

(10) Agency--A home and community support services agency.

(11) Applicant--The owner of an agency that is applying for a license under the statute. This is the person in whose name the license will be issued.

(12) Assistance with self-administration of medication--Any needed ancillary aid provided to a client in the client's self-administered medication or treatment regimen, such as reminding a client to take a medication at the prescribed time, opening and closing a medication container, pouring a predetermined quantity of liquid to be ingested, returning a medication to the proper storage area, and assisting in reordering medications from a pharmacy. Such ancillary aid includes administration of any medication when the client has the cognitive ability to direct the administration of their medication and would self-administer if not for a functional limitation.

(13) Association--A partnership, limited liability company, or other business entity that is not a corporation.

(14) Audiologist--A person who is currently licensed under the Texas Occupations Code, Chapter 401, as an audiologist.

(15) Bereavement--The process by which a survivor of a deceased person mourns and experiences grief.

(16) Bereavement services--Support services offered to a family during bereavement. Services may be provided to persons other than family members, including residents of a skilled nursing facility, nursing facility, or intermediate care facility for individuals with an intellectual disability or related conditions, when appropriate and identified in a bereavement plan of care.

(17) Biologicals--A medicinal preparation made from living organisms and their products, including serums, vaccines, antigens, and antitoxins.

(18) Boarding home facility--An establishment defined in Texas Health and Safety Code §260.001(2).

(19) Branch office--A facility or site in the service area of a parent agency from which home health or personal assistance services are delivered or where active client records are maintained. This does not include inactive records that are stored at an unlicensed site.

(20) Care plan--

(A) a written plan prepared by the appropriate health care professional for a client of the home and community support services agency; or

(B) for home dialysis designation, a written plan developed by the physician, registered nurse, dietitian, and qualified social worker to personalize the care for the client and enable long- and short-term goals to be met.

(21) Case conference--A conference among personnel furnishing services to the client to ensure that their efforts are coordinated effectively and support the objectives outlined in the plan of care or care plan.

(22) Certified agency--A home and community support services agency, or portion of the agency, that:

(A) provides a home health service; and

(B) is certified by an official of the Department of Health and Human Services as in compliance with conditions of participation in Social Security Act, Title XVIII (42 United States Code (USC) §1395 et seq.).

(23) Certified home health services--Home health services that are provided by a certified agency.

(24) CFR--Code of Federal Regulations. The regulations and rules promulgated by agencies of the Federal government that address a broad range of subjects, including hospice care and home health services.

(25) CHAP--Community Health Accreditation Program, Inc. An independent, nonprofit accrediting body that publicly certifies that an organization has voluntarily met certain standards for home and community-based health care.

(26) Chief financial officer--An individual who is responsible for supervising and managing all financial activities for a home and community support services agency.

(27) Client--An individual receiving home health, hospice, or personal assistance services from a licensed home and community support services agency. This term includes each member of the primary client's family if the member is receiving ongoing services. This term does not include the spouse, significant other, or other family

member living with the client who receives a one-time service (for example, vaccination) if the spouse, significant other, or other family member receives the service in connection with the care of a client.

(28) Clinical note--A dated and signed written notation by agency personnel of a contact with a client containing a description of signs and symptoms; treatment and medication given; the client's reaction; other health services provided; and any changes in physical and emotional condition.

(29) CMS--Centers for Medicare and Medicaid Services. The federal agency that administers the Medicare program and works in partnership with the states to administer Medicaid.

(30) Complaint--An allegation against an agency regulated by DADS or against an employee of an agency regulated by DADS that involves a violation of this chapter or the statute.

(31) Community disaster resources--A local, statewide, or nationwide emergency system that provides information and resources during a disaster, including weather information, transportation, evacuation, and shelter information, disaster assistance and recovery efforts, evacuee and disaster victim resources, and resources for locating evacuated friends and relatives.

(32) Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an agency or other person.

(A) A controlling person includes:

(i) a management company or other business entity that operates or contracts with others for the operation of an agency;

(ii) a person who is a controlling person of a management company or other business entity that operates an agency or that contracts with another person for the operation of an agency; and

(iii) any other individual who, because of a personal, familial, or other relationship with the owner, manager, or provider of an agency, is in a position of actual control or authority with respect to the agency, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the agency.

(B) A controlling person, as described by subparagraph (A)(iii) of this paragraph, does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of an agency.

(33) Conviction--An adjudication of guilt based on a finding of guilt, a plea of guilty, or a plea of nolo contendere.

(34) Counselor--An individual qualified under Medicare standards to provide counseling services, including bereavement, dietary, spiritual, and other counseling services to both the client and the family.

(35) DADS--Department of Aging and Disability Services.

(36) Day--Any reference to a day means a calendar day, unless otherwise specified in the text. A calendar day includes weekends and holidays.

(37) Deficiency--A finding of noncompliance with federal requirements resulting from a survey.

(38) Designated survey office--A DADS Home and Community Support Services Agencies Program office located in an agency's geographic region.

(39) Dialysis treatment record--For home dialysis designation, a dated and signed written notation by the person providing dialysis treatment which contains a description of signs and symptoms, machine parameters and pressure settings, type of dialyzer and dialysate, actual pre- and post-treatment weight, medications administered as part of the treatment, and the client's response to treatment.

(40) Dietitian--A person who is currently licensed under the laws of the State of Texas to use the title of licensed dietitian or provisional licensed dietitian, or who is a registered dietitian.

(41) Disaster--The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or man-made cause, such as fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, epidemic, air contamination, infestation, explosion, riot, hostile military or paramilitary action, or energy emergency. In a hospice inpatient unit, a disaster also includes failure of the heating or cooling system, power outage, explosion, and bomb threat.

(42) ESRD--End stage renal disease. For home dialysis designation, the stage of renal impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.

(43) Functional need--Needs of the individual that require services without regard to diagnosis or label.

(44) Habilitation--Habilitation services, as defined by Texas Government Code §534.001, provided by an agency licensed under this chapter.

(45) Health assessment--A determination of a client's physical and mental status through inventory of systems.

(46) Home and community support services agency--A person who provides home health, hospice, or personal assistance services for pay or other consideration in a client's residence, an independent living environment, or another appropriate location.

(47) Home health aide--An individual working for an agency who meets at least one of the requirements for home health aides as defined in §97.701 of this chapter (relating to Home Health Aides).

(48) Home health medication aide--An unlicensed person issued a permit by DADS to administer medication to a client under the Texas Health and Safety Code, Chapter 142, Subchapter B.

(49) Home health service--The provision of one or more of the following health services required by an individual in a residence or independent living environment:

(A) nursing, including blood pressure monitoring and diabetes treatment;

(B) physical, occupational, speech, or respiratory therapy;

(C) medical social service;

(D) intravenous therapy;

(E) dialysis;

(F) service provided by unlicensed personnel under the delegation or supervision of a licensed health professional;

(G) the furnishing of medical equipment and supplies, excluding drugs and medicines; or

(H) nutritional counseling.

(50) Hospice--A person licensed under this chapter to provide hospice services, including a person who owns or operates a residential unit or an inpatient unit.

(51) Hospice aide--A person working for an agency licensed to provide hospice services who meets the qualifications for a hospice aide as described in §97.843 of this chapter (relating to Hospice Aide Qualifications).

(52) Hospice homemaker--A person working for an agency licensed to provide hospice services who meets the qualifications described in §97.845 of this chapter (relating to Hospice Homemaker Qualifications).

(53) Hospice services--Services, including services provided by unlicensed personnel under the delegation of a registered nurse or physical therapist, provided to a client or a client's family as part of a coordinated program consistent with the standards and rules adopted under this chapter. These services include palliative care for terminally ill clients and support services for clients and their families that:

(A) are available 24 hours a day, seven days a week, during the last stages of illness, during death, and during bereavement;

(B) are provided by a medically directed interdisciplinary team; and

(C) may be provided in a home, nursing facility, residential unit, or inpatient unit according to need. These services do not include inpatient care normally provided in a licensed hospital to a terminally ill person who has not elected to be a hospice client. For the purposes of this definition, the word "home" includes a person's "residence" as defined in this section.

(54) IDR--Informal dispute resolution. An informal process that allows an agency to refute a violation or condition-level deficiency cited during a survey.

(55) Independent living environment--A client's residence, which may include a group home, foster home, or boarding home facility, or other settings where a client participates in activities, including school, work, or church.

(56) Individual and family choice and control--Individuals and families who express preferences and make choices about how their support service needs are met.

(57) Individualized service plan--A written plan prepared by the appropriate health care personnel for a client of a home and community support services agency licensed to provide personal assistance services.

(58) Inpatient unit--A facility, also referred to as a hospice freestanding inpatient facility, that provides a continuum of medical or nursing care and other hospice services to clients admitted into the unit and that is in compliance with:

(A) the conditions of participation for inpatient units adopted under Social Security Act, Title XVIII (42 United States Code §1395 et seq.); and

(B) standards adopted under this chapter.

(59) JCAHO--Joint Commission on Accreditation of Healthcare Organizations. An independent, nonprofit organization for standard-setting and accrediting in-home care and other areas of health care.

(60) Joint training--Training provided by DADS at least semi-annually for home and community support services agencies and

DADS surveyors on subjects that address the 10 most commonly cited violations of federal or state law by home and community support services agencies as published in DADS annual reports.

(61) LAR--Legally authorized representative. A person authorized by law to act on behalf of a client with regard to a matter described in this chapter, and may include a parent of a minor, guardian of an adult or minor, managing conservator of a minor, agent under a medical power of attorney, or surrogate decision-maker under Texas Health and Safety Code, §313.004.

(62) Licensed vocational nurse--A person who is currently licensed under Texas Occupations Code, Chapter 301, as a licensed vocational nurse.

(63) Life Safety Code (also referred to as NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(64) Local emergency management agencies--The local emergency management coordinator, fire, police, and emergency medical services.

(65) Local emergency management coordinator-- The person identified as the emergency management coordinator by the mayor or county judge in an agency's service area.

(66) Manager--An employee or independent contractor responsible for providing management services to a home and community support services agency for the overall operation of a home and community support services agency including administration, staffing, or delivery of services. Examples of contracts for services that will not be considered contracts for management services include contracts solely for maintenance, laundry, or food services.

(67) Medication administration record--A record used to document the administration of a client's medications.

(68) Medication list--A list that includes all prescription and over-the-counter medication that a client is currently taking, including the dosage, the frequency, and the method of administration.

(69) Mitigation--An action taken to eliminate or reduce the probability of a disaster, or reduce a disaster's severity or consequences.

(70) Multiple location--A Medicare-approved alternate delivery site that meets the definition in 42 CFR §418.3.

(71) Notarized copy--A sworn affidavit stating that attached copies are true and correct copies of the original documents.

(72) Nursing facility--An institution licensed as a nursing home under the Texas Health and Safety Code, Chapter 242.

(73) Nutritional counseling--Advising and assisting individuals or families on appropriate nutritional intake by integrating information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status, with the goal being health promotion, disease prevention, and nutrition education. Nutritional counseling may include the following:

(A) dialogue with the client to discuss current eating habits, exercise habits, food budget, and problems with food preparation;

(B) discussion of dietary needs to help the client understand why certain foods should be included or excluded from the client's diet and to help with adjustment to the new or revised or existing diet plan;

(C) a personalized written diet plan as ordered by the client's physician or practitioner, to include instructions for implementation;

(D) providing the client with motivation to help the client understand and appreciate the importance of the diet plan in getting and staying healthy; or

(E) working with the client or the client's family members by recommending ideas for meal planning, food budget planning, and appropriate food gifts.

(74) Occupational therapist--A person who is currently licensed under the Occupational Therapy Practice Act, Texas Occupations Code, Chapter 454, as an occupational therapist.

(75) Operating hours--The days of the week and the hours of day an agency's place of business is open as identified in an agency's written policy as required by §97.210 of this chapter (relating to Agency Operating Hours).

(76) Original active client record--A record composed first-hand for a client currently receiving services.

(77) Palliative care--Intervention services that focus primarily on the reduction or abatement of physical, psychosocial, and spiritual symptoms of a terminal illness. It is client and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and facilitating client autonomy, access to information, and choice.

(78) Parent agency--An agency that develops and maintains administrative controls and provides supervision of branch offices and alternate delivery sites.

(79) Parent company--A person, other than an individual, who has a direct 100 percent ownership interest in the owner of an agency.

(80) Person--An individual, corporation, or association.

(81) Person with a disclosable interest--Any person who owns at least a 5.0 percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 142. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the agency.

(82) Personal assistance services--Routine ongoing care or services required by an individual in a residence or independent living environment that enable the individual to engage in the activities of daily living or to perform the physical functions required for independent living, including respite services. The term includes:

(A) personal care;

(B) health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the Texas Board of Nursing through a memorandum of understanding with DADS in accordance with Texas Health and Safety Code, §142.016; and

(C) health-related tasks provided by unlicensed personnel under the delegation of a registered nurse or that a registered nurse determines do not require delegation.

(83) Personal care--The provision of one or more of the following services required by an individual in a residence or independent living environment:

(A) bathing;

(B) dressing;

(C) grooming;

(D) feeding;

(E) exercising;

(F) toileting;

(G) positioning;

(H) assisting with self-administered medications;

(I) routine hair and skin care; and

(J) transfer or ambulation.

(84) Pharmacist--A person who is licensed to practice pharmacy under the Texas Pharmacy Act, Texas Occupations Code, Chapter 558.

(85) Pharmacy--A facility defined in the Texas Occupations Code, §551.003(31), at which a prescription drug or medication order is received, processed, or dispensed.

(86) Physical therapist--A person who is currently licensed under Texas Occupations Code, Chapter 453, as a physical therapist.

(87) Physician--This term includes a person who is:

(A) licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code, Chapter 155;

(B) licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of a client and orders home health or hospice services for the client, in accordance with the Texas Occupations Code, §151.056(b)(4); or

(C) a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service if the person is not engaged in private practice, in accordance with the Texas Occupations Code, §151.052(a)(8).

(88) Physician assistant--A person who is licensed under the Physician Assistant Licensing Act, Texas Occupations Code, Chapter 204, as a physician assistant.

(89) Physician-delegated task--A task performed in accordance with the Texas Occupations Code, Chapter 157, including orders signed by a physician that specify the delegated task, the individual to whom the task is delegated, and the client's name.

(90) Place of business--An office of a home and community support services agency that maintains client records or directs home health, hospice, or personal assistance services. This term includes a parent agency, a branch office, and an alternate delivery site. The term does not include an administrative support site.

(91) Plan of care--The written orders of a practitioner for a client who requires skilled services.

(92) Practitioner--A person who is currently licensed in a state in which the person practices as a physician, dentist, podiatrist, or a physician assistant, or a person who is a registered nurse registered with the Texas Board of Nursing as an advanced practice nurse.

(93) Preparedness--Actions taken in anticipation of a disaster.

(94) Presurvey conference--A conference held with DADS staff and the applicant or the applicant's representatives to review licensure standards and survey documents, and to provide consultation before the survey.

(95) Progress note--A dated and signed written notation by agency personnel summarizing facts about care and the client's response during a given period of time.

(96) Psychoactive treatment--The provision of a skilled nursing visit to a client with a psychiatric diagnosis under the direction of a physician that includes one or more of the following:

- (A) assessment of alterations in mental status or evidence of suicide ideation or tendencies;
- (B) teaching coping mechanisms or skills;
- (C) counseling activities; or
- (D) evaluation of the plan of care.

(97) Recovery--Activities implemented during and after a disaster response designed to return an agency to its normal operations as quickly as possible.

(98) Registered nurse delegation--Delegation by a registered nurse in accordance with:

(A) 22 TAC Chapter 224 (concerning Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); and

(B) 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(99) Residence--A place where a person resides, including a home, a nursing facility, a convalescent home, or a residential unit.

(100) Residential unit--A facility that provides living quarters and hospice services to clients admitted into the unit and that is in compliance with standards adopted under the Texas Health and Safety Code, Chapter 142.

(101) Respiratory therapist--A person who is currently licensed under Texas Occupations Code, Chapter 604, as a respiratory care practitioner.

(102) Respite services--Support options that are provided temporarily for the purpose of relief for a primary caregiver in providing care to individuals of all ages with disabilities or at risk of abuse or neglect.

(103) Response--Actions taken immediately before an impending disaster or during and after a disaster to address the immediate and short-term effects of the disaster.

(104) Restraint--A restraint is:

(A) a manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a client in a hospice inpatient unit to move his or her arms, legs, body, or head freely, but does not include a device, such as an orthopedically prescribed device, a surgical dressing or bandage, a protective helmet, or other method that involves the physical holding of the client for the purpose of:

- (i) conducting a routine physical examination or test;
- (ii) protecting the client from falling out of bed; or

(iii) permitting the client to participate in activities without the risk of physical harm, not including a physical escort; or

(B) a drug or medication when used as a restriction to manage a client's behavior or restrict the client's freedom of movement in a hospice inpatient unit, but not as a standard treatment or medication dosage for the client's condition.

(105) RN--Registered nurse. A person who is currently licensed under the Nursing Practice Act, Texas Occupations Code, Chapter 301, as a registered nurse.

(106) Seclusion--The involuntary confinement of a client alone in a room or an area in a hospice inpatient unit from which the client is physically prevented from leaving.

(107) Section--A reference to a specific rule in this chapter.

(108) Service area--A geographic area established by an agency in which all or some of the agency's services are available.

(109) Skilled services--Services in accordance with a plan of care that require the skills of:

- (A) a registered nurse;
- (B) a licensed vocational nurse;
- (C) a physical therapist;
- (D) an occupational therapist;
- (E) a respiratory therapist;
- (F) a speech-language pathologist;
- (G) an audiologist;
- (H) a social worker; or
- (I) a dietitian.

(110) Social worker--A person who is currently licensed as a social worker under Texas Occupations Code, Chapter 505.

(111) Speech-language pathologist--A person who is currently licensed as a speech-language pathologist under Texas Occupations Code, Chapter 401.

(112) Statute--The Texas Health and Safety Code, Chapter 142.

(113) Substantial compliance--A finding in which an agency receives no recommendation for enforcement action after a survey.

(114) Supervised practical training--Hospice aide training that is conducted in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual. The training is supervised by a registered nurse or by a licensed vocational nurse who works under the direction of a registered nurse.

(115) Supervising nurse--The person responsible for supervising skilled services provided by an agency and who has the qualifications described in §97.244(c) of this chapter (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications). This person may also be known as the director of nursing or similar title.

(116) Supervision--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(117) Support services--Social, spiritual, and emotional care provided to a client and a client's family by a hospice.

(118) Survey--An on-site inspection or complaint investigation conducted by a DADS representative to determine if an agency is in compliance with the statute and this chapter or in compliance with applicable federal requirements or both.

(119) Terminal illness--An illness for which there is a limited prognosis if the illness runs its usual course.

(120) Unlicensed person--A person not licensed as a health care provider. The term includes home health aides, hospice aides, hospice homemakers, medication aides permitted by DADS, and other unlicensed individuals providing personal care or assistance in health services.

(121) Unsatisfied judgments--A failure to fully carry out the terms or meet the obligation of a court's final disposition on the matters before it in a suit regarding the operation of an agency.

(122) Violation--A finding of noncompliance with this chapter or the statute resulting from a survey.

(123) Volunteer--An individual who provides assistance to a home and community support services agency without compensation other than reimbursement for actual expenses.

(124) Working day--Any day except Saturday, Sunday, a state holiday, or a federal holiday.

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

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

TRD-201604808

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: October 5, 2016

Proposal publication date: July 8, 2016

For further information, please call: (512) 438-3791



## SUBCHAPTER E. LICENSURE SURVEYS DIVISION 2. THE SURVEY PROCESS

### 40 TAC §97.527

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS, and Texas Health and Safety Code, §142.0011 which authorizes the HHSC executive commissioner to adopt rules relating to the licensing and regulation of home and community support services agencies.

#### §97.527. *Post-Survey Procedures.*

(a) After a survey is completed, the surveyor holds an exit conference with the administrator or alternate administrator to inform the agency of the preliminary findings.

(b) An agency may make an audio recording of the exit conference only if the agency:

- (1) records two tapes simultaneously;
- (2) allows the surveyor to review the tapes; and

(3) gives the surveyor the tape of the surveyor's choice before leaving the agency.

(c) An agency may make a video recording of the exit conference only if the surveyor agrees to allow it and if the agency:

- (1) records two tapes simultaneously;
- (2) allows the surveyor to review the tapes; and

(3) gives the surveyor the tape of the surveyor's choice before leaving the agency.

(d) An agency may submit additional written documentation and facts after the exit conference only if the agency describes the additional documentation and facts to the surveyor during the exit conference.

(1) The agency must submit the additional written documentation and facts to the designated survey office within two working days after the end of the exit conference.

(2) If an agency properly submits additional written documentation, the surveyor may add the documentation to the record of the survey.

(e) If DADS identifies additional violations or deficiencies after the exit conference, DADS holds an additional face-to-face exit conference with the agency regarding the additional violations or deficiencies.

(f) DADS provides official written notification of the survey findings to the agency within 10 working days after the exit conference.

(g) The official written notification of the survey findings includes a statement of violations, condition-level deficiencies, or both, cited by DADS against the agency as a result of the survey, and instructions for submitting an acceptable plan of correction, and for requesting IDR.

(1) If the official written notification of the survey findings declares that an agency is in violation of the statute or this chapter, an agency must follow DADS instructions included with the statement of violations for submitting an acceptable plan of correction.

(2) An acceptable plan of correction includes the corrective measures and time frame with which the agency must comply to ensure correction of a violation. If an agency fails to correct each violation by the date on the plan of correction, DADS may take enforcement action against the agency. An agency must correct a violation in accordance with the following time frames:

(A) A Severity Level B violation that results in serious harm to or death of a client or constitutes a serious threat to the health or safety of a client must be addressed upon receipt of the official written notice of the violations and corrected within two days.

(B) A Severity Level B violation that substantially limits the agency's capacity to provide care must be corrected within seven days after receipt of the official written notice of the violations.

(C) A Severity Level A violation that has or had minor or no health or safety significance must be corrected within 20 days after receipt of the official written notice of the violations.

(D) A violation that is not designated as Severity Level A or Severity Level B must be corrected within 60 days after the date the violation was cited.

(3) An agency must submit an acceptable plan of correction for each violation or deficiency no later than 10 days after its receipt of the official written notification of the survey findings.

(4) If DADS finds the plan of correction unacceptable, DADS gives the agency written notice and provides the agency one additional opportunity to submit an acceptable plan of correction. An agency must submit a revised plan of correction no later than 30 days after the agency's receipt of DADS written notice of an unacceptable plan of correction.

(h) An acceptable plan of correction does not preclude DADS from taking enforcement action against an agency.

(i) An agency must submit a plan of correction in response to an official written notification of survey findings that declares a violation or deficiency even if the agency disagrees with the survey findings.

(j) If an agency disagrees with the survey findings citing a violation or condition-level deficiency, the agency may request IDR to refute the violation or deficiency.

(1) DADS does not grant an agency's request for IDR if:

(A) DADS cited the violation or deficiency at the agency's immediately preceding survey; and

(B) DADS cited the violation or deficiency again, with no new findings.

(2) To request IDR, an agency must:

(A) mail or fax a complete and accurate IDR request form to the address or fax number listed on the form, which must be postmarked or faxed within 10 days after the date of receipt of the official written notification of the survey findings;

(B) mail or fax a rebuttal letter and supporting documentation to the address or fax number listed on the IDR request form and ensure receipt by the DADS Survey and Certification Enforcement Unit within seven days after the postmark or fax date of the IDR request form; and

(C) mail or fax a copy of the IDR request form, rebuttal letter, and supporting documentation to the designated survey office within the same time frames each is submitted to the DADS Survey and Certification Enforcement Unit.

(3) An agency may not submit information after the deadlines established in paragraph (2)(A) and (B) of this subsection unless DADS requests additional information. The agency's response to

DADS request for information must be received within three working days after the request is made.

(4) An agency waives its right to IDR if the agency fails to submit the required information to the DADS Survey and Certification Enforcement Unit within the required time frames.

(5) An agency must present sufficient information to the DADS Survey and Certification Enforcement Unit to support the agency's desired IDR outcome.

(6) The rebuttal letter and supporting documentation must include:

(A) identification of the disputed deficiencies or violations;

(B) the reason the deficiencies or violations are disputed;

(C) the desired outcome for each disputed deficiency or violation; and

(D) copies of client records, policies and procedures, and other documentation and information that directly demonstrate that the condition-level deficiency or violation should not have been cited.

(7) The written decision issued by DADS after the completion of its review is the final decision from IDR.

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

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

TRD-201604809

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: October 5, 2016

Proposal publication date: July 8, 2016

For further information, please call: (512) 438-3791



# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

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## Adopted Rule Reviews

Texas Alcoholic Beverage Commission

### Title 16, Part 3

The Texas Alcoholic Beverage Commission readopts without change 16 Texas Administrative Code §33.10, Citizenship and Status.

The proposed rule review was published in the August 5, 2016, issue of the *Texas Register* (41 TexReg 5803). No comments were received.

The rule review was conducted pursuant to Government Code §2001.039. The agency finds that the reasons for adopting the rule

continue to exist. The rule is not obsolete, reflects current legal and policy considerations, and reflects current procedures of the Commission.

TRD-201604899

Martin Wilson

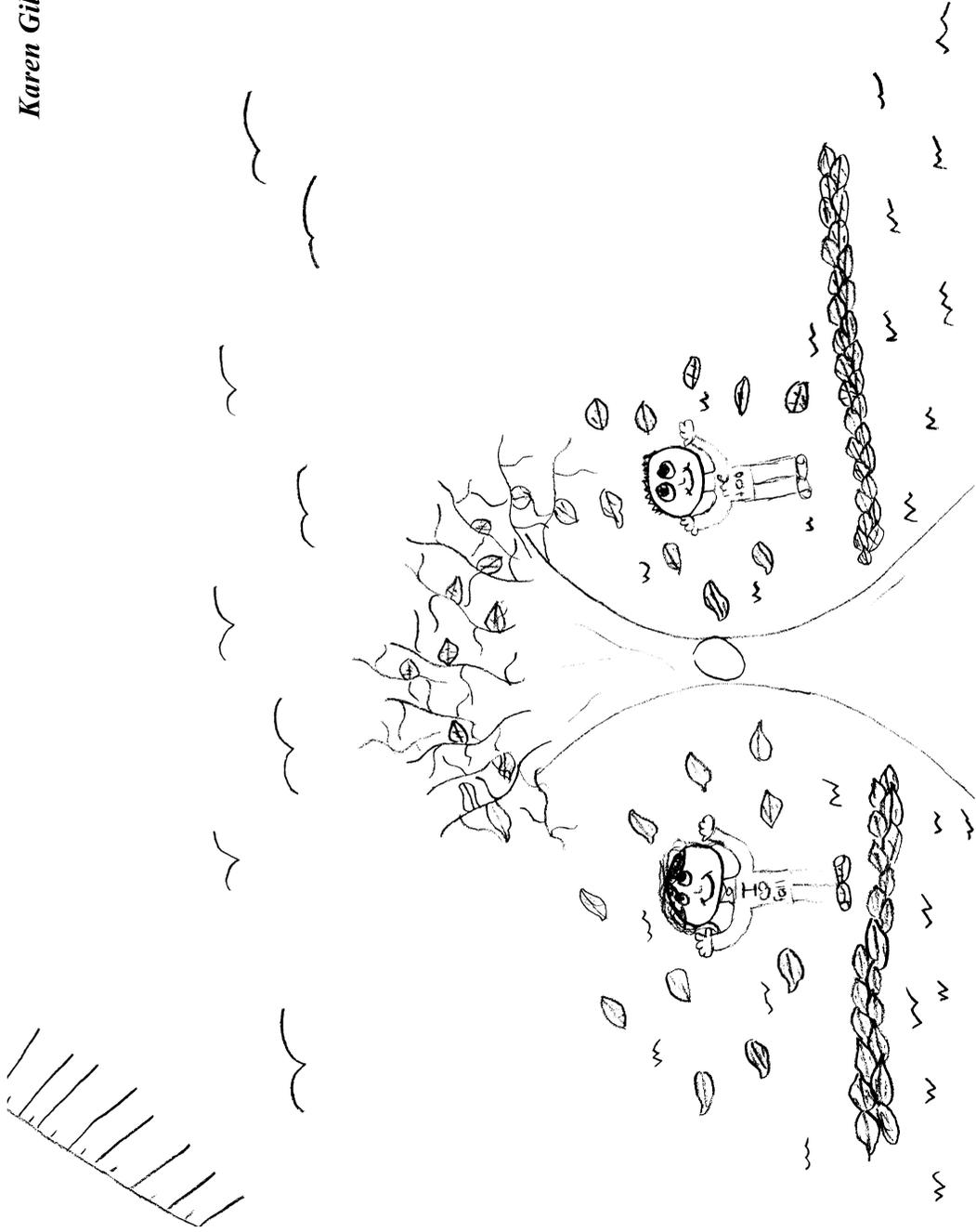
Assistant General Counsel

Texas Alcoholic Beverage Commission

Filed: September 21, 2016



*Karen Gil*



# TABLES & GRAPHICS

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

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

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Figure: 22 TAC §7.10(b)

| Description                                  | Architects                      | Landscape Architects | Registered Interior Designers | Total Fee Using Credit Card Payment | Total Fee Using ACH |
|----------------------------------------------|---------------------------------|----------------------|-------------------------------|-------------------------------------|---------------------|
| Exam Application                             | \$100                           | \$100                | \$100                         | \$102.51                            | \$101               |
| Examination                                  | ***                             | **                   | *                             | -                                   | -                   |
| Registration by Examination-Resident         | \$155                           | \$155                | \$155                         | \$158.74                            | \$156               |
| Registration by Examination--Nonresident     | \$180                           | \$180                | \$180                         | \$184.31                            | \$181               |
| Reciprocal Application                       | \$150                           | \$150                | \$150                         | \$153.63                            | \$151               |
| Reciprocal Registration                      | \$200                           | \$200                | \$200                         | \$204.76                            | \$201               |
| Active Renewal--Resident                     | <del>\$108</del><br>\$105       | \$105                | \$105                         | \$107.62                            | \$106               |
| Active Renewal--Nonresident                  | \$200                           | \$200                | \$200                         | \$204.76                            | \$201               |
| Active Renewal 1-90 days late--Resident      | <del>\$160.50</del><br>\$157.50 | \$157.50             | \$157.50                      | \$161.30                            | \$158.50            |
| Active Renewal > than 90 days late--Resident | <del>\$213</del><br>\$210       | \$210                | \$210                         | \$214.98                            | \$211               |
| Active Renewal 1-90 days late--Nonresident   | \$300                           | \$300                | \$300                         | \$307.01                            | \$301               |
| Active Renewal >                             | \$400                           | \$400                | \$400                         | \$409.26                            | \$401               |

|                                                    |                               |         |         |          |         |
|----------------------------------------------------|-------------------------------|---------|---------|----------|---------|
| than 90 days late-- Nonresident                    |                               |         |         |          |         |
| Emeritus Renewal-- Resident                        | \$10                          | \$10    | \$10    | \$10.48  | \$11    |
| Emeritus Renewal-- Nonresident                     | \$10                          | \$10    | \$10    | \$10.48  | \$11    |
| Emeritus Renewal 1-90 days late-- Resident         | \$15                          | \$15    | \$15    | \$15.59  | \$16    |
| Emeritus Renewal > than 90 days late-- Resident    | \$20                          | \$20    | \$20    | \$20.71  | \$21    |
| Emeritus Renewal 1-90 days late-- Nonresident      | \$15                          | \$15    | \$15    | \$15.59  | \$16    |
| Emeritus Renewal > than 90 days late-- Nonresident | \$20                          | \$20    | \$20    | \$20.71  | \$21    |
| Inactive Renewal-- Resident                        | <del>\$28</del><br>\$25       | \$25    | \$25    | \$25.82  | \$26    |
| Inactive Renewal-- Nonresident                     | \$125                         | \$125   | \$125   | \$128.07 | \$126   |
| Inactive Renewal 1-90 days late-- Resident         | <del>\$40.50</del><br>\$37.50 | \$37.50 | \$37.50 | \$38.60  | \$38.50 |
| Inactive Renewal > than 90 days late-- Resident    | <del>\$53</del><br>\$50       | \$50    | \$50    | \$51.38  | \$51    |

|                                                                     |          |          |          |          |          |
|---------------------------------------------------------------------|----------|----------|----------|----------|----------|
| Inactive<br>Renewal 1-90<br>days<br>late--<br>Nonresident           | \$187.50 | \$187.50 | \$187.50 | \$191.97 | \$188.50 |
| Inactive<br>Renewal ><br>than 90<br>days late--<br>Nonresident      | \$250    | \$250    | \$250    | \$255.88 | \$251    |
| Reciprocal<br>Reinstatement                                         | \$610    | \$610    | \$610    | \$623.98 | \$611    |
| Change in<br>Status--<br>Resident                                   | \$65     | \$65     | \$65     | \$66.72  | \$66     |
| Change in<br>Status--<br>Nonresident                                | \$95     | \$95     | \$95     | \$97.39  | \$96     |
| Reinstatement-<br>-Resident                                         | \$685    | \$685    | \$685    | \$700.67 | \$686    |
| Reinstatement-<br>-Nonresident                                      | \$775    | \$775    | \$775    | \$792.69 | \$776    |
| Certificate of<br>Standing--<br>Resident                            | \$30     | \$30     | \$30     | \$30.93  | \$31     |
| Certificate of<br>Standing--<br>Nonresident                         | \$40     | \$40     | \$40     | \$41.16  | \$41     |
| Replacement<br>or Duplicate<br>Wall<br>Certificate--<br>Resident    | \$40     | \$40     | \$40     | \$41.16  | \$41     |
| Replacement<br>of Duplicate<br>Wall<br>Certificate--<br>Nonresident | \$90     | \$90     | \$90     | \$92.28  | \$91     |
| Duplicate<br>Pocket Card                                            | \$5      | \$5      | \$5      | \$5.37   | \$6      |

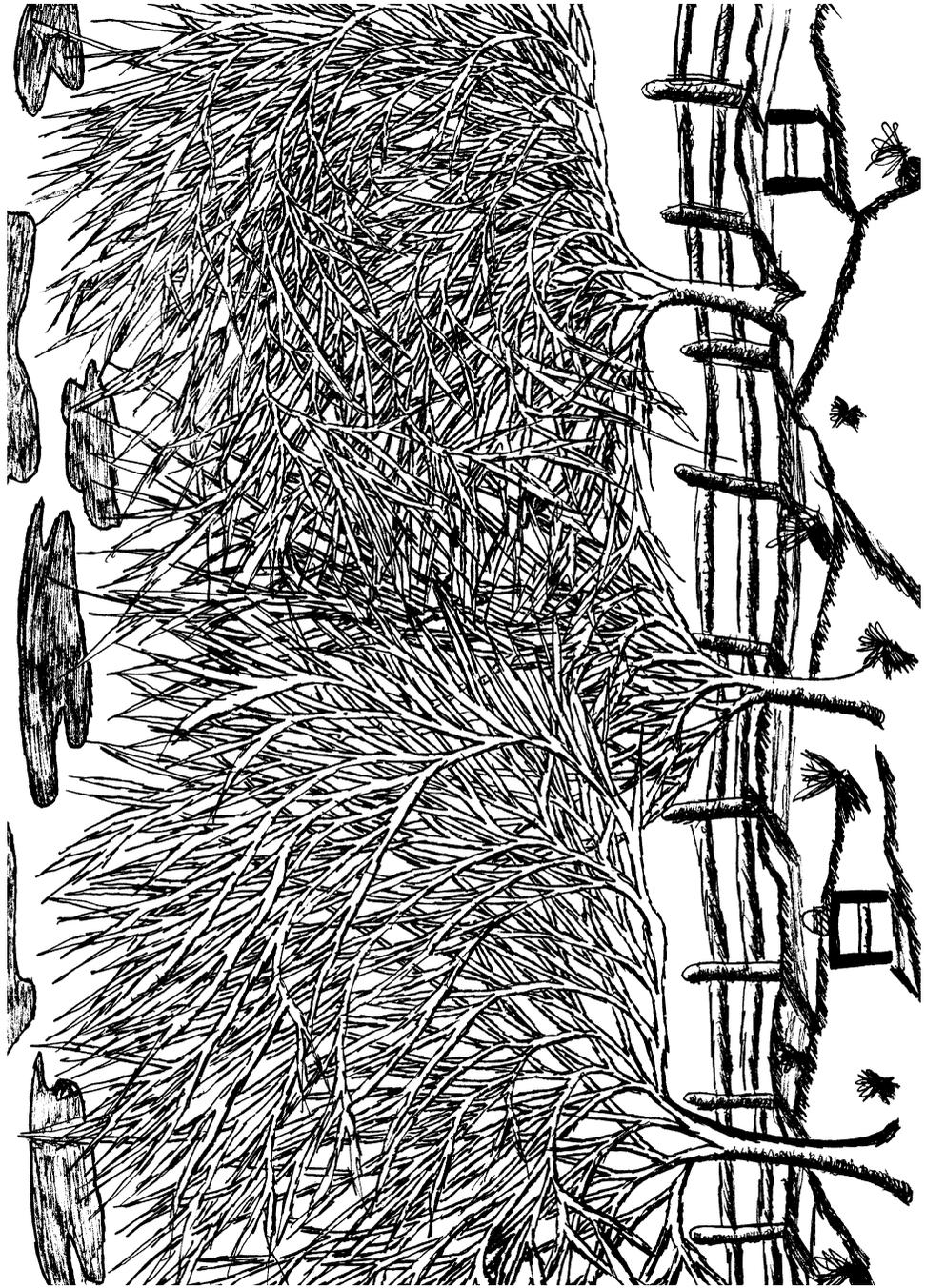
|                                                      |         |         |         |         |         |
|------------------------------------------------------|---------|---------|---------|---------|---------|
| Reopen Fee for closed candidate files                | \$25    | \$25    | \$25    | \$25.82 | \$26    |
| Annual Business Registration Fee****                 | \$45    | \$45    | \$45    | \$46.27 | \$46    |
| Business Registration Renewal 1-90 days late****     | \$67.50 | \$67.50 | \$67.50 | \$69.27 | \$68.50 |
| Business Registration Renewal >than 90 days late**** | \$90    | \$90    | \$90    | \$92.28 | \$91    |
| Examination-- Record Maintenance                     | \$25    | \$25    | \$25    | \$25.82 | \$26    |
| Returned Check Fee                                   | \$25    | \$25    | \$25    | \$25.82 | \$26    |

\*Examination fees are set by the Board examination provider, the National Council for Interior Design Qualification ("NCIDQ"). Contact the Board or the examination provider for the amount of the fee, and the date and location where each section of the examination is to be given.

\*\*Examination fees are set by the Board's examination provider, the Council of Landscape Architectural Registration Boards ("CLARB"). Contact the Board or the examination provider for the amount of the fee, and the date and location where each section of the examination is to be given.

\*\*\*Examination fees are set by the Board's examination provider, the National Council of Architectural Registration Boards ("NCARB"). Contact the Board or the examination provider for the amount of the fee, and the date and location where each section of the examination will be given.

\*\*\*\*Notwithstanding the amounts shown in each column, a multidisciplinary firm which renders or offers two or more of the regulated professions of architecture, landscape architecture, and interior design is required to pay only a single fee in the same manner as a firm which offers or renders services within a single profession.



# 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.

## State Office of Administrative Hearings

### Notice of Public Hearing

Notice of Public Hearing on Proposed Amendments to 1 TAC Chapter 159, Rules of Procedure for Administrative License Suspension Hearings

The State Office of Administrative Hearings will conduct a public hearing to receive comments from interested persons concerning proposed amendments to 1 Texas Administrative Code Chapter 159, Rules of Procedure for Administrative License Suspension Hearings.

The hearing is scheduled for October 7, 2016, at 10:00 a.m., in Room 404 of the William P. Clements State Office Building, 300 West 15th Street, Austin, Texas 78701.

Any interested person may appear and offer comments or statements, either orally or in writing. Organizations, associations, or groups are encouraged to present their commonly held views or similar comments through a representative member when possible.

Persons who have special communication or other accommodation needs who plan to attend the hearing should contact Susan Gage, Docketing Manager, at (512) 936-0735 or at [susan.gage@soah.texas.gov](mailto:susan.gage@soah.texas.gov). Requests should be made as far in advance as possible so that appropriate arrangements can be made.

TRD-201604810

Thomas H. Walston

General Counsel

State Office of Administrative Hearings

Filed: September 15, 2016

## Texas State Affordable Housing Corporation

### Notice of the Implementation of a 2016 Qualified Mortgage Credit Certificate Program by Texas State Affordable Housing Corporation

The Texas State Affordable Housing Corporation (the "Corporation"), a nonprofit corporation organized under the laws of the State of Texas (the "Program Area"), is implementing a qualified mortgage credit certificate program (the "Program") within the Program Area to assist eligible purchasers. A Mortgage Credit Certificate ("MCC") is an instrument designed to assist persons better afford home ownership. The MCC Program allows first-time homebuyers an annual federal income tax credit equal to the lesser of \$2,000 or the credit rate for the MCC multiplied by the amount of interest paid by the holder on a home mortgage loan during each year that they occupy the home as their principal residence.

An eligible purchaser of a residence located within a Program Area may apply to the Corporation for an MCC through a participating lender of his or her choice at the time of purchasing a principal residence and obtaining a mortgage loan from a participating lender.

To be an eligible purchaser to receive an MCC, a purchaser must meet the following criteria:

(1) Be one of the following:

(a) A person living in Texas whose annual household income does not exceed 80% Area Median Family Income (AMFI); or

(b) A full-time Texas classroom teacher, teacher's aide, school librarian, school nurse, school counselor, or an allied health or nursing faculty member whose annual family income does not exceed 100% of AMFI (for families of two persons or less) or 115% of AMFI (for families of three or more persons); or

(c) A full-time paid fire fighter, peace officer, corrections officer, juvenile corrections officer, county jailer, EMS personnel, veteran, or public security officer, working in the State of Texas whose annual family income does not exceed 100% of AMFI (for families of two persons or less) or 115% of AMFI (for families of three or more persons).

Visit [www.tsahc.org](http://www.tsahc.org) for a more complete description of the maximum income limits.

(2) The applicant for the MCC cannot have had an ownership interest in his or her principal residence during the three-year period ending on the date the mortgage loan is obtained.

(3) The applicant must intend to occupy the residence with respect to which the MCC is obtained as his or her principal residence within 60 days after the MCC is issued. The MCC issued to an applicant will be revoked if the residence to which the MCC relates ceases to be occupied by the applicant as his or her principal residence.

(4) The MCC cannot be issued to an applicant in conjunction with the replacement or refinancing of an existing mortgage loan. The MCC can, however, be obtained in conjunction with the replacement of a construction period or bridge loan having a term of less than 24 months.

(5) Federal law imposes limitations on the purchase price of homes financed under the program. These limitations are periodically adjusted. Visit [www.tsahc.org](http://www.tsahc.org) to view the current maximum purchase prices allowed. Two-family, three-family and four-family residences are also eligible, provided that one of the units will be occupied by the mortgagor as his or her principal residence and that the residence was first occupied for residential purposes at least five years prior to the closing of the mortgage.

Anyone receiving an MCC and selling his or her residence within nine years of the issuance of the MCC may be required to return all or a portion of the tax credit received in connection therewith to the Internal Revenue Service.

To defray the costs of implementing the Program, the Corporation will charge applicants a compliance fee, plus an MCC issuance fee.

The Corporation strongly encourages anyone who believes that he or she qualifies for an MCC to apply at the offices of a participating lender. For more information regarding the Program and its restrictions, including a list of current participating lenders, please contact Joniel Crim, Homeownership Programs Director, at (512) 477-3561 or by email at [jcrim@tsahc.org](mailto:jcrim@tsahc.org).

TRD-201604880

David Long  
President  
Texas State Affordable Housing Corporation  
Filed: September 21, 2016

◆ ◆ ◆  
**Office of the Attorney General**

**Notice of Settlement: Chapter 7 of the Texas Water Code**

Texas Water Code and Texas Health and Safety Code Settlement Notice  
Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed judgment if the comments disclose facts or considerations that include that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health and Safety Code.

Case Title and Court: *State of Texas v. A.B. Clark, Jr. and A.B. Clark III*; Cause No. D-1-GN-16-002125, in the 345th Judicial District Court, Travis County, Texas.

Nature of the Defendant's Operations: A.B. Clark, Jr. owns property within the Sabine National Forest, near Hemphill in Sabine County. A.B. Clark III disposed of solid waste on the property without authorization from TCEQ. Waste illegally disposed and stored at the property includes cardboard boxes, televisions, refrigerators, speakers, computer components, clothing, and other various household-type waste. A.B. Clark III also burned some of the waste on the property without authorization from TCEQ.

Proposed Agreed Judgment: The Agreed Final Judgment and Permanent Injunction orders Defendants to stop burning waste at the property and stop disposing, storing or accepting additional waste at the property. The Defendants are further ordered to remove and properly dispose of the waste at a facility authorized to accept waste by TCEQ. The Judgment awards the State of Texas civil penalties of \$12,000 and \$3,500 in attorney's fees.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Ekaterina DeAngelo, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201604824  
Amanda Crawford  
General Counsel  
Office of the Attorney General  
Filed: September 19, 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 09/26/16 - 10/02/16 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 09/26/16 - 10/02/16 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 10/01/16 - 10/31/16 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 10/01/16 - 10/31/16 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-201604863  
Leslie Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: September 20, 2016

◆ ◆ ◆  
**Credit Union Department**

**Application for a Merger or Consolidation**

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 Texas Bay Area Credit Union (Houston) seeking approval to merge with The Grocers Supply Employees Credit Union (Houston), with Texas Bay Area Credit Union being the surviving 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. 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-201604870  
Harold E. Feeney  
Commissioner  
Credit Union Department  
Filed: September 21, 2016

◆ ◆ ◆  
**Application to Amend Articles of Incorporation.**

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application for a name change was received from Bridge Credit Union, Corpus Christi, Texas. The credit union is proposing to change its name to Texas Bridge 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. 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-201604869  
Harold E. Feeney  
Commissioner  
Credit Union Department  
Filed: September 21, 2016



### Application to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from Tex Mex Credit Union, Laredo, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school within the geographic boundaries of Webb County, Texas, to be eligible for membership in the credit union.

An application was received from First Service Credit Union, Houston, Texas, to expand its field of membership. The proposal would permit employees and members of the You First Foundation, to be eligible for membership in the credit union.

An application was received from InTouch Credit Union #1, Plano, Texas, to expand its field of membership. The proposal would permit persons who live, worship, attend school, or work in Clark County, Nevada, to be eligible for membership in the credit union.

An application was received from InTouch Credit Union #2, Plano, Texas, to expand its field of membership. The proposal would permit persons who live, worship, attend school, or work in Oakland County, Michigan, to be eligible for membership in the credit union.

An application was received from InTouch Credit Union #3, Plano, Texas, to expand its field of membership. The proposal would permit persons who live, worship, attend school, or work in Fairfax County, Virginia, to be eligible for membership in the credit union.

An application was received from InTouch Credit Union #4, Plano, Texas, to expand its field of membership. The proposal would permit persons who live, worship, attend school, or work in Loudoun County, Virginia, to be eligible for membership in the credit union.

An application was received from InTouch Credit Union #5, Plano, Texas, to expand its field of membership. The proposal would permit Conference USA student-athletes, faculty, coaches, athletic department administrators and employees, Conference USA employees, and members of their families, 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-201604868  
Harold E. Feeney  
Commissioner  
Credit Union Department  
Filed: September 21, 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

East Texas Professional Credit Union, Longview, Texas - See *Texas Register* issue dated October 31, 2014.

InTouch Credit Union, Plano, Texas - See *Texas Register* issue dated June 24, 2016.

TRD-201604871  
Harold E. Feeney  
Commissioner  
Credit Union Department  
Filed: September 21, 2016



### Texas Council for Developmental Disabilities

#### Request for Proposals: Texas Council for Developmental Disabilities Public Policy Fellows

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for up to two organizations that will each hire and mentor policy fellows. The purpose of these projects is to increase the number of policy professionals in Texas who have the skills, knowledge and experience to engage in policy activities so that people with developmental disabilities have greater control over their own lives. Organizations receiving funding must support fellows to develop a deep understanding of policy affecting people with developmental disabilities. The fellows should also develop the skills to promote self-termination and self-advocacy.

This Request for Proposals (RFP) will remain open throughout the year and applicants may submit proposals at any time. TCDD will review proposals twice a year with deadlines on December 1, 5 p.m. and June 1, 5 p.m. Organizations that apply and are not selected may re-submit the same proposal or submit a new proposal for consideration in the next review period or at a later date.

TCDD has approved funding up to \$67,500 per organization, per year, for up to 2 years. Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Intellectual and Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this RFP may be obtained at [www.DDSuite.org](http://www.DDSuite.org). More information about TCDD may be obtained through TCDD's website at [www.tcdd.texas.gov](http://www.tcdd.texas.gov). All questions pertaining to this RFP should be directed in writing to Danny Fikac, Planning Specialist, via email at [Danny.Fikac@tcdd.texas.gov](mailto:Danny.Fikac@tcdd.texas.gov). Mr. Fikac may also be reached by telephone at (512) 437-5415.

Deadline: Proposals for the first review must be submitted through [www.DDSuite.org](http://www.DDSuite.org) by December 1, 2016. For this first selection, proposals will not be accepted after the due date.

TRD-201604900

Beth Stalvey  
Executive Director  
Texas Council for Developmental Disabilities  
Filed: September 21, 2016



### Request for Proposals: Youth Leadership Development

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for up to three organizations that will each develop a youth leadership development project. Each project will support at least 150 people with developmental disabilities between 14 and 22 years old to gain and share information, develop skills, and establish personal plans in an experientially based program.

TCDD has approved funding up to \$125,000 per organization, per year, for up to 5 years. Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Intellectual and Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this RFP may be obtained at [www.DDSuite.org](http://www.DDSuite.org). More information about TCDD may be obtained through TCDD's website at [www.todd.texas.gov](http://www.todd.texas.gov). All questions pertaining to this RFP should be directed in writing to Danny Fikac, Planning Specialist, via email at [Danny.Fikac@todd.texas.gov](mailto:Danny.Fikac@todd.texas.gov). Mr. Fikac may also be reached by telephone at (512) 437-5415.

Deadline: Proposals must be submitted through [www.DDSuite.org](http://www.DDSuite.org) by November 30, 2016. Proposals will not be accepted after the due date.

TRD-201604901

Beth Stalvey  
Executive Director  
Texas Council for Developmental Disabilities  
Filed: September 21, 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 October 31, 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 October 31, 2016. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: 1265 LLC; DOCKET NUMBER: 2016-1441-WQ-E; IDENTIFIER: RN109214536; LOCATION: Bullard, Smith County; TYPE OF FACILITY: subdivision construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 2616 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: AL-HAMD DIVERSIFIED, L.C. dba C Mart; DOCKET NUMBER: 2016-0729-PST-E; IDENTIFIER: RN102441490; LOCATION: Cypress, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Al's Investments, Incorporated dba Golden Express Truck Stop; DOCKET NUMBER: 2016-1182-PST-E; IDENTIFIER: RN101435592; LOCATION: Alvord, Wise County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$7,875; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: ANITRIO, INCORPORATED dba Mr. Discount; DOCKET NUMBER: 2016-0715-PST-E; IDENTIFIER: RN102276011; LOCATION: Ennis, Ellis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Ann Marie Jones and John H. Jones; DOCKET NUMBER: 2016-0834-MLM-E; IDENTIFIER: RN109189027; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §328.59(b)(1) and §328.60(a) and Texas Health and Safety Code (THSC), §361.112(a), by failing to obtain a scrap tire storage site registration from the executive director prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers on any public or private property; 30 TAC §328.63(c)(1), by failing to obtain a registration to process scrap tires; 30 TAC §111.201 and THSC, §382.085(b), by failing to not cause, suffer, allow, or permit outdoor burning within

the state of Texas; and 30 TAC §330.15(a) and (c), by failing to cause, suffer, allow, or permit the unauthorized disposal of MSW; PENALTY: \$15,174; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(6) COMPANY: ASIL ENTERPRISES INCORPORATED dba Danish Food Mart; DOCKET NUMBER: 2016-1096-PST-E; IDENTIFIER: RN102255296; LOCATION: Clute, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Carl Randle Beard; DOCKET NUMBER: 2015-1335-IHW-E; IDENTIFIER: RN100584291; LOCATION: Odessa, Ector County; TYPE OF FACILITY: unauthorized industrial solid waste storage facility; RULE VIOLATED: 30 TAC §335.4, by failing to not cause, suffer, allow, or permit the unauthorized disposal of industrial hazardous waste; PENALTY: \$11,250; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(8) COMPANY: City of Fort Worth; DOCKET NUMBER: 2016-0658-PST-E; IDENTIFIER: RN100942259; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A), (d)(1)(B)(ii), and (iii)(I) 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, and failing to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 % of the total substance flow-through for the month plus 130 gallons, and failing to conduct daily inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; PENALTY: \$24,650; Supplemental Environmental Project offset amount of \$19,720; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: City of Strawn; DOCKET NUMBER: 2016-0769-PWS-E; IDENTIFIER: RN101424968; LOCATION: Strawn, Palo Pinto 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; and 30 TAC §290.117(c)(2)(C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and submit the results to the executive director for the January 1, 2013 - December 31, 2015, monitoring period; PENALTY: \$345; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: City of Willow Park; DOCKET NUMBER: 2016-0448-MWD-E; IDENTIFIER: RN101920585; LOCATION: Willow Park, Parker County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013834001, Permit Conditions Numbers 2(d) and (g),

by failing to prevent unauthorized discharges of wastewater from the collection system into or adjacent to water in the state; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Claudine Cooksey and John H. Jones; DOCKET NUMBER: 2016-0961-MLM-E; IDENTIFIER: RN109188706; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code (THSC), §382.085(b), by failing to not cause, suffer, allow, or permit outdoor burning within the State of Texas; 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of MSW; and 30 TAC §328.59(b)(1) and §328.60(a) and THSC, §361.112(a), by failing to obtain a scrap tire storage site registration prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers; PENALTY: \$11,300; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 698-9674.

(12) COMPANY: COWBOY STAR INCORPORATED dba Berkleys Food Store; DOCKET NUMBER: 2016-0803-PST-E; IDENTIFIER: RN102464971; LOCATION: Brady, McCulloch County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank (UST) system; 30 TAC §334.49(c)(2)(C) and (4)(C), and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure the rectifier and other components are operating properly, and failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 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, Class B, and Class C; PENALTY: \$14,094; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 698-9674.

(13) COMPANY: Eduardo Ramirez dba JJs Southern Express 2; DOCKET NUMBER: 2016-0855-PST-E; IDENTIFIER: RN104409461; LOCATION: Palmview, Hidalgo County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,504; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(14) COMPANY: Iram A. Rashid dba Lilli Food; DOCKET NUMBER: 2016-1295-PST-E; IDENTIFIER: RN101433951; LOCATION: Brownwood, Brown 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 tank for releases at a frequency of at least once every month; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Benjamin Sakmar, (512) 239-1704; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(15) COMPANY: Jose Librado Deleon; DOCKET NUMBER: 2016-0806-MSW-E; IDENTIFIER: RN107742173; LOCATION: San Marcos, Guadalupe County; TYPE OF FACILITY: unauthorized munic-

ipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(a), by failing to not cause, suffer, allow, or permit the unauthorized disposal of MSW; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: KELLY-MOORE PAINT COMPANY, INCORPORATED; DOCKET NUMBER: 2016-0735-IHW-E; IDENTIFIER: RN100219112; LOCATION: Hurst, Tarrant County; TYPE OF FACILITY: paint manufacturing facility; RULES VIOLATED: 30 TAC §335.2(b), by failing to not cause, suffer, allow, or permit, the unauthorized disposal of industrial solid waste; and 30 TAC §335.6(c), by failing to notify the TCEQ regarding the facility's generator status and update the Notice of Registration to include waste management units for each waste stream generated at the facility; PENALTY: \$3,291; ENFORCEMENT COORDINATOR: Jessica Bland, (512) 239-4967; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: LAKEOAK ENTERPRISE INCORPORATED dba The Korner Store; DOCKET NUMBER: 2016-1184-PST-E; IDENTIFIER: RN102029956; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Jessica Bland, (512) 239-4967; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: Lone Star NGL Fractionators LLC; DOCKET NUMBER: 2016-0773-AIR-E; IDENTIFIER: RN106018260; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A), Federal Operating Permit (FOP) Number O3586, General Terms and Conditions (GTC), and Texas Health and Safety Code (THSC), §382.085(b), by failing to report all instances of deviations; 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O3586, GTC, and THSC, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of the reporting period; 30 TAC §122.143(4) and §122.146(1), FOP Number O3586, Special Terms and Conditions (STC) Number 12, and THSC, §382.085(b), by failing to certify compliance for at least each 12-month period following initial permit issuance; and 30 TAC §116.615(2) and §122.143(4), FOP Number O3586, STC Number 10, Standard Permit Registration Number 93813, and THSC, §382.085(b), by failing to comply with maximum allowable emissions rates; PENALTY: \$51,113; Supplemental Environmental Project offset amount of \$20,445; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Neches Construction, Incorporated; DOCKET NUMBER: 2016-1420-WQ-E; IDENTIFIER: RN109249540; LOCATION: Chandler, Henderson County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 2616 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: Our Country Homes, Incorporated dba The Resort on Eagle Mountain Lake; DOCKET NUMBER: 2016-1504-WQ-E; IDENTIFIER: RN109130591; LOCATION: Hurst, Tarrant County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit;

PENALTY: \$875; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: ROZI BUSINESS, INCORPORATED dba Step N Go; DOCKET NUMBER: 2016-1017-PST-E; IDENTIFIER: RN102280955; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(d)(3)(E) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months, or upon major system replacement or modification, whichever occurs first; 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; and 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: \$7,935; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: Signor Farm and Ranch, L.P. and Stratton Oilfield Systems Texas LLC; DOCKET NUMBER: 2016-0461-WQ-E; IDENTIFIER: RN108856782; LOCATION: Carrizo Springs, Dimmitt County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.1(b)(2), §305.42(a), and TWC, §26.121(a)(1), by failing to obtain authorization to discharge municipal waste into or adjacent to any water in the State; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(23) COMPANY: Southern Foods Group, LLC dba Hygeia Dairy; DOCKET NUMBER: 2016-0995-PST-E; IDENTIFIER: RN102437126; LOCATION: McAllen, Hidalgo County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(24) COMPANY: SOUTHSIDE INDEPENDENT SCHOOL DISTRICT PUBLIC FACILITY CORPORATION; DOCKET NUMBER: 2016-1147-PST-E; IDENTIFIER: RN101766210; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Benjamin Sakmar, (512) 239-1704; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(25) COMPANY: Sparkle Development, L.L.C. dba One Stop Fuel; DOCKET NUMBER: 2014-1786-PST-E; IDENTIFIER: RN102402179; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES

VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Swapna Enterprises Incorporated dba Casstevens Cash and Carry; DOCKET NUMBER: 2016-1156-PST-E; IDENTIFIER: RN101845618; LOCATION: Lillian, Johnson 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 tank for releases at a frequency of at least once every month; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Texas Municipal Power Agency; DOCKET NUMBER: 2016-0925-AIR-E; IDENTIFIER: RN100214550; LOCATION: Anderson, Grimes County; TYPE OF FACILITY: power plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O83, General Terms and Conditions, by failing to submit a Permit Compliance Certification no later than 30 days after the end of the certification period; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Molly Ellsworth, (512) 239-2296; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-201604862

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 20, 2016



Aviso De Reunión Informativa Sobre Renovación Del Registro De Permiso Estándar De Calidad De Aire Por Integrity Ready Mix Concrete, LLC Registro De Calidad De Aire Núm. 78606

**SOLICITUD.** Integrity Ready Mix Concrete LLC ha solicitado de la Comisión de Calidad Ambiental de Texas (TCEQ, por sus siglas en inglés) la renovación del Registro Núm. 78606, para un Permiso Estándar de Calidad de Aire de Plantas Mezcladoras de Concreto (Air Quality Standard Permit for Concrete Batch Plants), que autorizaría la operación continua de una Planta Mezcladora de Concreto ubicada en 2219 Hartwick Road, Houston, Harris County, Texas 77093. Este enlace a un mapa electrónico de la ubicación general de la instalación se ofrece como una cortesía pública y no como parte de la solicitud o aviso. Para la ubicación exacta, consulte la solicitud. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.885277&lng=-95.351388&zoom=13&type=r>. La instalación existente está autorizada para emitir los siguientes contaminantes del aire: material particulado incluyendo (pero no limitado a) polvo de agregado, cemento o de camino con diámetros de 10 micrones o menos y de 2.5 micrones o menos.

Esta solicitud se presentó a la TCEQ el 4 de mayo del 2016. La solicitud está disponible para ver y copiar en la oficina central de la TCEQ, la oficina regional de la TCEQ en Houston y la Harris County Public Library - High Meadows Branch, 4500 Aldine Mail Route, Houston, Harris County, Texas. El archivo de cumplimiento de la instalación, si es que existe, está disponible para revisión pública en la oficina regional de la TCEQ en Houston.

El director ejecutivo ha determinado que la solicitud está administrativamente completa y realizará una evaluación técnica de la solicitud. Información contenida en la solicitud indica que esta renovación de permiso no resultaría en un aumento de las emisiones permitidas ni en la emisión de un contaminante del aire que no haya sido emitido previamente.

La TCEQ realizará una reunión informativa para responder a preguntas y discutir la solicitud. La reunión se llevará a cabo el día:

**Martes, 11 de octubre, 2016, a las 18:30 horas**

**Los Alcatraces Reception Hall**

**11939 Eastex Freeway**

**Houston, Texas 77039**

**INFORMACIÓN.** Para obtener más información sobre esta solicitud para permiso o el proceso de permisos, por favor llame al Programa de Educación del Público, sin costo, al (800) 687-4040. Puede encontrar información general en nuestro sitio web, en [www.tceq.texas.gov](http://www.tceq.texas.gov). Para información en español, llame al (800) 687-4040.

Las personas con discapacidad que necesiten adaptaciones especiales en la reunión deben llamar a la Oficina del Secretario Oficial al (512) 239-3300 o al (800) RELAY-TX (TDD; para sordos) por lo menos una semana antes de la reunión.

Emitido: 16 de septiembre de 2016

TRD-201604876

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 21, 2016



#### Enforcement Orders

An agreed order was adopted regarding Robert Engelhardt dba Robin's Trucking, Docket No. 2015-1194--WQ-E on September 20, 2016, assessing \$5,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, 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 Gregory W. Dickerson d/b/a Westside Shell, Docket No. 2015-1199-PST-E on September 20, 2016, assessing \$4,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, 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 Kenneth M. Ivey, Docket No. 2015-1667-LII-E on September 20, 2016, assessing \$936 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 Paul Manley and Lindsey Manley, Docket No. 2015-1699-MSW-E on September 20, 2016, assessing \$1,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, 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 BZSTAR'S 2, INC. d/b/a EZ Trip 2, Docket No. 2016-0224-PST-E on September 20, 2016, assessing \$6,375 in administrative penalties. Information concerning any as-

pect of this order may be obtained by contacting Eric Grady, 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 Randy O'Neal, Docket No. 2016-0273-MSW-E on September 20, 2016, assessing \$1,312 in administrative penalties with \$262 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, 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 Red Ewald, Inc., Docket No. 2016-0275-AIR-E on September 20, 2016, assessing \$3,563 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Harkrider, 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 WATER NECESSITIES, INC. dba Countrywood Water System, Docket No. 2016-0322-PWS-E on September 20, 2016, assessing \$388 in administrative penalties with \$77 deferred. Information concerning any aspect of this order may be obtained by contacting Jim 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 JUSRYN COMPANY, INC., Docket No. 2016-0400-PWS-E on September 20, 2016, assessing \$504 in administrative penalties with \$100 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, 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 Midland, Docket No. 2016-0636-PST-E on September 20, 2016, assessing \$2,813 in administrative penalties with \$562 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, 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 COUNCIL CREEK VILLAGE, INC., Docket No. 2016-0646-PWS-E on September 20, 2016, assessing \$120 in administrative penalties with \$24 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, 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 LBM & M LLC dba CJs Convenience, Docket No. 2016-0701-PST-E on September 20, 2016, assessing \$4,254 in administrative penalties with \$850 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, 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 RAKIN, LLC dba TRI-STOP, Docket No. 2016-0727-PST-E on September 20, 2016, assessing \$2,807 in administrative penalties with \$561 deferred. Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, 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 Sherman, Docket No. 2016-0813-PST-E on September 20, 2016, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Sandra Douglas, En-

forcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Gabriel Rodriguez, Docket No. 2016-1165-WOC-E on September 20, 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.

An agreed order was adopted regarding City of Hale Center, Docket No. 2014-0019-MLM-E on September 21, 2016, assessing \$65,363 in administrative penalties with \$65,363 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding Alauddin Investments, Inc. d/b/a Kwik Trip Food Store 2, Docket No. 2015-0701-PST-E on September 21, 2016, assessing \$19,687 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, 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 Daniel R. Soto and Drs Rock Materials, LLC, Docket No. 2015-0824-WQ-E on September 21, 2016, assessing \$10,000 in administrative penalties with \$2,000 deferred. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, 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 San Marcos, Docket No. 2015-1605-MWD-E on September 21, 2016, assessing \$9,000 in administrative penalties with \$1,800 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, 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 IESI Tx Landfill LP, Docket No. 2015-1686-MSW-E on September 21, 2016, assessing \$7,875 in administrative penalties with \$1,575 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, 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 Arlington, Docket No. 2016-0012-MWD-E on September 21, 2016, assessing \$26,250 in administrative penalties. 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 Kingsville, Docket No. 2016-0021-MWD-E on September 21, 2016, assessing \$24,438 in administrative penalties. 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 City of Laredo, Docket No. 2016-0082-PWS-E on September 21, 2016, assessing \$1,491 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jim 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 Poteet, Docket No. 2016-0103-MWD-E on September 21, 2016, assessing \$10,063 in administrative penalties with \$2,012 deferred. Information concerning any aspect of this order may be obtained by contacting Alex 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 City of Zavalla, Docket No. 2016-0129-PWS-E on September 21, 2016, assessing \$298 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Hall, 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 Targa Downstream LLC, Docket No. 2016-0130-AIR-E on September 21, 2016, assessing \$10,125 in administrative penalties with \$2,025 deferred. Information concerning any aspect of this order may be obtained by contacting Carol Mcgrath, 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 Harris County Municipal Utility District No. 71, Docket No. 2016-0166-MWD-E on September 21, 2016, assessing \$35,937 in administrative penalties. 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 City of Grapevine, Docket No. 2016-0199-WQ-E on September 21, 2016, assessing \$9,062 in administrative penalties. 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 A & K Enterprises, Inc. dba Country Food Store, Docket No. 2016-0301-PST-E on September 21, 2016, assessing \$13,794 in administrative penalties with \$2,758 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, 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 Orion Engineered Carbons LLC, Docket No. 2016-0324-AIR-E on September 21, 2016, assessing \$16,650 in administrative penalties with \$3,330 deferred. Information concerning any aspect of this order may be obtained by contacting Carol Mcgrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201604890  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: September 21, 2016



#### Notice of Hearing

NANTUCKET HOUSING, LLC

SOAH Docket No. 582-16-5930

TCEQ Docket No. 2016-0787-MWD

Permit No. WQ0015381001

#### APPLICATION.

Nantucket Housing, LLC, 9219 Katy Freeway, Suite 264, Houston, Texas 77024, a land developer, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015381001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 55,000 gallons per day. TCEQ received this application on May 7, 2015.

The facility will be located at 12321 Huffmeister Road, Cypress, in Harris County, Texas 77429. The treated effluent will be discharged to an enclosed stormwater pipe; thence to Cypress Creek in Segment No. 1009 of the San Jacinto River Basin. The designated uses for Segment No. 1009 are high aquatic life use, public water supply, and primary contact recreation. In accordance with Title 30 Texas Administrative Code (TAC) §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected Cypress Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Harris County Public Library, Northwest Branch, 11355 Regency Green Drive, Cypress, Texas. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.952777&lng=-95.634444&zoom=13&type=r>. For the exact location, refer to the application.

#### CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - October 25, 2016

City of Houston - City Hall Annex Chamber

900 Bagby Street, Public Level

Houston, Texas 77002

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on August 9, 2016. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you 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

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 our web site at <http://www.tceq.texas.gov/>.

Further information may also be obtained from Nantucket Housing, LLC at the address stated above or by calling Ms. Katherine Hallaway, P.E., Brown & Gay Engineers, Inc., at (281) 558-8700.

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: September 13, 2016

TRD-201604877

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 21, 2016



#### Notice of Hearing

CITY OF DALLAS

SOAH Docket No. 582-17-0196

TCEQ Docket No. 2016-0049-WR

Certificate of Adjudication No. 08-24621

#### APPLICATION.

The City of Dallas, Applicant, 1500 Marilla Street, Room 4AN, Dallas, Texas 75201, seeks an amendment pursuant to Texas Water Code §11.122 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) §295.1, *et seq.*

The City of Dallas has applied to amend Certificate of Adjudication No. 08-2462 to increase the diversion amount and the maximum combined diversion rate from the perimeter of Lake Ray Hubbard on the East Fork Trinity River, Trinity River Basin in Dallas, Kaufman, Rockwall, and Collin Counties.

Certificate of Adjudication No. 08-2462 authorizes the City of Dallas to maintain an existing dam and reservoir (Lake Ray Hubbard) on the East Fork Trinity River, tributary of the Trinity River, Trinity River Basin, in Dallas, Kaufman, Rockwall, and Collin Counties, and to impound therein 490,000 acre-feet of water. Owner is also authorized to divert and use not to exceed 89,700 acre-feet of water per year at a maximum combined diversion rate of 619 cfs (277,807 gpm) from the perimeter of Lake Ray Hubbard and other points for municipal, industrial, agricultural (irrigation), mining, domestic, recreation, instream, livestock, and hydroelectric power generation purposes. Multiple special conditions apply.

Applicant seeks to amend Certificate of Adjudication No. 08-2462 to increase diversion and use of water from Lake Ray Hubbard by 119,600 acre-feet of water per year, from 89,700 acre-feet of water per year to 209,300 acre-feet of water per year, from the perimeter of Lake Ray Hubbard and other points authorized for diversion for the authorized multiple purposes, being municipal, industrial, agricultural (irrigation), mining, domestic, recreation, instream, livestock, and hydroelectric power generation.

Applicant also seeks to increase the authorized maximum combined diversion rate from Lake Ray Hubbard by 836 cfs (375,197 gpm), from 619 cfs (277,807 gpm) to 1,455 cfs (653,004 gpm). No increase in storage is requested.

Applicant originally requested that the additional diversion of 119,600 acre-feet of water per year include 49,600 acre-feet of additional firm water and 70,000 acre-feet of water per year that is available on a less than firm basis. Applicant stated that the additional appropriation of water is based on adjustment of the naturalized flows in the Trinity WAM to reflect "the increase in runoff that would have occurred over the historical period had today's level of development been there."

Applicant subsequently revised the application, after notice was issued, to seek only an additional appropriation of 119,000 acre-feet of non-firm water per year which is not based on an adjustment to the naturalized flows. Staff's recommendation is based on the revised application.

The application and partial fees were received on July 11, 2007, and additional information and fees were received on April 11, and April 30, 2008. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on June 6, 2008.

#### CONTESTED CASE HEARING.

SOAH will conduct a preliminary hearing on this application at:

**10:00 a.m. - November 14, 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 Texas Administrative Code (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: September 20, 2016

TRD-201604873

Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: September 21, 2016

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Notice of Informational Meeting on Air Quality Standard Permit

REGISTRATION RENEWAL

BY INTEGRITY READY MIX CONCRETE, LLC

AIR QUALITY REGISTRATION NO. 78606

**APPLICATION.** Integrity Ready Mix Concrete LLC, has applied to the Texas Commission on Environmental Quality (TCEQ) for renewal of Registration No. 78606, for an Air Quality Standard Permit for Concrete Batch Plants, which would authorize continued operation of a Concrete Batch Plant located at 2219 Hartwick Road, Houston, Harris County, Texas 77093. 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=29.885277&lng=-95.351388&zoom=13&type=r>. The existing facility is authorized to emit the following air contaminants: particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

This application was submitted to the TCEQ on May 4, 2016. The application is available for viewing and copying at the TCEQ central office, the TCEQ Houston regional office, and the Harris County Public Library - High Meadows Branch, 4500 Aldine Mail Route, Houston, Harris County, Texas. The facility's compliance file, if any exists, is available for public review in the Houston regional office of the TCEQ.

The executive director has determined the application is administratively complete and will conduct a technical review of the application. Information in the application indicates that this permit renewal would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted.

The TCEQ will conduct an informational meeting to answer questions and discuss the application. The meeting will be held:

**Tuesday, October 11, 2016 at 6:30 PM**

**Los Alcatrazes Reception Hall**

**11939 Eastex Freeway**

**Houston, Texas 77039**

**INFORMATION.** For more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. General information can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). Si desea información en español, puede llamar al (800) 687-4040.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Issued: September 16, 2016

TRD-201604875

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 21, 2016

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of

BRIAN FABRE DBA FAY BEN MOBILE HOME PARK

SOAH Docket No. 582-17-0145

TCEQ Docket No. 2015-1688-PWS-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. - October 13, 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 June 28, 2016 concerning assessing administrative penalties against and requiring certain actions of Brian Fabre dba Fay Ben Mobile Home Park, for violations in Lubbock County, Texas, of: Tex. Water Code §5.702, Tex. Health & Safety Code §341.033(a), and 30 Tex. Admin. Code §§290.41(c)(3)(O), 290.46(e)(4)(A), 290.51(a)(6), 290.106(c), 290.109(c)(4)(B), 290.110(e)(4)(A) and (f)(3), 290.117(c)(2)(B) and (i)(1), 290.122(c)(2)(A) and (f), 290.271(b) and 290.274(a) and (c).

The hearing will allow Brian Fabre dba Fay Ben Mobile Home Park, 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 Brian Fabre dba Fay Ben Mobile Home Park, 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 Brian Fabre dba Fay Ben Mobile Home Park 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.** Brian Fabre dba Fay Ben Mobile Home Park, 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 ch. 5 and Tex. Health & Safety Code ch. 341 and 30 Tex. Admin. Code chs. 70 and 290; 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: September 14, 2016

TRD-201604872

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 21, 2016



#### Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of

DARIO V. GUERRA, III D/B/A DERBY ING

SOAH Docket No. 582-17-0146

TCEQ Docket No. 2015-1280-PWS-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. - October 13, 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 July 14, 2016 concerning assessing administrative penalties against and requiring certain actions of Dario V. Guerra, III d/b/a DERBY ING, for violations in Frio County, Texas, of: Tex. Health & Safety Code §341.033(d), Tex. Water Code §5.702, and 30 Tex. Admin. Code §§290.51(a)(6), 290.109(c)(2)(A)(ii), 290.110(e)(4)(A) and (f)(3), 290.117(c)(2)(B) and (i)(1), 290.122(c)(2)(A) and (f), and 291.76.

The hearing will allow Dario V. Guerra, III d/b/a DERBY ING, 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 Dario V. Guerra, III d/b/a DERBY ING, 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 Dario V. Guerra, III d/b/a DERBY ING 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.** Dario V. Guerra, III d/b/a DERBY ING, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Health & Safety Code ch. 341, Tex. Water Code chs. 5 and 13, and 30 Tex. Admin. Code chs. 70, 290, and 291; 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 Meaghan Bailey, 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: September 14, 2016

TRD-201604874

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 21, 2016



#### Notice of Public Meeting and Notice of Application and Preliminary Decision for an Air Quality Permit

Proposed Permit Number: 139561

**APPLICATION AND PRELIMINARY DECISION.** TEXAS LNG BROWNSVILLE LLC, 2800 North Loop West Suite 910, Houston, Texas 77092-8838, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit Number 139561, which would authorize construction of a LNG export terminal located east from Brownsville on State Highway 48. The applicant provided the following directions to the site: From the intersection of State Highway 48 and State Highway 550 continue on State Highway 48 for 12.2 miles, the gate to the location is on the right, Brownsville, Cameron County, Texas 78521. This application was submitted to the TCEQ on March 24, 2016. The proposed facility

will emit the following contaminants: nitrogen oxides, carbon monoxide, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less, sulfur dioxide, and hazardous air pollutants, including, but not limited to hydrogen sulfide.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue the permit because it meets all rules and regulations. The permit application, executive director's preliminary decision, and draft permit will be available for viewing and copying at the TCEQ central office, the TCEQ Harlingen regional office, and at the Port Isabel Public Library, 213 Yturria Street, Port Isabel, Cameron County, Texas, beginning the first day of publication of this notice. The facility's compliance file, if any exists, is available for public review at the TCEQ Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas.

**PUBLIC COMMENT/PUBLIC MEETING. The TCEQ will hold a public meeting for this application. You may submit public comments on this application or request a contested case hearing to the TCEQ Office of the Chief Clerk at the address below.** The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting is not a contested case hearing. The TCEQ will consider all public comments in developing a final decision on the application.

The public meeting 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. However, informal comments made during the Informal Discussion Period will not be considered by the TCEQ Commissioners 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 formal comments into the official record. A written response to all formal comments will be prepared by the Executive Director and considered by the Commissioners before they reach a decision on the permit. A copy of the response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this application and who provides a mailing address. Only relevant and material issues raised during the formal comment period can be considered if a contested case hearing is granted.

**The Public Meeting is to be held:**

**Tuesday, October 11, 2016, at 7:00 p.m.**

**The Historic Brownsville Museum**

**641 E. Madison St.**

**Brownsville, Texas 78520**

**You may submit additional written public comments within 30 days of the date of newspaper publication of this notice in the manner set forth in the AGENCY CONTACTS AND INFORMATION paragraph below.**

After the deadline for public comment, the executive director will consider the comments and prepare a response to all public comment. **The response to comments, along with the executive director's decision on the application will be mailed to everyone who submitted public comments or is on a mailing list for this application.**

**OPPORTUNITY FOR A CONTESTED CASE HEARING.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court. A person who may be affected by emissions of air contaminants from the facility is entitled to request a hearing. A contested

case hearing request must include the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number; (2) applicant's name and permit number; (3) the statement "I/we request a contested case hearing;" (4) a specific description of how you would be adversely affected by the application and air emissions from the facility in a way not common to the general public; (5) the location and distance of your property relative to the facility; (6) a description of how you use the property which may be impacted by the facility; and (7) a list of all disputed issues of fact that you submit during the comment period. If the request is made by a group or association, one or more members who have standing to request a hearing must be identified by name and physical address. The interests the group or association seeks to protect must also be identified. You may also submit your proposed adjustments to the application/permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing within 30 days following this notice to the Office of the Chief Clerk, at the address provided in the information section below.

A contested case hearing will only be granted based on disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decisions on the application. 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. Issues that are not submitted in public comments may not be considered during a hearing.

**EXECUTIVE DIRECTOR ACTION.** A timely hearing request has been received by the TCEQ. However, if all timely contested case hearing requests have been withdrawn and no additional comments are received, the executive director may issue final approval of the application. The response to comments, along with the executive director's decision on the application will be mailed to everyone who submitted public comments or is on a mailing list for this application, and will be posted electronically to the Commissioners' Integrated Database (CID). If all timely hearing requests are not withdrawn, the executive director will not issue final approval of the permit and will forward the application and requests to the Commissioners for their consideration at a scheduled commission meeting.

**INFORMATION AVAILABLE ONLINE.** When they become available, the executive director's response to comments and the final decision on this application will be accessible through the Commission's Web site at [www.tceq.texas.gov/goto/cid](http://www.tceq.texas.gov/goto/cid). Once you have access to the CID using the above link, enter the permit number for this application which is provided at the top of this notice. 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=26.040833&lng=-97.2325&zoom=13&type=r>

**MAILING LIST.** You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

**AGENCY CONTACTS AND INFORMATION.** 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 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 Public Education Program toll free at 1 (800) 687-4040. Si desea información en español, puede llamar al 1 (800) 687-4040.

Further information may also be obtained from TEXAS LNG BROWNSVILLE LLC at the address stated above or by calling Mr. David Glessner, General Manager Permitting at (713) 820-9607.

Persons with disabilities who need special accommodations at the public meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Notice Issuance Date: September 15, 2016

TRD-201604878

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 21, 2016



## Notice of Water Rights Application

Notice issued September 15, 2016

APPLICATION NO. 12026A; Pursuant to an Alternate Source of Water Contract with Angelina and Neches River Authority, the City of Tyler, 212 W. Bonner, Tyler, TX 75710, Applicant, seeks to amend Water Use Permit No. 12026 to increase the storage capacity of the proposed reservoir on an unnamed tributary of West Mud Creek, Neches River Basin in Smith County. Water Use Permit No. 12026 authorizes the City of Tyler, Permittee, to construct and maintain a dam and reservoir on an unnamed tributary of West Mud Creek, tributary of Mud Creek, tributary of the Angelina River, tributary of the Neches River, Neches River Basin and impound therein not to exceed 9.98 acre-feet of water for recreational purposes in Smith County. The application and partial fees were received on June 30, 2014. Additional information and fees were received on September 17, 2014, December 31, 2014, April 24, 2015, and July 31, 2015. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on September 17, 2015. 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 maintaining an alternate source of water. 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, TX 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 web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement (I/we) request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested applica-

tion 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, TX 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 web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en español, puede llamar al (800) 687-4040.

Issued in Austin, Texas on September 20, 2016

TRD-201604879

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 21, 2016



## Texas Ethics Commission

### List of Late Filers

Below is a list from the Texas Ethics Commission of names of filers who did not file a report or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Michelle Gonzales at (512) 463-5800.

#### **Deadline: Semiannual Report due July 15, 2016, for Candidates**

Rhetta A. Bowers, 3526 Lakeview Pkwy., Ste. B, #212, Rowlett, Texas 75088

Kimberly De La Garza Solar, 109 W. Court, Seguin, Texas 78155

#### **Deadline: Monthly Report due June 6, 2016, for Committees**

Keith A. Houser, Citizens for Property Rights, P.O. Box 93476, Southlake, Texas 76092-0114

#### **Deadline: Monthly Report due July 5, 2016, for Committees**

Keith A. Houser, Citizens for Property Rights, P.O. Box 93476, Southlake, Texas 76092-0114

Adam Pacheco, Associated General Contractors of El Paso PAC, 120 Paragon, Ste. 101, El Paso, Texas 79912

Regina A. Tyroch, Whistle Political Action Committee Incorporated d/b/a Whistle PAC, 17424 W. Grand Pkwy., Ste. 160, Sugar Land, Texas 77479

#### **Deadline: Semiannual Report due January 15, 2016, for Committees**

Roberto Alvarez, Houston Turnout Project Super PAC, P.O. Box 3104, Houston, Texas 77253

#### **Deadline: Semiannual Report due July 15, 2016, for Committees**

Roberto Alvarez, Houston Turnout Project Super PAC, P.O. Box 3104, Houston, Texas 77253

Chad B. Baker, Housing First Texas Political Action Committee, 511 N. Akard 302, Dallas, Texas 75201

Brandy J. Dougan, Politics Hub, 2250 Tradewind Dr., #32, Mesquite, Texas 75150-3210

Ateja N. Dukes, Dawwna Dukes Campaign, 5224 Marymount Dr., Austin, Texas 78723

Aaron M. Duval, Travis County District 4 PAC Fund, P.O. Box 41601, Austin, Texas 78704

Amy B. Easley, Vote FOR Our Kids PAC, 111 E. Cunningham St., Bonham, Texas 75418

William Elliott, Texas Card Players Association Political Action Committee, P.O. Box 26176, Austin, Texas 78755-0176

Kathy C. Flores, Lubbock Tejano Democrats, 2606 Purdue, Lubbock, Texas 79415

Susan R. Fowler, Texas Motion Picture Alliance PAC, 4809 Comal St., Pearland, Texas 77581

Jein Gadson, KEY PAC, 2429 Bissonnet, Ste. 106, Houston, Texas 77005

Lydia B. Garza, American Protection Specialists - PAC, 203 S. 10th Ave., Edinburg, Texas 78539

Michael Gibson, Three Amigos, 911 Millpond Dr., Sugar Land, Texas 77398

Mark Anthony Guerra, Del Rio Police Officers' Association Political Action Committee, 86 Tamara Ln., Del Rio, Texas 78840

Elizabeth Guerrero, Guadalupe County Republican Women's Club, 165 Castlewood Dr., Seguin, Texas 78155

Sandra M. Hernandez, Advancing Cameron County, 4208 Boca Bay Dr., Dallas, Texas 75244

Renee Hollingsworth, Common Ground Texas, 316 S. Montreal Ave., Dallas, Texas 75208

**Deadline: Lobby Activities Report due January 11, 2016**

Jeffrey Brooks, P.O. Box 2659, Austin, Texas 78768

Ana Rodriguez DeFrates, P.O. Box 6580, Austin, Texas 78762

Matthew Haertner, 12885 Research Blvd., Ste. 204, Austin, Texas 78750

**Deadline: Lobby Activities Report due April 11, 2016**

Adam Goldman, 919 Congress Ave., Ste. 425, Austin, Texas 78701

**Deadline: Lobby Activities Report due May 10, 2016**

Adam Goldman, 919 Congress Ave., Ste. 425, Austin, Texas 78701

**Deadline: Lobby Activities Report due June 10, 2016**

Adam Goldman, 919 Congress Ave., Ste. 425, Austin, Texas 78701

**Deadline: Personal Financial Statement Report due July 1, 2016**

Rebecca Bell-Metereau, 1931 Los Santos Drive, San Marcos, Texas 78666-2763

John Davis, IV, 1107 Goliad Avenue, Richmond, Texas 77469-1624

Thomas E. Freeman, 3011 Hwy 30 W., Ste. 101-213, Huntsville, Texas 77340

Wesley Ward, 201 Caroline 13th Floor, Houston, Texas 77002

TRD-201604813

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Filed: September 15, 2016

◆ ◆ ◆  
**General Land Office**

**Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program**

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of August 22, 2016, through September 19, 2016. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, September 23, 2016. The public comment period for this project will close at 5:00 p.m. on Sunday, October 23, 2016.

**FEDERAL AGENCY ACTIONS:**

**Applicant:** S&G Marina, LLC

**Location:** 101 Skipper Lane, Laguna Madre, Nueces County

**Project Description:** This review is for an amendment to Standard Permit SWG-2007-01222, originally issued 2 July 2009 and expired 31 December 2014. None of the work or mitigation authorized under the previous permit authorization was conducted. The applicant has amended his permit request to construct new marina facilities and maintenance dredge an existing marina basin and entrance channel located on the Laguna Madre. Project site facilities will include a 79,000-square-foot boat dry stack storage facility, a 3,200-square-foot office/retail/restroom building, a 2,500-square-foot maintenance building, a 3,000-square-foot caretaker residence, a fish cleaning station, parking areas, and an entrance gate structure, all to be constructed within uplands on the property. The existing marina basin covers approximately 1.1 acres and both the marina basin and channel will be mechanically dredged to a depth of -4 feet mean lowest low water (MLLW). The marina entrance and channel will be improved to a width of 30 feet along the entire channel length of approximately 1,800 feet. Existing water depths within the channel range from approximately -3 to greater than -5 feet MLLW. The primary area of dredging is located between the beginning of the channel at the basin and out to 900 feet from the basin. Between 900 and 1,600 feet from the basin, the depth is greater than -4 feet MLLW except in small, isolated areas that may require a small amount of dredging. Between 1,600 and 1,800 feet from the basin, the depth is slightly less than -4 feet MLLW and may require more extensive dredging. Approximately 3,300 cubic yards of material will be removed from the basin and 1,000 cubic yards from the entrance channel. Seagrass beds are located adjacent to the existing channel but no seagrasses were noted in the marina basin or channel based on a survey performed by the agent. Turbidity curtains will be used during dredging operations to protect adjacent seagrass beds. Dredging is planned to be conducted between October and January to coincide with seagrass dormancy. All dredged material will be placed in an onsite dredge material placement area (DMPA) located on the east end of the project site. Future maintenance of the marina will require the removal

of 2,000 cubic yards of material from the marina basin every 4 years and the removal of approximately 3,700 cubic yards of material from the channel every 8 years. An existing bulkhead along the marina's west shoreline will be replaced with a new bulkhead. Portions of the northern and southern shorelines of the marina will also be bulkheaded and a concrete boat ramp will be installed at the northwest corner of the marina basin. The 53-foot-long by 24-foot-wide ramp will serve two purposes: seagrass wrack will stack up in this area and the marina personnel will be able to collect the wrack in this area for disposal, and the ramp will be used by marina personnel to launch and retrieve boats that will be stored in the dry stack storage facility. Temporary timber matting will be installed between the wetlands at the north end of the marina and the proposed new bulkhead during construction and dredging operations. Construction of the boat storage facility and associated structures will require that the project site grade be raised 1 to 2 feet above existing elevation. Approximately 2.5 acres of the site (uplands) will be covered with a 6-inch base material and 8 inches of concrete, the remaining 2 acres of the site (uplands) will be covered with gravel for parking lots.

**CMP Project No:** 16-1406-F1

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application #SWG-2007-01222. This application will be reviewed pursuant to §10 of the Rivers and Harbors Act of 1899.

**Applicant:** Mr. Larry Childers

**Location:** North side of Park Road 22 on approximately 5.61-acre property adjacent to Packery Channel on North Padre Island, Corpus Christi, Nueces County, Texas

**Project Description:** The applicant proposes to construct a mixed-use development consisting of a hotel, retail/commercial buildings, and associated roadways and parking lots on the north side of the PR 22 frontage. The project site contains 0.34 acre of jurisdictional wetlands. The proposed project would permanently impact 0.26 acre of these wetlands.

**CMP Project No:** 16-1407-F1

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application #SWG-2016-00335. This application will be reviewed pursuant to §404 of the Clean Water Act (CWA).

**Applicant:** Texas Department of Transportation - Corpus Christi District

**Location:** Corpus Christi Ship Channel along United States Highway (US) 181, in Corpus Christi, Nueces County, Texas

**Project Description:** The applicant proposes to construct a new US 181 bridge to traverse the Ship Channel, 1,000 feet west of the existing bridge in Corpus Christi, Texas. The project limits are from the US 181 and Beach Avenue intersection south to the State Highway 286 and Morgan Avenue intersection, and from Mesquite Avenue in downtown Corpus Christi west to the Interstate Highway (IH) 37 and Buddy Lawrence Avenue intersection. The proposed project includes constructing a new bridge, demolishing the old bridge, constructing new approaches and new location roadway and frontage roads, and re-constructing the interchange at IH 37 and the Crosstown Expressway, which would include four direct connector ramps. In order to span the Ship Channel, the proposed bridge will be a cable stay bridge, approximately 1,700 feet in length, with a minimum vertical clearance height of 205 feet above mean high water (MHW). The bridge design includes the use of 50-foot square concrete piles and 64-foot by 174-foot rectangular concrete footings. The bridge footings and associated bridge structures will not be placed within waters of the U.S. The new structure will have three 12-foot lanes in each direction with 12-foot inside

and 10-foot outside shoulders. It will also include a 10-foot bicycle and pedestrian shared use path separated from the main lanes by a 2-foot concrete barrier. Materials for construction will include steel for the main bridge span over the Ship Channel with concrete supports, concrete for elevated structures on main lanes, direct connector ramps, and asphalt for frontage roads. Construction of the bridge approaches and frontage roads would result in 0.88 acre of permanent impacts caused by discharge of fill material into waters of the U.S.

**CMP Project No:** 17-1405-F1

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application #SWG-2014-00408. This application will be reviewed pursuant to §404 of the Clean Water Act (CWA).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Mr. Jesse Solis, P.O. Box 12873, Austin, Texas 78711-2873, or via email at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov). Comments should be sent to Mr. Solis at the above address or by email.

TRD-201604864

Anne L. Idsal

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: September 20, 2016

## ◆ ◆ ◆ Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for Anesthesia Services

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on October 31, 2016, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for Anesthesia Services.

The public hearing will be held in the Public Hearing Room of the John H. Winters Building at 701 West 51st Street, Austin, Texas. Entry is through security at the front of the building facing West 51st Street. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for Anesthesia Services are proposed to be effective January 1, 2017.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code §355.8085, which addresses the reimbursement methodology for physicians and other practitioners.

**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 or after October 17, 2016. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting HHSC Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201604857  
Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: September 19, 2016



### Notice of Public Hearing on Proposed Medicaid Payment Rates for Diagnostic Radiology Services

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on December 15, 2016, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for Diagnostic Radiology Services.

The public hearing will be held in the Public Hearing Room of the John H. Winters Building at 701 West 51st Street, Austin, Texas. Entry is through security at the front of the building facing West 51st Street. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for Diagnostic Radiology Services are proposed to be effective March 1, 2017.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code §355.8085, which addresses the reimbursement methodology for physicians and other practitioners.

**Briefing Package.** A briefing package describing the proposed payment rates will be available at <http://legacy-hhsc.hhsc.state.tx.us/rad/rate-packets.shtml> on or after December 1, 2016. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting HHSC Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by email at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by email to [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance so appropriate arrangements can be made.

TRD-201604881  
Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: September 21, 2016



### Public Notice: State Plan Attachment Administrative Correction

The Texas Health and Human Services Commission announces its intent to submit transmittal number 16-0024 to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act.

The purpose of this amendment is to delete pages superseded by previous state plan amendments. The proposed amendment is effective October 1, 2016.

The proposed amendment is estimated to have no fiscal impact. The amendment does not change or modify allowable coverage or benefits.

To obtain copies of the proposed amendment, interested parties may contact J.R. Top, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 462-6397; by facsimile at (512) 730-7472; or by email at [jr.top@hhsc.state.tx.us](mailto:jr.top@hhsc.state.tx.us). Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201604807  
Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: September 14, 2016



### Revised - Public Notice

Waiver renewal to the Texas Home Living (TxHmL)

The initial public notice for the Waiver Renewal of TxHmL post to the Texas Register September 23, 2016. Below is the revised notice.

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request for a renewal to the Texas Home Living (TxHmL) waiver program, a waiver implemented under the authority of section 1915(c) of the Social Security Act. CMS has approved this waiver through February 28, 2017. The proposed effective date for the renewal is March 1, 2017, with no changes to cost neutrality.

This renewal request proposes to make the following changes:

Pursuant to the 84th Texas Legislature, 2015, Regular Session, the HHSC transition plan for the Texas Department of Aging and Disability Services (DADS) requires the integration of DADS into the HHSC system. Please note the subsequent language modifications made throughout the application:

- a) Department of Aging and Disability Services to Health and Human Services Commission (DADS - HHSC);
- b) "local authority" to "local intellectual and developmental disability authority";

- c) Operating Agency to State Medicaid Agency;
- d) "consumer" to "individual" and other such changes related to person-first language; and
- e) "consumer directed services agency" to "financial management services agency."

The following paragraphs identify and describe the substantial changes to the following appendices that are being revised and include a description of the revision, respectively.

*Appendix A: Waiver Administration and Operation*

a) Language was adjusted to reflect the agency transformation, in which DADS, the current operating agency, is being integrated into the HHSC system. Consistent with CMS regulations, performance measures were removed from this assurance based on HHSC responsibility for both operating and regulating the program.

*Appendix B: Participant Access and Eligibility*

- a) Unduplicated number of participants and point in time numbers for all waiver years were updated.
- b) Eligibility group Medicaid Buy-In for Children (MBIC) (under age 19) §1902(a)(10)(A)(ii)(XIX), §1902(cc)(1) has been removed from the list of "other specified groups" as the MBIC group only applies to the 300% Special Income Limit groups.
- c) Eligibility groups SSI Recipient §1902(a)(10)(A)(i)(II) and Medicaid Buy-In (MBI) §1902(a)(10)(A)(ii)(XIII) were removed from the list of "other specified groups" as they are identified B4b.

*Appendix C: Participant Services*

- a) Through the Medicaid State Plan, Community First Choice (CFC), habilitation, and personal assistance services are now available to all individuals receiving TxHmL waiver services. Transportation services are included exclusively in Community Supports for individuals receiving TxHmL waiver services.
- b) Changed provider type name from "financial management services agencies" to "consumer directed services direct service provider;" no change to services will occur due to this change.
- c) Added that Respite services cannot be provided at the same time as Community Supports or CFC state plan services.
- d) Updated the service definition for Financial Management Services.
- e) The service definition of Respite was modified to include the provision that Respite cannot be provided at the same time as Community Supports or CFC state plan services.
- f) The State is changing the name of "Support Consultation Services" to "Support Consultation." This change does not affect the service.
- g) The State is changing the name of "Audiology" to "Audiology Services." This change does not affect the services.
- h) The State is changing the name of "Dental" to "Dental Treatment." This change does not affect the services.
- i) Limitations to Dental Treatment were updated to include the following language: "This waiver service is only provided to individuals age 21 and over. All medically necessary Dental Treatment for children under the age of 21 are covered in the state plan pursuant to the [Early and Periodic Screening, Diagnostic, and Treatment] EPSDT benefit."
- j) The State is changing the name of "Dietary" to "Dietary Service." This change does not affect the services.
- k) The State is changing the name of "Occupational Therapy" to "Occupational Therapy Services." This change does not affect the services.

l) The State is changing the name of "Physical Therapy" to "Physical Therapy Services." This change does not affect the services.

m) Limitations to Physical Therapy Services were updated to include the following language: "This waiver service is only provided to individuals age 21 and over. All medically necessary Physical Therapy services for children under the age of 21 are covered in the state plan pursuant to the EPSDT benefit."

n) Limitations to Occupational Therapy Services were updated to include the following language: "This waiver service is only provided to individuals age 21 and over. All medically necessary Occupational Therapy services for children under the age of 21 are covered in the state plan pursuant to the EPSDT benefit."

o) The State is changing the name of "Skilled Nursing" to "Nursing." This change does not affect the services.

p) The State is changing the name of "Speech/Language Therapy" to "Speech-Language Pathology" to better represent the services. This change will not affect the service.

q) Limitations to Speech-Language Therapy were updated to include the following language: "This waiver service is only provided to individuals age 21 and over. All medically necessary Speech-Language Pathology services for children under the age of 21 are covered in the state plan pursuant to the EPSDT benefit."

r) The list of examples of Adaptive Aids was removed from this service definition and a hyperlink to the complete list of billable Adaptive Aids is provided.

s) The provider standard, other standard for Adaptive Aids has been modified to accurately reflect the standard.

t) Cost limit for Adaptive Aids services was adjusted to \$10,000 because the previous \$6,000 annual limit was listed in error; this change is made to reflect what is currently offered in TxHmL.

u) The list of examples of Minor Home Modifications was removed from this service definition and a hyperlink to the complete list of billable Minor Home Modifications is provided.

v) Update Criminal History and Background Checks for providers of Consumer Directed Services (CDS) to reflect new requirements.

w) General Service Specifications, open enrollment of providers process has been updated to include a requirement for financial management agencies to obtain a Medicaid provider agreement. This is not a new requirement and is added to accurately reflect current requirements.

x) Administrative penalties were added as an additional method of remediation for program providers who do not comply with TxHmL rules.

y) Methods for remediation of financial management services agencies were updated.

*Appendix D: Service Delivery*

a) Respite is modified to include the provision that Respite cannot be provided at the same time as community supports or Community First Choice state plan services.

b) Administrative penalties were added as an additional method of remediation for program providers.

*Appendix E: Participant Direction of Services*

a) The estimated numbers of individuals utilizing the consumer directed services (CDS) option were updated to reflect a decrease in the total number of individuals served in the waiver (the C value). The

percentages of individuals in the waiver utilizing the CDS option are anticipated to remain the same.

*Appendix G: Health and Welfare*

- a) Language regarding restraint, seclusion and restrictive intervention was clarified.
- b) Administrative penalties were added as an additional method of remediation for program providers who do not comply with TxHmL rules.

*Appendix I: Financial Accountability*

- a) Fiscal responsibility was updated to reflect current practices, and the rate methodology was updated to include a legislatively-mandated spending requirement related to a rate increase effective September 1, 2015.
- b) Methods for Remediation/Fixing Individual Problems was updated.

*Appendix J:*

- a) Unduplicated number of participants and point in time numbers for all waiver years were updated.

TxHmL provides essential community-based services and supports to individuals with an intellectual and developmental disability living in their own homes or with their families. Services and supports are intended to enhance quality of life, functional independence, and health and well-being in continued community-based living and to enhance, rather than replace, existing informal or formal supports and resources. Services include day habilitation, respite, supported employment, prescription medications, financial management services, support consultation, adaptive aids, audiology services, behavioral support, community support, dental treatment, dietary service, employment assistance, minor home modifications, occupational therapy services, physical therapy services, nursing, and speech-language pathology.

An individual may obtain a free copy of the proposed waiver renewal, including the TxHmL settings transition plan, or if you have questions, need additional information, or wish to submit comments regarding this renewal or the TxHmL settings transition plan, interested parties may contact Jacqueline Pernell by U.S. mail, telephone, fax, or email. The addresses are as follows:

**U.S. Mail**

Texas Health and Human Services Commission  
Attention: Jacqueline Pernell, Waiver Coordinator, Policy Development Support  
PO Box 13247  
Mail Code H-600  
Austin, Texas 78711-3247

**Telephone**

(512) 428-1931

**Fax**

Attention: Jacqueline Pernell, Waiver Coordinator, at (512) 730-7477

**Email**

TX\_Medicaid\_Waivers@hhsc.state.tx.us.

In addition, the HHSC local offices will post this notice for 30 days. The complete waiver amendment request can be found online on the DADS website at:

<http://www.dads.state.tx.us/providers/HCS/>.

The DADS local offices will post this notice for 30 days. The complete waiver application can be found online on the DADS website at:

<http://www.dads.state.tx.us/providers/CLASS/>

TRD-201604904

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: September 21, 2016

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## Texas Department of Housing and Community Affairs

### Notice of Public Hearing

Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Arborstone Apartments)

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at the Hampton-Illinois Branch Library, 2951 South Hampton Road, Dallas, Texas 75224 at 1:00 p.m. on October 25, 2016. The hearing is regarding an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$35,500,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Dalcov Arborstone, Ltd., a Texas limited partnership, or a related person or affiliate thereof (the "Borrower"), to finance a portion of the costs of acquiring and rehabilitating a multifamily housing development. The housing development is described as follows: an approximately 536-unit multifamily housing development located at 6500 South Cockrell Hill Road, Dallas, Texas 75236 (the "Development"). Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Shannon Roth at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941; (512) 475-3929; and/or [shannon.roth@tdhca.state.tx.us](mailto:shannon.roth@tdhca.state.tx.us).

Persons who intend to appear at the hearing and express their views are invited to contact Shannon Roth in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Shannon Roth prior to the date scheduled for the hearing. Individuals who require a language interpreter for the public hearing should contact Elena Peinado at (512) 475-3814 at least five days prior to the hearing date 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 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this hearing should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least five days before the hearing so that appropriate arrangements can be made.

This notice is published and the hearing is to be held in satisfaction of the requirements of §147(f) of the Internal Revenue Code of 1986, as amended.

<http://www.tdhca.state.tx.us/multifamily/communities.htm>

TRD-201604865

Timothy K. Irvine  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: September 20, 2016

◆ ◆ ◆  
**University of Houston System**

**Campus Space Utilization Study and Best Practice Evaluation**  
Notice of Procurement

The University of Houston System announces a Request for Proposal (RFP) for consultant services pursuant to Government Code, Chapter 2254, Subchapter B.

RFP730-16156, Review and Evaluation of Campus Space Utilization  
Purpose:

The University of Houston (UH) Campus Services Department is seeking competitive responses to a Request for Proposal ("RFP") for a Consultant to provide an independent analysis and recommendations for current and future campus space utilization. The evaluation would include an analysis of current space utilization, including all campus academic, research, and administrative spaces. This evaluation would encompass an analysis of campus spaces relative to current course enrollment, research space needs, employee workspace needs, and classroom booking and scheduling.

Eligible Applicants:

Consulting firms with related knowledge and experience in:

Firms that have expertise with evaluating campus space utilization and management of physical campus spaces.

Services to be performed:

To evaluate the current utilization of physical space

To complete projections for education, administrative, and research spaces using enrollment and hiring projections from the university

To examine space management in connection with national university peers

To review current staffing levels and software needs for the effective management of physical space on campus

To make process / service improvement recommendations as needed

Finding by Chief Executive Officer, Renu Khator:

After reviewing the current status and discussing this matter with the staff, the evaluation of the university's space utilization and management, including the development of projections for future needs, can only be conducted by a firm considered an expert in university space management. The university believes that using a third-party consultant, who has conducted similar evaluations of space management functions on national campuses similar in context and size to the University, will provide the institution with best practices that can be used to improve our ability to be most efficient in our use of physical facilities. The expertise needed for this evaluation is complex and requires a comprehensive knowledge of national industry trends related to management of space and projections of future space needs. Currently, our Planning Department does not have the breadth of experience needed for this evaluation. Thus, it is necessary for the University to engage a consultant to advise it regarding its evaluation of university space utilization and management, and make recommendations, as appropriate for the improvement of the use of these resources.

Review and Award Criteria:

All proposals will be evaluated by appointed representatives of the University in accordance with the following procedures:

Purchasing will receive and review each RFP proposal to ensure it meets the requirements of the RFP. Qualified proposals will be given to the selection committee.

Each member of the selection committee will independently evaluate the qualified proposals according to the criteria in section IX of the RFP, except for price, and send their evaluations to Purchasing. Price will be evaluated by Project Manager.

Purchasing will combine the committee's scores to determine which proposal received the highest combined score.

Purchasing will notify the respondent with the highest score that the University intends to contract with them.

Deadlines: UH must receive proposals according to instructions in the RFP package on or before Monday, October 24, 2016 at 12:00 p.m. CDT.

Obtaining a copy of the RFP: Copies will be available on the Electronic State Business Daily (ESBD) at <http://esbd.cpa.state.tx.us/>.

The sole point of contact for inquiries concerning RFP is:

Jack Tenner

UH Purchasing

5000 Gulf Freeway, ERP 1, Rm.204

Houston, Texas 77204-5015

Phone: (713) 743-5671

Email: [jtenner@central.uh.edu](mailto:jtenner@central.uh.edu)

TRD-201604812

Jack Tenner

Director of Purchasing

University of Houston System

Filed: September 15, 2016

◆ ◆ ◆  
**Review and Evaluation of Campus Safety Services**

Notice of Procurement

The University of Houston System announces a Request for Proposal (RFP) for consultant services pursuant to Government Code, Chapter 2254, Subchapter B.

RFP730-17008, Review and Evaluation of Campus Safety Services

Purpose:

The University of Houston (UH) Campus Services Department is seeking competitive responses to a Request for Proposal ("RFP") for a Consultant to provide an independent analysis of UH Safety Services including fire, life, health, environmental, and lab safety (biological, chemical and radiation).

Eligible Applicants:

Consulting firms with related knowledge and experience in:

Firms that have expertise with evaluating university safety service programs.

Services to be performed:

To evaluate the methods and procedures with the Safety Services programs

To review the process for new construction and renovation plan reviews  
To examine this department in connection with peers to the university  
To review current staffing levels and financials for this department  
To make process/service improvement recommendations as needed  
Finding by Chief Executive Officer, Renu Khator:

After reviewing the current status and discussing this matter with the staff, the evaluation of these services can only be conducted by a firm considered expert in university safety services. The university believes that using a third-party consultant, who has conducted similar evaluations of safety services on national campuses similar in context and size to the University, will provide the institution with best practices that can be used to improve the service to our customers. Similarly, in this era of financial accountability, it is important for the University to understand if this service is providing best value to its customers and constituents. The expertise needed for this evaluation is complex and requires a comprehensive knowledge of national industry trends related to university safety services. Currently, the staff do not have the breadth of experience needed for this evaluation. Thus, it is necessary for the University to engage a consultant to advise on university safety services, and make recommendations, as appropriate for the improvement of these services.

**Review and Award Criteria:**

All proposals will be evaluated by appointed representatives of the University in accordance with the following procedures:

Purchasing will receive and review each RFP proposal to ensure it meets the requirements of the RFP. Qualified proposals will be given to the selection committee.

Each member of the selection committee will independently evaluate the qualified proposals according to the criteria in section IX of the RFP, except for price, and send their evaluations to Purchasing. Price will be evaluated by Project Manager.

Purchasing will combine the committee's scores to determine which proposal received the highest combined score.

Purchasing will notify the respondent with the highest score that the University intends to contract with them.

Deadlines: UH must receive proposals according to instructions in the RFP package on or before Monday, October 31, 2016 at 2:00 p.m. CDT.

Obtaining a copy of the RFP: Copies will be available on the Electronic State Business Daily (ESBD) at <http://esbd.cpa.state.tx.us/>.

The sole point of contact for inquiries concerning RFP is:

Jack Tenner  
UH Purchasing  
5000 Gulf Freeway, ERP 1, Rm. 204  
Houston, Texas 77204-5015  
Phone: (713) 743-5671  
Email: [jdtenner@central.uh.edu](mailto:jdtenner@central.uh.edu)  
TRD-201604819  
Jack Tenner  
Director of Purchasing  
University of Houston System  
Filed: September 16, 2016



## Texas Lottery Commission

### Correction to Scratch Ticket Game Number 1756 "High Roller Casino Action"

The Texas Lottery Commission ("Commission") filed for publication Scratch Ticket Game Number 1756 "High Roller Casino Action". The document was published in the March 25, 2016, issue of the *Texas Register* (41 TexReg 2353). The Commission amends the list of prizes by validation tier levels by correcting §1.2.F to include low tier prizes of \$50.00 and \$70.00. The Commission amends Section 1.2.G by deleting prizes of \$50.00 and \$70.00. The Commission amends the section numbers for the remaining sub-sections in Section 1.2.

Sections 1.2.F through 1.2.M now read as follows:

F. Low Tier Prize - A prize of \$50.00 and \$70.00.

G. Mid-Tier Prize - A prize of \$100, \$150, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$2,000, \$2,500, \$10,000 or \$7,500,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1756), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 020 within each Pack. The format will be: 1756-0000001-001.

K. Pack - A Pack of the "HIGH ROLLER CASINO ACTION" Scratch Ticket Game contains 020 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 020 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

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 Ticket Game, Scratch Ticket or Ticket - Texas Lottery "HIGH ROLLER CASINO ACTION" Scratch Ticket Game No. 1756.

TRD-201604858  
Bob Biard  
General Counsel  
Texas Lottery Commission  
Filed: September 20, 2016



### Scratch Ticket Game Number 1773 "Rich"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1773 is "RICH". The play style is "key number match."

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1773 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1773.

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,

41, 42, 43, 44, 45, 46, 47, 48, 49, 50, GOLD BAR SYMBOL, RICH SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$250, \$1,000 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. 1773 - 1.2D

| PLAY SYMBOL | CAPTION |
|-------------|---------|
| 01          | ONE     |
| 02          | TWO     |
| 03          | THR     |
| 04          | FOR     |
| 05          | FIV     |
| 06          | SIX     |
| 07          | SVN     |
| 08          | EGT     |
| 09          | NIN     |
| 10          | TEN     |
| 11          | ELV     |
| 12          | TLV     |
| 13          | TRN     |
| 14          | FTN     |
| 15          | FFN     |
| 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   |
| 41              | FRON   |
| 42              | FRTO   |
| 43              | FRTH   |
| 44              | FRFR   |
| 45              | FRFV   |
| 46              | FRSX   |
| 47              | FRSV   |
| 48              | FRET   |
| 49              | FRNI   |
| 50              | FFTY   |
| GOLD BAR SYMBOL | WINX5  |
| RICH SYMBOL     | WINALL |
| \$5.00          | FIV\$  |
| \$10.00         | TEN\$  |
| \$15.00         | FFN\$  |
| \$20.00         | TWY\$  |
| \$50.00         | FFTY\$ |
| \$100           | ONHN   |
| \$250           | TOFF   |
| \$1,000         | ONTH   |
| \$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, \$200, \$250, \$300, \$400 or \$500.

H. High-Tier Prize - A prize of \$1,000 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 (1773), 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: 1773-0000001-001.

K. Pack - A Pack of the "RICH" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of

one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

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 Ticket Game, Scratch Ticket or Ticket - Texas Lottery "RICH" Scratch Ticket Game No. 1773.

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 "RICH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "GOLD BAR" Play Symbol, the player wins 5 TIMES the prize for that

symbol. If a player reveals a "RICH" Play Symbol, the player WINS ALL 20 PRIZES 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 45 (forty-five) 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 45 (forty-five) 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 45 (forty-five) Play Symbols must be exactly one of those described in §1.2.C of these Game Procedures;
17. Each of the 45 (forty-five) 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 within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to twenty (20) times.

D. On winning and Non-Winning Tickets, the top cash prizes of \$1,000 and \$100,000 will each appear at least once, except on Tickets winning twenty (20) times.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create wins, unless restricted by other parameters, play action or prize structure.

H. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

I. YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e. 5 and \$5, 10 and \$10, 15 and \$15, 20 and \$20, 50 and \$50).

J. On all Tickets, a Prize Symbol will not appear more than four (4) times except as required by the prize structure to create multiple wins.

K. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

L. The "GOLD BAR" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

M. The "GOLD BAR" (WINX5) Play Symbol will never appear more than once on a Ticket, unless restricted by other parameters, play action or prize structure.

N. The "GOLD BAR" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

O. The "GOLD BAR" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

P. The "RICH" (WINALL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

Q. The "RICH" (WINALL) Play Symbol will WIN ALL 20 PRIZES INSTANTLY for that Play Symbol and will win as per the prize structure.

R. The "RICH" (WINALL) Play Symbol will never appear more than once on a Ticket.

S. The "RICH" (WINALL) Play Symbol will never appear on a Non-Winning Ticket.

T. On Tickets that win with the "RICH" (WINALL) Play Symbol, no YOUR NUMBERS Play Symbols will match a WINNING NUMBERS Play Symbol.

U. The "RICH" (WINALL) Play Symbol and the "GOLD BAR" (WINX5) Play Symbol will never appear on the same Ticket.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "RICH" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$200, \$250, \$300, \$400 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, \$200, \$250, \$300, \$400 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 §2.3.B of these Game Procedures.

B. To claim a "RICH" Scratch Ticket Game prize of \$1,000 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 "RICH" 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 §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 "RICH" 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 "RICH" 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 7,200,000 Scratch Tickets in Scratch Ticket Game No. 1773. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1773 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|--------------|--------------------------------|------------------------------|
| \$5          | 736,000                        | 9.78                         |
| \$10         | 752,000                        | 9.57                         |
| \$15         | 192,000                        | 37.50                        |
| \$20         | 64,000                         | 112.50                       |
| \$50         | 67,480                         | 106.70                       |
| \$100        | 32,480                         | 221.67                       |
| \$200        | 900                            | 8,000.00                     |
| \$250        | 1,580                          | 4,556.96                     |
| \$300        | 740                            | 9,729.73                     |
| \$400        | 320                            | 22,500.00                    |
| \$500        | 1,140                          | 6,315.79                     |
| \$1,000      | 204                            | 35,294.12                    |
| \$100,000    | 8                              | 900,000.00                   |

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.89. 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. 1773 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. 1773, 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-201604860  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: September 20, 2016



Scratch Ticket Game Number 1817 "Golden Ticket"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1817 is "GOLDEN TICKET". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1817 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1817.

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, COIN SYMBOL, POT OF GOLD SYMBOL, \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$150, \$200, \$500, \$10,000 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. 1817 - 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>COIN SYMBOL</b>        | <b>WIN</b>     |
| <b>POT OF GOLD SYMBOL</b> | <b>WINALL</b>  |
| \$5.00                    | FIV\$          |
| \$10.00                   | TEN\$          |
| \$20.00                   | TWY\$          |
| \$25.00                   | TWV\$          |

|           |        |
|-----------|--------|
| \$50.00   | FFTY\$ |
| \$100     | ONHN\$ |
| \$150     | HNFFY  |
| \$200     | TOHN   |
| \$500     | FVHN   |
| \$10,000  | 10TH   |
| \$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 or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100, \$150, \$200 or \$500.

H. High-Tier Prize - A prize of \$10,000 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-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1817), 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: 1817-0000001-001.

K. Pack - A Pack of the "GOLDEN TICKET" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning 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 Ticket Game, Scratch Ticket or Ticket - Texas Lottery "GOLDEN TICKET" Scratch Ticket Game No. 1817.

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 "GOLDEN TICKET" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the GOLDEN TICKET NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "COIN" Play Symbol, the player wins the prize for that symbol instantly. If a player reveals a "POT OF GOLD" Play Symbol, the player WINS ALL 20 PRIZES 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:

- Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
- 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;
- Each of the Play Symbols must be present in its entirety and be fully legible;
- Each of the Play Symbols must be printed in black ink except for dual image games;
- The Scratch Ticket shall be intact;
- The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;
- The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
- The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
- The Scratch Ticket must not be counterfeit in whole or in part;
- The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
- 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;
- The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;
- The Scratch Ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;
- 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;
- The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
- Each of the 45 (forty-five) Play Symbols must be exactly one of those described in §1.2.C of these Game Procedures;
- Each of the 45 (forty-five) 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.

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 prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 5 and \$5).

D. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. No matching GOLDEN TICKET NUMBERS Play Symbols on a Ticket.

F. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

G. A Ticket may have up to four (4) matching non-winning Prize Symbols unless restricted by other parameters, play action or prize structure.

H. The "COIN" (WIN) Play Symbol may appear multiple times on winning Tickets unless restricted by other parameters, play action or prize structure.

I. When the "POT OF GOLD" (WINALL) Play Symbol appears, there will be no occurrence of a YOUR NUMBERS Play Symbol matching a GOLDEN TICKET NUMBERS Play Symbol and, if applicable, no occurrence of any other special features on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "GOLDEN TICKET" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$150, \$200 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 \$25.00, \$50.00, \$100, \$150, \$200

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 §2.3.B and §2.3.C of these Game Procedures.

B. To claim a "GOLDEN TICKET" Scratch Ticket Game prize of \$10,000 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 "GOLDEN TICKET" 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 §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 "GOLDEN

TICKET" 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 "GOLDEN TICKET" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 8,040,000 Scratch Tickets in Scratch Ticket Game No. 1817. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1817 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|--------------|--------------------------------|------------------------------|
| \$5          | 911,200                        | 8.82                         |
| \$10         | 670,000                        | 12.00                        |
| \$20         | 134,000                        | 60.00                        |
| \$25         | 107,334                        | 74.91                        |
| \$50         | 80,400                         | 100.00                       |
| \$100        | 17,420                         | 461.54                       |
| \$150        | 12,395                         | 648.65                       |
| \$200        | 5,025                          | 1,600.00                     |
| \$500        | 2680                           | 3,000.00                     |
| \$10,000     | 15                             | 536,000.00                   |
| \$100,000    | 6                              | 1,340,000.00                 |

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.14. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of 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. 1817 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. 1817, 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-201604859  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: September 20, 2016



## North Central Texas Council of Governments

### Request for Information for the Dallas-Fort Worth High-Speed Rail Core Express Service Project

The North Central Texas Council of Governments (NCTCOG), is seeking information from private sector firms regarding potential project delivery and finance structures for the Dallas-Fort Worth High-Speed Rail Core Express Service Project. The Regional Transportation Council (RTC) is the Metropolitan Planning Organization (MPO) policy body associated with NCTCOG. The metropolitan transportation plan for the North Central Texas region, Mobility 2040, as adopted by the RTC, includes recommendations for at-grade and grade-separated high-speed rail, including service between the cities of Fort Worth and Dallas. NCTCOG, on behalf of the RTC, is seeking information regarding 1) private sector interest in the delivery of high-speed rail for the Core Express Service Project, 2) potential project delivery mechanisms to maximize private sector participation in the project, 3) potential financing structures to maximize private sector participation in the project, 4) commitments needed from the public sector to assist in project delivery, and 5) identification of major risks associated with the delivery of such a project and mechanisms to mitigate such risks. NCTCOG will hold an RFI Industry Forum on October 25, 2016 at NCTCOG offices in Arlington, Texas, to provide additional information and background.

This Request for Information (RFI) is issued solely for information and planning purposes - it does not constitute a Request for Proposal (RFP) or a promise to issue an RFP in the future. This RFI does not commit NCTCOG to contract for any supply or service whatsoever. Costs associated with preparing a response to this request are at the respondent's own expense and will not be reimbursed by NCTCOG. Not responding to this RFI does not preclude participation in any future RFP, if any is issued.

#### Release and Due Date

The RFI will be issued and made available on NCTCOG's website on September 30, 2016, at [www.nctcog.org/rfp](http://www.nctcog.org/rfp). Responses to the RFI must be received no later than 5:00 p.m., on Friday, November 18, 2016, via email to [TransRFPs@nctcog.org](mailto:TransRFPs@nctcog.org) or hand-delivery, to Kevin Feldt, Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201604898

R. Michael Eastland  
Executive Director

North Central Texas Council of Governments  
Filed: September 21, 2016



### Request for Proposals to Conduct a Dallas High-Speed Rail Station Area Planning Study

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consulting firms to conduct a Dallas High-Speed Rail Station Area Planning Study. With the advent of high-speed passenger rail service for the Dallas-Fort Worth region, major transportation and land use changes will occur. Adding high-speed passenger rail service to the region's transportation choices will create impacts to travel and land use decisions. The manner in which these impacts are absorbed and mitigated will be critical to successful implementation of high-speed passenger rail service. This study will assist

NCTCOG and the City of Dallas in reviewing the proposed High-Speed Rail Station Location identified by the potential private high-speed rail implementer from Houston to Dallas. Additionally, development of a station area plan will help advance the City's Economic Development opportunities.

Proposals must be received no later than 5:00 p.m., on Friday, October 28, 2016, to Kevin Feldt, Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals (RFP) will be available at [www.nctcog.org/rfp](http://www.nctcog.org/rfp) by the close of business on Friday, September 30, 2016.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201604896

R. Michael Eastland  
Executive Director

North Central Texas Council of Governments  
Filed: September 21, 2016



### Request for Proposals to Conduct a Fort Worth High-Speed Rail Station Area Planning Study

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consulting firms to conduct a Fort Worth High-Speed Rail Station Area Planning Study. With the advent of high-speed passenger rail service for the Dallas-Fort Worth region, major transportation and land use changes will occur. Adding high-speed passenger rail service to the region's transportation choices will create impacts to travel and land use decisions. The manner in which these impacts are absorbed, mitigated and accessed will be critical to successful implementation of high-speed passenger rail service. This study will assist NCTCOG and the City of Fort Worth in optimizing the location of a high-speed rail station in or near downtown Fort Worth and to develop station area high-speed rail accessibility. Additionally, development of a station area plan will help to advance Fort Worth's economic goals.

Proposals must be received no later than 5:00 p.m., on Friday, October 28, 2016, to Kevin Feldt, Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals (RFP) will be available at [www.nctcog.org/rfp](http://www.nctcog.org/rfp) by the close of business on Friday, September 30, 2016.

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TRD-201604897

R. Michael Eastland  
Executive Director

North Central Texas Council of Governments  
Filed: September 21, 2016



### Request for Proposals to Conduct an Arlington High-Speed Rail Station Area Planning Study

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consulting firms to conduct an Arlington High-Speed Rail Station Area Planning Study. With the advent of high-speed passenger rail service for the Dallas-Fort Worth region, ma-

major transportation and land use changes will occur. Adding high-speed passenger rail service to the region's transportation choices will create impacts to travel and land use decisions. The manner in which these impacts are absorbed, mitigated and accessed will be critical to successful implementation of high-speed passenger rail service. This study will assist NCTCOG and the City of Fort Worth in optimizing the location of a high-speed rail station in or near downtown Fort Worth and to develop station area high-speed rail accessibility. Additionally, development of a station area plan will help to advance Fort Worth's economic goals.

Proposals must be received no later than 5:00 p.m., on Friday, October 28, 2016, to Kevin Feldt, Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals (RFP) will be available at [www.nctcog.org/rfp](http://www.nctcog.org/rfp) by the close of business on Friday, September 30, 2016.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201604895  
R. Michael Eastland  
Executive Director  
North Central Texas Council of Governments  
Filed: September 21, 2016

## Panhandle Regional Planning Commission

Consultant Proposal Request Auditing Services

Notice of Invitation for Proposal

Panhandle Regional Planning Commission (PRPC) is soliciting proposals to perform auditing services for fiscal years ending September 30, 2016, 2017, and 2018 with the option of a year-by-year extension for the two subsequent fiscal years September 30, 2019, and 2020, in accordance with the provisions of 2 CFR 200 Uniform Guidance. Detailed information regarding the project is set forth in the Request for Proposal (RFP) which will be available on or after September 26, 2016, at the following location:

Cindy Boone, CPA  
Finance Director  
Panhandle Regional Planning Commission  
P.O. Box 9257  
Amarillo, Texas 79105  
[cboone@theprpc.org](mailto:cboone@theprpc.org)  
(806) 372-3381

The deadline for submission of proposals in response to this request will be 5:00 p.m. on Friday October 14, 2016.

PRPC reserves the right to accept or reject any or all proposals submitted. PRPC is under no legal requirement to execute a resulting contract on the basis of this advertisement and intends the material provided only as a means of identifying the various contractual alternatives. PRPC will base its choice on demonstrated competence, qualifications, and evidence of superior conformance with criteria.

This RFP does not commit PRPC to pay any costs incurred prior to the execution of a contract. Issuance of this material in no way obligates PRPC to award a contract or pay any cost incurred in the preparation of a response. PRPC specifically reserves the right to vary all provisions

set forth at any time prior to execution of a contract where PRPC feels it to be in its own best interest.

TRD-201604817  
Cindy Boone  
Finance Director  
Panhandle Regional Planning Commission  
Filed: September 16, 2016

## Texas Parks and Wildlife Department

Notice of Availability and Request for Comments

**Draft Damage Assessment and Restoration Plan**

**Former Arkema, Inc. Agriculture Pesticide Formulation Production Facility in Bryan, Texas**

**AGENCIES:** The Texas Commission on Environmental Quality (TCEQ); Texas Parks and Wildlife Department; Texas General Land Office; and United States Department of the Interior (DOI), as represented by the United States Fish and Wildlife Service (collectively, the Trustees).

**ACTION:** Notice of availability of a Draft Damage Assessment and Restoration Plan (DARP) for natural resource damages resulting from historical releases of hazardous substances at or from the former Arkema, Inc. agriculture pesticide formulation production facility in Bryan, Texas (Facility), and of a 30-day period for public comment on the Draft DARP beginning on the date of publication of this notice.

**SUMMARY:** This notice serves to inform the public that the Trustees have developed a Draft DARP to resolve natural resource damages associated with this Facility. The Draft DARP outlines the injuries resulting from the unauthorized release of hazardous substances from the Facility, as well as the proposed restoration project selected to compensate for those injuries. The opportunity for public review and comment on the Draft DARP announced in this notice is required under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9607(f), and parallels provisions of 43 C.F.R. §11.81(d), which are applicable to natural resource damage assessments under CERCLA.

**ADDRESSES:** A copy of this Draft DARP may be obtained by contacting: Environmental Assessment, Response, and Restoration Program (EARRP) at the Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; phone: (512) 389-8615; or email: [EARRP@tpwd.texas.gov](mailto:EARRP@tpwd.texas.gov).

**DATES:** Comments must be submitted in writing on or before 5:00 p.m. on October 31, 2016, to the Environmental Assessment, Response, and Restoration Program at the Texas Parks and Wildlife Department at the address listed in the previous paragraph. The Trustees will consider all written comments received during the comment period prior to finalizing the DARP.

**SUPPLEMENTARY INFORMATION:** The Facility, a former agriculture pesticide formulating production facility owned and operated by Arkema, Inc. and its predecessors, is located in Bryan, Texas, and began operations circa 1940. Prior to stopping all chemical production activities in 1993, pesticide production at the Facility resulted in the release of arsenic and other hazardous substances into the surrounding environment. The Facility currently contains foundations and containment areas associated with the former production areas; several office, warehouse, and maintenance buildings; aboveground chemical, water, and wastewater tanks associated with groundwater and stormwater treatment systems; and a capped landfill. When the Facility was in operation it included: four main production areas; two unlined process

water retention ponds with a main sump; an arsenic acid truck loading/unloading area; an arsenic acid rail loading/unloading area; a materials handling area; a sprinkler basin; a containment basin for stormwater, fire suppression water, and overflow from the sump; and a small retention pond for on-site stormwater.

Historically, groundwater, stormwater runoff, and surface water runoff from the Facility discharged directly into and overlaid into both Finfeather Lake (an adjacent 27-acre waterbody) and No-Name Lake (a small series of ponds isolated on the Facility). Surface water then flowed from Finfeather Lake through a weir system to Kazmier Pond, an intermediate stormwater pond that overflowed into a drainage Channel, the Connecting Channel, then into Municipal Lake (an approximately 15-acre waterbody).

Documented releases of hazardous substances at or from the Facility contaminated the above-mentioned water bodies. Response actions were conducted by Arkema under a TCEQ Agreed Order and included dewatering and dredging of Finfeather and Municipal Lakes, construction of an earthen sump and two retention ponds for remediation of surface water impoundments, construction of a groundwater extraction and treatment system to remediate groundwater, and incorporation of a stormwater collection system. Remedial actions continue, including groundwater monitoring; surface water monitoring of Finfeather Lake, Municipal Lake, and Connecting Channel; stormwater collection and treatment prior to discharge; and groundwater extraction and treatment.

The Trustees are designated under Section 107(f) of CERCLA, 42 U.S.C. §9607(f); Section 311 of the Federal Water Pollution and Control Act (Clean Water Act), 33 U.S.C. §1321; Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. §300.600 and §300.605; and other applicable federal or state laws. The Trustees are authorized to act on behalf of the public under these authorities to protect and restore natural resources injured or lost as a result of releases of hazardous substances.

The Trustees determined that the releases of hazardous substances posed a direct and indirect threat to natural resources for which the federal and/or state governments may assert trusteeship. Natural resources or their services injured as a result of the historical contamination and response actions include, but are not limited to aquatic habitats of Municipal and Finfeather Lakes, including surface waters, submerged lands, sediments, wetlands, migratory avian species, wildlife, fisheries, and aquatic organisms. To evaluate injury to resources caused by the Facility, the Trustees reviewed existing information, including remedial investigation data, ecological risk assessments, and open scientific literature, and applied their collective knowledge and understanding of the function of the terrestrial and aquatic ecosystems at and near the Facility. Contaminants of concern (COCs) considered by the Trustees included arsenic, copper, zinc, endothal, insecticides, and fungicides manufactured at the Facility. The Trustees identified arsenic in its various forms as the primary COC and have focused the assessment on injuries resulting from this contaminant. The Trustees quantified injuries to approximately 42 acres of aquatic communities found in Finfeather and Municipal Lakes. The Trustees' evaluation of injury included identifying where contaminated sediments were located, the severity of the contamination (showing where sediment concentrations exceeded known effects levels for sediment that may cause harm to fish and aquatic invertebrates), and the potential for contaminated sediments to be transported or moved into uncontaminated areas.

To facilitate settlement and achieve a cost-effective resolution, the Trustees invited Legacy Site Services, as the registered agent for Arkema, to conduct a cooperative assessment. As a result, the Trustees and Arkema reached a settlement agreement for Arkema to pay \$1.4 million to resolve natural resource damages and Trustee costs. Based on a thorough evaluation, the Trustees concluded that the acquisition

and or preservation of a minimum of 402 acres of existing mixed open water, wetland, and bottomland hardwood habitat is feasible and the most appropriate restoration option for the natural resources injured and services lost.

In accordance with the CERCLA regulations, the Trustees evaluated a reasonable range of restoration alternatives to compensate for injuries to natural resources and associated lost services. After examining restoration alternatives and potential restoration sites, the Trustees have identified the acquisition and preservation of two tracts of land totaling 621 acres of bottomland hardwoods, open water, and Neches River riparian habitat along the Anderson/Cherokee County line. The acquired property would be added to the Neches River National Wildlife Refuge and managed by DOI in accordance with an approved refuge management plan. The Trustees are seeking public input on a proposal to use natural resource damages recovered for the historical contamination to preserve the tracts as compensation for injuries related to the Facility.

For further information, contact Environmental Assessment, Response, and Restoration Program at the Texas Parks and Wildlife Department at (512) 389-8165 or via email at EARRP@tpwd.texas.gov.

TRD-201604894

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Filed: September 21, 2016



## Notice of Proposed Real Estate Transactions

### Exchange of Land - Bexar County

#### Approximately Nine Acres at Government Canyon State Natural Area

In a meeting on November 3, 2016 the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the exchange of approximately nine acres of land between an adjacent private landowner and the Government Canyon State Natural Area (SNA) in Bexar County. The exchange will eliminate a long narrow "finger" of land outside the Edwards Aquifer recharge zone from the state natural area and add land contiguous to the SNA in the recharge zone with high wildlife and recreation value. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.texas.gov or through the TPWD web site at tpwd.texas.gov.

### Grant of Pipeline Corridor Easement - Jefferson County

#### Approximately 30 Acres at J.D. Murphree Wildlife Management Area

In a meeting on November 3, 2016 the Texas Parks and Wildlife Commission (the Commission) will consider granting an easement of approximately 30 acres for installation of up to ten (10) pipelines across a portion of the J.D. Murphree Wildlife Management Area in Jefferson County. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Depart-

ment, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.texas.gov or through the TPWD web site at tpwd.texas.gov.

TRD-201604893

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Filed: September 21, 2016

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**Texas Department of Public Safety**

**Hazardous Materials Emergency Preparedness Sub-Grant Application Notice**

**INTRODUCTION:** The Texas Department of Public Safety - Texas Division of Emergency Management (TDEM), acting on behalf of the State Emergency Response Commission (SERC), is requesting applications from Local Emergency Planning Committees (LEPCs) for Hazardous Materials Emergency Preparedness (HMEP) grants to be awarded to cities/counties/regions represented by LEPCs or authorities to further their work in hazardous materials transportation emergency planning.

**DESCRIPTION OF ACTIVITIES:** LEPCs are mandated by the federal Emergency Planning and Community Right-to-Know Act (EPCRA) to provide planning and information for communities relating to the use, storage and/or transit of hazardous chemicals. The U.S. Department of Transportation (DOT) has made grant money available to enhance communities readiness for responding to hazardous materials transportation incidents. A grant may be used by an LEPC or authority in various ways depending upon needs.

**ELIGIBLE APPLICANTS:** Each application must be developed by an LEPC or authority in cooperation with county and/or city governments or regional authority. LEPC membership and regional authority standing must be recognized by the SERC. The LEPC application must be approved by an LEPC vote. Each LEPC or authority shall arrange for a city or county to serve as its fiscal agent for the management of any and all money awarded under this grant.

**CERTIFICATION:** The fiscal agent must provide appropriate certification to commit funds for this project. The certification must be in the form of an enabling resolution from the county or an authorization to commit funds from the city.

**LIMITATIONS:** Total funding for these grants is dependent on the amount granted to the state from the U.S. DOT. Grants will be awarded based upon project, population, hazardous materials risk, need, and cost-effectiveness as determined by the SERC. TDEM will fund a maximum of eighty percent of the total project amount approved by the SERC and the remaining costs must be borne by the grantee. Approved in-kind contributions may be used to satisfy this twenty percent minimum requirement. In addition to the grant, LEPCs or authorities must maintain the same level of spending for planning as an average of the past two years.

Examples of proposals:

(a) Development, improvement, and implementation of emergency plans required under the EPCRA, as well as exercises, which test the emergency plan. Improvement of emergency plans may include hazard analysis or risk assessment as well as response procedures for emergencies involving transportation of hazardous materials including radioactive materials.

(b) An assessment to determine flow patterns of hazardous materials within a State, between a State and another State, Territory or Native

American Land, and development and maintenance of a system to keep such information current.

(c) An assessment of the need for regional hazardous materials emergency response teams or to assess local response capabilities.

(d) Conducting emergency response drills and exercises associated with transportation-related emergency response plans.

(e) Temporary technical staff to support the planning effort. (Staff funding under planning grants cannot be diverted to support other requirements of EPCRA.)

(f) Any other planning project related to the transportation of hazardous materials approved by TDEM, using U.S. DOT approved projects as a reference base.

contract period: Grant contracts begin as early as October 1, 2016, and end no later than September 30, 2017.

final selection: TDEM will review the applications and the SERC Subcommittee on Planning will make the final selections. The State is under no obligation to award grants to any or all applicants.

**APPLICATION FORMS AND DEADLINE:** You can obtain a "Request for Application" package by downloading the documents from the TDEM website at <http://www.dps.texas.gov/dem/GrantsResources/index.htm>. A copy can also be requested from Joshua Bryant, Technological Hazards Unit Supervisor, by calling him at (512) 424-5989 or emailing him at [Joshua.bryant@dps.texas.gov](mailto:Joshua.bryant@dps.texas.gov). The completed (original) application package may be sent via email to Mr. Bryant at [Joshua.bryant@dps.texas.gov](mailto:Joshua.bryant@dps.texas.gov), but the executed hard copy must be sent via certified/registered mail, or other private mail delivery service requiring a signature, to the Texas Division of Emergency Management, Preparedness Section, Technological Hazards Unit, P.O. Box 4087, Austin, Texas 78773-0223. The application(s) must be received by 5:00 p.m. on October 17, 2016.

TRD-201604827

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Filed: September 19, 2016

◆ ◆ ◆  
**Public Utility Commission of Texas**

**Notice of Application for Retail Electric Provider Certification**

Notice is given to the public of the filing with the Public Utility Commission of Texas (Commission) of an application on September 14, 2016, for retail electric provider certification, pursuant to Public Utility Regulatory Act (PURA) §39.352.

Docket Title and Number: Application of LifeEnergy, LLC for a Retail Electric Provider Certificate, Docket Number 46363.

Applicant requests an Option I retail electric certificate for the entire State of Texas.

Information on the application may be obtained by contacting 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 telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Docket Number 46363.

TRD-201604818

Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 16, 2016



#### Notice of Application for Waiver

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on September 16, 2016, for waiver of 16 Texas Administrative Code §22.243(b) (TAC).

Docket Style and Number: Application of El Paso Electric Company for Waiver of Rate Filing Package Schedule S, Docket Number 46373.

The Application: El Paso Electric Company (EPE) filed an application requesting that the commission waive the requirement of 16 TAC §22.243(b) to file all of the schedules required by the commission's current rate filing package. EPE stated it is planning on filing a base rate change application in the first quarter of 2017. EPE requests waiver of the requirement to file Schedule S - Independent Audit of Application and of the related audit required by Schedule S.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46373.

TRD-201604886  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 21, 2016



#### Notice of Application to Amend a Service Provider Certificate of Operating Authority

On September 9, 2016, Grande Communications and Radiate Holdings, L.P. filed a joint application with the Public Utility Commission of Texas to amend service provider certificate of operating authority number 60341, approving a change in ownership and control.

Docket Style and Number: Joint Application of Grande Communications and Radiate Holdings, L.P. to Amend a Service Provider Certificate of Operating Authority, Docket Number 46346.

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 October 7, 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 46346.

TRD-201604811  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 15, 2016



#### Notice of Application to Amend a Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend a water certificate of convenience and necessity (CCN) in Kendall County.

Docket Style and Number: Application of City of Fair Oaks Ranch to Amend a Water Certificate of Convenience and Necessity in Kendall County, Docket Number 46359.

The Application: On September 14, 2016, the City of Fair Oaks Ranch (City) filed with the commission an application to amend its water CCN No. 11246 in Kendall County. The City seeks to serve The Reserve at Fair Oaks Ranch, a proposed master-planned community. The total area being requested includes approximately 345 acres.

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 (toll-free: (888) 782-8477). A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46359.

TRD-201604866  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 20, 2016



#### Notice of Application to Obtain a 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 obtain a water certificate of convenience and necessity in Kerr County, Texas.

Docket Style and Number: Application of Sherman's Mill Water Supply Corporation for a Water Certificate of Convenience and Necessity in Kerr County, Docket Number 46381.

The Application: On September 19, 2016, Sherman's Mill Water Supply Corporation filed an application to obtain a new water certificate of convenience and necessity in Kerr County. The proposed total area being requested includes approximately 53.65 acres and 15 current customers.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46381.

TRD-201604906  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 21, 2016



#### Supreme Court of Texas

In the Supreme Court of Texas

**ORDER APPROVING AMENDMENTS TO THE INTERNAL OPERATING PROCEDURES OF THE BOARD OF DISCIPLINARY APPEALS**

**ORDERED** that:

1. The Internal Operating Procedures of the Board of Disciplinary Appeals are amended as follows, effective immediately.
2. The Clerk is directed to:
  - a. file a copy of this order with the Secretary of State;
  - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this order to each elected member of the Legislature; and
  - d. submit a copy of the order for publication in the *Texas Register*.

Dated: September 20, 2016.

\_\_\_\_\_  
Nathan L. Hecht, Chief Justice

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Paul W. Green, Justice

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Phil Johnson, Justice

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Don R. Willett, Justice

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Eva M. Guzman, Justice

\_\_\_\_\_  
Debra H. Lehrmann, Justice

\_\_\_\_\_  
Jeffrey S. Boyd, Justice

\_\_\_\_\_  
John P. Devine, Justice

\_\_\_\_\_  
Jeffrey V. Brown, Justice

**Rule 1.06 Service of Petition**

In any disciplinary proceeding before BODA initiated by service of a petition on the Respondent, the petition ~~may~~ must be served by personal service; by certified mail with return receipt requested; or, if permitted by BODA, in any other manner that is authorized by the TRCP

and reasonably calculated under all the circumstances to apprise the Respondent of the proceeding and to give him or her reasonable time to appear and answer. To establish service by certified mail, the return receipt must contain the Respondent's signature.

**Rule 6.02 Interlocutory Suspension**

(a) **Interlocutory Suspension.** In any compulsory proceeding under TRDP Part VIII in which BODA determines that the Respondent has been convicted of an Intentional Crime and that the criminal conviction is on direct appeal, BODA ~~may~~ must suspend the Respondent's license to practice law by interlocutory order. In any compulsory case in which BODA has imposed an interlocutory order of suspension, BODA retains jurisdiction to render final judgment after the direct appeal of the criminal conviction is final. For purposes of rendering final judgment in a compulsory discipline case, the direct appeal of the criminal conviction is final when the appellate court issues its mandate.

\* \* \*

**Rule 7.01 Initiation of Proceeding**

The Commission for Lawyer Discipline ~~may~~ To initiate an action for reciprocal discipline under TRDP Part IX, the CDC must file by filing a petition with BODA under TRDP Part IX and these rules request an Order to Show Cause. The petition must request that the Respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction, including a certified copy of the order or judgment rendered against the Respondent.

**Rule 8.01 Appointment of District Disability Committee**

\* \* \*

(e) Should any member of the District Disability Committee become unable to serve, the BODA Chair ~~may~~ must appoint a substitute member.

**Rule 8.02 Petition and Answer**

(a) **Petition.** Upon being notified that the District Disability Committee has been appointed by BODA, the CDC must, within 20 days, file with the BODA Clerk and serve on the Respondent a copy of a petition for indefinite disability suspension. Service ~~may be made in person or by certified mail, return receipt requested.~~ If service is by certified mail, the return receipt with the Respondent's signature must be filed with the BODA Clerk must comply with Rule 1.06.

\* \* \*

TRD-201604888  
Martha Newton  
Rules Attorney  
Supreme Court of Texas  
Filed: September 21, 2016



## 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)

## SALES AND CUSTOMER SUPPORT

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Phone: (800) 833-9844

Fax: (518) 487-3584

E-mail: [customer.support@lexisnexis.com](mailto:customer.support@lexisnexis.com)

Website: [www.lexisnexis.com/printcdsc](http://www.lexisnexis.com/printcdsc)



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