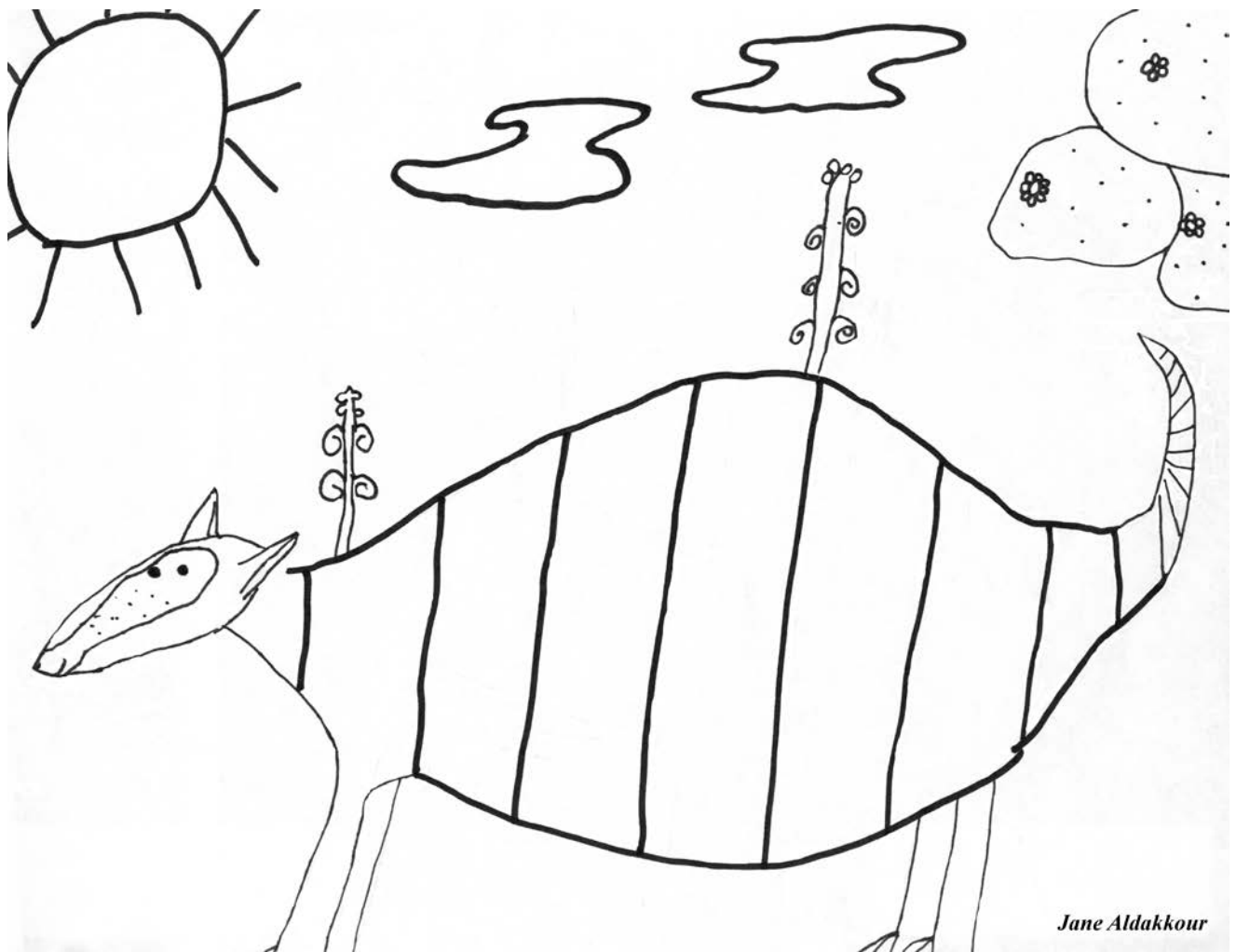

TEXAS REGISTER

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IN THIS ISSUE

PROPOSED RULES

TEXAS ANIMAL HEALTH COMMISSION

CHRONIC WASTING DISEASE

4 TAC §40.5.....	449
4 TAC §40.5.....	449

FEVER TICKS

4 TAC §41.9.....	453
------------------	-----

SWINE

4 TAC §55.5.....	454
------------------	-----

TEXAS DEPARTMENT OF LICENSING AND REGULATION

VEHICLE STORAGE FACILITIES

16 TAC §§85.200, 85.709, 85.710, 85.725, 85.1003.....	458
---	-----

PROPERTY TAX PROFESSIONALS

16 TAC §94.25.....	460
--------------------	-----

TEXAS EDUCATION AGENCY

CHARTERS

19 TAC §100.1015.....	461
-----------------------	-----

TEXAS BOARD OF CHIROPRACTIC EXAMINERS

RULES OF PRACTICE

22 TAC §75.17.....	463
--------------------	-----

TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

PEER ASSISTANCE

22 TAC §502.1.....	463
22 TAC §502.2.....	464

ELIGIBILITY

22 TAC §511.53.....	465
22 TAC §511.77.....	466
22 TAC §511.79.....	467

PRACTICE AND PROCEDURE

22 TAC §519.24.....	468
---------------------	-----

PROVISIONS FOR THE FIFTH-YEAR ACCOUNTING STUDENTS SCHOLARSHIP PROGRAM

22 TAC §520.1.....	469
22 TAC §520.2.....	470
22 TAC §520.3.....	471
22 TAC §520.5.....	472
22 TAC §520.6.....	473
22 TAC §520.7.....	474
22 TAC §520.8.....	475

22 TAC §520.9.....	476
22 TAC §520.10.....	477

CRIMINAL BACKGROUND INVESTIGATIONS

22 TAC §525.1.....	477
22 TAC §525.2.....	479

OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER

ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §310.6.....	480
--------------------	-----

DEPARTMENT OF AGING AND DISABILITY SERVICES

INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

40 TAC §90.3.....	482
40 TAC §90.42.....	484

WITHDRAWN RULES

TEXAS ANIMAL HEALTH COMMISSION

CHRONIC WASTING DISEASE

4 TAC §40.5.....	489
------------------	-----

TEXAS DEPARTMENT OF LICENSING AND REGULATION

VEHICLE STORAGE FACILITIES

16 TAC §§85.200, 85.709, 85.710, 85.725, 85.1003.....	489
---	-----

ADOPTED RULES

TEXAS DEPARTMENT OF AGRICULTURE

QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

4 TAC §§19.615 - 19.622.....	491
------------------------------	-----

TEXAS ANIMAL HEALTH COMMISSION

FEEES

4 TAC §33.2.....	492
------------------	-----

BRUCellosIS

4 TAC §35.4.....	493
------------------	-----

TRICHOMONIASIS

4 TAC §§38.1 - 38.4, 38.6.....	494
--------------------------------	-----

CHRONIC WASTING DISEASE

4 TAC §§40.1 - 40.3, 40.7.....	495
--------------------------------	-----

ENTRY REQUIREMENTS

4 TAC §51.8, §51.10.....	497
--------------------------	-----

GENERAL PRACTICES AND PROCEDURES	
4 TAC §59.11	498
4 TAC §59.11	498
RAILROAD COMMISSION OF TEXAS	
ALTERNATIVE FUELS RESEARCH AND EDUCATION DIVISION	
16 TAC §§15.101, 15.105, 15.110, 15.125, 15.140, 15.145, 15.150, 15.155, 15.160, 15.165	499
TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY	
PRACTICE AND PROCEDURE	
22 TAC §519.42	500
PROVISIONS FOR THE FIFTH-YEAR ACCOUNTING STUDENTS SCHOLARSHIP PROGRAM	
22 TAC §520.4	500
CONTINUING PROFESSIONAL EDUCATION	
22 TAC §523.102	500
22 TAC §523.103	500
22 TAC §523.110	501
22 TAC §523.111	501
22 TAC §523.112	501
22 TAC §523.113	502
22 TAC §523.114	502
22 TAC §523.115	502
22 TAC §523.116	502
22 TAC §523.117	503
22 TAC §523.118	503
22 TAC §523.119	503
22 TAC §523.120	504
22 TAC §523.121	504
22 TAC §523.130	504
22 TAC §523.131	504
22 TAC §523.132	505
22 TAC §523.140	505
22 TAC §523.141	505
22 TAC §523.142	506
22 TAC §523.143	506
22 TAC §523.144	506
22 TAC §523.145	506
22 TAC §523.146	507
22 TAC §523.147	507

RULE REVIEW

Adopted Rule Reviews	
Texas Department of Criminal Justice	509
IN ADDITION	
Comptroller of Public Accounts	
Certification of the Average Taxable Price of Gas and Oil - December 2012	511
Notice of Contract Award	511
Office of Consumer Credit Commissioner	
Notice of Rate Ceilings	511
Texas Education Agency	
Request for Applications Concerning Preschool Transition Education Training (PTET) Grant Program	511
Request for Applications Concerning Texas 21st Century Community Learning Centers Grant Program, Cycle 8, Year 1	512
Texas Commission on Environmental Quality	
Agreed Orders	513
Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions	516
Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions	517
Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions	518
Notice of Water Quality Applications	518
Golden Crescent Workforce Development Board	
Public Notice	519
Office of the Governor	
Notice of Application and Priorities for the Justice Assistance Grant Program Federal Application	519
Texas Health and Human Services Commission	
Notice of Public Hearing on Proposed Medicaid Payment Rate for 3rd Quarter 2012 Healthcare Common Procedure Coding System Update for Physician-Administered Drugs	519
Notice of Public Hearing on Proposed Medicaid Payment Rates for 2013 Annual Healthcare Common Procedure Coding System Update	520
Notice of Public Hearing on Proposed Medicaid Payment Rates for Aerosol Treatments	521
Notice of Public Hearing on Proposed Medicaid Payment Rates for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Therapeutic Dental Services	521
Notice of Public Hearing on Proposed Medicaid Payment Rates for Evoked Response Tests and Neuromuscular Procedures	522
Notice of Public Hearing on Proposed Medicaid Payment Rates for Medicaid Biennial Calendar Fee Review	522
Notice of Public Hearing on Proposed Medicaid Payment Rates for Neurostimulators	523

Notice of Public Hearing on Proposed Medicaid Payment Rates for Provisionally Licensed Psychologists.....	524	Notice of Application for a Service Provider Certificate of Operating Authority	535
Notice of Public Hearing on Proposed Medicaid Payment Rates for Telemedicine and Telehealth Services	524	Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line.....	535
Notice of Public Hearing on Proposed Medicaid Payment Rates for Vaccines and Toxoids.....	525	Notice of Award	535
Public Notice.....	525	Public Notice of Workshop	536
Texas Lottery Commission		Texas Department of Transportation	
Instant Game Number 1496 "3 Times Lucky".....	525	Notice of Public Hearings on Proposed Restrictions on Use of State Highways	536
Instant Game Number 1498 "Maximum Jackpot"	529	Public Hearing Notice - Statewide Transportation Improvement Program	537
Panhandle Regional Planning Commission		Public Notice - Aviation.....	537
Legal Notice.....	534	Texas Water Development Board	
Public Utility Commission of Texas		Applications for January 2013	538
Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority	534		
Notice of Application for a Service Provider Certificate of Operating Authority	535		

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

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

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

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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.

PROPOSED RULES

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

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

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §40.5

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

The Texas Animal Health Commission (commission) proposes the repeal of §40.5, concerning Testing Requirements for Elk, in Chapter 40 entitled "Chronic Wasting Disease".

Elsewhere in this issue of the *Texas Register*, the commission proposes new §40.5, concerning Movement Requirements for CWD Susceptible Species, which replaces the repealed rule in its entirety.

FISCAL NOTE

Mr. Sami Chadli, Director of Administration and Finance, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no significant additional fiscal implications for local or state government as a result of repealing the rule.

PUBLIC BENEFIT NOTE

Mr. Chadli has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of repealing the rule will be that the new proposed rule will include all CWD susceptible species.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

TAKINGS ASSESSMENT

The agency has determined that the proposed repeal will not affect private real property, and is therefore compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane,

Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us".

STATUTORY AUTHORITY

The repeal is authorized by the Texas Agriculture Code §161.046, which provides the commission with authority to adopt rules relating to the protection of livestock, exotic livestock, domestic fowl or exotic fowl, as well as Government Code §2001.039, which authorizes a state agency to repeal a rule.

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

§40.5. Testing Requirements for Elk.

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

Filed with the Office of the Secretary of State on January 17, 2013.

TRD-201300141

Gene Snelson

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: March 3, 2013

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



4 TAC §40.5

The Texas Animal Health Commission (commission) proposes new §40.5, concerning Movement Requirements for CWD Susceptible Species, in Chapter 40 entitled "Chronic Wasting Disease".

Elsewhere in this issue of the *Texas Register*, the commission contemporaneously proposes the repeal of existing §40.5, concerning Testing Requirements for Elk. The new section is for the purpose of revising the current surveillance requirements for the state's intrastate movement of elk to include exotic livestock, which are susceptible to Chronic Wasting Disease (CWD).

The commission has recently been addressing a number of different CWD regulations and agency actions in response to a number of recent developments involving CWD. The commission has adopted changes to the commission's CWD voluntary program in response to the federal program as discussed below. The commission has also recently authorized the Executive Director to designate areas of the state as being at a high risk for CWD based on disclosure of any positive animals. This measure is in order to try and protect these animal resources within the state.

The commission proposes to modify the current CWD program to include red deer and Sika deer, and their hybrids, because of recent actions which have classified them as being a susceptible species for CWD. The purpose of the program was to establish testing surveillance for elk and now includes these added species. Based on the inclusion of red deer and Sika deer and other members of the cervid family as susceptible species, the commission is proposing this new section to be applicable to all cervid species known to be susceptible to CWD, excluding all mule deer, white-tailed deer, and native species under the jurisdiction of Texas Parks and Wildlife Department (TPWD).

As background, all breeders of white-tailed deer, through the direction of TPWD, participate in a CWD monitoring program through either TPWD or the commission. Because of this participation, the state of Texas has done a significant amount of CWD surveillance testing of white-tailed deer without disclosing any positive deer. Surveillance testing is a key, critical component to determine that if there is any disease present as well as helping to establish a prevalence number for how many animals may be affected. This also helps to support our animal industries in having confidence in the health of their animals and makes them more marketable. Failure to perform adequate surveillance allows any disease to circulate unnoticed among animal host and spread the disease creating a greater disease problem and a far more difficult response task. In today's current environment the mobility and transportation of agricultural animals throughout the state and country has greatly increased exposure to diseases, and for the commission to not perform adequate disease surveillance for a disease that has national concerns would be inappropriate.

Though the white-tailed deer population in Texas has had significant surveillance, very few elk herds participated in a CWD monitoring program providing very little elk CWD testing surveillance. This had been a noted concern for a number of exotic livestock and deer associations because of the inequity of this situation. In implementing the first elk identification requirement in 2006, this was an issue of concern at that time but the commission believed that for now the most appropriate initial approach to CWD surveillance in elk was through voluntary participation by owners of elk. The commission then required elk to participate in surveillance for CWD which was put in place in 2010.

However, the U.S. Department of Agriculture's (USDA's) interim final rule which modified the national CWD Herd Certification Program (HCP) to include red deer and Sika has caused the agency to revisit this program. The USDA action came after the first diagnosis of CWD in red deer. The commission announced in June that red deer and Sika deer must meet the same entry requirements as other cervid species such as elk and moose because they are considered susceptible species for CWD. The new entry rules for red deer and Sika deer require they originate from herds with at least five years of participation.

The commission has historically used a CWD task force of individuals that have provided guidance, counsel and recommendations to the commission regarding our CWD program. These members include members of Texas Deer Association (TDA), Exotic Wildlife Association (EWA), Texas Wildlife Association (TWA), members of the Texas Veterinary Medical Diagnostic Laboratory (TVMDL), USDA and TPWD along with noted private veterinary practitioners and wildlife biologists. Both groups have jointly convened three times in 2012 to discuss the various issues of concern for the CWD with the positive animals disclosed in West Texas, the changes to the CWD

federal program and the need to modify the intrastate program for the exotic susceptible species to make it a more successful and involved surveillance program. Clearly all the changes denoted above have invoked serious concern on protecting our cervid industries and all those that could be affected. However, based on some of the concerns raised by industries members, the commission felt that there was a need not only to modify the testing requirements to better encompass the various susceptible species, but also to make sure that it is more equitable in application. A criticism of the present version is the belief that an animal must be sacrificed to comply. Unfortunately, with this test being mortality based there is a hardship for producers particularly for those who ranch a species that does not have a lot of test eligible mortalities, such as red deer or Sika deer. As such, the commission is proposing this program based on a percentage of mortalities. This mirrors what is being used as a surveillance scale by white-tailed breeders who follow a similar CWD program through TPWD.

However, the critical part of such a program is some type of verifiable inventory in which to base mortalities. This also means that we need to establish some type of verification system for establishing mortalities, and the commission would like to get the industry's comments on how to make such a system work. It is understood that the nature of some of the ranches is to release these animals to large enclosed pastures and they are not handled in the typical manner of livestock, but in order for the commission to develop an effective surveillance program to protect this state and their industry, it is necessary that these producers help partner with the agency to develop a verifiable inventory.

Subsection (a) is made up of definitions specifically for this section only. They include Captive CWD Susceptible Species, CWD Susceptible Species (FYI - all mule deer, white-tailed deer, and native species under the jurisdiction of the TPWD are excluded from this definition and application of this section), Free Ranging CWD Susceptible Species, Premises, and Transport.

Subsection (b) provides the surveillance requirements. In order to transport or move a CWD susceptible species live within the state the person controlling the CWD susceptible species shall meet one of the following requirements: they can test 20% percent of mortalities of all CWD susceptible species, maintained on a premise, or have status with the commission in a herd certification program in accordance with the requirements of §40.3 of this chapter (relating to Herd Status Plans for Cervidae) or be moved directly from the premises where they were trapped or held to a recognized slaughter facility. A recognized slaughter facility is a slaughter facility operated under the state or federal meat inspection laws and regulations.

Subsection (c) describes premise identification and states that in order to move a CWD Susceptible Species from or to a premise the location must obtain a premises identification number (PIN).

Subsection (d) concerns inventory and provides that some type of annual inventory shall be verified/accounted/certified by commission personnel along with herd records that include a complete inventory of animals with documents showing all test results for those animals that died and were tested. This is a particular point of difficulty for the exotic species to manage because they do not inventory and manage these animals in that manner. Generally, they are released in a pasture situation, but in order to have any type of successful surveillance program based on mortalities there needs to be some way to account or verify numbers which then authorizes movement. This is a particular area where the commission is requesting comments from affected groups or

individuals that will help to create an adequate surveillance program based on how they maintain their inventory.

Subsection (e) outlines identification requirements and provides that these susceptible species moved or transported within the state shall be identified with an official identification device.

Subsection (f) concerns testing requirements and provides an alternative to the federal standard by being for animals that are 16 months of age or older. This also would allow the samples to be collected by a state or federal animal health official, an accredited veterinarian, or a Certified CWD Sample Collector. Tissue samples may be either the obex or a retropharyngeal lymph node from each animal being tested.

Subsection (g) describes test reporting and subsection (h) describes movement reporting requirements. A movement request for all CWD susceptible species that are moved onto or off of premises shall be submitted to the commission, either in hard copy on forms provided or authorized by the commission or as an electronic copy.

Subsection (i) concerns record keeping which requires the buyer and seller to maintain records for all CWD susceptible species transported within the state or where there is a transfer of ownership and provide those when requested by the commission.

Subsection (j), inspection, states that in order to authorize movement, a premise where CWD susceptible species are located may be inspected by the commission or authorized agents of the commission.

Subsection (k) provides dealer requirements to address issues related to brokers of the animals throughout the state and how they may maintain them at their premise before relocating them to a designation premise.

FISCAL NOTE

Mr. Sami Chadli, Director for Administration and Finance, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rule as the commission will use already appropriated resources to service these programs and with the fees that we assess for participation in the herd certification program or for inspection of their inventory verification. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on micro businesses. The agency has evaluated the requirements and determined that there is an economic impact because the program establishes participation standards that do create a cost to comply, but also provides a benefit to those that participate. The purpose of the program is to provide standards and quality assurance that animals moving intrastate have been monitored and can be deemed low risk for having and potentially transporting a disease. Movement of animals creates a higher risk of exposure and transmission of a disease and therefore merits required participation in a surveillance program because of the serious negative impact to the affected industries in the state as well as to any area where CWD is disclosed. The participation of CWD susceptible species, under the commission, is to provide surveillance and reduce the risk of animals being positive and exposing other animals. This program also equitably mirrors a surveillance program for white-tailed deer as all white-tailed breeder facilities within the state, at the direction of the TPWD, participate in a CWD monitoring program through either TPWD or the commission. The purpose of the rule is to protect a very

valuable resource in the wildlife cervids as well as those that are under private ownership. The impact of CWD exposure in herds in the state can greatly reduce the value of the animals causing a much greater adverse economic impact to these industries and resources.

PUBLIC BENEFIT NOTE

Mr. Chadli, has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be that exotic livestock are included as susceptible species and are required to participate in a stronger surveillance system in order to create a surveillance safety net with safeguards to prevent spread of CWD to another part of the state or to a variety of herds.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

TAKINGS ASSESSMENT

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

REQUEST FOR COMMENT

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

STATUTORY AUTHORITY

The new section is proposed under the following statutory authority as found in Texas Agriculture Code §161.0541. This section provides that the commission by rule may establish a disease surveillance program for elk. Rules adopted under this section must: (1) require each person who moves elk in this state to have elk tested for chronic wasting disease or other diseases as determined by the commission; (2) be designed to protect the health of the elk population in this state; and (3) include provisions for testing, identification, transportation, and inspection under the disease surveillance program. The section also provides that a person commits an offense if the person knowingly violates a rule adopted by the commission under this section. Also, an offense under subsection (c) is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has previously been convicted of an offense under that subsection, in which event the offense is a Class B misdemeanor.

The commission is also vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on

the affected animals or on the affected place. That is found in §161.061.

As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048. A person is presumed to control the animal if the person is the owner or lessee of the pen, pasture, or other place in which the animal is located and has control of that place; or exercises care or control over the animal. That is under §161.002.

Section 161.007 provides that if a veterinarian employed by the commission determines that a communicable disease exists among livestock, domestic animals, or domestic fowl or on certain premises or that livestock, domestic animals, or domestic fowl have been exposed to the agency of transmission of a communicable disease, the exposure or infection is considered to continue until the commission determines that the exposure or infection has been eradicated through methods prescribed by rule of the commission. Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice, signed under that authority has the same force and effect as if signed by the entire commission.

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

§40.5. Movement Requirements for CWD Susceptible Species.

(a) Definitions:

(1) Captive CWD Susceptible Species--A CWD susceptible species captured or privately or publicly maintained or held within a perimeter fence or confined area that is designed to retain the CWD susceptible species under normal conditions at all times with a height of eight feet or greater.

(2) CWD Susceptible Species--A cervid species determined to be susceptible to CWD, which means a species that has had a diagnosis of CWD confirmed by means of an official test conducted by a laboratory approved by USDA/APHIS. This includes North American elk or wapiti (*Cervus Canadensis*), red deer (*Cervus elaphus*), Sika deer (*Cervus Nippon*), moose (*Alces alces*), and any associated subspecies and hybrids. All mule deer, white-tailed deer, and native species under the jurisdiction of the Texas Parks and Wildlife Department are excluded from this definition and application of this section.

(3) Free Ranging CWD Susceptible Species--Any CWD susceptible species that is not captured or contained within a fence intended to retain CWD susceptible species under normal conditions at all times with a height of eight feet or greater.

(4) Premises--A physical location(s) which is contiguous, that is under common ownership or management, and represent a unique and describable geographic location.

(5) Transport--Movement of an animal from one non-contiguous property or premises to another.

(b) Surveillance Requirements. In order to transport or move a CWD susceptible species live within the state the person controlling the CWD susceptible species shall meet one of the following:

(1) test 20% percent of mortalities of all CWD susceptible species, maintained on a premise; or

(2) have status with the Commission in a herd certification program in accordance with the requirements of §40.3 of this chapter (relating to Herd Status Plans for Cervidae); or

(3) be moved directly from the premises where they were trapped or held to a recognized slaughter facility. A recognized slaughter facility is a slaughter facility operated under the state or federal meat inspection laws and regulations.

(c) Premise Identification. In order to move a CWD Susceptible Species from or to a premise which has surveillance, as required under subsection (b) of this section, the location must obtain a "Premises identification number (PIN)". A PIN means a unique official seven character alpha numeric identification code issued under this chapter to identify a specific and unique premises. Separate geographic physical locations that are under common ownership and management and on which commingling of animals occurs may be registered as one premises.

(d) Inventory. An annual inventory shall be verified/accrued/certified by TAHC personnel. The herd owner shall maintain herd records that include a complete inventory of animals with documents showing all test results for those animals that died and were tested.

(e) Identification Requirements. CWD susceptible species moved or transported within the state shall be identified with an official identification device, which may include an eartag that conforms to the USDA alphanumeric national uniform ear tagging system, which is a visible and legible animal identification number (AIN) or other identification methods approved by the Commission, including a RFID Device.

(f) Testing Requirements. CWD test samples shall be collected and submitted to an official laboratory for CWD diagnosis using a United States Department of Agriculture (USDA) validated test for animals that are 16 months of age or older and from the same population as the CWD susceptible species being moved. Test reporting shall be directed to the appropriate TAHC Regional Office. The samples may be collected by a state or federal animal health official, an accredited veterinarian, or a Certified CWD Sample Collector. Tissue samples may be either the obex or a retropharyngeal lymph node from each animal being tested.

(g) Test reporting. Test results shall be directed to the Commission by either writing to Texas Animal Health Commission, c/o CWD Susceptible Species Reporting, P.O. Box 12966, Austin, Texas 78711-2966; or by fax to (512) 719-0729; or by e-mail to CWD_movement@tahc.texas.gov.

(h) Movement Reporting Requirements. A movement request for all CWD susceptible species that are moved onto or off of premises shall be submitted to the Commission, either in hard copy on forms provided or authorized by the Commission, or an electronic copy. The person moving the CWD susceptible species must have documentation with the CWD susceptible species being moved to show compliance with the requirements of this subsection. A copy of this documentation must be provided to any market selling these species. Such report shall be submitted within 48 hours of the movement. Movement report-

ing shall be directed to the Commission by either writing to Texas Animal Health Commission, c/o CWD Susceptible Species Reporting, P.O. Box 12966, Austin, Texas 78711-2966; or by fax to (512) 719-0729; or by e-mail to CWD_movement@tahc.texas.gov. The movement report shall include the following information:

- (1) PIN for premises of origin;
- (2) PIN for premises of the destination;
- (3) Number of CWD susceptible species being moved;
- (4) Official individual identification device number;
- (5) Other official or unofficial identification numbers;
- (6) Age/Gender; and
- (7) Test results from the testing laboratory.

(i) Record Keeping. The buyer and seller must maintain records for all CWD susceptible species transported within the state or where there is a transfer of ownership, and provide those to Commission personnel upon request. Records required to be kept under the provisions of this section shall be maintained for not less than five years. The records shall include the following information:

- (1) Owner's name;
- (2) Location where the animal was sold or purchased;
- (3) Official ID and/or Ranch tag (additional field for retag);
- (4) Gender/age of animal;
- (5) Source of animal (if purchased addition);
- (6) Movement to other premises; and
- (7) Disposition.

(j) Inspection. In order to authorize movement, a premise where CWD susceptible species are located may be inspected by the Commission or authorized agents of the Commission.

(k) Dealer Requirements. A dealer is a person engaged in the business of buying or selling CWD susceptible species in commerce on the person's own account, as an employee or agent of a vendor, purchaser, or both, or on a commission basis. To maintain separate herd status for the animals a dealer sells, a dealer shall maintain separate herd facilities; separate water sources; there shall be at least 30 feet between the perimeter fencing around separate herds; and no commingling of animals may occur. Movement of animals between herds must be recorded as if they were separately owned herds. A dealer shall maintain records in accordance with this section.

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

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Gene Snelson

General Counsel

Texas Animal Health Commission

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



CHAPTER 41. FEVER TICKS

4 TAC §41.9

The Texas Animal Health Commission (commission) proposes amendments to §41.9, concerning Vacation and Inspection of a Premise, in Chapter 41, which is entitled "Fever Ticks". The purpose of this amendment is to add a requirement that all cattle maintained in the Permanent Quarantine Zone, as defined in §§41.14 - 41.22 of this chapter, must be identified with permanent official identification and must be presented annually for inspection.

The Texas Cattle Fever Tick Eradication Program (program) is undergoing some changes in order to make it more effective in the efforts to eradicate the Texas Cattle Fever Ticks. The program in the last year has implemented the use of individual herd plans. An individual herd plan is a written disease management plan that is developed with the herd or land owner(s) and/or their representative(s), and a State or Federal Designated Fever Tick Epidemiologist to eradicate fever ticks or potential exposure to fever ticks from an affected herd or property. The herd plan will include appropriate treatment frequencies, treatments to be employed, and any additional disease management or herd management practices deemed necessary to eradicate fever ticks from the herd in an efficient and effective manner.

FISCAL NOTE

Mr. Sami Chadli, Director of Administration and Finance, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rule. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact and therefore there is no need to do an EIS. Implementation of this rule poses no significant fiscal impact on small or micro-businesses.

PUBLIC BENEFIT NOTE

Mr. Chadli, has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to have herd management practices of annual inspection and the use of identification as an effective and necessary action to control and eradicate fever ticks from the herd in an efficient and effective manner.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

TAKINGS ASSESSMENT

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

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane,

Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us".

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 167 of the Texas Agriculture Code. Section 167.003 provides for general powers and duties of the commission to eradicate fever ticks and provides authority for adopting the necessary rules to fulfill those duties. Section 167.004 authorizes the commission by rule to define what animals can be classified as exposed to ticks. Section 167.006 authorizes the commission to designate for tick eradication any county or part of a county that the commission believes contains ticks. Section 167.007 authorizes the commission to conduct tick eradication in the free area. Section 167.021, entitled "General Quarantine Power" provides that "[t]he commission may establish quarantines on land, premises, and livestock as necessary for tick eradication." Section 167.022, entitled "Quarantine of Tick Eradication Area" provides the commission authority to designate a county or part of a county for tick eradication. Section 167.023, entitled "Quarantine of Free Area" provides the commission authority to establish quarantine in the Free Area. Section 167.024, entitled "Movement In or From Quarantined Area" provides the requirement to obtain appropriate authorization and compliance with the requirements prior to movement. Section 167.032 provides that the commission may restrict movement of commodities that are capable of carrying ticks.

The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061. As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. That authority is found in §161.048. A person is presumed to control the animal if the person is the owner or lessee of the pen, pasture, or other place in which the animal is located and has control of that place; or exercises care or control over the animal. That is under §161.002.

Section 161.007 provides that if a veterinarian employed by the commission determines that a communicable disease exists among livestock, domestic animals, or domestic fowl or on certain premises or that livestock, domestic animals, or domestic fowl have been exposed to the agency of transmission of a communicable disease, the exposure or infection is considered to continue until the commission determines that the exposure or infection has been eradicated through methods prescribed by rule of the commission. Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice,

signed under that authority has the same force and effect as if signed by the entire commission.

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

§41.9. *Vacation and Inspection of a Premise.*

(a) Vacation of premise. Upon the removal of all livestock from a premise, the premise remains classified as before for the period shown on Table I (Pasture Vacation Schedule, South of Highway 90) or Table II (Pasture Vacation Schedule, North of Highway 90), whichever is applicable. The starting date is the date of the first clean dipping during which 100% of the livestock on the premise have been dipped and continued on an official dipping schedule until removed from the premise. The premise will be reclassified to a Check Premise, as provided by subsection (b) of this section, upon the expiration of the time shown in Tables I (Pasture Vacation Schedule, South of Highway 90) or II (Pasture Vacation Schedule, North of Highway 90), whichever is applicable. The Check Premise restrictions will be released when determined by the commission that the premise has no infestation.

(b) Required inspection of premise. An infested premise, exposed premise, or adjacent premise will be inspected every 14 days by an authorized representative of the commission. The 14-day interval may be extended due to circumstances that prevent the inspection. A check premise will be inspected when deemed necessary by an authorized representative of the commission.

(c) Required scratch inspection of livestock. The owner or caretaker of livestock on any premise must present them to be scratch inspected at any time specified by notice from an authorized representative of the commission.

(d) Free-ranging wildlife and exotic animals that are found on vacated pastures or check premises and which are capable of hosting fever ticks shall be treated by methods approved by the Commission and for the length of time specified by the Commission.

(e) All livestock maintained in the permanent quarantine zone as defined by §§41.14 - 41.22 of this chapter shall be gathered and presented annually for inspection in the presence of an authorized representative of the Commission. All of these animals shall be identified with a permanent and official identification device recognized by the Commission.

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

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Gene Snelson

General Counsel

Texas Animal Health Commission

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CHAPTER 55. SWINE

4 TAC §55.5

The Texas Animal Health Commission (commission) proposes amendments to §55.5, concerning Pseudorabies, in Chapter 55 entitled "Swine". The purpose of the amendment is to update the test timeframes for releasing swine that are quarantined for being exposed to Pseudorabies (PRV). This is in accordance

with the Uniform Methods and Rules issued by USDA Veterinary Services regarding the national PRV eradication program.

The proposal changes §55.5(e)(7)(C) which requires two consecutive negative herd tests, not less than 60 days from removal of the last reactor, to qualify for release from quarantine for PRV infected herds. The proposal will allow for release from quarantine with one negative herd test no less than 30 days from removal of the last reactor. The justification for this proposal is based on the fact that a herd of swine are not classified as a known infected herd when no livestock or other animals on the premises show clinical signs of PRV after a negative test 30 days or more after removal of all positive swine. Long-term observation in the field provides sufficient evidence that the incubation of PRV is well within the 30-day time frame to allow for identification of recently infected animals if active transmission is occurring.

FISCAL NOTE

Mr. Sami Chadli, Director of Administration and Finance, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rule. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact and, therefore, there is no need to do an EIS. Implementation of this rule poses no significant fiscal impact on small or micro-businesses.

PUBLIC BENEFIT NOTE

Mr. Chadli has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to conform test requirements of the release standards to those accepted and utilized by other states and USDA.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

TAKINGS ASSESSMENT

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

REQUEST FOR COMMENT

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

STATUTORY AUTHORITY

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

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

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

Section 161.061 provides that if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

Chapter 165 of the Texas Agriculture Code entitled "Control of Diseases of Swine" has several sections which also provide statutory authority for these amendments. Section 165.021 entitled "Cooperation with United States Department of Agriculture" provides that the commission may cooperate with USDA in the eradication of swine diseases. Also, §165.022 provides that the commission may adopt rules for the manner and method of eradicating swine diseases. Under §165.023, the commission is authorized to adopt rules governing the use of biologics.

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

§55.5. *Pseudorabies.*

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

(1) Approved feeder pig market--A livestock market where only feeder pigs from the following herds of origin are accepted for sale in accordance with federal interstate regulations and applicable provisions of the program standards:

- (A) pseudorabies qualified negative herd;
- (B) pseudorabies monitored herd;
- (C) official 30-day pseudorabies serologic test of each animal; or
- (D) from a Stage IV or V state.

(2) Approved slaughter market--A livestock market at which shipments of slaughter swine only are permitted in accordance with applicable state and federal regulations. No swine may be

released from an approved slaughter market unless consigned directly to a recognized slaughtering establishment for immediate slaughter.

(3) Commercial Production Swine (Commercial Swine)--Those swine that are continuously managed and have adequate facilities and practices to prevent exposure to either transitional production swine or feral swine.

(4) Commission--Texas Animal Health Commission.

(5) Continuous flow feedlot--A premise on which there is a constant population of swine in various stages of finish, being fed for slaughter purposes.

(6) Direct shipment--Movement without unloading en route, without contact with swine of lesser pseudorabies status, and without contact with infected or exposed livestock.

(7) Farm of origin--A farm where the swine were born, or on which they have resided for a least 60 consecutive days immediately prior to movement.

(8) Official random sample test--A sampling procedure utilizing official pseudorabies serologic tests which provides a 95% probability of detecting infection in a herd in which at least 5.0% of the swine are seropositive for pseudorabies. Each segregated group of swine on an individual premises must be considered a separate herd and sampled as follows:

(A) less than 100 head--test 45 or entire herd, whichever is the smaller;

(B) 100-200 head--test 51;

(C) 201-999 head--test 57;

(D) 1,000 and over--test 59.

(9) Recognized tests--Tests for the diagnosis of pseudorabies approved by USDA, APHIS, VS. Those tests are:

(A) microtitration serum-virus neutralization;

(B) virus isolation and identification;

(C) fluorescent antibody tissue section;

(D) Enzyme Linked Immunosorbent Assay (ELISA);

(E) latex agglutination.

(10) Transitional Production Swine--Swine that have a reasonable opportunity to be exposed to feral swine or captive feral swine.

(b) Commercial Swine: To qualify as a producer of commercial swine, the producer must implement sufficient safeguards (i.e., management practices, perimeter fencing, confinement etc.) to prevent commingling or ensure that nose to nose contact with feral or transitional swine cannot [ean nɒt] occur. Feral swine shall not be intentionally commingled with commercial swine.

(c) Animal Identification. Breeding swine sold or destined for slaughter are required to be identified, using a method recognized by the commission, to the farm-of-origin.

(d) Movement Restrictions: All herds suspicious of PRV will be placed under movement restrictions and investigated pending final determination. Final determination of the presence or absence of PRV in a herd shall be made by the investigating veterinarian in consultation with official pseudorabies epidemiologist. Official diagnosis shall be based on standard diagnostic procedures including the serum neutralization or other recognized tests.

(e) Pseudorabies Management of Infected, Exposed or Area Herds.

(1) If an animal is determined to be infected with PRV, it shall be identified by placing a red serially numbered reactor tag in the left ear. The infected herd shall be disposed of within 15 days after test results are reported. Disposition may include destruction or permitted to slaughter by a VS 1-27.

(2) Following a determination that a herd is infected, a herd plan to eradicate the disease from a swine herd will be developed. The plan shall be developed by a state/federal veterinarian of the swine pseudorabies control program in consultation with the herd owner or caretaker and his veterinarian. The plan shall include provisions for release of quarantine as specified in this subsection. The plan developed by the commission shall be final and the owner or caretaker will be provided a copy.

(3) All exposed herds will be placed under movement restrictions, using a quarantine or hold order, until results of exposure are determined.

(4) All swine herds within a 2.0 mile radius of infected premises will be monitored either by a test of all breeding swine or an official random sample test. All exposed swine herds as determined by epidemiological investigation and all swine herds within 2 miles of the new case shall be tested with an official sample test (95/5). Testing of the herds must be accomplished, with negative test results, no earlier than 30 days and no later than 60 days after depopulation of the affected herd and of the premises.

(5) Swine showing clinical signs of PRV shall not be removed from the premises. Swine on a quarantined premise not showing clinical signs of PRV may be moved only directly to a slaughter plant and accompanied by a permit issued by a state or federal inspector, or may be shipped directly to a slaughter plant in an official sealed vehicle, when accompanied by a permit.

(6) Vehicles used for slaughter delivery of restricted swine will be cleaned and disinfected immediately after unloading and prior to loading with other livestock.

(7) Movement Restrictions will be released in the following instances:

(A) when all reactor animals have been removed from the premise;

(B) when there have been no clinical signs of PRV on the premises after removal of the reactor swine; and

(C) when all exposed swine over six months of age along with a number of progeny equal to 20% of the breeding swine selected from the oldest portion of swine under six months of age remaining in the herd have withstood one [~~two consecutive~~] negative herd test [tests]. The test [~~first of these~~] must be conducted not less than 30 days from removal of last infected animals [~~and the second test coming not less than 30 days from the first test~~]. Herd additions must be tested negative prior to being added to the herd, remain on the premises 30 or more days, and be retested negative; or

(D) when all swine on the premises are depopulated; the premises are cleaned and disinfected under the direction of state or federal personnel and 30 days have passed with no swine on the premises following cleaning and disinfecting.

(f) PRV vaccine.

(1) Vaccination of swine with a PRV vaccine is prohibited without written permission of the executive director. Written permission may be granted only for use in high risk herds or as part of an approved herd-cleanup plan.

(2) Approved PRV vaccine shall be a product for which there is a laboratory test approved by the executive director available to differentiate between vaccine and field infection titers.

(3) The executive director of the Texas Animal Health Commission will restrict the sale of approved PRV vaccine to a practicing accredited veterinarian for use only in infected and high risk herds. Official state laboratory confirmation of PRV constitutes an infected herd. The executive director will request a specific number of doses of vaccine to be shipped to the practicing veterinarian making the request.

(4) The herd owner will sign a memorandum of understanding with the Texas Animal Health Commission, and the practicing veterinarian will be accountable for the vaccine and its use by signing an agreement to this effect.

(5) All vaccinated animals are to be marked with a hole punched in the left ear of not less than 1/2 inch in diameter at the time of vaccination.

(6) The movement restrictions will be released as provided for in this section utilizing an approved test that will identify vaccine titers.

(g) Qualified pseudorabies negative herd.

(1) Qualified PRV negative herd status is attained by 100% testing of the adult breeding herd over six months of age plus a number of progeny equal to 20% of the breeding swine population in the herd and finding them negative to an official pseudorabies serologic test. Progeny shall be randomly selected from the oldest swine in the herd less than six months of age. The herd must not have been a known infected herd within the past 30 days. A minimum of 90% of the swine in the herd must have been on the premises and part of the herd for at least 60 days prior to the qualifying official pseudorabies serologic test, or have entered directly from another qualified pseudorabies negative herd.

(2) Qualified pseudorabies negative herd status is maintained by conducting an official pseudorabies serologic test on at least 80% of the swine over six months of age and on a number of progeny equal to 20% of the breeding swine population of the herd at least once each year. All swine tested shall be randomly selected and in the case of adult swine, representative of all age groups on the premises. This must be accomplished by testing 25% of the required breeding swine and progeny every 80 to 105 days and finding all swine so tested negative, or by testing 10% of the required breeding swine and progeny each month and finding all swine so tested negative.

(3) If on a qualifying official pseudorabies serologic test or any subsequent official pseudorabies test, any swine are tested positive, qualified pseudorabies negative herd status is suspended until the infection status of the herd is determined through testing and an epidemiological study of the herd. Before qualified pseudorabies negative herd status may be attained or maintained, all seropositive swine must be sold for slaughter and the herd tested and released from movement restrictions as provided for in this section. Herd additions must be tested negative with the SN or any recognized PRV test within 30 days prior to entry on the premises; isolated at least 30 days and retested prior to adding them to the herd or:

(A) moved directly from another qualified PRV negative herd;

(B) added from another qualified pseudorabies negative herd, but with interim contact with swine other than those from a single qualified pseudorabies negative herd, isolated until they have been

found negative to an official pseudorabies serologic test, conducted 30 days or more after the swine have been placed in isolation;

(C) isolated upon return to the herd after contact with swine other than those from a single qualified pseudorabies negative herd. They shall be isolated until found negative to an official pseudorabies serologic test conducted 30 days or more after being placed in isolation.

(4) Test records will be maintained by the Texas Animal Health Commission at its Austin office. Herd owners will receive a letter from the executive director of the Texas Animal Health Commission listing test dates, test results, the laboratory in which test was run, and the qualified herd status of the herd.

(h) Requirements for a pseudorabies monitored feeder pig herd. To qualify as a monitored feeder pig herd, breeding swine must have been sampled and tested negative by an official pseudorabies serologic test during the last 12 months at the following rate:

(1) 10 head--test all;

(2) 11 to 35 head--test 10;

(3) 36 or more--test 30% or 30, whichever is less. Breeding swine that are tested are to be selected at random from all age groups, including herd boars, with all groups to be proportionately represented.

(i) Requirements for continuous flow feedlots on premises on which there are no breeding animals. When provisions of the State-Federal-Industry Program Standards for Pseudorabies Eradication require surveillance testing of these feedlots for advancement of the state to the next stage of the eradication program, one of the following methods will be used to satisfy this requirement.

(1) Collection of blood from a random sample of swine in the feedlot in the following representation:

(A) less than 100 head in the feedlot--test 25;

(B) 100-200 head--test 27;

(C) 201-999 head--test 28;

(D) 1,000 and over--test 29.

(2) Collection of blood from swine consigned from feedlot at slaughter using the criteria shown in paragraph (1) of this subsection, to determine the number of swine to be tested.

(j) Owner assistance. If ordered by the commission or its representative, the owner or caretaker of swine shall submit the swine and furnish labor and facilities used in normal operation in order that the swine may be tested, vaccinated, or otherwise handled in accordance with this chapter [these rules].

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

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Gene Snelson

General Counsel

Texas Animal Health Commission

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 85. VEHICLE STORAGE FACILITIES

16 TAC §§85.200, 85.709, 85.710, 85.725, 85.1003

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 TAC Chapter 85, §§85.200, 85.709, 85.710, 85.725, and 85.1003, regarding the towing, storage, and booting program.

The proposed amendments are necessary to implement changes recommended by the Towing, Storage, and Booting Advisory Board, and as general rule cleanup so that these rules are internally consistent and in harmony with 16 TAC Chapter 86, rules regarding the towing of vehicles. The proposed rule amendments were originally proposed in the September 14, 2012, issue of the *Texas Register* (37 TexReg 7250); however, the proposed rule amendments are withdrawn in this issue of the *Texas Register*.

The proposed amendments to §85.200 clarify the requirement that only a single licensed facility may register and operate from a single address. This links the registered address of the licensed facility to the taxing records of the county wherein the facility is located.

The proposed amendments to §85.709 implement one of the purposes for requiring a fenced and secure area around a licensed facility. The amendments clarify the classes or groups of persons authorized to enter the secured area.

The proposed amendment to §85.710(a)(3) requires that a vehicle storage facility (VSF) must accept payment at the location of the stored vehicle and may not require a person to travel to a separate location to make payment and another location to retrieve the stored vehicle. The provision in §85.710(a)(5) has been deleted and moved to §85.710(a)(3)(l).

The proposed new §85.710(c) addresses long-standing issues related to persons attempting to gain access to or possession of stored vehicles using fraudulent documentation. This amendment is an express prohibition against such fraudulent activity through exercise of the Department's and the Texas Commission of Licensing and Regulation's (Commission) jurisdiction to impose administrative penalties for such violations.

The proposed amendment to §85.725(a)(6)(C)(iii) harmonizes the drug testing requirement that the percentage of random testing be based on the number of employees participating in the consortium rather than the VSF. This harmonizes the drug testing requirements for VSFs with those used by towing companies.

The proposed amendments to §85.1003 provide flexibility for a VSF to continue with the existing practices related to the placement of signage or implement the new provisions which provide for and allow affixing the notices to the payment window. This flexibility will reduce or eliminate the need to print new signs with each statute or rule change that may affect consumer notices. A new §85.1003(g) is proposed to retain the statutory requirement that notice of nonconsent fee schedules be provided.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect

there will be no direct cost to state or local government as a result of enforcing or administering the proposed rules.

Mr. Kuntz has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit from clarity in what is required by the law of a VSF. The proposed rules also maintain consumer protections for individuals whose vehicles are the subject of a nonconsent tow. The public also benefit from the enhanced integrity of VSFs.

There will be no adverse economic effect on small or micro-businesses or to persons who are required to comply with the rules as proposed.

Since the agency has determined that the proposed amendments will have no adverse economic effect on small businesses preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Shanna Dawson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*. All comments previously submitted in response to the September 14, 2012, proposed rule filing, which is withdrawn in this issue of the *Texas Register*, will be considered in addition to comments received in response to this filing.

The amendments are proposed under Texas Occupations Code, Chapters 51 and 2308, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§85.200. License Required--Vehicle Storage Facility.

(a) A person may not operate a VSF unless the person holds a VSF license issued by the department. For purposes of this section, each VSF physical location or lot is a separate facility and must obtain a VSF license.

(b) Only one licensed facility may be located at the physical address as recorded in the records of the local taxing appraisal district for the county in which the facility is located.

§85.709. Responsibilities of Licensee--Unpermitted Tow Trucks Prohibited and Unlicensed Personnel Restrictions.

(a) Unless authorized by another law or regulation, a VSF shall not allow a tow truck that is not permitted under Texas Occupations Code, Chapter 2308, to enter the storage area of the facility.

(b) Except as provided for in paragraphs (1) - (7), a VSF shall not allow any person to access the fenced vehicle storage area unless the person is:

- (1) licensed under this chapter or Chapter 86 of this title;
- (2) the owner of the stored vehicle;
- (3) a person authorized by the owner of the stored vehicle to have access to or possession of the vehicle;
- (4) law enforcement;
- (5) named in a court order;

(6) a person participating in the auctioning of a vehicle under Transportation Code, Chapter 683; or

(7) any other person authorized by this chapter or Texas Occupations Code, Chapters 2303 and 2308.

§85.710. *[Responsibilities of Licensee--]Release of Vehicles.*

(a) Release of vehicles. The VSF must comply with the following requirements when releasing vehicles.

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

(3) The VSF shall allow the vehicle owner or authorized representative to obtain possession of the vehicle, including payment at the location of the stored vehicle, at any time between the hours listed on the facility information sign posted as described in §85.1003, upon payment of all fees due, presentation of valid identification (Texas drivers license or other state or federally issued photo identification), and upon presentation of:

(A) - (F) (No change.)

(G) appropriate identification of any state or federal law enforcement agency representative; ~~[or]~~

(H) the most recent version of a department-approved form or electronic version of a department-approved form published on the department's website, www.license.state.tx.us; which the VSF must make available to the vehicle owner or person seeking possession of or access to the vehicle; or[-]

(I) evidence of financial responsibility (insurance card), as required by Transportation Code §601.051, as an additional form of identification that establishes ownership or right of possession or control of the vehicle.

(4) (No change.)

~~{(5) A VSF must accept evidence of financial responsibility (insurance card), as required by §601.051, Transportation Code, as an additional form of identification that establishes ownership or right of possession or control of the vehicle.}~~

(5) ~~[(6)]~~ Paragraph (3) does not require a VSF to release a vehicle to the owner or operator of the vehicle if the owner or operator of the vehicle does not:

(A) pay the charges for services regulated under this chapter or Chapter 86 of this title, including charges for and associated with delivery or storage of the vehicle; and

(B) present valid photo identification issued by this state, another state, a federal agency or a foreign government.

(6) ~~[(7)]~~ If it accepts vehicles 24 hours a day, all VSFs shall have vehicles available for release 24 hours a day within one hour's notice.

(7) ~~[(8)]~~ If a VSF does not accept vehicles 24 hours a day, such facility must have vehicles available for release within one hour between the hours of 8:00 a.m. and midnight Monday-Saturday and from 8:00 a.m. to 5:00 p.m. on Sundays except for nationally recognized holidays. It is not the intent of this section to require release of vehicles after midnight, and refusal to release after that time, even with notice after 11:00 p.m., is not a violation of this section.

(8) ~~[(9)]~~ For purposes of determining when the one hour for release of a vehicle starts, the VSF must clearly note on the receipt the time of the call requesting vehicle release and have the person requesting release separately initial the notation.

(b) (No change.)

(c) A person may not execute, submit or use a department-approved form or other document which contains a false, fictitious, dishonest, or fraudulent statement of a material fact used for the purpose of obtaining possession of or access to a motor stored by facility licensed under Texas Occupations Code, Chapter 2303.

(1) For purposes of this section, a false, fictitious, dishonest, or fraudulent statement related to authorization from the vehicle owner to the person or entity named in the form or document is a material fact.

(2) Conduct found by the commission or the executive director by final order to have violated this section shall be deemed fraudulent and dishonest conduct.

§85.725. *Responsibilities of Licensee--Drug Testing Policy.*

(a) A VSF adopting paragraphs (1) - (12) will comply with Texas Occupations Code, §2303.160.

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

(6) Types of Tests.

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

(C) Random Testing. In addition to annual testing, VSF employees are subject to random urine drug testing. Under this policy, annual random test for drugs of at least 25 percent of the total number of VSF employees is required.

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

(iii) Each licensed VSF participating in a consortium must ensure that the consortium performs random drug testing on at least 25% of the total number of the licensed VSF employees participating in and tested by the consortium ~~[employed by or under contract with the VSF].~~

(D) (No change.)

(7) - (12) (No change.)

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

§85.1003. *Technical Requirements--Storage Lot Signs.*

(a) (No change.)

(b) All VSFs shall have a sign in view of the person who claims the vehicle setting out the charge for storage and all other fees, which may be charged by the storage lot, including notification and impoundment fees. The sign may be affixed to the payment window and shall include all forms of payments the VSF accepts for any charge associated with delivery or storage of a vehicle. If the sign is affixed to the payment window, it [The sign] must be located so it is clearly visible to a vehicle owner at the place of payment [and shall have letters at least 1 inch in height with a contrasting background].

(c) Nonconsent towing fees schedule. All VSFs shall conspicuously place a sign, at the place of payment, which states in 1-inch letters that:

(1) (No change.)

(2) The nonconsent towing fees provided for viewing and to the vehicle owner or representative must match the nonconsent towing fees authorized by this chapter or Texas Occupations Code §2308.2065.

(d) Instruments accepted for release of vehicle. VSFs shall have a sign describing the documents that may be presented by the vehicle owner or his/her authorized representative to obtain possession of the vehicle. This sign shall list all instruments as described

in §85.710(a)(3)(A) - (I)(G), and shall also state: "Affidavit of Right of Possession Furnished Upon Request." The sign may be affixed to the payment window. [This sign shall be located so it is clearly visible to a vehicle owner at the place of payment, and have letters at least 1 inch in height with a contrasting background.]

(e) - (f) (No change.)

(g) A vehicle storage facility accepting a nonconsent towed vehicle shall post a sign in one inch letters stating "Nonconsent tow fees schedules available on request." The vehicle storage facility shall provide a copy of a nonconsent towing fees schedule on request.

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

Filed with the Office of the Secretary of State on January 18, 2013.

TRD-201300190

Brian Francis

Deputy Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: March 3, 2013

For further information, please call: (512) 475-4879



CHAPTER 94. PROPERTY TAX PROFESSIONALS

16 TAC §94.25

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 TAC Chapter 94, §94.25, regarding the property tax professionals program.

The proposed rule amendments are necessary to implement changes recommended by the Tax Professional Advisory Committee (Committee) relating to the regulation of property tax professionals.

Proposed amendments to §94.25(b)(3) change the required continuing education hours from seven (7) hours in Uniform Standards of Professional Appraisal Practice (USPAP) to three and one half (3.5) hours in USPAP. Subsection (i) is proposed for deletion, which would eliminate the need for registrants to retain copies of their completed courses. The substance of these proposed rule changes was recommended by the Committee at its meeting on December 6, 2012.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed rule amendments are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed rule.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed rule changes are in effect, the public benefit will be realized efficiency for the program and the industry at large.

There is no anticipated adverse economic effect on small or micro-businesses or to persons who are required to comply with the rules as proposed.

Since the agency has determined that the proposed rule amendments will have no adverse economic effect on small or micro

businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Shanna Dawson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapters 51 and 1151, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the proposal.

§94.25. *Continuing Education.*

(a) (No change.)

(b) A Registered Professional Appraiser (RPA) must complete 30 hours of approved continuing education to be eligible to renew the registration. The continuing education must include:

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

(3) 3.5 [seven] hours in USPAP.

(c) - (h) (No change.)

~~{(i) A RTC, RPA, or RTA must retain a copy of the certificate of completion for a course for two years after the date of completion. In conducting any inspection or investigation of the registrant, the department may examine the registrant's records to determine compliance with this subsection.}~~

(i) ~~{(j)}~~ To be approved by the Comptroller, a provider's course must be dedicated to instruction in:

(1) appraisal procedures and methods;

(2) tax assessment and collection;

(3) professional ethics;

(4) laws and rules;

(5) USPAP; or

(6) customer service.

~~(j) ~~{(k)}~~ The provisions in this section apply to registrations that renew on or after January 1, 2011.~~

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

Filed with the Office of the Secretary of State on January 18, 2013.

TRD-201300191

Brian Francis

Deputy Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: March 3, 2013

For further information, please call: (512) 475-4879



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS

DIVISION 1. GENERAL PROVISIONS

19 TAC §100.1015

The Texas Education Agency (TEA) proposes an amendment to §100.1015, concerning open-enrollment charter schools. The section addresses applicant procedures for an open-enrollment charter, public senior college or university charter, or public junior college charter. The proposed amendment would further refine provisions relating to governance standards for charter applicants.

Section 100.1015, Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter, was last amended effective September 12, 2012, to improve the application process for charters authorized by the State Board of Education (SBOE). That amendment implemented the commissioner's authority, as authorized in the Texas Education Code, §12.101(b), to adopt financial, governing, and operational standards with which an applicant for an open-enrollment charter must comply before the SBOE can award a charter. The proposed amendment to 19 TAC §100.1015 would further refine provisions relating to the governing standards in paragraph (2) to clarify requirements relating to 501(c)(3) exemptions and specifications pertaining to an applicant's members.

Paragraph (1) would also be modified to reference the TEA Financial Accountability System Resource Guide Special Supplement - Charter Schools.

The proposed amendment would require charter applicants and successful charter awardees to demonstrate evidence of meeting and maintaining certain governing standards as specified in the request for applications. The proposed amendment would have no new locally maintained paperwork requirements.

Sally Partridge, associate commissioner for accreditation and school improvement, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

Ms. Partridge has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be the refinement of provisions related to governance standards to improve the charter application process in order to provide additional education opportunities for students. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

The public comment period on the proposal begins February 1, 2013, and ends March 4, 2013. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking,

Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 1, 2013.

The amendment is proposed under the Texas Education Code, §12.101(b), which authorizes the commissioner to adopt financial, governing, and operational standards with which an applicant for an open-enrollment charter must comply before the State Board of Education can award a charter.

The amendment implements the Texas Education Code, §12.101(b).

§100.1015. Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter.

Notwithstanding any other provisions in this chapter, the following provisions apply to open-enrollment charter applicants and successful charter awardees authorized by the State Board of Education (SBOE) under requests for applications adopted after November 1, 2012.

(1) Financial standards. An applicant for an open-enrollment charter, a public senior college or university charter, or a public junior college charter shall meet each of the following financial standards, as determined by the commissioner of education or the commissioner's designee, prior to being considered for award of a charter and must understand that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation.

(A) - (F) (No change.)

(G) No more than 27% of the budget may be allocated for administrative costs for charters with an anticipated first-year enrollment of 500 or fewer students, or no more than 16% of the budget may be allocated for administrative costs for charters with an anticipated first-year enrollment of more than 500 students. Administrative costs are those costs identified as such in the official Texas Education Agency (TEA) publication, Financial Accountability System Resource Guide Special Supplement - Charter Schools, or as otherwise adopted pursuant to §109.41 of this title (relating to Financial Accountability System Resource Guide) [financial publications for charter schools].

(2) Governing standards. An applicant for an open-enrollment charter, a public senior college or university charter, or a public junior college charter shall meet each of the following governing standards, as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must understand that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation, except as provided by Texas Education Code (TEC), §12.1054(a)(2) and §12.1055(b).

(A) To qualify as an eligible entity in accordance with TEC, §12.101(a)(3), as an organization that is exempt under 26 United States Code (USC), §501(c)(3), the applicant must: [have its own 501(c)(3) exemption in its own name, as evidenced by a 501(c)(3) letter of determination issued by the IRS. Thus, an applicant cannot attain status as an eligible entity that is exempt under 26 USC, §501(c)(3), as a disregarded entity, a supporting organization, or a member of a group exemption of a currently recognized 501(c)(3) tax-exempt organization. A religious organization, sectarian school, or religious institution that applies must have an established separate

non-sectarian entity that is exempt under 26 USC, §501(c)(3), to be considered an eligible entity.]

(i) have its own 501(c)(3) exemption in its own name, as evidenced by a 501(c)(3) letter of determination issued by the IRS; or

(ii) demonstrate that:

(I) it is eligible as a tax-exempt entity under a group exemption at the application deadline and provide both a group exemption letter issued to the central organization and a statement from the central organization that the applicant is one of the subordinates currently covered by its group exemption and that the exempt status of the applicant shall not be withheld or revoked for a period of one year from the application deadline or until the applicant obtains its own 501(c)(3) exemption, whichever comes first; and

(II) it has applied for its own 501(c)(3) exemption in its own name, as evidenced by an acknowledgement letter from the IRS or a file-stamped copy of the application with the IRS. The applicant must agree that it will not commence operations in any school year for which it does not hold its own 501(c)(3) exemption in its own name.

(B) A religious organization, sectarian school, or religious institution that applies must have an established separate non-sectarian entity that is exempt under 26 USC, §501(c)(3), to be considered an eligible entity.

(C) [~~(B)~~] Except as authorized by subparagraph (G) of this paragraph, the [~~The~~] articles of incorporation, the Certificate of Filing, the Certificate of Formation, and the bylaws of the applicant must vest the management of the corporate affairs in the board of directors. Except as authorized by subparagraph (G) of this paragraph, the [~~The~~] management of the corporate affairs shall not be vested in any member or members nor shall the corporate charter or bylaws confer on or reserve to any other entity or person the ability to overrule, remove, replace, or name the members of the board of the charter holder during the duration of the charter's existence. Any change in the aforementioned governance documents pursuant to the management of the corporate affairs of the nonprofit entity may only occur with the approval of the commissioner in accordance with §100.1033(c) of this title (relating to Charter Amendment) or in accordance with any other power granted to the commissioner in state law or rule.

(D) [~~(C)~~] If the applicant [~~sponsoring entity~~] is a 501(c)(3) nonprofit corporation, its bylaws must clearly state that the charter holder and charter school will comply with the Texas Open Meetings Act and will appropriately respond to Texas Public Information Act requests.

(E) [~~(D)~~] No family members within the third degree of consanguinity or third degree of affinity shall serve together on the charter holder or charter school board.

(F) [~~(E)~~] No family member within the third degree of consanguinity or third degree of affinity of any charter holder board member, charter school board member, or school officer shall receive compensation in any form from the charter school, the charter holder, or any management company that operates the charter school.

(G) Notwithstanding subparagraph (C) of this paragraph, the articles of incorporation, the Certificate of Formation, or the bylaws of an applicant may vest, confer on, or reserve to an entity other than the applicant the ability to overrule, remove, replace, or appoint the members of the board of the charter holder during the duration of the charter's existence, subject to the following limitations.

(i) Only an entity that is exempt under 26 USC, §501(c)(3), may serve as a member or exercise any power of a member.

(ii) A member must commit in writing to produce all records relating to the Texas charter holder or Texas charter school to the TEA upon request and in a reasonable period of time.

(iii) A member must commit in writing to provide its annual audit to the TEA within 30 days of its completion and adoption or upon request anytime thereafter.

(iv) A member shall not have authority to remove any of the applicant's board of directors without prior approval of the commissioner.

(v) A member shall not have final authority to:

(I) hear or decide employee grievances, citizen complaints, or parental concerns;

(II) adopt or amend the budget or authorize or require the expenditure or obligation of state funds or the use of public property;

(III) control the disposition or safekeeping of any records of the charter holder relating to the operation or management of the charter;

(IV) adopt operating policies governing charter school operations;

(V) approve audit reports under TEC, §44.008(d);

(VI) select, employ, direct, evaluate, renew, non-renew, terminate, or set compensation for the chief executive officer of the charter;

(VII) select or employ any employee of the charter or organize the administrative operations of the charter;

(VIII) approve, disapprove, or control any reports required of the charter by law or rule; or

(IX) except as provided in clause (vi) of this subparagraph, have the authority under a lease, franchise, license, or any other agreement to control access to or the use of the facilities, curriculum, name, or instructional materials used by the charter during a school year.

(vi) A member may have the authority under a lease, franchise, license, or any other agreement to control access to or the use of the facilities, curriculum, name, or instructional materials used by the charter only as authorized under this clause. An agreement subject to this clause must be in writing and approved by the board of directors of the charter holder and must be terminable only upon 90 days written notice to be effective no sooner than the end of the then-current school year, provided that nothing in this clause precludes termination of an agreement immediately for nonpayment or condemnation.

(vii) An applicant may have a member only if the member successfully operates at least one charter school in at least one other state as determined by the commissioner.

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

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

Filed with the Office of the Secretary of State on January 18, 2013.

TRD-201300188
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: March 3, 2013
For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.17

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §75.17, concerning Scope of Practice. Section 75.17(e) is amended to clarify that all therapeutic modalities provided by Doctors of Chiropractic in Texas must comply with the chiropractic scope of practice as defined by the Texas Occupations Code (the Chiropractic Act).

The Board proposes this amendment to make explicitly clear that any therapeutic modality used by a Doctor of Chiropractic for treatment of a chiropractic patient must be done in accordance with the legislatively defined scope of practice for chiropractic.

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

Ms. Yarbrough has also determined that, for each year of the first five years this amendment will be in effect, the public benefit of this amendment will be explicit clarity in the limit of scope of practice in the practice of chiropractic.

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

This amendment is proposed under Texas Occupations Code §201.152, relating to rules, and §201.002, relating to the practice of chiropractic. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.002 defines the practice of chiropractic and the limits of chiropractic scope of practice.

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

§75.17. Scope of Practice.

(a) - (d) (No change.)

(e) Treatment Procedures and Services.

(1) (No change.)

(2) In order to provide therapeutic care for a patient or patient population, licensees are authorized to use the therapeutic

modalities listed in this paragraph. All therapeutic modalities provided by Doctors of Chiropractic in Texas must comply with the chiropractic scope of practice as defined by the Texas Occupations Code §201.002.[-]

(A) Osseous [os̄s̄ēōus] and soft tissue adjustment and manipulative techniques;

(B) Physical [f̄īs̄īc̄īāl] and rehabilitative procedures and modalities;

(C) Acupuncture [ǣūp̄ūn̄c̄t̄ūr̄e] and other reflex techniques;

(D) Exercise [ēx̄ēr̄c̄īs̄e] therapy;

(E) Patient [p̄ǣīēn̄t] education;

(F) Advice [ǣd̄v̄īc̄e] and counsel;

(G) Diet [d̄īēt] and weight control;

(H) Immobilization [īm̄m̄ōb̄īl̄īz̄āt̄īōn];

(I) Splinting [s̄pl̄īn̄t̄īn̄g];

(J) Bracing [br̄ǣīc̄īn̄g];

(K) Therapeutic [th̄ēr̄ǣp̄ēūt̄īc] lasers (non-invasive, nonincisive), with adequate training and the use of appropriate safety devices and procedures for the patient, the licensee and all other persons present during the use of the laser;

(L) Durable [d̄ȳr̄ǣb̄l̄] medical goods and devices;

(M) Homeopathic [h̄ōm̄ēōp̄ǣt̄īc] and botanical medicines, including vitamins, minerals,[-] phytonutrients, antioxidants, enzymes, nutraceuticals, and glandular extracts;

(N) Non-prescription [n̄ōn̄̄p̄r̄ēs̄c̄r̄īp̄t̄īōn] drugs;

(O) Referral [r̄ēf̄ēr̄r̄ǣl] of patients to other doctors and health care providers; and

(P) Other [ōth̄ēr] treatment procedures and services consistent with the practice of chiropractic.

(3) (No change.)

(f) (No change.)

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

Filed with the Office of the Secretary of State on January 17, 2013.

TRD-201300187
Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: March 3, 2013
For further information, please call: (512) 305-6716



PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 502. PEER ASSISTANCE

22 TAC §502.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §502.1, concerning Peer Assistance to Licensees.

The amendment to §502.1 will clarify that the Board may refer a licensee or certificate holder to a peer assistance program, along with other appropriate actions, in response to a complaint for a violation of the rules or of the Act and for chemical dependency on drugs or alcohol or other mental health issues. The amendment also expands its program to include certificate holders and accounting students and makes other non-substantive changes to rule text.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be programs that have been expanded to reach more CPAs, certificate holders and students in need of assistance, protecting the public from potential harm caused by CPA violators because of chemical dependency or mental health issues.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 1, 2013. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the

proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

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

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

§502.1. Peer Assistance to Licensees.

(a) The board adopts the provisions contained in the Texas Health and Safety Code [HEALTH & SAFETY CODE], Chapter 467, Peer Assistance Programs [PEER ASSISTANCE PROGRAMS], in its entirety, including any amendments enacted by the Texas Legislature.

(b) Should the board receive information regarding a licensee, applicant or certificate holder indicating possible chemical dependency on drugs or alcohol [~~substance abuse~~] or [~~other~~] mental health issues [~~issue~~], the board may [~~; in addition to any other action~~]:

(1) refer the licensee to an approved peer assistance program; or

(2) require the licensee to participate in or complete a course of treatment or rehabilitation.

(c) Should the board receive a complaint or other information constituting possible violations of other board rules, including chemical dependency on drugs or alcohol, or mental health issues, then the board may take action as appropriate under this title and the Act regarding those possible violations in addition to making a referral under subsection (b) of this section.

(d) [(e)] An approved peer assistance program that receives a report or referral under subsection (b) of this section or a report under §467.005(a) of the Texas Health and Safety Code, may intervene to assist the licensee, applicant or certificate holder to obtain and complete a course of treatment and rehabilitation.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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



22 TAC §502.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §502.2, concerning Texas State Board of Public Accountancy Policy Statement of the Peer Assistance Oversight Committee.

The amendment to §502.2 will clarify chemical dependency as a dependency on drugs or alcohol, use acronyms defined in §501.55, and make other non-substantive changes to rule text.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer understanding by CPAs, certificate holders and students that assistance is available to them for dependency on drugs or alcohol.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 1, 2013. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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

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

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

§502.2. *Texas State Board of Public Accountancy Policy Statement of the Peer Assistance Oversight Committee.*

(a) The board [Texas State Board of Public Accountancy] has established the peer assistance oversight [Peer Assistance Oversight] committee to oversee the activities of the TSCPA's [Texas Society of Certified Public Accountants'] peer assistance program as mandated under the Texas Health and Safety Code, Chapter 467.

(b) The peer assistance oversight committee [Peer Assistance Oversight Committee] operates under the premise that impairments caused by chemical dependency on drugs or alcohol [substance abuse] and mental health issues [illness] are treatable.

(c) The peer assistance oversight committee's [Peer Assistance Oversight Committee's] responsibilities include, but are not limited to:

(1) protecting the public from CPAs whose ethical, behavioral, and technical violations due to chemical dependency on drugs or alcohol and/or mental health issues [illness] have harmed, or have the potential to harm, the public;

(2) encouraging CPAs, CPA applicants [candidates], and accounting students to seek assistance for impairment due to chemical dependency on drugs or alcohol and/or mental health issues [illness];

(3) cooperating with the TSCPA's [Texas Society of CPAs] peer assistance program in promoting confidential assistance to CPAs, CPA applicants [candidates], and accounting students who suffer from chemical dependency on drugs or alcohol and/or mental health issues [illness]; and

(4) disseminating information about the peer assistance program to CPAs, CPA applicants [candidates], and accounting students.

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

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J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy

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CHAPTER 511. ELIGIBILITY SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.53

The Texas State Board of Public Accountancy (Board) proposes new §511.53, concerning Evaluation of Foreign Education Documents.

New §511.53 will clarify the standards by which the board evaluates foreign education documents to determine course and degree equivalency with Board-recognized educational institutions.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be none.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be assurance that the education of foreign applicants has been evaluated to be substantially equivalent to Board-recognized institutions.

The probable economic cost to persons required to comply with the new rule will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the new rule does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed new rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 1, 2013. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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

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

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

§511.53. Evaluation of Foreign Education Documents.

(a) It is the responsibility of the board to confirm that education obtained at colleges and universities outside of the United States (foreign education) is equivalent to education earned at board-recognized institutions of higher education in the U.S.

(b) The board shall use, at the expense of the applicant, the services of the University of Texas at Austin, Graduate and International

Admissions Center, to validate, review, and evaluate foreign education documents submitted by an applicant to determine if the courses taken and degrees earned are substantially equivalent to those offered by the board-recognized institutions of higher education located in the U.S. Other evaluation or credential services of foreign education are not accepted by the board. The evaluation shall provide the following information to the board:

(1) Degrees earned by the applicant that are substantially equivalent to those conferred by a board-recognized institution of higher education in the U.S. that meets §511.52 of this chapter (relating to Recognized Institutions of Higher Education);

(2) The total number of semester hours or quarter hour equivalents earned that are substantially equivalent to those earned at U.S. institutions of higher education and that meet §511.59 of this chapter (relating to Definition of 150 Semester Hours);

(3) The total number of semester hours or quarter hour equivalents earned in accounting coursework that meets §511.57 of this chapter (relating to Qualified Accounting Courses);

(4) An analysis of the title and content of courses taken that are substantially equivalent to courses listed in §511.57 of this chapter;

(5) The total number of semester hours or quarter hour equivalents earned in accounting that were earned in traditional courses and the total number of semester hours or quarter hour equivalents earned in accounting that were earned in non-traditionally delivered courses, as defined in §511.51 of this chapter (relating to Educational Definitions); and

(6) The total number of semester hours or quarter hour equivalents earned in business coursework that meets §511.58 of this chapter (relating to Definitions of Related Business Subjects and Ethics Courses).

(c) The University of Texas at Austin, Graduate and International Admissions Center, may use the American Association of Collegiate Registrars and Admissions Officers (AACRAO) material, including the Electronic Database for Global Education (EDGE), in evaluating foreign education documents.

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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SUBCHAPTER D. CPA EXAMINATION

22 TAC §511.77

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.77, concerning Scoring.

The amendment to §511.77 will clarify the score review process and its intended purpose.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be exam candidates who have a better understanding of how their test is scored and how the score review process works.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 1, 2013. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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

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

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

§511.77. *Scoring.*

(a) Scoring of the UCPAE ~~[examination]~~ shall be performed by the AICPA, subject to the approval of ~~[by]~~ the board. An applicant

~~[The candidate] must earn [attain] the [uniform] passing score established through a psychometrically acceptable standard-setting procedure approved by the board. The [current minimum] passing score is 75. The board shall establish a method for accurately [the accurate] tracking and recording an applicant's [of a candidate's] score. An applicant will be notified of the score no [Not] later than the 30th day after the day on which the board receives the applicant's [a candidate's] score from NASBA, [the candidate will be notified of the score] unless board action is pending; in which case, [and] the applicant [individual] is precluded from receiving the UCPAE score [examination results] until the board action is resolved. In no event will any information concerning the applicant's [a candidate's] performance on the UCPAE [examination] be released [given] to anyone other than the applicant [candidate] unless the applicant has delivered written authorization to the board [has written authorization to do so].~~

(b) An applicant may only request a score review of the UCPAE results from the most recent testing window established by the AICPA and shall pay the fee associated with the score review.

(c) Interpretive comment 1: A score review is generally discouraged because fewer than 1% of all requested score reviews, since the inception of the UCPAE computer-based testing, have resulted in a change to a score.

(d) Interpretive comment 2: The UCPAE results are subject to routine quality controls and are scored twice by the AICPA before scores are released to the board. The score review is a verification that the approved answer key was applied correctly to the UCPAE section and that the written communications questions were scored. The score review is not:

- (1) A regrading of the UCPAE section;
- (2) An opportunity to find additional points;
- (3) An opportunity to review content; or
- (4) An opportunity to have an alternate response consid-

ered.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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



22 TAC §511.79

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

The Texas State Board of Public Accountancy (Board) proposes the repeal of §511.79, concerning Request for Review.

The repeal of §511.79 is necessary in order to transfer the language in this rule to §511.77, concerning Scoring.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the repeal will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be none.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be relocating rule text to a more appropriate rule, which will make it easier to find and understand.

The probable economic cost to persons required to comply with the repeal will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed repeal will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 1, 2013. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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

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

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

§511.79. *Request for Review.*

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

Filed with the Office of the Secretary of State on January 17, 2013.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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CHAPTER 519. PRACTICE AND PROCEDURE SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS

22 TAC §519.24

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.24, concerning Committee Recommendations.

The amendment to §519.24 will permit the Board to take disciplinary action against a licensee when the respondent has failed to respond to the Board and failed to request a hearing when provided the opportunity for a hearing.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to reduce the unnecessary expenditure of staff resources and expenses where a licensee is non-responsive to the disciplinary process.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 1, 2013. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333

Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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

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

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

§519.24. Committee Recommendations.

(a) At the conclusion of its investigation the committee may [~~will~~] make a recommendation to the board regarding the disposition of the investigation.

(b) The committee may recommend dismissal of the complaint if [~~If~~] the committee determines: [~~the board no longer has jurisdiction, there is insufficient evidence of a violation of the Act, board rules or board order or the respondent comes into compliance with the Act board rules, or board order, the committee may recommend dismissal of the complaint. The committee will inform the respondent of its recommendation and may issue a letter of comment stating the committee's concerns about respondent's practice and make suggestions that may improve respondent's practice. The committee's recommendation of dismissal is not final until it is ratified by the board in an open meeting.~~]

(1) the board lacks jurisdiction; or

(2) there is insufficient evidence of a violation of the Act, board rules or board order; or

(3) the respondent came into compliance with the Act, board rules or board order.

(c) The committee will inform the respondent of its recommendation but may, in its discretion, issue a letter of comment stating the committee's concerns about respondent's practice and make suggestions that may improve respondent's practice. The committee's recommendation of dismissal is not final until it is ratified by the board in an open meeting.

(d) [(e)] If the committee determines that there is a violation of the Act, board rules or board order, the committee may recommend [~~appropriate~~] disciplinary action. The committee may recommend any disciplinary sanction provided in §901.501 of the Act (relating to Disciplinary Powers of Board), singularly or in any combination. The respondent shall [~~will~~] be notified of the committee's action.

(e) [(d)] Upon a determination by the committee that there is a violation of the Act, board rule, or board order, the committee may [~~In the appropriate case, the committee will~~] offer respondent [~~to enter into~~] an agreed consent order containing [~~with the respondent. The agreed consent order shall contain~~] the committee's [~~factual~~] findings

of fact and conclusions of law, and proposed sanctions, administrative penalties and costs; and the recommended terms and conditions for final resolution of the matter]. The respondent shall be notified of the committee's determination by certified mail at the respondent's address on file with the board. The respondent shall [~~will~~] have 20 calendar [~~a specified number of~~] days [~~in writing~~] to provide in writing Respondent's acceptance of [~~accept or reject~~] the agreed consent order or request a hearing to contest the committee's determination in accordance with §519.3 of this chapter (relating to Computation of Time). Upon a showing of good cause, the 20 days may be extended. Failure [~~A rejection must be made in writing; however, failure~~] to accept [~~or reject~~] the proposed agreed consent order within the required time to respond shall [~~specified number of days will~~] be deemed a rejection. [~~An agreed consent order is not final until it has been ratified by the board in an open meeting. If the agreed consent order is rejected, the matter will be referred to SOAH for a contested case hearing.~~]

(f) If the respondent does not accept the proposed agreed consent order and fails to request a hearing in writing within the required time, the executive director, after providing notice of hearing before the executive director and respondent failing to appear, may offer a proposed order containing the committee's findings of fact and conclusions of law and imposing disciplinary sanctions, and administrative penalties and costs for the board's consideration and ratification. A proposed order offered by the executive director is not final until it has been approved by the board.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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CHAPTER 520. PROVISIONS FOR THE FIFTH-YEAR ACCOUNTING STUDENTS SCHOLARSHIP PROGRAM

22 TAC §520.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §520.1, concerning Authority and Purpose.

The amendment to §520.1 will replace terms with acronyms defined in §501.55.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that is easier to read and understand.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 1, 2013. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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

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

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

§520.1. Authority and Purpose.

(a) Authority for this chapter is provided in Subchapter D, §901.155 of the Act, which is titled Scholarship Trust Fund for Fifth-Year Accounting Students. This chapter establishes procedures to administer the fifth-year accounting students scholarship program.

(b) The purpose of the fifth-year accounting students scholarship program is to provide financial assistance to students intending to take the written examination conducted for the purpose of granting a certificate of CPA [certified public accountant] and thus increase the number of highly trained and educated CPAs [Certified Public Accountant] available to serve the residents of this state.

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

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J. Randel (Jerry) Hill

General Counsel

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



22 TAC §520.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §520.2, concerning Definitions.

The amendment to §520.2 will correct terms that should be lowercase and specifies a rule reference.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that is easier to read and understand.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 1, 2013. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods

of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

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

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

§520.2. *Definitions.*

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

(1) Cost of attendance--An estimate of the expenses incurred by a typical financial aid student in attending a particular college or university. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).

(2) Expected family contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined by the US Department of Education Definition of Expected Family Contribution.

(3) Financial need--The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with board guidelines.

(4) Gift Aid--Educational funds from state, federal, and other sources, such as grants, that do not require repayment from present or future earnings. Assistantships and work-study programs are not considered to be gift aid.

(5) Half-time student--For undergraduates, [a person] who are [is] enrolled or are [is] expected to be enrolled for the equivalent of at least six but not more than nine semester credit hours. For graduate students, [a person] who are [is] enrolled or are [is] expected to be enrolled for the equivalent of 4.5 but not more than six semester credit hours.

(6) Institution--Public and private or independent institutions of higher education as defined in Texas Education Code, §61.003.

(7) Period of enrollment--The term or terms within the current state fiscal year (September 1 - August 31) for which the student was enrolled in an approved institution and met all the eligibility requirements for an award through the program described in this chapter.

(8) Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the board. The program officer [~~Program Officer~~] has primary responsibility for all ministerial acts required by the program, including maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as program officer [~~Program Officer~~].

(9) Resident of Texas--A resident of the State of Texas as determined in accordance with 19 TAC Part 1, Chapter 21, Subchapter B (relating to Determination of Resident Status [~~and Waiver Programs for Certain Nonresident Persons~~]). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

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

Filed with the Office of the Secretary of State on January 17, 2013.

TRD-201300175

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 3, 2013

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



22 TAC §520.3

The Texas State Board of Public Accountancy (Board) proposes an amendment to §520.3, concerning Institutions.

The amendment to §520.3 will correct rule titles, replace terms with acronyms defined in §501.55, and make other non-substantive changes to rule text.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that is easier to read and understand.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 1, 2013. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have

an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

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

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

§520.3. *Institutions.*

(a) Eligibility.

(1) Any college or university defined as a public, private or independent institution of higher education by Texas Education Code, §61.003 ~~that~~ ~~and~~ offers the courses required by §511.57 of this title (relating to Qualified [Definition of] Accounting Courses) and §511.58 of this title (relating to Definitions of Related Business Subjects and Ethics Courses), is eligible to participate in the fifth-year accounting students scholarship program [Fifth-Year Accounting Students Scholarship Program].

(2) No institution may, on the grounds of race, color, national origin, gender, religion, age or disability exclude an individual from participation in, or deny the benefits of the program described in this chapter.

(3) Each participating institution must follow the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admissions.

(b) Approval.

(1) Each approved institution must enter into an agreement with the board, the terms of which shall be prescribed by the executive director [Executive Director].

(2) An institution must be approved by April 1 in order for qualified students enrolled in that institution to be eligible to receive scholarships in the following fiscal year.

(c) Responsibilities.

(1) Probation Notice. If the institution is placed on public probation by its accrediting agency, it must immediately advise scholarship recipients of this condition and maintain evidence in each student's file to demonstrate that the student was so informed.

(2) Disbursements to Students.

(A) The institution must maintain records to prove the receipt of program funds to the student or the crediting of such funds to the student's school account.

(B) If the executive director [Executive Director] has reason to believe that an institution has disbursed funds for unauthorized purposes, the institution will be notified and offered an opportunity for a hearing pursuant to the applicable procedures outlined in Chapter 519 of this title (relating to Practice and Procedure) and the rules of procedure of SOAH [the State Office of Administrative Hear-

ings]. Thereafter, if the board determines that funds have been improperly disbursed, the institution shall become [primarily] responsible for restoring the funds to the board. No further disbursements of scholarship funds shall be permitted to students at that institution until the funds have been repaid.

(d) Reporting.

(1) All institutions must [timely] meet board reporting requirements. Such reporting requirements shall include reports specific to allocation and reallocation of scholarship funds as well as progress and year-end reports.

(2) Penalties for Late Reports.

(A) An institution that postmarks or electronically submits a progress report a week (seven (7) calendar days) or more after its due date will be ineligible to receive additional funding through the reallocation occurring at that time.

(B) The executive director [Executive Director] may penalize an institution by reducing its allocation of funds in the following year by up to 10 percent for each progress report that is postmarked or submitted electronically more than a week (seven (7) calendar days) late.

(C) The executive director [Executive Director] may assess more severe penalties against an institution if any report is received by the board more than one month (thirty (30) calendar days) after its due date. The maximum penalty for a single year is 30 percent of the school's allocation. If penalties are invoked two consecutive years, the institution may be penalized an additional 20 percent.

(3) If the executive director [Executive Director] determines that a penalty is appropriate, the institution will be notified by certified mail, addressed to the program officer [Program Officer]. Within 21 days from the date [time] that the program officer [Program Officer] receives the written notice, the institution must submit a written response appealing the board's decision, or the penalty shall become final and no longer subject to an appeal. An appeal under this section will be conducted in accordance with the rules provided in the applicable sections of Chapter 519 of this title ~~[(relating to Practice and Procedure)]~~ and the procedural rules of SOAH [the State Office of Administrative Hearings].

(e) Program Reviews. If selected for such by the board, participating institutions must submit to program reviews of activities related to the fifth-year accounting students scholarship program [Fifth-Year Accounting Students Scholarship Program].

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

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J. Randel (Jerry) Hill
General Counsel
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22 TAC §520.5

The Texas State Board of Public Accountancy (Board) proposes an amendment to §520.5, concerning Award Amounts and Uses.

The amendment to §520.5 replaces certain terms with the word "shall."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that is easier to read and understand.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 1, 2013. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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

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

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

§520.5. *Award Amounts and Uses.*

(a) Funds awarded through this program may include any gifts, grants and donations of real or personal property from any entity, subject to limitations or conditions set by law, for the purposes of this chapter.

(b) Award Amount and Disbursements.

(1) The minimum and maximum annual award for a student through this program shall be [is] an amount recommended by the advisory committee and announced to institutions in the allocation announcement sent out for the relevant year, less any amount previously received through this program.

(2) No individual shall [may] receive an aggregate total of more than the amount recommended by the advisory committee and announced to institutions in the allocation announcement through the program.

(3) An individual student's scholarship shall [is to] be paid out in the form of at least one disbursement per semester.

(c) No scholarship disbursed to a student shall [may] be used for any purpose other than for meeting the cost of attending an approved institution.

(d) At the time an award is made to a student, it shall [may] not exceed the student's need. No future adjustment is required if subsequent awards during the student's period of enrollment cause an over award of \$300 or less.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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



22 TAC §520.6

The Texas State Board of Public Accountancy (Board) proposes an amendment to §520.6, concerning Allocations and Reallocations.

The amendment to §520.6 will correct terms that should be lowercase.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

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

adoption of the proposed amendment will be a rule that is easier to read and understand.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 1, 2013. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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

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

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

§520.6. *Allocations and Reallocations.*

(a) The board, with the assistance of the advisory committee [Advisory Committee], shall develop a formula for allocating funds to participating institutions in a way that fulfills the purpose of the program.

(b) Unless otherwise indicated, institutions shall [with] have until a date specified by the board via a policy memo addressed to the program officer [Program Officer] at the institution to encumber all funds allocated to them. On that date, institutions lose claim to any unencumbered funds and the unencumbered funds are available to the board for reallocation to other institutions. If necessary for ensuring the full use of funds, subsequent reallocations may be scheduled until all funds are awarded and disbursed.

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

Filed with the Office of the Secretary of State on January 17, 2013.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 3, 2013

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



22 TAC §520.7

The Texas State Board of Public Accountancy (Board) proposes an amendment to §520.7, concerning Disbursements to Institutions.

The amendment to §520.7 will correct terms that should be lowercase.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that is easier to read and understand.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 1, 2013. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic im-

pact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

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

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

§520.7. Disbursements to Institutions.

Requests for program funds for eligible students shall be made by the program officer. Program [~~Officer and program~~] funds, up to the maximum allocation for the institution, shall be disbursed to the institution for immediate release to the students or immediate application to the students' accounts at the institution. Requests for program funds may be made at any time during the academic year prior to the reallocation deadline.

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

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J. Randel (Jerry) Hill

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



22 TAC §520.8

The Texas State Board of Public Accountancy (Board) proposes an amendment to §520.8, concerning Retroactive Disbursements.

The amendment to §520.8 replaces certain terms with the word "shall" and deletes one word.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that is easier to read and understand.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 1, 2013. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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

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

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

§520.8. Retroactive Disbursements.

(a) A student may receive a disbursement after the end of his or her period of enrollment if the student:

(1) owes funds to the institution for the period of enrollment for which the award is being made; or

(2) received a student loan that is still outstanding for the period of enrollment for which the award is being made.

(b) Funds that are disbursed retroactively shall [~~must~~] either be used to pay the student's outstanding balance, including interest, from his or her period of enrollment at the institution or to make a payment against an outstanding loan received during that period of enrollment. Under no circumstances shall [~~are~~] funds [~~to~~] be released to the student.

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

Filed with the Office of the Secretary of State on January 17, 2013.



22 TAC §520.9

The Texas State Board of Public Accountancy (Board) proposes an amendment to §520.9, concerning Advisory Committee.

The amendment to §520.9 will replace terms with acronyms defined in §501.55.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that is easier to read and understand.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 1, 2013. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board

may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

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

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

§520.9. *Advisory Committee.*

(a) The board shall appoint an advisory committee to advise the board concerning assistance provided under this chapter to fifth-year accounting students.

(1) The advisory committee shall consist of:

(A) a presiding officer named by the board;

(B) one representative named by the board;

(C) one representative named by the TSCPA [~~Texas Society of Certified Public Accountants~~];

(D) a Texas representative of the American Accounting Association named by that organization;

(E) one representative named by the National Association of Black Accountants;

(F) one representative named by the American Association of Hispanic Certified Public Accountants; and

(G) two representatives named by the Texas Higher Education Coordinating Board who are the chairs of accounting departments at Texas colleges and universities, one of whom shall [~~must~~] be a representative of a private college or university and the other shall [~~must~~] be a representative from a college or university that primarily serves minority students.

(2) The costs of participation on an advisory committee of a member representing a particular organization or agency shall be borne by that member or the organization or agency the member represents.

(b) The duties of the advisory committee shall be to advise the board on:

(1) how the scholarships provided for under this chapter [~~subchapter~~] should be established and administered to best promote the public purpose of the scholarships;

(2) the amount of money needed to adequately fund the scholarship program; and

(3) setting priorities among the factors identified by §520.4 of this chapter [~~title~~] (relating to Eligible Students).

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: March 3, 2013
For further information, please call: (512) 305-7842



22 TAC §520.10

The Texas State Board of Public Accountancy (Board) proposes an amendment to §520.10, concerning Recognition of Accounting Firms Hiring and Offering Internships.

The amendment to §520.10 replaces the word "may" with "shall."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

- A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.
- B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.
- C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that is easier to read and understand.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 1, 2013. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health,

safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

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

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

§520.10. Recognition of Accounting Firms Hiring and Offering Internships.

Accounting firms shall [may] be recognized by the board for their contribution to the training and hiring of minority or disadvantaged accounting students. The board may publish in its Board Report the names of accounting firms providing internships or hiring two or more disadvantaged or minority students each calendar year.

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

Filed with the Office of the Secretary of State on January 17, 2013.

TRD-201300182
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: March 3, 2013
For further information, please call: (512) 305-7842



CHAPTER 525. CRIMINAL BACKGROUND INVESTIGATIONS

22 TAC §525.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §525.1, concerning Applications for the Uniform CPA Examination, Issuance of the CPA Certificate, or a License.

The amendment to §525.1 will replace terms with acronyms defined in §501.55 and make other non-substantive changes to rule text.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

- A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.
- B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.
- C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that is easier to read and understand.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 1, 2013. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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

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

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

§525.1. Applications for the UCPAE [Uniform CPA Examination], Issuance of the CPA Certificate, or a License.

(a) The board may deny an applicant's [a candidate's] application to take the UCPAE [CPA exam] for a period not to exceed five years from the date of application, and shall not issue the CPA certificate, or issue an initial license, or renew a license, and shall revoke a current license, if the board finds that the applicant or licensee has been convicted of a felony offense or upon revocation of applicant's or licensee's felony probation, parole, or mandatory supervision.

(b) The board may deny an applicants' [a candidates'] application to take the UCPAE [CPA exam], the application to issue the CPA certificate, or the application to issue an initial license, if the board finds that the applicant [individual applying] has been convicted of a felony or misdemeanor offense which directly relates to the practice of public accountancy. In determining whether the felony or misdemeanor conviction directly relates to such duties and responsibilities, the board shall consider:

- (1) the nature and seriousness of the crime;

- (2) the relationship of the crime to the board's statutory responsibility to ensure that persons professing to practice public accountancy maintain high standards of competence and integrity in light of the reliance of the public on professional accounting services; and the business community in particular, on the reports and other services;

- (3) the extent to which a license to practice public accountancy might offer an opportunity to engage in further criminal activity of the same type as that in which the person was previously involved;

- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a CPA [certified public accountant] or public accountant;

- (5) fraud or dishonesty as an element of the offense; and

- (6) all conduct indicating a lack of fitness to serve the public as a professional accountant.

(c) In addition to the factors stated in subsection (b) of this section, the board shall consider [Section] §53.023 (Texas Occupations Code) in determining the present fitness of an applicant [a candidate] who has been convicted of a crime.

(d) Because an accountant is often placed in a position of trust with respect to client funds, and the public in general relies on professional accounting services; and the business community in particular, rely on the reports and other services of accountants, the Texas State Board of Public Accountancy considers that the following crimes directly relate to the practice of public accountancy:

- (1) any felony or misdemeanor of which fraud or deceit is an essential element;

- (2) any felony or misdemeanor conviction which results in the suspension or revocation of the right to practice before any state or federal agency for a cause which in the opinion of the board warrants its action; and

- (3) any crime involving moral turpitude.

(e) The following procedures shall apply in the processing of an application to take the UCPAE [uniform CPA examination].

- (1) The applicant [candidate] will be asked to respond, under penalty of perjury, to the question if he or she has ever been convicted of a felony or misdemeanor.

- (2) The board may submit identifying information to the Texas Department of Public Safety and or other appropriate agencies on board letterhead requesting conviction records on all applicants [candidates] about whom the executive director finds evidence to warrant a record search.

- (3) The board will review the conviction records of applicants [candidates] and will approve or disapprove applications as the evidence warrants. If the requested information is not provided by the Texas Department of Public Safety and or other appropriate agencies at least 10 days prior to the examination, an applicant [a candidate] may be permitted to take the UCPAE [uniform CPA examination], with his or her scores subject to being voided. An applicant [A candidate] may have his or her scores voided or may be denied the opportunity to take the UCPAE [uniform CPA examination] on the basis of a prior conviction pursuant to a hearing as provided for in the Act.

- (4) The examination eligibility fee of an applicant [a candidate] whose application to take the UCPAE [CPA examination] has been denied under this section or §511.70 of this title (relating to Grounds for Disciplinary Action of Applicants [Candidates]) and who has not taken any portion of the examination shall [will] be refunded.

(f) An applicant who [A candidate that] has not been permitted to sit for the UCPAE [CPA exam] as a result of having been convicted of a felony offense must provide evidence of rehabilitation as the board may request.

(g) The following procedure shall apply in the processing of an application for issuance of the CPA certificate.

(1) The applicant shall [individual will] be asked to respond, under penalty of perjury, to the question if he or she has ever been convicted of a felony or misdemeanor.

(2) The board may submit identifying information to the Texas Department of Public Safety and or other appropriate agencies on board letterhead requesting conviction records on an applicant [individual] requesting issuance of the CPA certificate.

(3) The board shall [will] review the individual applications and the conviction records of applicants and shall [will] approve or disapprove applications as the evidence warrants. No CPA certificate or initial license may be issued to an applicant [individual] whose application for a CPA certificate has been denied. The board may disqualify a person from receiving a CPA certificate or initial license on the basis of a prior conviction pursuant to a hearing as provided for in the Act.

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

Filed with the Office of the Secretary of State on January 17, 2013.

TRD-201300183

J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 3, 2013

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



22 TAC §525.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §525.2, concerning Renewal of a License for Individuals with Criminal Backgrounds.

The amendment to §525.2 will replace terms with acronyms defined in §501.55, clarify subsection (b) making it easier to understand, and make other non-substantive changes to rule text.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that is easier to read and understand.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on March 1, 2013. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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

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

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

§525.2. Application for or Renewal of a License for Applicants or Licensees [Individuals] with Criminal Backgrounds.

(a) The following procedure shall apply when renewing a license annually.

(1) Each licensee shall [will] be asked to respond, under penalty of perjury, to the question if he or she has ever been convicted of a felony or misdemeanor of which the board has not previously been informed. If the licensee responds in the negative and pays the required license fee, a renewal license shall [will] be issued in accordance with established procedures. If the licensee responds affirmatively and pays the required license fee, the board may submit identifying information on board letterhead to the Texas Department of Public Safety and other appropriate agencies requesting conviction records on the licensee [individual].

(2) The board shall [will] review the conviction records and either approve or deny the application for a renewal license as the evidence warrants. The board shall [will] refund any renewal fee submitted if the application is denied. The board may suspend or revoke

or refuse to renew an annual license on the basis of a prior conviction pursuant to a hearing as provided for in the Act.

(b) The board may suspend or revoke or decline to renew a licensee's valid license as a result of a licensee's prior conviction of a crime relevant to the license and/or certificate following the opportunity for a hearing as provided for in the Act. The board may deny an applicant a license or certificate or the opportunity to sit for the UCPAE or void the applicant's grades as a result of an applicant's prior conviction of a crime relevant to the license and/or certificate pursuant to the opportunity for a hearing as provided for in the Act. Following such an action, [In the event the board suspends or revokes a valid license or denies an individual a license or certificate or the opportunity to sit for the uniform CPA examination or voids the grades of a candidate because of an individual's prior conviction of a crime and the relationship of the crime to the license and certificate pursuant to a hearing as provided for in the Act] the board shall notify the person in writing:

(1) of the reasons for the suspension, revocation, denial, or disqualification;

(2) that the applicant or licensee [individual], after exhausting administrative appeals, may file an action in district court in Travis County, for review of the evidence presented to the board and its decision in accordance with the Act;

(3) that an applicant or licensee shall [individual must] begin the judicial review within 30 days after the board's decision is final and appealable; and

(4) that the earliest date an applicant or licensee [individual] may appeal is when a motion for rehearing is denied, or when the time for filing a motion for rehearing has expired and no motion has been filed.

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

Filed with the Office of the Secretary of State on January 17, 2013.

TRD-201300184

J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: March 3, 2013

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



TITLE 34. PUBLIC FINANCE

PART 11. OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER

CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §310.6

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) proposes amendments to §310.6, concerning Local Contributions, to impose an interest charge, based on the assumed rate of investment returns, on any portion of an increased contribution rate elected by a par-

ticipating department in the System that precedes by more than six months the date the increased rate is implemented. The proposed amendments would also delete obsolete provisions, with no substantive effect on the law.

The board proposes amendments to §310.6 for the purpose of reimbursing the System when an increased rate by a participating department may have an actuarial impact on the System, because the System does not have the benefit of investing the contributions during all of the period for which the increased rate is valid.

Sherri Walker, Commissioner, has determined that for the first five years the amended rule is in effect there would be no cost to local governments as a result of adoption of the amended rule unless a local government voluntarily chose to be included within the provision of the rule. There would be no cost to the state as a result of adoption of the amended rule, but additional revenue to the System would occur if a local government chose to be included within the provision of the rule.

Ms. Walker has also determined for each year of the first five years the amended rule is in effect the public benefits will be to ensure that the System is reimbursed by an amount by which actuarial obligations of the System are increased as a result of a retroactive increase in the contributions of a participating department. A participating department currently has the ability under §310.6 to elect to contribute at any rate that is greater than the minimum provided by the rule as it now exists, and an increased rate is payable for a period determined as provided by an agreement between the department and the System, unless the department determines a lesser rate on notification of the Commissioner.

Small businesses or individuals would not be affected by the adoption of the amended rule.

Comments on the proposed amendments may be submitted in writing to Sherri Walker, Commissioner, Office of the Fire Fighters' Pension Commissioner, P.O. Box 12577, Austin, Texas 78711-2577, not later than 2:00 p.m., Central Standard Time, on March 1, 2013. Comments may also be submitted electronically to rules@ffpc.state.tx.us or faxed to (512) 936-3480.

The amendments are proposed under the statutory authority of Texas Government Code, Title 8, Subtitle H, Chapter 865, §865.014, which specifically authorizes the Board to prescribe contribution rates for departments participating in the System.

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

§310.6. Local Contributions.

(a) Each [Except as otherwise provided by this section, each] participating department shall contribute at least \$36 [\$12] for each month or a portion of a month a member performs emergency services for the department. A participating department may elect to make contributions at a greater rate by notifying the commissioner of the rate and signing an amended agreement to contribute at that rate. Contributions are payable for each month or portion of a month of service regardless of whether the member receives a year of qualified service. Contributions are payable as provided by §865.014, Texas Government Code, and §310.8 of this title.

(b) A department that elects to increase its contribution rate for more than six months before the month in which an amended agreement to contribute at that rate is signed is liable for an interest charge, payable on the first billing that becomes due after the change, on the number of months that exceeds six months before the month in which the agree-

ment is signed, at the assumed rate of investment return adopted by the state board for the period covered by those months.

~~[(b) The minimum contribution rate for a department that begins participation in the pension system after September 1, 2005, is \$36.]~~

~~[(c) The minimum monthly contribution rate for a department participating in the pension system on September 1, 2005, is subject to increase according to the following schedule:]~~

~~[(1) on September 1, 2006, \$16;]~~

~~[(2) on September 1, 2007, \$20;]~~

~~[(3) on September 1, 2008, \$24;]~~

~~[(4) on September 1, 2009, \$28;]~~

~~[(5) on September 1, 2010, \$32; and]~~

~~[(6) on September 1, 2011, \$36.]~~

~~[(c) [(d)] Contributions are payable during a period of temporary disability or when leave is taken under the Family and Medical Leave Act of 1993 (29 U.S.C. §2601 et seq.), but are not payable when a member is performing active military duty, although the member receives credit for qualified service when performing active military duty.~~

~~[(d) [(e)] Contributions required under this section are not considered compensation to the members for whom they are made.~~

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

Filed with the Office of the Secretary of State on January 17, 2013.

TRD-201300133

Sherri Walker

Commissioner

Office of the Fire Fighters' Pension Commissioner

Earliest possible date of adoption: March 3, 2013

For further information, please call: (512) 936-3464



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 90. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §90.3, concerning definitions; and §90.42, concerning standards for facilities serving persons with an intellectual disability or related conditions, in Chapter 90, Intermediate Care Facilities for Persons with an Intellectual Disability or Related Conditions.

BACKGROUND AND PURPOSE

The purpose of the amendments is to increase medical professional service options for intermediate care facilities for individuals with an intellectual disability or related conditions (ICF/IID), as allowed by current federal regulations, which state at 42 Code of Federal Regulations, §483.460(a)(4), that "to the extent permitted by state law, the facility may utilize physician assistants and nurse practitioners to provide physician services as described in this section."

Existing §90.42 allows only a physician to provide written and oral orders for medication, participate on an interdisciplinary team reviewing issues related to restraint, implement policies and procedures for automatic stop orders for medications, and order specialized nutritional support. DADS proposes to amend §90.42 to allow a licensed healthcare professional acting within the scope of the professional's practice to perform these services as well. The proposed amendment will also allow a licensed health care professional acting within the professional's scope of practice to delegate to unlicensed staff the provision of specialized nutritional support.

The proposed amendment to §90.3, relating to definitions, clarifies that the term "health care professional" includes a physician, licensed nurse, physician assistant, podiatrist, dentist, physical therapist, speech therapist, and occupational therapist; and "licensed nurse" includes a licensed vocational nurse, registered nurse, or advanced practice nurse. In addition, definitions were added for "advanced practice nurse," "licensed vocational nurse," and "registered nurse."

SECTION-BY-SECTION SUMMARY

The proposed amendment to §90.3 adds definitions for "advanced practice nurse," "health care professional," "licensed nurse," "licensed vocational nurse," and "registered nurse."

The proposed amendment to §90.42 updates terminology used in the section, adds physician assistant and advanced practice nurse to the interdisciplinary team that identifies factors and conditions that must be taken into account if the use of restraint is considered for a facility resident, and adds a physician assistant or licensed nurse to those who may review the identified factors and conditions as required of the facility at least annually. The proposed amendment also adds a health care professional acting within the scope of his or her practice to provisions regarding pharmacy services and a health care professional acting within the scope of his or her practice or a person to whom a health care professional has properly delegated performance of a task to provisions regarding specialized nutrition support.

FISCAL NOTE

David Cook, DADS Interim Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses, because ICF/IID providers have always been required to use a physician to provide written and oral orders for medication, participate on the interdisciplinary team, develop and implement policies and procedures for automatic stop orders for medications, and order specialized nutritional support for individuals residing in their facilities. Allowing other licensed

health care professionals to perform these services should not increase the cost to providers.

PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is that individuals may receive services from a health care professional other than a physician if the professional is acting within the scope of the professional's practice.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS 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 Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kim Lammons at (512) 438-2264 in DADS Regulatory Services. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-12R03, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 12R03" in the subject line.

SUBCHAPTER A. INTRODUCTION

40 TAC §90.3

STATUTORY AUTHORITY

The amendment is proposed 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; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate intermediate care facilities for individuals with an intellectual disability or related conditions; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendment implements Texas Government Code, §531.0055 and §531.021; Texas Health and Safety Code,

§§252.001 - 252.208; and Texas Human Resources Code, §161.021.

§90.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise. Individual subchapters may have definitions that are specific to the subchapter.

- (1) Addition--The addition of floor space to a facility.
- (2) Administrator--The administrator of a facility.
- (3) Administration of medication--Removing a unit or dose of medication from a previously dispensed, properly labeled container; verifying the medication with the medication order; giving the proper medication in the proper dosage to the proper resident at the proper time by the proper administration route; and recording the time of administration and dosage administered.
 - (4) Advanced practice nurse--A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301, and authorized by the Texas Board of Nursing to practice as an advanced practice nurse.
 - (5) [(4)] Applicant--A person applying for a license under Texas Health and Safety Code, Chapter 252.
 - (6) [(5)] APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.
 - (7) [(6)] Attendant personnel--All persons who are responsible for direct and non-nursing services to residents of a facility. (Nonattendant personnel are all persons who are not responsible for direct personal services to residents.) Attendant personnel come within the categories of: administration, dietitians, medical records, activities, housekeeping, laundry, and maintenance.
 - (8) [(7)] Behavioral emergency--A situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by a resident:
 - (A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the resident or others;
 - (B) has not abated in response to attempted preventive de-escalatory or redirection techniques;
 - (C) is not addressed in a behavior therapy program; and
 - (D) does not occur during a medical or dental procedure.
 - (9) [(8)] Care and treatment--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and provide reasonable safety, all consistent with the preferences of the resident.
 - (10) [(9)] Centers for Medicare and Medicaid Services (CMS)--The federal agency that provides funding and oversight for the Medicare and Medicaid programs. CMS was formerly known as the Health Care Financing Administration (HCFA).
 - (11) [(10)] Change of ownership--A change of 50 percent or more in the ownership of the business organization that is licensed to operate the facility, or a change in the federal taxpayer identification number.
 - (12) [(11)] Controlled substance--A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Health and Safety Code, Chapter 481, as amended, or the Federal Controlled Substance Act of 1970, Public Law 91-513, as amended.

(13) [(12)] Controlling person of an applicant, license holder, or facility--A person who, acting alone or with others, has the ability to directly or indirectly influence or direct the management, expenditure of money, or policies of an applicant or license holder or of a facility owned by an applicant or license holder.

(A) The term includes:

(i) a person who owns at least 5 percent interest in the applicant or license holder;

(ii) a spouse of the applicant or license holder;

(iii) an officer or director, if the applicant or license holder is a corporation;

(iv) a partner, if the applicant or license holder is a partnership;

(v) a trustee or trust manager, if the applicant or license holder is a trust;

(vi) a person that operates or contracts with others to operate the facility;

(vii) a person who, because of a personal, familial, or other relationship is in a position of actual control or authority over the facility, without regard to whether the person is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility; and

(viii) a person who would be a controlling person of an entity described in clauses (i) - (vii) of this subparagraph, if that entity were the applicant or license holder.

(B) The term 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 a facility.

(14) [(13)] DADS--The Department of Aging and Disability Services.

(15) [(14)] Dangerous drug--Any drug as defined in the Texas Dangerous Drug Act, Health and Safety Code, Chapter 483.

(16) [(15)] Department--The Department of Aging and Disability Services.

(17) [(16)] Designee--A state agency or entity with which DADS contracts to perform specific, identified duties related to the fulfillment of a responsibility prescribed by this chapter.

(18) [(17)] Drug (also referred to as medication)--A drug is:

(A) any substance recognized as a drug in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(C) any substance (other than food) intended to affect the structure or any function of the human body; and

(D) any substance intended for use as a component of any substance specified in subparagraphs (A) - (C) of this paragraph. It does not include devices or their components, parts, or accessories.

(19) [(18)] Establishment--A place of business or a place where business is conducted which includes staff, fixtures, and property.

(20) [(19)] Facility--A facility serving persons with an intellectual disability or related conditions licensed under this chapter as described in §90.2 of this subchapter (relating to Scope) and required to be licensed under the Texas Health and Safety Code, Chapter 252.

(21) [(20)] Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(22) Health care professional--A person licensed, certified, or otherwise authorized to administer health care, for profit or otherwise. The term includes a physician, licensed nurse, physician assistant, podiatrist, dentist, physical therapist, speech therapist, and occupational therapist.

(23) [(21)] Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I.

(24) [(22)] Immediate and serious threat--A situation in which there is a high probability that serious harm or injury to residents could occur at any time or has already occurred and may occur again if residents are not protected effectively from the harm or if the threat is not removed.

(25) [(23)] Immediate jeopardy to health and safety--A situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the facility.

(26) [(24)] Incident--An unusual or abnormal event or occurrence in, at, or affecting the facility or the residents of the facility.

(27) [(25)] Inspection--Any on-site visit to or survey of a facility by DADS for the purpose of inspection of care, licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(28) [(26)] Large facility--Facilities with 17 or more resident beds.

(29) [(27)] Legal guardian--A person who is appointed guardian under §693 of the Probate Code.

(30) [(28)] Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(31) [(29)] License--Approval from DADS to establish or operate a facility.

(32) [(30)] License holder--A person who holds a license to operate a facility.

(33) Licensed nurse--A licensed vocational nurse, registered nurse, or advanced practice nurse.

(34) [(31)] Life Safety Code (also referred to as the Code or NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(35) [(32)] Life safety features--Fire safety components required by the Life Safety Code such as building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, sprinkler systems, etc.

(36) [(33)] Local authorities--A local health authority, fire marshal, building inspector, etc., who may be authorized by state law,

county order, or municipal ordinance to perform certain inspections or certifications.

(37) [(34)] Local health authority--The physician having local jurisdiction to administer state and local laws or ordinances relating to public health, as described in the Texas Health and Safety Code, §§121.021 - 121.025.

(38) LVN--Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(39) [(35)] Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services shall not include contracts solely for maintenance, laundry, or food services.

(40) [(36)] Metered dose inhaler--A device that delivers a measured amount of medication as a mist that can be inhaled.

(41) [(37)] Oral medication--Medication administered by way or through the mouth and does not include sublingual or buccal.

(42) [(38)] Person--An individual, firm, partnership, corporation, association, or joint stock company, and any legal successor of those entities.

(43) [(39)] Personal hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(44) [(40)] Qualified mental retardation professional (QMRP)--A person with at least a bachelor's degree who has at least one year of experience working with persons with an intellectual disability or related conditions.

(45) [(41)] Quality-of-care monitor--A registered nurse, pharmacist, or dietitian, employed by DADS, who is trained and experienced in long-term care regulations, standards of practice in long-term care, and evaluation of resident care and functions independently of DADS Regulatory Services Division.

(46) Registered nurse--A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(47) [(42)] Remodeling--The construction, removal, or relocation of walls and partitions, or construction of foundations, floors, or ceiling-roof assemblies, including expanding of safety systems (i.e., sprinkler systems, fire alarm systems), that will change the existing plan and use areas of the facility.

(48) [(43)] Renovation--The restoration to a former better state by cleaning, repairing, or rebuilding, e.g., routine maintenance, repairs, equipment replacement, painting.

(49) [(44)] Restraint--A manual method, or a physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, that restricts freedom of movement or normal access to the resident's body. This term includes a personal hold.

(50) [(45)] Seclusion--The involuntary separation of a resident away from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

(51) [(46)] Small facilities--Facilities with 16 or fewer resident beds.

(52) [(47)] Specialized staff--Personnel with expertise in developmental disabilities.

(53) [(48)] Standards--The minimum conditions, requirements, and criteria with which a facility will have to comply to be licensed under this chapter.

(54) [(49)] Topical medication--Medication applied to the skin but does not include medication administered in the eyes.

(55) [(50)] Universal precautions--The use of barrier precautions by facility personnel to prevent direct contact with blood or other body fluids that are visibly contaminated with blood.

(56) [(51)] Vaccine preventable diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(57) [(52)] Well-recognized church or religious denomination--An organization which has been granted a tax-exempt status as a religious association from the state or federal government.

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

Filed with the Office of the Secretary of State on January 14, 2013.

TRD-201300087

Kenneth L. Owens
General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: March 3, 2013

For further information, please call: (512) 438-4466



SUBCHAPTER C. STANDARDS FOR LICENSURE

40 TAC §90.42

STATUTORY AUTHORITY

The amendment is proposed 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; Texas Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate intermediate care facilities for individuals with an intellectual disability or related conditions; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendment implements Texas Government Code, §531.0055; Texas Health and Safety Code, §§252.001 - 252.208; and Texas Human Resources Code, §161.021.

§90.42. *Standards for Facilities Serving Individuals [Persons] with an Intellectual Disability or Related Conditions.*

(a) Purpose. The purpose of this section is to promote the public health, safety, and welfare by providing for the development, establishment, and enforcement of standards:

(1) for the habilitation of individuals [persons] based on an active treatment program in facilities governed by this chapter [institutions defined and covered in this section]; and

(2) for the establishment, construction, maintenance, and operation of such facilities that view an intellectual disability and related conditions [institutions that view an intellectual disability and other developmental disabilities] within the context of a developmental model in accordance with the principle of normalization.

(b) Philosophy. A facility [Facilities] regulated by the standards in this section is [are] known as an intermediate care facility [facilities] for individuals [persons] with an intellectual disability or [and] related conditions (ICF/IID) [in Texas (ICF/ID)]. Individuals [Persons] in these facilities have the same civil rights, equal liberties, and due process of law as other individuals, plus the right to receive active treatment and habilitation. Facilities shall provide and promote services that enhance the development of such individuals, maximize their achievement through an interdisciplinary approach based on developmental principles, and create an environment, to the extent possible, that is normalized and normalizing.

(c) Standards. Each ICF/IID must [facility serving persons with an intellectual disability or related conditions shall] comply with regulations promulgated by the United States Department of Health and Human Services in Title 42, Code of Federal Regulations (CFR), Part 483, Subpart I, §§483.400 - 483.480, [is titled, "Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded."] Additionally, DADS adopts by reference the federal regulations governing conditions of participation for the ICF/IID [ICF/ID] program as specified in 42 CFR, Part 483, Subpart I, §§483.410, 483.420, 483.430, 483.440, 483.450, 483.460, 483.470, and 483.480 as licensing standards.

(d) Precertification training conference for new providers of service. Each new provider must attend the precertification/prelicensure training conference prior to licensing by DADS. The purpose of the training is to assure that providers of services are familiar with the licensing requirements and to facilitate the delivery of quality services to residents in facilities serving persons with an intellectual disability or related conditions.

(1) A new provider is an entity which has not had at least one year of administering services in a facility serving persons with an intellectual disability or related conditions in Texas. All new providers must attend a precertification training conference prior to the life safety code survey.

(2) Each new provider must designate at least one individual who will be involved with the direct management of the facility to attend the training conference prior to a health survey being scheduled.

(3) Each new provider will be given a training schedule. DADS will schedule training sessions, and the date, time, and location of the training will be indicated on the schedule.

(e) Additional requirements.

(1) A facility must develop and implement policies and procedures for reporting abuse, neglect, and exploitation to the Department of Family and Protective Services and reporting other incidents to DADS.

(2) In the area of cardiopulmonary resuscitation (CPR), the following apply:

(A) At least one staff person per shift and on duty must be trained by a CPR instructor certified by an organization such as the American Heart Association or the Red Cross.

(B) The facility must ensure that staff members maintain their certification as recommended by such organizations.

(3) In the area of behavior management, seclusion of residents may not be used.

(4) In the area of physical restraints, the following apply:

(A) A facility must not use restraint:

(i) in a manner that:

(I) obstructs the resident's airway, including the placement of anything in, on, or over the resident's mouth or nose;

(II) impairs the resident's breathing by putting pressure on the resident's torso;

(III) interferes with the resident's ability to communicate;

(IV) extends muscle groups away from each other;

(V) uses hyperextension of joints; or

(VI) uses pressure points or pain;

(ii) for disciplinary purposes, that is, as retaliation or retribution;

(iii) for the convenience of staff or other residents; or

(iv) as a substitute for effective treatment or habilitation.

(B) A facility may use restraint:

(i) in a behavioral emergency;

(ii) as an intervention in a behavior therapy program that addresses inappropriate behavior exhibited voluntarily by a resident;

(iii) during a medical or dental procedure if necessary to protect the resident or others and as a follow-up after a medical or dental procedure or following an injury to promote the healing of wounds;

(iv) to protect the resident from involuntary self-injury; and

(v) to provide postural support to the resident or to assist the resident in obtaining and maintaining normative bodily functioning.

(C) In order to decrease the frequency of the use of restraint and to minimize the risk of harm to a resident, a facility must ensure that the interdisciplinary team:

(i) with the participation of a physician, or a physician assistant or an advanced practice nurse acting within the scope of his or her practice, identifies:

(I) the resident's known physical or medical conditions that might constitute a risk to the resident during the use of restraint;

(II) the resident's ability to communicate; and

(III) other factors that must be taken into account if the use of restraint is considered, including the resident's:

- (-a-) cognitive functioning level;
- (-b-) height;
- (-c-) weight;
- (-d-) emotional condition (including whether the resident has a history of having been physically or sexually abused); and

(-e-) age;

(ii) documents the conditions and factors identified in accordance with clause (i) of this subparagraph, and, as applicable, limitations on specific restraint techniques or mechanical restraint devices in the resident's record; and

(iii) reviews and updates with a physician, physician assistant, or licensed nurse [registered nurse, or licensed vocational nurse], at least annually or when a condition or factor documented in accordance with clause (ii) of this subparagraph changes significantly, information in the resident's record related to the identified condition, factor, or limitation.

(D) If a facility restrains a resident as provided in subparagraph (B) of this paragraph, the facility must:

(i) take into account the conditions, factors, and limitations on specific restraint techniques or mechanical restraint devices documented in accordance with subparagraph (C)(ii) and (iii) of this paragraph;

(ii) use the minimal amount of force or pressure that is reasonable and necessary to ensure the safety of the resident and others;

(iii) safeguard the resident's dignity, privacy, and well-being; and

(iv) not secure the resident to a stationary object while the resident is in a standing position.

(E) If a facility uses restraint in a circumstance described in subparagraph (B)(i) or (ii) of this paragraph:

(i) the facility may use only a personal hold in which the resident's limbs are held close to the body to limit or prevent movement and that does not violate the provisions of subparagraph (A)(i) of this paragraph; and

(ii) if a resident rolls into a prone or supine position during restraint, the facility must transition the resident to a side, sitting, or standing position as soon as possible. The facility may only use a prone or supine hold:

(I) as a transitional hold, and only for the shortest period of time necessary to ensure the protection of the resident or others;

(II) as a last resort, when other less restrictive interventions have proven to be ineffective; and

(III) except in a small facility, when an observer who is trained to identify risks associated with positional, compression, or restraint asphyxiation, and with prone and supine holds is ensuring that the resident's breathing is not impaired.

(F) A facility must release a resident from restraint:

(i) as soon as the resident no longer poses a risk of imminent physical harm to the resident or others; or

(ii) if the resident in restraint experiences a medical emergency, as soon as possible as indicated by the medical emergency.

(G) If a facility restrains a resident as provided in subparagraph (B)(i) of this paragraph, the facility must obtain a physician's order authorizing the restraint by the end of the first business day after the use of restraint.

(H) A facility must ensure that each resident and the resident's legally authorized representative are notified of the DADS rules and the facility's policies related to restraint and seclusion.

(I) A facility may adopt policies that allow less use of restraint than allowed by the rules of this chapter.

(5) In the area of pharmacy services, the following applies.

(A) All pharmacy services must comply with the Texas State Board of Pharmacy requirements, the Texas Pharmacy Act, and rules adopted thereunder, the Texas Controlled Substances Act, and Texas Health and Safety Code, Chapter 483 (relating to Dangerous Drugs).

(B) All medications must be ordered orally or in writing by a health care professional acting within the scope of his or her practice [physician, dentist, or podiatrist]. Oral [Verbal] orders may be taken only by a licensed nurse, a pharmacist, physician assistant, or [another] physician, and must be immediately transcribed and signed by the individual taking the order. Oral [Verbal] orders must be signed by the health care professional who ordered the medication [physician, dentist, or podiatrist] within seven working days after issuing the order.

(C) The facility, with input from the consultant pharmacist and a health care professional acting within the scope of his or her practice [physician], must develop and implement [policies and] procedures regarding automatic stop orders for medications. These procedures must be utilized when the order for a medication does not specify the number of doses to be given or the time for discontinuance or re-order.

(6) Specialized nutrition support (delivery of parenteral nutrients and enteral feedings by nasogastric, gastrostomy, or jejunostomy tubes[, etc.]) must be given: [in accordance with physician's orders by a registered or licensed nurse. Proper technique must be utilized when giving nutritional support.]

(A) by a health care professional acting within the scope of his or her practice or by a person to whom a health care professional has properly delegated performance of the task; and

(B) in accordance with an order issued by a health care professional acting within the scope of his or her practice.

(7) In the area of self-administration of medication and emergency medication kits, the following apply.

(A) Residents who have demonstrated the competency for self-administration of medications must have access to and maintain their own medications. They must have an individual storage space that permits them to store their medications under lock and key.

(B) Residents may participate in a self-administration of medication training program if the interdisciplinary team determines that self-administration of medications is an appropriate objective. Residents participating in a self-administration of medication training program must have training in coordination with and as part of the resident's total active treatment program. The resident's training plan must be evaluated as necessary by a licensed nurse. The supervision and implementation of a self-administration of medication training program may be conducted by personnel described in §90.43(a)(1), (3), and (4) of this subchapter (relating to Administration of Medication).

(C) A facility may maintain a supply of controlled substances in an emergency medication kit for a resident's emergency medication needs, as outlined under §90.324 and §90.325 of this chapter (relating to Emergency Medication Kit and Controlled Substances).

(8) In the area of communicable diseases, the facility must have written policies and procedures for the control of communicable diseases in employees and residents. When any reportable communicable disease becomes evident, the facility must report in accordance with Communicable Disease and Prevention Act, Texas Health and Safety Code, Chapter 81, or as specified in 25 TAC §§97.1 - 97.13 (relating to Control of Communicable Diseases) and 25 TAC §§97.131 - 97.146 [§§97.131 - 97.136] (relating to Sexually Transmitted Diseases Including Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)) and in the publication titled, "Reportable Diseases in Texas," Publication 6-101a (Revised 1987). The local health authority should be contacted to assist the facility in determining the transmissibility of the disease and, in the case of employees, the ability of the employee to continue performing his duties. The facility must have written policies and procedures for infection control, which include implementation of universal precautions as recommended by the Centers for Disease Control and Prevention (CDC).

(9) In the area of water activities, the facility must assure the safety of all individuals who participate in facility-sponsored events. For the purpose of this section, a water activity is defined as an activity which occurs in or on water that is knee deep or deeper on the majority of individuals participating in the event. To assure the safety of all individuals who participate, the requirements in subparagraphs (A) - (F) of this paragraph apply.

(A) The facility must develop a policy statement regarding the water sites utilized by the facility. Water sites include, but are not limited to, lakes, amusement parks, and pools.

(B) A minimum of one staff person with demonstrated proficiency in cardiopulmonary resuscitation (CPR) must be on duty and at the site when individuals are involved in water activities.

(C) A minimum of one person with demonstrated proficiency in water life saving skills must be on duty and at the site when activities take place in or on water that is deep enough to require swimming for life saving retrieval. This person must maintain supervision of the activity for its duration.

(D) A sufficient number of staff or a combination of staff and volunteers must be available to meet the safety requirements of the group and/or specific individuals.

(E) Each individual's program plan must address each person's needs for safety when participating in water activities includ-

ing, but not necessarily limited to, medical conditions; physical disabilities and/or behavioral needs which could pose a threat to safety; the ability to follow directions and instructions pertaining to water safety; the ability to swim independently; and, when called for, special precautions.

(F) If the interdisciplinary team recommends the use of a flotation device as a precaution for any individual to engage in water activities, it must be identified and precautions outlined in the individual program plan. The device must be approved by the United States Coast Guard or be a specialized therapy flotation device utilized in the individual's therapy program.

(10) In the area of communication, a facility may not prohibit a resident or employee from communicating in the person's native language with another resident or employee for the purpose of acquiring or providing care, training, or treatment.

(11) In the area of physical exams, a facility shall ensure that a resident is given at least one physical exam on a yearly basis by:

(A) a person licensed to practice medicine in accordance with Texas Occupations Code, Chapter 155 (relating to License to Practice Medicine);

(B) a person licensed as a physician assistant in accordance with Texas Occupations Code, Chapter 204 (relating to Physician Assistants); or

(C) a person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301 (relating to Nurses), and authorized by the Texas Board of Nursing to practice as an advanced practice nurse.

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

Filed with the Office of the Secretary of State on January 14, 2013.

TRD-201300088

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: March 3, 2013

For further information, please call: (512) 438-4466



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 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §40.5

The Texas Animal Health Commission withdraws the proposed amendment to §40.5 which appeared in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8130).

Filed with the Office of the Secretary of State on January 16, 2013.

TRD-201300122

Gene Snelson

General Counsel

Texas Animal Health Commission

Effective date: January 16, 2013

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



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 85. VEHICLE STORAGE FACILITIES

16 TAC §§85.200, 85.709, 85.710, 85.725, 85.1003

The Texas Department of Licensing and Regulation withdraws the proposed amendments to §§85.200, 85.709, 85.710, 85.725, and 85.1003 which appeared in the September 14, 2012, issue of the *Texas Register* (37 TexReg 7250).

Filed with the Office of the Secretary of State on January 18, 2013.

TRD-201300189

Brian Francis

Deputy Executive Director

Texas Department of Licensing and Regulation

Effective date: January 18, 2013

For further information, please call: (512) 475-4879



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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER X. CITRUS GREENING QUARANTINE

4 TAC §§19.615 - 19.622

The Texas Department of Agriculture (the department) adopts new §§19.615 - 19.622, to establish a quarantine to contain and combat a recently discovered infestation of citrus greening ("*Candidatus Liberibacter asiaticus*"), also known as Huanglongbing (HLB), an exotic incurable, lethal disease that is dangerous to citrus trees and many related plants and that is vectored by the Asian citrus psyllid (ACP), *Diaphorina citri* Kuwayama (Homoptera: Psyllidae). New §19.618 is adopted with changes to the proposed text as published in the December 7, 2012, issue of the *Texas Register* (37 TexReg 9561) and will be republished. New §19.618 is adopted with a change to subsection (a)(3) to clarify that regulated articles subject to any seizure orders issued by the department must also meet the requirements of subsection (a)(3). New §§19.615 - 19.617 and 19.619 - 19.622 are adopted without changes and will not be republished.

This quarantine is adopted because the department and the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) have confirmed the detection of citrus greening in a commercial orange grove and an adjacent commercial grapefruit grove in San Juan, Texas, in Hidalgo County. The newly detected infestation, which is the first known instance of citrus greening in Texas, represents a serious risk to the state's citrus fruit and citrus nursery industries and residential citrus trees. The department believes that establishment of this adopted quarantine on a permanent basis is both necessary and appropriate in order to effectively combat and prevent the spread of citrus greening to non-infected areas, including to other commercial citrus groves, citrus nursery plant production areas and residential citrus in Texas and other states.

New §19.615 states the basis for the quarantine and defines the quarantined pest. New §19.616 designates the areas subject to quarantine. New §19.617 provides that an article subject to the quarantine, or regulated article, is any article described as a regulated article by Title 7, Code of Federal Regulations (CFR) §301.76-2. New §19.618 provides restrictions on the movement of articles subject to the quarantine. New §19.619 provides consequences for failure to comply with quarantine restrictions. New

§19.620 provides an appeal process for certain agency actions taken against a person for failure to comply with quarantine restrictions or requirements. New §19.621 provides procedures for handling discrepancies or other inconsistencies in textual descriptions in this subchapter with graphic representations. New §19.622 provides requirements for treatment of citrus nursery stock in the citrus zone, prior to shipment within and outside of the citrus zone.

The department declared a temporary emergency quarantine for citrus greening on January 13, 2012, to quarantine a five-mile area surrounding the initial detection site. Revisions of the temporary emergency quarantine were filed and published in the *Texas Register*. On August 14, 2012, the department filed an updated temporary emergency quarantine, published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6827), that made the department's quarantine consistent with USDA regulations found in 7 CFR, Part 301, Subpart--Citrus Greening and Asian Citrus Psyllid, §§301.76 - 301.76-11, and with Federal Order DA-2012-30 issued by USDA-APHIS on August 9, effective September 1, 2012.

The citrus and nursery industries are in peril because without the adoption of the quarantine action on a permanent basis, USDA could quarantine the entire state of Texas and, as a result, important export markets for citrus plants could be lost and all citrus plants would be subject to more costly production in enclosed structures under stringent requirements prior to export from the state. This quarantine takes necessary steps to prevent the spread of the infection, thus protecting the state's citrus fruit and nursery crops, agricultural industries of vital importance to the state of Texas.

No public comments were received on the proposal.

The new sections are adopted under the Texas Agriculture Code, §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; and §12.020, which authorizes the department to assess administrative penalties for violations of Chapter 71.

§19.618. *Restrictions on Production, Movement or Distribution of Articles Subject to the Quarantine.*

(a) In addition to other restrictions that may apply:

(1) In a quarantined area, any regulated article intended for interstate movement, distribution or sale shall conform to:

(A) the requirements of 7 CFR §301.76; and

(B) those requirements of §19.622 of this subchapter (relating to Mandatory Treatment of Citrus Nursery Plants in the Citrus Zone) that apply to all regulated articles intended for interstate movement; or

(2) In a quarantined area, any regulated article intended for intrastate movement, distribution or sale:

(A) shall not be moved, except as specified in this subchapter; and

(B) shall conform to the requirements of §19.622 of this subchapter that apply to any regulated article produced or under production in the citrus zone, that is intended either for intrastate sale or for commercial or noncommercial distribution or movement.

(3) Regulated articles seized pursuant to any department order shall either be:

(A) held without further movement within or outside the quarantined area and treated with a department approved systemic pesticide (soil drench) labeled for the control of Asian citrus psyllid and for use on those plants, in accordance with that label, for the duration of the quarantine maintaining the plants free of Asian citrus psyllid; or

(B) moved within the quarantined area under the conditions of a special permit or compliance agreement issued by the department; or

(C) destroyed.

(b) Transitory movement of regulated articles through a quarantined area shall be done only in a sealed, insect-proof container that shall not remain in the quarantined area beyond the time required for simple transit.

(c) Movement of regulated articles into a quarantined area shall be conducted as follows.

(1) Except as covered by subsection (b) of this section, movement of regulated articles into a quarantined area must be performed under a compliance agreement with the department.

(2) Retail purchasers who take regulated articles purchased outside of a quarantined area directly to their home or business inside the quarantined area and permanently plant the regulated article promptly at that address are exempt from paragraph (1) of this subsection.

(d) Propagation, sale or distribution of regulated articles.

(1) Any person who propagates regulated articles in a quarantined area, other than for personal noncommercial use on the same property, or who sells, distributes or moves regulated articles, shall do so only under a special permit or a compliance agreement with the department.

(2) Under a special permit or compliance agreement from the department, regulated articles may be moved intrastate out of a quarantined area, if the regulated articles are compliant with all production, treatment, recordkeeping and shipment requirements that apply to regulated articles intended for interstate movement, as provided in 7 CFR §301.76 and in the "Interstate Movement of Citrus and other Rutaceous Plants For Planting From Areas Quarantined for Citrus Canker, Citrus Greening, or Asian Citrus Psyllid" as published by the United States Department of Agriculture, Animal and Plant Health Inspection Service (USDA-APHIS), Plant Protection and Quarantine. A copy of the requirements may be obtained by contacting the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866.

(e) Detached citrus fruit originating within a quarantined area may be moved outside the quarantined area provided the fruit is treated, harvested, transported and packed under the conditions outlined in the August 9, 2012, Federal Order (DA-2012-30) issued by the USDA-

APHIS, Plant Protection and Quarantine, entitled "Quarantine for '*Can-didatus Liberibacter asiaticus*' Causal Agent of Citrus Greening (CG)".

(f) To request a special permit, a compliance agreement, or a copy of applicable departmental or federal requirements, contact the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866.

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

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Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 33. FEES

4 TAC §33.2

The Texas Animal Health Commission (commission) adopts new §33.2, concerning Certificate of Veterinary Inspection, without changes to the proposed text as published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8123). The rule will not be republished.

Elsewhere in this issue of the *Texas Register*, the commission contemporaneously repeals §59.11. The rule is repealed because the subject matter is moved to §33.2 as it is better located within the fee chapter. The Certificate of Veterinary Inspection fee process, structure and amount are not changing.

No comments were received regarding adoption of the new rule.

STATUTORY AUTHORITY

The new section is adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. Under §161.060, the commission may charge a fee, as provided by commission rule, for an inspection made by the commission. During the 82nd Texas Legislative Session, House Bill 1992 was passed which provides the commission with broader based fee assessment authority. HB 1992 amends §161.060 which will allow the commission to set and collect a fee for most services provided, including: 1) inspecting animals or facilities; 2) obtaining samples from animals for disease diagnostic test; 3) testing animals for disease; 4) disease prevention, control/eradication and treatment efforts; 5) services related to the transport of livestock; 6) control and eradication of ticks and other pests; and 7) any other service for which the commission may incur a cost.

Section 161.0601 authorizes the commission through rulemaking to issue and to set the fee for a certificate of veterinary inspection for the transport of domestic and exotic livestock and fowl. Furthermore, the commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals,

and domestic fowl from disease. The commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061. As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054.

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

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Gene Snelson

General Counsel

Texas Animal Health Commission

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CHAPTER 35. BRUCELLOSIS

SUBCHAPTER A. ERADICATION OF BRUCELLOSIS IN CATTLE

4 TAC §35.4

The Texas Animal Health Commission (commission) adopts amendments to §35.4, concerning Entry, Movement, and Change of Ownership, without changes to the proposed text as published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8123). The rule will not be republished.

The purpose of the amendment is to add an exception to the identification requirement for adult cattle going to slaughter.

The commission recently adopted identification requirements that all sexually intact cattle that are parturient or post parturient or 18 months of age and older changing ownership within Texas shall be officially identified with commission-approved permanent identification. The commission is considering an exception to this requirement. Basically, commission personnel may exempt from the permanent identification requirement beef cattle presented for sale at a livestock market if, upon consultation with market ownership or management, it is determined that the animal's physical condition makes the handling required to apply permanent identification unsafe or injurious in nature. Also, beef cattle exempted from the permanent identification requirement under this subsection must be sold and consigned to a state or federally approved slaughter establishment and movement may be permitted by commission representatives.

The commission received three comments on the proposal. The commission also received a number of letters during and since the comment period closed which were more generally focused on frustration with the tagging requirement and how it is impacting the individual cattle producer or the livestock markets through which the animals are sold, but are not germane to the proposed amendment.

The commission received a comment letter from Texas and Southwestern Cattle Raisers Association. They reiterated their position that the commission should have considered more flexible options for identification such as a market backtag for cattle going to slaughter. Specifically, with this proposed exemption, they felt like the need for commission inspector approval to qualify would create a burden for those cattle producers who take their cattle direct to slaughter. This concern was also echoed in a comment letter from the Farm and Ranch Freedom Alliance. They felt that it created a burden for those producers that take their cattle direct to slaughter. The Livestock Marketing Association of Texas sent in comments supportive of the amendment; however, they felt that the cost of permanent identification applied in cattle going to slaughter would outweigh the benefit.

The commission appreciates the comments and would like to provide some clarity on the amendment. The commission does consider that the change of ownership provision is triggered by a producer taking his animals direct to slaughter from the herd's premise. The transaction is based off the carcass value of the animal and not the live animal, but most importantly because the producer is taking his animals direct to a slaughter plant they are traceable based on the animals being sold in a lot, which provides the necessary information back to the herd owner. Also, regarding the comment that the identification requirement for cattle going to slaughter outweighs the benefit, it is important to understand that the identification requirement is a safeguard to the Texas cattle industry. Permanent identification applied at change of ownership will provide better traceability than a paper backtag. The agency routinely faces unidentified Texas animals needing to be traced from slaughter surveillance and also receives trace out investigation requests from other states on animals that did not possess permanent identification. When the commission cannot quickly determine the source for the positive animal, then we are forced to look at all animals associated with the positive animal and possibly restrict and test those associated animals in hopes of determining a source. All of this creates a cost to the state and the producer, which can exponentially have a large cost to those involved.

STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. That subsection also provides that the commission also is authorized to adopt any rules necessary to carry out the purposes of this subsection, including rules concerning testing, movement, inspection, and treatment.

Section 161.056 provides that in order to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, the commission may develop and implement an animal identification program

that is consistent with the United States Department of Agriculture's National Animal Identification System. Also, subsection (c) provides that the commission may require the use of official identification numbers assigned as part of the animal identification program for animal disease control, animal emergency management, and other commission programs.

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

Section 161.061 provides that if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

Chapter 163 has statutory authority for Brucellosis control. Section 163.002, entitled "Cooperative Program", provides that "[i]n order to bring about effective control of bovine brucellosis, to allow Texas cattle to move in interstate and international commerce with the fewest possible restrictions, and to accomplish those purposes in the most effective, practical, and expeditious manner, the commission may enforce this chapter and enter into cooperative agreements with the United States Department of Agriculture."

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

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CHAPTER 38. TRICHOMONIASIS

4 TAC §§38.1 - 38.4, 38.6

The Texas Animal Health Commission (commission) adopts amendments to §38.1, concerning Definitions; §38.2, concerning General Requirements; §38.3, concerning Infected Herds; §38.4, concerning Certified Veterinary Practitioners; and §38.6,

concerning Official Trichomoniasis Tests, without changes to the proposed text as published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8126). The rules will not be republished.

The amendments are for the purpose of making changes to the Trichomoniasis Control Program based on recommendations made by the Trichomoniasis Working Group (TWG), which met on May 15, 2012.

Bovine Trichomoniasis (aka Trichomonosis or Trich) is a venereal disease of cattle caused by the protozoa *Trichomonas foetus*. The organism lives in the folds of the prepuce and internal sheath in bulls, and colonizes the vagina, cervix, uterus and oviducts of cows. It causes abortion and extended calving seasons. Bulls will remain persistently infected and spread infection from cow to cow during natural service; however, cows generally clear infection after two to three heat cycles. Bulls over four years old are typically the main reservoir of infection in a herd; this is because older bulls often have deeper preputial folds (crypts) creating a more favorable environment for Trich.

Certain herd management practices are risk factors for infection; commingled grazing or fence-line contact with other herds is one documented risk factor. Control of *T. foetus* in an infected herd includes testing bulls and culling those infected. Although use of younger bulls has been recommended as a control strategy because they have a lower prevalence of infection than older bulls, such use will not eliminate the possibility of infection. Artificial insemination is considered the classic method for controlling venereal diseases of cattle. However, this is often impractical in range cattle operations due to lack of facilities, expertise or management practices. Additionally, annual pregnancy testing and culling of non-pregnant cows can help control herd infection. Also, vaccination of females can decrease duration and severity of infection. If exposure to other risk factors cannot be avoided, vaccination is believed to help reduce economic loss.

The TWG discussed requiring the testing of all bulls in a herd when a cow has been diagnosed positive. The TWG did agree that if a laboratory diagnosis has been made on a cow, fetus or bull, that all bulls in that herd should be placed under quarantine and tested for Trich. The TWG did not want to address a female management program at this time, but if a positive test on routine laboratory screening did show a positive Trich cow in a herd, then all bulls in that herd must test negative for Trich as per existing rule before the herd can be released from quarantine.

The TWG also discussed the maximum transport time for samples - is 96 hours still valid with 48-hour incubation? Does TVMDL also incubate samples for 48 hours even if private veterinarians incubate samples for 48 hours before sending them to the lab for testing? For example, if a vet obtains blood samples on a Friday, incubates over the weekend, and then sends to the lab, does TVMDL incubate for an additional 48 hours before running test? After consultation with TVMDL staff, the commission will extend the maximum shipping time for private vets to 120 hours provided that they indicate on the test chart that the sample has been incubated as per specifications prior to shipping.

The group also recommended allowing laboratory pooled samples for change of ownership and allowing laboratory pooled samples for both releasing tests from quarantine, instead of just one of the tests as it is now.

Regarding Trich Feeding Facility issues, the group agreed to two of the proposals. The first was to allow untested bulls permit-

ted originally to the feeding facility to return to a market for sale to slaughter or to allow bulls to return to market for a test. All untested bulls will be permitted in and out of feeding facilities whether headed direct to slaughter or back to a market. Also, allowing untested bulls that entered a feeding facility on a permit to later be tested at the facility and sold by private treaty/or return to market as tested was not approved by the committee.

No comments were received regarding adoption of the amendments.

STATUTORY AUTHORITY

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

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

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

Section 161.061 provides that if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

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

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Gene Snelson

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CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §§40.1 - 40.3, 40.7

The Texas Animal Health Commission (commission) adopts amendments to §40.1, concerning Definitions; §40.2, concerning General Requirements; and §40.3, concerning Herd Status Plans for Cervidae; and new §40.7, concerning Executive Director Declaration of a CWD Movement Restriction Zone, without changes to the proposed text as published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8130). The rules will not be republished. Elsewhere in this issue of the *Texas Register*, the commission contemporaneously withdraws the previous proposal for §40.5, repeals the existing §40.5, and proposes new §40.5, Movement Requirements for CWD Susceptible Species.

The adopted amendments are for the purpose of revising a number of the current requirements to address recent issues involving CWD.

The commission currently provides a voluntary herd monitored status program for species that are susceptible to CWD. Currently, all breeders of white-tailed deer, through the direction of the Texas Parks and Wildlife Department (TPWD), participate in a CWD monitoring program through either TPWD or the Commission. The Commission is requiring additional cervid species to participate in surveillance for CWD. There have recently been two different CWD issues which greatly affected Texas. The TPWD recently harvested mule deer for CWD surveillance testing with the disclosure of two positive animals in Texas. The Commission acted on recommendations on a strategy to address the risk of exposure of CWD to susceptible species in Texas. The recommendations led to the creation of CWD Movement Restriction Zone(s) with restrictions put in place to protect against the exposure and spread of CWD into additional regions of Texas. These actions are being taken in a coordinated effort by both TPWD and the commission.

Also, the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS) recently announced an interim final rule to establish a national CWD Herd Certification Program and minimum requirements for interstate movement of deer, elk and moose, or cervids, in the United States. Participation in the program will be voluntary. The interim final rule amends the USDA's 2006 final rule which was never put into effect. The amendments to their CWD rule are intended to help control the spread of this disease by establishing acceptable program standards for interstate movement. The federal CWD Herd Certification Program is found in 9 CFR Subchapter B, Part 55.

Also, the commission announced in June that red deer (*Cervus elaphus*) and Sika deer (*Cervus Nippon*) must meet the same entry requirements as other cervid species regulated by the agency such as elk and moose because they were "susceptible species" for CWD. The new entry rules for red deer and Sika deer require they originate from herds with at least five years of participation in an approved CWD monitoring program.

The agency decision was based in part on the disclosure that a farmed red deer herd in Minnesota was confirmed positive for CWD in May of 2012. Furthermore, the USDA released an interim final CWD rule on June 8, 2012, which designates Sika deer and red deer as susceptible species. The USDA rule is intended to establish minimum requirements for interstate movement of deer, elk, moose, and other susceptible cervids, and to also establish a national CWD certification program.

The commission has used a CWD task force of individuals that have provided guidance, counsel, and recommendations to the Commission regarding our CWD program. There is also a Cervid Health Working Group that provides advice to TPWD on their programs which encompass CWD. These members include members of Texas Deer Association, Texas Exotic Wildlife Association, Texas Wildlife Association, members of the Texas Veterinary Medical Diagnostic Laboratory, veterinarians with the United States Department of Agriculture and TPWD along with noted private veterinary practitioners and wildlife biologists. Both groups have jointly convened twice in late Fall to discuss the various issues of concern for the CWD with the positive animals disclosed in West Texas, the changes to the CWD federal program and the need to modify the intrastate program for the exotic susceptible species to make it a more successful and involved surveillance program. Clearly all the changes denoted above have invoked serious concern on protecting our cervid industries and all those that could be affected.

The commission received 57 comments on the proposal and responds to the comments as follows.

The vast majority of comments received by the commission addressed three major issues with the amendments proposed for §40.3. The first area of concern raised by the comments was regarding the federal requirement that a CWD monitored herd needs to have a physical inventory of the herd every three years in order to properly reconcile the inventory. The comments all noted that when dealing with cervid species, particularly with exotic cervids, released into large enclosed pastures, that it is impossible to perform that task. The second issue that the comments addressed related to the lowering of the test age from 16 months to 12 months. The comments focused on the fact that you have a lot more young cervids that might die in this time frame for a variety of natural reasons, but that would not necessarily constitute CWD and it will greatly increase their mortality rate and testing cost. The last of the three major issues raised was regarding the requirement for 100% testing of all mortalities, particularly in regards to the 12-month test age.

These comments all focus on elements that correspond to requirements in the USDA CWD monitoring program in order to move the animals interstate. This program is a voluntary program that is established to allow those participants that choose to move interstate and as such we are constrained to maintain those elements in order to be qualified for interstate movement. The commission would like to note that in regards to the controversy over the physical inventory being done every three years the actual standard used in the rule proposal is that the inventory needs to be done annually by reconciling their inventory with a TAHC employee or agent or by using an accredited veterinarian which does not require a physical inventory. However, for animals seeking to qualify for movement in interstate commerce a complete physical herd inventory must be performed at the time a herd is enrolled and a complete physical herd inventory must be performed for all herds enrolled in the CWD Herd Certifica-

tion Program no more than three years after the last complete physical herd inventory for the herd.

Another issue raised in the comments was regarding the ability of cervids to transit a state's border while in interstate commerce. As part of the federal CWD regulations USDA adopted a federal rule, effective on December 10, 2012, which would preempt a state from prohibiting cervids that transited through a state while being transported from a state of origin to a state of destination. Historically, the commission recognizes that animals moving in interstate commerce with all the proper documentation such as a Certificate of Veterinary Inspection which provides health status and any required tests can transit the state. We will maintain that recognition for any such exotic livestock transiting the state with full and proper documentation. However, those cervids, such as white-tailed or mule deer, and which are classified as indigenous to the state are also subject to the jurisdiction of TPWD and we defer to their jurisdiction on this matter on how they choose to handle white-tailed or mule deer in transiting the state.

The commission also received some comments specific to §40.5. Based on the events this year of having the first positive CWD animals diagnosed in Texas coupled with the detection of CWD in a red deer in Minnesota, the commission has been working with stakeholder groups to try and define an effective surveillance strategy for those susceptible species that are classified as exotic livestock within this state. This has been a long and difficult challenge to try and obtain participation of these types of animals because they are not required to participate in a CWD program like those white-tail and mule under the jurisdiction of TPWD. Because of the nature of the disease and the inability to utilize a live animal test, it creates some very difficult obstacles in terms of providing adequate surveillance to give an industry confidence of being at low risk for exposure. It is not something that is prevalent in the species but the impact of the disease is greatly increased by the association with other similar diseases for cattle, sheep and even humans. CWD is a disease that is being grappled with by a lot of other states in trying to have confidence in their surveillance efforts. Based on the concern that the disclosure of positive animals will greatly impact the local producers and the hunting industries in this state for these animals, the commission and TPWD have worked together to try and address these concerns with affected stakeholders. The white-tailed and mule deer breeders all participate in some type of surveillance program. The commission and industry leaders have worked to try and get a sufficient CWD surveillance program on the exotic side as represented with the current §40.5 and identified as "Testing Requirements for Elk". However, with the addition of Sika and red deer as susceptible species there is a need to modify the program to include them. The commission simply proposed to add them through the most recent proposal which is being withdrawn.

STATUTORY AUTHORITY

The amendments and new section are adopted under the following statutory authority as found in Texas Agriculture Code §161.0541 entitled Elk Disease Surveillance Program. The section provides that the commission by rule may establish a disease surveillance program for elk. Rules adopted under this section must: (1) require each person who moves elk in this state to have elk tested for chronic wasting disease or other diseases as determined by the Commission; (2) be designed to protect the health of the elk population in this state; and (3) include provisions for testing, identification, transportation, and inspection

under the disease surveillance program. The section also provides that a person commits an offense if the person knowingly violates a rule adopted by the Commission under this section. Also, an offense under Subsection (c) is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has previously been convicted of an offense under that subsection, in which event the offense is a Class B misdemeanor.

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

As a control measure, the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048. A person is presumed to control the animal if the person is the owner or lessee of the pen, pasture, or other place in which the animal is located and has control of that place; or exercises care or control over the animal. That is under §161.002.

Section 161.007 provides that if a veterinarian employed by the commission determines that a communicable disease exists among livestock, domestic animals, or domestic fowl or on certain premises or that livestock, domestic animals, or domestic fowl have been exposed to the agency of transmission of a communicable disease, the exposure or infection is considered to continue until the commission determines that the exposure or infection has been eradicated through methods prescribed by rule of the commission. Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice, signed under that authority has the same force and effect as if signed by the entire commission.

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

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CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.8, §51.10

The Texas Animal Health Commission (commission or TAHC) adopts amendments to §51.8, concerning Cattle, and §51.10, concerning Cervidae, without changes to the proposed text as published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8138). The rules will not be republished.

The purpose of the amendments is to change the Bovine Trichomoniasis (Trich) testing requirements and the Cervidae entry requirements.

The Trich control program was an industry driven initiative that was implemented in 2009. The concept included an annual review by TAHC staff and interested stakeholder organizations of the program's rules and policies and to subsequently suggest non-binding recommendations to the commission. The Trich Working Group met on May 15, 2012, to evaluate the Trich program. The group discussed the program overview to date, the management of infected herds, entry requirements, and ultimately discussed the need for possible changes to the program. There were two recommendations for rule changes for the interstate movement of breeding bulls into Texas that the commission considered. The first is to allow a bull to enter Texas on a laboratory pooled negative test sample (no greater than 5 total in sample). The second is to lengthen the time which a test result is valid from 30 days to 60 days to coincide with the existing intrastate time limit for a valid negative test.

The commission announced in June it had been determined that red deer (*Cervus elaphus*) and Sika deer (*Cervus Nippon*) are "susceptible species" for Chronic Wasting Disease (CWD) and therefore must meet the same entry requirements as other cervid species regulated by the agency such as elk and moose. The new entry rules for red deer and Sika deer will require they originate from herds with at least five years of participation in an approved CWD status program. The agency decision was based in part on the disclosure that a farmed Red deer herd in Minnesota was confirmed positive for CWD in May of this year. Also, the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS) recently announced an interim final rule to establish a national CWD Herd Certification Program (HCP) and minimum requirements for interstate movement of deer, elk and moose, or cervids, in the United States. Participation in the program will be voluntary. The interim final rule amends the Agency's 2006 final rule which was never put into effect. These amendments to their CWD rule are intended to help control the spread of this disease by establishing minimum program standards for interstate movement. The federal Chronic Wasting Disease Herd Certification Program is found in 9 CFR Subchapter B, Part 55. As part of that rule change they are establishing that these species need to have participated for a minimum of five years in a CWD approved status program in order to move interstate. In recognition the Commission is amending the entry requirements to remove the three-year standard for

cervid originating from states that had not detected CWD within their borders.

No comments were received regarding adoption of the amendments.

STATUTORY AUTHORITY

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

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

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

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

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CHAPTER 59. GENERAL PRACTICES AND PROCEDURES

4 TAC §59.11

The Texas Animal Health Commission (commission) adopts the repeal of §59.11, concerning Certificate of Veterinary Inspec-

tions, without changes to the proposed text as published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8142). The rule will not be republished.

Elsewhere in this issue of the *Texas Register*, the commission contemporaneously adopts new §33.2, which replaces the repealed rule in a different chapter.

No comments were received regarding adoption of the repeal.

STATUTORY AUTHORITY

The repeal is authorized by the Texas Agriculture Code §161.046, which provides the Commission with authority to adopt rules relating to the protection of livestock, exotic livestock, domestic fowl or exotic fowl, as well as Government Code §2001.039, which authorizes a state agency to repeal a rule.

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

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4 TAC §59.11

The Texas Animal Health Commission (commission) adopts new §59.11, concerning Executive Director Declaration of a High Risk Disease Movement Restriction Zone, without changes to the proposed text as published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8143). The rule will not be republished.

The new section authorizes the Executive Director to issue an order which will classify an area or a county as being high risk for animals to be infected with or exposed to a disease.

The new section provides for definitions in subsection (a) for high risk area or county, hold order, and individual herd plan. Subsection (b) provides that the Executive Director may issue an order to test animals in a high risk area or county based on sound epidemiological principles. Subsection (c) provides the elements contained in the order; subsection (d) contains the testing procedures; subsection (e) provides the notice of the order; and subsection (f) provides a procedure for protesting the individual herd test plan.

No comments were received regarding adoption of the new rule.

STATUTORY AUTHORITY

The new section is adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized by §161.041(b) to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in §161.041 of this code or an

agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061.

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

Section 161.057 provides that the commission by rule may prescribe criteria for classifying areas in the state for disease control. The criteria must be based on sound epidemiological principles. The commission may prescribe different control measures and procedures for areas with different classifications. In subsection (b), the commission by rule may designate as a particular classification an area consisting of one or more counties.

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

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

Filed with the Office of the Secretary of State on January 16, 2013.

TRD-201300121

Gene Snelson

General Counsel

Texas Animal Health Commission

Effective date: February 5, 2013

Proposal publication date: October 12, 2012

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



TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 15. ALTERNATIVE FUELS RESEARCH AND EDUCATION DIVISION SUBCHAPTER B. ALTERNATIVE FUELS CONSUMER REBATE PROGRAM

**16 TAC §§15.101, 15.105, 15.110, 15.125, 15.140, 15.145,
15.150, 15.155, 15.160, 15.165**

The Railroad Commission of Texas (Commission) adopts amendments to §§15.101, 15.105, 15.110, 15.125, 15.140, 15.145, 15.150, 15.155, 15.160, and 15.165, relating to Purpose; Definitions; Establishment; Duration; Application; Rebate Amount; Minimum Efficiency Factor or Performance Standard; Verification; Safety; Disallowance; Refund; Assignment of Rebate; Compliance; Complaints; and Penalties, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9221).

The Commission updates references to the former Alternative Fuels Research and Education Division (AFRED) and the License and Permit Section of the Gas Services Division, to clarify that these administrative units are now part of the Commission's Alternative Energy Division (AED). The Commission also extends eligibility for rebates and incentives to natural gas vehicles and equipment as funds are available for that purpose.

The Commission received no comments on the proposed amendments.

The Commission adopts the amendments under the Texas Natural Resources Code, §113.243, which authorizes the Commission to research, develop, and implement marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers; §113.2435, which authorizes the Commission to establish consumer rebate programs for purchasers of appliances and equipment fueled by LP-gas or other environmentally beneficial alternative fuels for the purpose of achieving energy conservation and efficiency and improving the quality of air in this state and to adopt rules as necessary under that section; §113.248, relating to a civil penalty for violations of a Commission rule for administering or enforcing this subchapter; §113.249, authorizing the attorney general at the request of the Commission to sue to collect a penalty due under this subchapter; and §113.250, relating to a criminal penalty for making and delivering to the Commission a report required under this subchapter that contains false information.

Statutory authority: Texas Natural Resources Code, §§113.243, 113.2435, 113.248, 113.249 and 113.250.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on January 15, 2013.

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

Filed with the Office of the Secretary of State on January 15, 2013.

TRD-201300098

Cristina Martinez Self

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

Effective date: February 4, 2013

Proposal publication date: November 23, 2012

For further information, please call: (512) 475-1295



TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 519. PRACTICE AND PROCEDURE SUBCHAPTER C. PROCEEDINGS AT SOAH

22 TAC §519.42

The Texas State Board of Public Accountancy adopts an amendment to §519.42, concerning Administrative Hearings, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9249). The rule will not be republished.

The amendment revises the procedure for the Board obtaining default judgments in cases before SOAH.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 17, 2013.

TRD-201300166

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 6, 2013

Proposal publication date: November 23, 2012

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



CHAPTER 520. PROVISIONS FOR THE FIFTH-YEAR ACCOUNTING STUDENTS SCHOLARSHIP PROGRAM

22 TAC §520.4

The Texas State Board of Public Accountancy adopts an amendment to §520.4, concerning Eligible Students, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9250). The rule will not be republished.

The amendment would place the grant recipients on notice that if they don't take the exam, they could be required to repay the amount of the scholarship. The rule permits the Executive Director to waive the requirement upon a showing of good cause.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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TRD-201300167

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 6, 2013

Proposal publication date: November 23, 2012

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



CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION SUBCHAPTER A. CONTINUING PROFESSIONAL EDUCATION PURPOSE AND DEFINITIONS

22 TAC §523.102

The Texas State Board of Public Accountancy adopts an amendment to §523.102, concerning CPE Purpose and Definitions, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9251). The rule will not be republished.

The amendment clarifies and updates what is meant by self-study programs, defines what constitutes sponsors of continuing education programs, and relocates the definition of technical and non-technical courses to the definitions section of the rules.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 17, 2013.

TRD-201300142

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 6, 2013

Proposal publication date: November 23, 2012

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



22 TAC §523.103

The Texas State Board of Public Accountancy adopts the repeal of §523.103, concerning Standards for CPE Program Development, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9253). The rule will not be republished.

The repeal transfers the definition of technical and non-technical courses to the definitions section of the rules.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 18, 2013.

TRD-201300196

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 7, 2013

Proposal publication date: November 23, 2012

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



SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

22 TAC §523.110

The Texas State Board of Public Accountancy adopts an amendment to §523.110, concerning Establishment of Required CPE Program Standards, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9254). The rule will not be republished.

The amendment adds references to additional chapters of the Board's rules, updates rule titles, and deletes unnecessary rule references.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 17, 2013.

TRD-201300143

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 6, 2013

Proposal publication date: November 23, 2012

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



22 TAC §523.111

The Texas State Board of Public Accountancy adopts an amendment to §523.111, concerning Required CPE Reporting, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9255). The rule will not be republished.

The amendment adds a rule reference and corrects a rule citation.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 17, 2013.

TRD-201300144

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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Proposal publication date: November 23, 2012

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



22 TAC §523.112

The Texas State Board of Public Accountancy adopts an amendment to §523.112, concerning Required CPE Participation, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9256). The rule will not be republished.

The amendment relocates the requirement for 40 CPE hours prior to re-entry into the workforce in two locations and provides for it in one location in the rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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TRD-201300145

J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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



22 TAC §523.113

The Texas State Board of Public Accountancy adopts an amendment to §523.113, concerning Exemptions from CPE, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9257). The rule will not be republished.

The amendment clarifies the circumstances in which the board may consider granting an exemption from the CPE requirement.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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TRD-201300146

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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



22 TAC §523.114

The Texas State Board of Public Accountancy adopts an amendment to §523.114, concerning Disciplinary Actions Relating to CPE, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9258). The rule will not be republished.

The amendment lengthens the number of years that a licensee is required to retain evidence of continuing professional education from three to five and corrects citations.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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



22 TAC §523.115

The Texas State Board of Public Accountancy adopts an amendment to §523.115, concerning Credits for Instructors and Discussion Leaders, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9259). The rule will not be republished.

The amendment clarifies that the reporting period is a one-year reporting period.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 6, 2013

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



22 TAC §523.116

The Texas State Board of Public Accountancy adopts an amendment to §523.116, concerning Authors of Published Articles and Books, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9260). The rule will not be republished.

The amendment reduces the number of hours from twenty to ten for which a licensee may receive continuing professional education credit for publishing his own articles and books.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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TRD-201300149
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 6, 2013
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For further information, please call: (512) 305-7842



22 TAC §523.117

The Texas State Board of Public Accountancy adopts the repeal of §523.117, concerning Minimum Hours Required Per CPE Reporting Period as a Participant, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9261). The rule will not be republished.

The repeal is necessary in order to relocate rule language to more relevant sections of Chapter 523.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 6, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 305-7842



22 TAC §523.118

The Texas State Board of Public Accountancy adopts an amendment to §523.118, concerning Limitation for Non-Technical Courses, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9262). The rule will not be republished.

The amendment replaces the word "fifty" with "50" and adds punctuation.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842



22 TAC §523.119

The Texas State Board of Public Accountancy adopts an amendment to §523.119, concerning Alternative Sources of CPE, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9262). The rule will not be republished.

The amendment clarifies that the maximum continuing professional education hours from alternative sources may not exceed 50 percent of the hours claimed in any three-year reporting period.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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TRD-201300152

J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 6, 2013
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For further information, please call: (512) 305-7842



22 TAC §523.120

The Texas State Board of Public Accountancy adopts the repeal of §523.120, concerning Standards for CPE Reporting, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9263). The rule will not be republished.

The repeal relocates rule language to more relevant sections of Chapter 523.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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TRD-201300153
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 6, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 305-7842



22 TAC §523.121

The Texas State Board of Public Accountancy adopts an amendment to §523.121, concerning CPE for Non-CPA Owners, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9264). The rule will not be republished.

The amendment is a clarification of the requirements of continuing professional education for non-licensee owners of CPA firms.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 17, 2013.

TRD-201300154
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 6, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 305-7842



SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

22 TAC §523.130

The Texas State Board of Public Accountancy adopts an amendment to §523.130, concerning Ethics Course Requirements, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9265). The rule will not be republished.

The amendment correctly revises the citations in this rule, changing "title" to "chapter", and specifies that compliance with this rule permits licensees to claim an exemption from the continuing professional education requirements.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 17, 2013.

TRD-201300155
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 6, 2013
Proposal publication date: November 23, 2012
For further information, please call: (512) 305-7842



22 TAC §523.131

The Texas State Board of Public Accountancy adopts an amendment to §523.131, concerning Board Approval of Ethics Course Content, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9266). The rule will not be republished.

The amendment clarifies that the ethics courses are required to provide a minimum amount of time for each subject matter and be comprised of one four-hour single session including ten-minute breaks each hour. The amendment also requires up-

dated course materials and course evaluations be provided to the Board when requested.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 17, 2013.

TRD-201300156

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 6, 2013

Proposal publication date: November 23, 2012

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



22 TAC §523.132

The Texas State Board of Public Accountancy adopts an amendment to §523.132, concerning Board Contracted Ethics Instructors, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9267). The rule will not be republished.

The amendment revises the rule to use pre-defined acronyms and allow the Board to approve course education from sources other than a university, college or community college as credit for the ethics requirement.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 17, 2013.

TRD-201300157

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 6, 2013

Proposal publication date: November 23, 2012

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



SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

22 TAC §523.140

The Texas State Board of Public Accountancy adopts an amendment to §523.140, concerning Program Standards, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9268). The rule will not be republished.

The amendment requires that continuing professional education courses provide course content objectives for participants in advance of the course, requires documentation in the final program to support the credit hours, requires self-study courses to include questions at the conclusion of each section, and removes the requirement for the course sponsor to have the course materials reviewed by a third party.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 17, 2013.

TRD-201300158

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 6, 2013

Proposal publication date: November 23, 2012

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



22 TAC §523.141

The Texas State Board of Public Accountancy adopts an amendment to §523.141, concerning Evaluation, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9269). The rule will not be republished.

The amendment replaces the word "should" with the word "shall" and the phrase "some means" with the word "process."

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

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TRD-201300159

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 6, 2013

Proposal publication date: November 23, 2012

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



22 TAC §523.142

The Texas State Board of Public Accountancy adopts an amendment to §523.142, concerning Program Time Credit Measurement for Sponsors, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9270). The rule will not be republished.

The amendment establishes standards for self-study programs.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 17, 2013.

TRD-201300160

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 6, 2013

Proposal publication date: November 23, 2012

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



22 TAC §523.143

The Texas State Board of Public Accountancy adopts an amendment to §523.143, concerning Sponsor's Record, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9271). The rule will not be republished.

The amendment requires continuing professional education program sponsors to retain records of their pre-test data for self-study courses and retain all final exams completed by participants for self-study courses. The amendment also requires that the documentation be retained for at least five years.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 17, 2013.

TRD-201300161

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 6, 2013

Proposal publication date: November 23, 2012

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



22 TAC §523.144

The Texas State Board of Public Accountancy adopts an amendment to §523.144, concerning Board Registered CPE Sponsors, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9272). The rule will not be republished.

The amendment replaces the term "title" with "chapter", revises a rule title, and corrects terms that should be lowercase.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 17, 2013.

TRD-201300162

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 6, 2013

Proposal publication date: November 23, 2012

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



22 TAC §523.145

The Texas State Board of Public Accountancy adopts an amendment to §523.145, concerning Obligations of the Sponsor, without changes to the proposed text as published in the November

23, 2012, issue of the *Texas Register* (37 TexReg 9274). The rule will not be republished.

The amendment replaces the term "title" with "chapter" and put sponsors on notice that they cannot harass or annoy persons in their marketing efforts.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 17, 2013.

TRD-201300163

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 6, 2013

Proposal publication date: November 23, 2012

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



22 TAC §523.146

The Texas State Board of Public Accountancy adopts an amendment to §523.146, concerning Registry of NASBA CPE Sponsors, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9275). The rule will not be republished.

The amendment replaces the word "must" with the word "shall."

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 17, 2013.

TRD-201300164

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 6, 2013

Proposal publication date: November 23, 2012

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



22 TAC §523.147

The Texas State Board of Public Accountancy adopts an amendment to §523.147, concerning Sponsor Review Program, without changes to the proposed text as published in the November 23, 2012, issue of the *Texas Register* (37 TexReg 9275). The rule will not be republished.

The amendment corrects terms that should be lowercase, replaces the term "title" with "chapter", and deletes an unnecessary rule reference.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on January 17, 2013.

TRD-201300165

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 6, 2013

Proposal publication date: November 23, 2012

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



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.

Adopted Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice adopts the review of §163.3, concerning Objectives, pursuant to Texas Government Code §2001.039.

The proposed rule review was published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8859).

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201300134

Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

Filed: January 17, 2013



The Texas Board of Criminal Justice adopts the review of §163.31, concerning Sanctions, Programs, and Services, pursuant to Texas Government Code §2001.039.

The proposed rule review was published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8859).

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201300135

Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

Filed: January 17, 2013



The Texas Board of Criminal Justice adopts the review of §163.36, concerning Mentally Impaired Offender Supervision, pursuant to Texas Government Code §2001.039.

The proposed rule review was published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8859).

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201300136

Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

Filed: January 17, 2013



IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil - December 2012

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of crude oil for reporting period December 2012, is \$68.70 per barrel for the three-month period beginning on September 1, 2012, and ending November 30, 2012. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of December 2012, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period December 2012, is \$2.71 per mcf for the three-month period beginning on September 1, 2012, and ending November 31, 2012. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of December 2012, from a qualified Low-Producing Well, is eligible for 50% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of December 2012, is \$88.25 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of December 2012, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of December 2012, is \$3.44 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of December 2012, from a qualified low-producing gas well.

TRD-201300185
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: January 17, 2013



Notice of Contract Award

The Texas Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO) announces the award of a grant as a result of Request for Applications (RFA) No. AF-G1-2012 to the City of Dallas, 1500 Marilla Street, Dallas, Texas 75201-6318, for funds for approved projects and activities under the Comptroller's State Energy Program for Alternative Fuel Vehicle Grant Program. The total amount of the grant is not to exceed \$50,000.00. The term of the grant is January 4, 2013, through August 31, 2013.

The notice of request for applications was published in the June 8, 2012, issue of the *Texas Register* (37 TexReg 4265).

TRD-201300132
Jason C. Frizzell
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: January 16, 2013



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 01/28/13 - 02/03/13 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/28/13 - 02/03/13 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 02/01/13 - 02/28/13 is 5.00% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 02/01/13 - 02/28/13 is 5.00% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201300224
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 23, 2013



Texas Education Agency

Request for Applications Concerning Preschool Transition Education Training (PTET) Grant Program

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Application (RFA) #701-13-103 from nonprofit or for-profit organizations, regional education service centers, or institutions of higher education.

Description. The purpose of the Preschool Transition Education Training (PTET) grant program is to select a provider to administer statewide and targeted training for parents of preschool children with disabilities. The purpose of the training is to educate parents about their children's disabilities and to provide parents with strategies to assist their children. Training should include strategies for the transition of students from early childhood intervention to programs for preschool children with disabilities to kindergarten. Gaps have been identified in services

to families of children with disabilities related to education for parents about their children's disabilities; strategies for parents to assist their children in the home and community environment; and strategies to navigate the complex and varied sets of services, organizations, funding mechanisms, eligibility criteria, and enrollment and exiting processes designed to provide students with disabilities the skills, knowledge, and abilities to succeed in the early childhood through kindergarten entry environment.

Dates of Project. PTET will be implemented July 1, 2013 - September 30, 2014. Applicants should plan for a starting date of no earlier than July 1, 2013, and an ending date of no later than September 30, 2014.

Project Amount. Approximately \$1 million is available for funding the PTET grant during the July 1, 2013 - September 30, 2014, project period.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the need for the proposed project and the quality of the following: project design, management plan, project services, and the appropriateness of the budget. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The announcement letter and complete RFA and support information and materials will be posted on the TEA Grant Opportunities web page at <http://burlson.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx>. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the PTET RFA, contact Howard Morrison, Division of Federal and State Education Policy, Office of Standards and Programs, TEA, (512) 936-6060. In order to assure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in the program guidelines of the RFA. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by March 14, 2013. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received by the TEA by 5:00 p.m. (Central Time), Thursday, March 21, 2013, to be considered for funding.

TRD-201300226
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: January 23, 2013



Request for Applications Concerning Texas 21st Century Community Learning Centers Grant Program, Cycle 8, Year 1

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-13-107 from local educational agencies (LEAs), including public school districts, open-enrollment charter schools, and regional education service centers; community-based organizations (CBOs); and other public or private entities, nonprofit organizations, city or county government agencies, faith-based organizations, institutions of higher education, for-profit corporations, or a shared service arrangement of two or more agencies, organizations, or entities.

Description. The purpose of the Texas 21st Century Community Learning Centers Grant Program, also known as Texas Afterschool Centers on Education (ACE), Cycle 8, Year 1, is to provide opportunities beyond the regular school day for communities to establish or expand activities in community learning centers that (1) provide opportunities for academic enrichment, including providing tutorial services to help children, particularly students who attend low-performing schools, meet state and local student academic achievement standards in core academic subjects such as reading and mathematics; (2) offer students a broad array of additional services, programs, and activities such as youth development activities; drug and violence prevention programs; counseling programs; art, music, and recreation programs; and technology education programs, all of which are designed to reinforce and complement the regular academic program of participating students; and (3) offer families of students served by community learning centers opportunities for literacy and related educational development. Program activities must be offered only when schools are not in session (before or after school, during holidays, or during summer recess). The program must be carried out in active collaboration with the schools the students attend. Applications must document partnerships between an LEA, a CBO, and other public or private organizations, if appropriate.

Dates of Project. The Texas 21st Century Community Learning Centers Grant Program, Cycle 8, Year 1, will be implemented during the 2013-2014 school year. Applicants should plan for a starting date of no earlier than August 1, 2013, and an ending date of no later than July 31, 2014.

Project Amount. Funding will be provided for approximately 20 projects. Each project will receive a minimum of \$50,000 for the 2013-2014 project period; maximum funds per applicant are \$2.2 million. This project is funded 100 percent from Title IV, Part B, of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the need for the proposed project; the quality of the project design, management plan, project services, and project evaluation; and the appropriateness of the budget. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicant's Conference. Prospective applicants will be provided an opportunity to receive general and clarifying information from TEA about the scope of this RFA on Tuesday, February 26, 2013, in the form of a

pre-recorded webinar. The entire webinar will be digitally recorded and streamed over the Internet. To access the webinar, please visit the TEA website at <http://burlson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" to view the webinar. Pre-webinar questions should be sent to Candace.Ferguson@tea.state.tx.us prior to Tuesday, February 19, 2013.

Requesting the Application. The announcement letter and complete RFA will be posted on the TEA website at <http://burlson.tea.state.tx.us/GrantOpportunities/forms> for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Candace Ferguson, Division of Federal and State Education Policy, TEA, via e-mail at Candace.Ferguson@tea.state.tx.us. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at <http://burlson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Tuesday, March 26, 2013, to be eligible to be considered for funding.

TRD-201300227

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: January 23, 2013



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 4, 2013**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 4, 2013**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the 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: ABF PACKING, INCORPORATED; DOCKET NUMBER: 2011-0691-WQ-E; IDENTIFIER: RN106006125; LOCATION: Dublin, Erath County; TYPE OF FACILITY: meat processing plant; RULE VIOLATED: TWC, §26.121(a)(1) and 30 TAC §321.57, by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state; PENALTY: \$15,550; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Alon USA, LP; DOCKET NUMBER: 2012-0356-IWD-E; IDENTIFIER: RN100250869; LOCATION: Big Spring, Howard County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and (17), and §319.7(d) and Texas Pollutant Discharge Elimination System Permit Number WQ0001768000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations and also by failing to timely submit effluent monitoring results at the intervals specified in the permit; PENALTY: \$17,830; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (432) 570-1359.

(3) COMPANY: Barry Boes dba Boes Cable Ski Lake; DOCKET NUMBER: 2012-1542-EAQ-E; IDENTIFIER: RN106424187; LOCATION: Dripping Springs, Hays County; TYPE OF FACILITY: cable ski lake; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain authorization prior to beginning a regulated activity over the Edwards Aquifer Contributing Zone; PENALTY: \$6,750; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753-1808, (512) 339-2929.

(4) COMPANY: Carlton Anderson; DOCKET NUMBER: 2012-1588-WOC-E; IDENTIFIER: RN106442916; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a) and §30.381(b), TWC, §37.003, and Texas Health and Safety Code, §341.034(b), by failing to obtain a valid public water system operator license prior to performing process control duties in the production, treatment, and distribution of public drinking water; PENALTY: \$761; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: City of Gladewater; DOCKET NUMBER: 2012-1783-PWS-E; IDENTIFIER: RN101176832; LOCATION: Gladewater, Gregg County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.111(i)(7), by failing to correct the performance-limiting factors identified in the May 2012 Mandatory Comprehensive Performance Evaluation corrective action plan; PENALTY: \$1,035; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: City of Gruver; DOCKET NUMBER: 2012-2210-PWS-E; IDENTIFIER: RN102672219; LOCATION: Gruver, Hansford County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the month of June 2012; and 30 TAC §290.109(f)(3) and THSC, §341.031(a), by failing to comply with the Maximum Contaminant Level for total coliform for the months of September and October 2012; PENALTY: \$517; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(7) COMPANY: City of Houston; DOCKET NUMBER: 2012-2020-PST-E; IDENTIFIER: RN102156114; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: City of Laredo; DOCKET NUMBER: 2012-1063-MWD-E; IDENTIFIER: RN101608545; LOCATION: Laredo, Webb County; TYPE OF FACILITY: water treatment plant; RULE VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d) and Texas Pollutant Discharge Elimination System Permit Number WQ0010681001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring reports for the monitoring periods ending April 30, 2011 - July 31, 2011, by the 20th day of the following month; PENALTY: \$1,233; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 707 East Calton Road, Suite 30, Laredo, Texas 78041-3887, (956) 791-6611.

(9) COMPANY: City of Miami; DOCKET NUMBER: 2012-1758-MWD-E; IDENTIFIER: RN101916708; LOCATION: Miami, Roberts County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011027001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limits; PENALTY: \$16,070; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(10) COMPANY: City of Wilmer; DOCKET NUMBER: 2012-1899-PWS-E; IDENTIFIER: RN101414332; LOCATION: Wilmer, Dallas County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(f)(3) and Texas Health and Safety Code, §341.031(a), by failing to comply with the Maximum Contaminant Level for total coliform during the months of February and July 2012; and 30 TAC §290.109(c)(2)(F), by failing to collect at least five routine distribution coliform samples the month following a coliform-positive sample result for the month of March 2012; PENALTY: \$1,215; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2012-1772-AIR-E; IDENTIFIER: RN100219955; LOCATION: Gruver, Hansford County; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Air Permit Number 73394, Special Conditions Number 1, Federal Operating Permit Number O2569, Special Terms and Conditions Number 8, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions. Since this emissions event was avoidable, the

respondent is precluded from asserting an affirmative defense under 30 TAC §101.222; PENALTY: \$25,000; Supplemental Environmental Project offset amount of \$12,500 applied to Borger Independent School District (ISD) - Borger ISD School Bus Replacement Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(12) COMPANY: East Cedar Creek Fresh Water Supply District; DOCKET NUMBER: 2012-1698-MWD-E; IDENTIFIER: RN102185352; LOCATION: Gun Barrel City, Henderson County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011858001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limitations; PENALTY: \$4,800; Supplemental Environmental Project offset amount of \$3,840 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Household Hazardous Waste Clean-up; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: Enrique Garcia; DOCKET NUMBER: 2012-0064-MSW-E; IDENTIFIER: RN106283351; LOCATION: Rio Grande City, Starr County; TYPE OF FACILITY: unauthorized solid waste disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(14) COMPANY: Fresno Investments, Incorporated dba 3 Way Corner Store; DOCKET NUMBER: 2012-1876-PST-E; IDENTIFIER: RN102475225; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-2616; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: GREEN LAND VENTURES, LTD.; DOCKET NUMBER: 2012-1755-WQ-E; IDENTIFIER: RN106433766; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: land development construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.2(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$1,125; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: Harold Tschirhart dba Lake McQueeney Estates; DOCKET NUMBER: 2012-1490-PWS-E; IDENTIFIER: RN101248607; LOCATION: McQueeney, Guadalupe County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(ii) and Texas Health and Safety Code, §341.0315(a)(1), by failing to provide a total storage capacity of 200 gallons per connection; PENALTY: \$775; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: HOLIDAY HILLS COUNTRY CLUB, INCORPORATED; DOCKET NUMBER: 2012-1459-WR-E; IDENTIFIER: RN101598134; LOCATION: Mineral Wells, Palo Pinto County; TYPE OF FACILITY: golf course; RULE VIOLATED: 30 TAC §297.11 and

TWC, §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: \$750; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Jalbhe Investment, Incorporated dba Go Fast Food 1; DOCKET NUMBER: 2012-1967-PST-E; IDENTIFIER: RN101831139; LOCATION: Longview, Gregg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and also by failing to provide proper release detection for the product piping associated with the UST system; PENALTY: \$3,880; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(19) COMPANY: Jeffrey H. Brennan dba P & B Water Corporation and Robin Cove Water Subdivision; DOCKET NUMBER: 2012-1665-PWS-E; IDENTIFIER: RN102953718 (P & B Water) and RN102682150 (Robin Cove Water); LOCATION: Houston, Harris County and Pearland, Brazoria County; TYPE OF FACILITY: public water supply; RULE VIOLATED: P & B Water: 30 TAC §290.106(e), by failing to timely provide the results of annual nitrate/nitrite sampling to the executive director for the 2010 monitoring period; 30 TAC §290.107(e), by failing to timely provide the results of triennial group 5 synthetic organic chemical (SOC) contaminants sampling to the executive director for the January 1, 2008 - December 31, 2010 monitoring period; 30 TAC §290.107(e), by failing to provide the results of sexennial volatile organic chemical (VOC) contaminant sampling to the executive director for the January 1, 2004 - December 31, 2009 monitoring period; 30 TAC §290.106(e) and §290.108(e), by failing to provide the results of triennial minerals, metals, and radionuclides sampling to the executive director for the January 1, 2007 - December 31, 2009 monitoring period; 30 TAC §290.107(e) and §290.113(e), by failing to timely provide the results of triennial sampling for disinfection by-products (DBPs) and SOC contaminants under Methods 504, 515.4, and 531.1 to the executive director for the January 1, 2009 - December 31, 2011 monitoring period; 30 TAC §290.106(e), by failing to provide the results of sexennial sampling for cyanide to the executive director for the January 1, 2006 - December 31, 2011 monitoring period; 30 TAC §290.110(e)(4)(a) and (f)(3), by failing to timely submit a disinfectant level quarterly report to the executive director each quarter by the tenth day of the month following the end of the quarter; Robin Cove Water: 30 TAC §290.106(e), by failing to timely provide the results of annual nitrate sampling to the executive director for the 2009 - 2011 monitoring period; 30 TAC §290.106(e) and §290.108(e), by failing to timely provide the results of triennial sampling for minerals, metals, and radionuclides to the executive director for the January 1, 2008 - December 31, 2010 monitoring period; 30 TAC §290.113(e), by failing to timely provide the results of triennial total trihalomethanes sampling to the executive director for the January 1, 2006 - December 31, 2008 monitoring period; 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay annual public health service fees and/or any associated late fees, for TCEQ Financial Administration Account Number 90200541 for Fiscal Years 2011 and 2012; 30 TAC §290.107(e) and §290.113(e), by failing to timely provide the results of triennial sampling for SOC contaminants and DBPs to the executive director for the January 1, 2009 - December 31, 2011 monitoring period; 30 TAC §290.107(e), by failing to timely provide the results of sexennial VOC contaminant sampling to the executive director for the January 1, 2006 - December 31, 2011 monitoring period; and 30 TAC §290.106(e), by failing to

timely provide the results of triennial cyanide sampling to the executive director for the January 1, 2009 - December 31, 2011 monitoring period; PENALTY: \$1,327; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Lower Colorado River Authority dba Lometa Regional Water; DOCKET NUMBER: 2012-1974-PWS-E; IDENTIFIER: RN101211126; LOCATION: Lometa, Lampasas County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the running annual average; PENALTY: \$345; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(21) COMPANY: Multi-Chem Group, LLC; DOCKET NUMBER: 2012-1753-MLM-E; IDENTIFIER: RN103948733; LOCATION: Sonora, Sutton County; TYPE OF FACILITY: chemical manufacturing facility with associated public water supply; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activity; TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state; 30 TAC §335.4, by failing to prevent the unauthorized discharge and imminent threat of discharge of industrial solid waste into or adjacent to waters in the state; and 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications and obtain written approval from the executive director prior to the construction of a new public water system; PENALTY: \$15,562; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(22) COMPANY: National Geospatial-Intelligence Agency; DOCKET NUMBER: 2012-1494-PST-E; IDENTIFIER: RN101535078; LOCATION: Mineral Wells, Palo Pinto County; TYPE OF FACILITY: property with a backup diesel generator and one underground storage tank (UST); RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide proper release detection for the product piping associated with the UST system; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Noma Kathaleen Hill dba Leaning Oaks Mobile Home Park; DOCKET NUMBER: 2012-1961-PWS-E; IDENTIFIER: RN101207918; LOCATION: Waller, Waller County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; PENALTY: \$2,251; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: R K & L Company and Valley Transit Company, Incorporated; DOCKET NUMBER: 2012-1949-PST-E; IDENTIFIER: RN101647964; LOCATION: Harlingen, Cameron County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2608;

REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(25) COMPANY: Rayburn Country Municipal Utility District; DOCKET NUMBER: 2012-1345-PWS-E; IDENTIFIER: RN101213890; LOCATION: Jasper, Jasper County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(l)(4), by failing to meet the operation, maintenance, and reporting requirements for an issued exception; 30 TAC §290.44(h)(1)(A), by failing to install backflow prevention assemblies at all residences or establishments where an actual or potential contamination hazard exists, as identified in 30 TAC §290.47(i); 30 TAC §290.46(m), (m)(2) and (6), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; and 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to operate the disinfection equipment to maintain a minimum disinfectant residual of 0.5 milligrams per liter total chlorine throughout the distribution system at all times; PENALTY: \$897; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(26) COMPANY: Rimpan, L.L.C. dba Nuway of Joaquin; DOCKET NUMBER: 2012-1774-PST-E; IDENTIFIER: RN102359510; LOCATION: Joaquin, Shelby County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$4,125; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(27) COMPANY: Shahbaz Raza dba Stuckeys 109; DOCKET NUMBER: 2012-1775-PWS-E; IDENTIFIER: RN101244648; LOCATION: Hankamer, Chambers County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(3)(A)(ii), (4)(B), and (f), and Texas Health and Safety Code, §341.031(a), by failing to comply with the Maximum Contaminant Level for total coliform for the months of June and July 2012; and by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine sample during the month of May 2012; and also by failing to collect one raw groundwater source *escherichia coli* sample from the facility's well within 24 hours of notification of a distribution total coliform-positive sample during the month of May 2012; PENALTY: \$1,237; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: Texas Trucking Company, Incorporated; DOCKET NUMBER: 2012-1808-EAQ-E; IDENTIFIER: RN106469976; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: trucking company yard and office; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a Water Pollution Abatement Plan prior to beginning regulated activities over the Edwards Aquifer Recharge Zone; PENALTY: \$6,250; Supplemental Environmental Project offset amount of \$2,500 applied to Austin Parks Foundation - Restoration and Rehabilitation of the Barton Springs Pool Bypass Tunnel; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753-1808, (512) 339-2929.

(29) COMPANY: Voyles, LLC dba Whispering Hills Achievement Center; DOCKET NUMBER: 2012-1892-PWS-E; IDENTIFIER: RN105971121; LOCATION: Flatonia, Fayette County; TYPE OF FACILITY: Behavioral Health Care Center with a public water supply; RULE VIOLATED: 30 TAC §290.109(c)(3)(A)(i), (4)(B), and (f), and Texas Health and Safety Code, §341.031(a), by failing to collect a set of repeat distribution samples within 24 hours of being notified of a total coliform-positive result; also by failing to collect one raw groundwater source *escherichia coli* sample from the facility's two wells within 24 hours of being notified of a distribution total coliform-positive result on a routine sample during the month of May 2012; and also by failing to comply with the Maximum Contaminant Level for total coliform during the month of May 2012; PENALTY: \$827; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753-1808, (512) 339-2929.

(30) COMPANY: Zaradam LLC dba Dry Clean City; DOCKET NUMBER: 2012-1819-MLM-E; IDENTIFIER: RN103967667; LOCATION: Farmers Branch, Dallas County; TYPE OF FACILITY: dry cleaning; RULE VIOLATED: 30 TAC §337.20(e)(3)(A) and Texas Health and Safety Code, §374.053, by failing to install a dike or a secondary containment structure around each dry cleaning unit and around each storage area for dry cleaning solvents, dry cleaning waste, or dry cleaning wastewater; and 30 TAC §335.4, by failing to prevent the unauthorized discharge of industrial hazardous waste; PENALTY: \$3,275; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201300209

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 22, 2013



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

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 opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 4, 2013**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087

and must be **received by 5:00 p.m. on March 4, 2013**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Addie Marlin d/b/a Marlin Marina Water System; DOCKET NUMBER: 2011-2069-PST-E; TCEQ ID NUMBER: RN101196079; LOCATION: 612 Griffin Drive, Freeport, Brazoria County and 622 Griffin Drive, Freeport, Brazoria County; TYPE OF FACILITY: underground storage tank (UST) system and public water system; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the UST system within 30 days of the occurrence of the change or addition; 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and TWC, §5.702 and 30 TAC §290.51(a)(3), by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Account Number 90200461 for Fiscal Years 2007 - 2011; PENALTY: \$3,815; STAFF ATTORNEY: Michael Fishburn, Litigation Division, MC-175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Gayland Matejka d/b/a Lake Limestone Store; DOCKET NUMBER: 2012-0314-PST-E; TCEQ ID NUMBER: RN101669208; LOCATION: 6030 Farm-to-Market 937, Groesbeck, Limestone County; TYPE OF FACILITY: underground storage tank system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: \$2,500; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Harry Wurzbach Retail, Inc. d/b/a Diamond Express 1; DOCKET NUMBER: 2012-1221-PST-E; TCEQ ID NUMBER: RN102237534; LOCATION: 2315 Harry Wurzbach Road, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(C) and (5)(A), by failing to obtain a UST delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of ownership change; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of the discovery; 30 TAC §334.74, by failing to investigate a suspected release of regulated substances within 30 days of discovery; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$22,835; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: KALI INC.; DOCKET NUMBER: 2012-1647-PST-E; TCEQ ID NUMBER: RN102398435; LOCATION: 6001 Grace Lane, Azle, Parker County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d)

and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$7,500; STAFF ATTORNEY: David Terry, Litigation Division, MC-175, (512) 239-0619; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201300211

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 22, 2013



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 4, 2013**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 4, 2013**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: HSR Site Control, LLC; DOCKET NUMBER: 2012-0882-WQ-E; TCEQ ID NUMBER: RN106301054; LOCATION: 280 feet east of Rim Drive and Interstate Highway 10, San Antonio, Bexar County; TYPE OF FACILITY: commercial construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$3,750; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC-175, (512) 239-2053; REGIONAL OFFICE: San

Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Tank Works, Inc. d/b/a Brazos Bend Home & Ranch; DOCKET NUMBER: 2012-1286-PWS-E; TCEQ ID NUMBER: RN101176592; LOCATION: 22930 Farm-to-Market Road 1462, Fort Bend County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106(e), by failing to provide the results for triennial sampling for minerals to the TCEQ's Executive Director for the reporting period from January 1, 2009 - December 31, 2011; 30 TAC §290.106(e), by failing to provide the results of annual nitrate/nitrite sampling to the TCEQ's Executive Director for the 2011 monitoring period; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result on a routine sample, and by failing to provide public notification regarding the failure to conduct repeat sampling; 30 TAC §290.109(c)(2)(F), by failing to collect at least five routine distribution coliform samples the month following a coliform-positive sample result; 30 TAC §290.106(e), by failing to provide the results of annual nitrate/nitrite sampling to the TCEQ's Executive Director for the 2007 - 2010 monitoring periods; 30 TAC §290.106(e), by failing to provide the results for triennial sampling for minerals to the TCEQ's Executive Director for the reporting period from January 1, 2006 - December 31, 2008; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees for TCEQ Financial Administration Account Number 90790184 for Fiscal Years 2010 - 2012; PENALTY: \$1,127; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201300212

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 22, 2013



Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 4, 2013**.

The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 4, 2013**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: DOBANI INC d/b/a Gulf Freeway Shell; DOCKET NUMBER: 2012-1546-PST-E; TCEQ ID NUMBER: RN101781235; LOCATION: 8115 Gulf Freeway, Houston, Harris County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$11,246; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500;

(2) COMPANY: LAKHANI INVESTMENTS, INC. d/b/a Amigos Food Mart; DOCKET NUMBER: 2012-1239-PST-E; TCEQ ID NUMBER: RN102778818; LOCATION: 2816 State Highway 132 North Natalia, Medina County; TYPE OF FACILITY: UST system and a convenience store; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide release detection for the piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$8,876; STAFF ATTORNEY: Cullen McMorrow, Litigation Division, MC 175, (512) 239-0607; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201300210

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 22, 2013



Notice of Water Quality Applications

The following notices were issued on January 11, 2013 through January 18, 2013.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

ESMERALDA SANJUAN has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0012919001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 18,000 gallons per day. The facility is located on the 9800 Block of Deer Trail Drive approximately one mile northwest of the intersection of Farm-to-Market Road 149 and Interstate Highway 45 in Harris County, Texas 77038.

GREENSPORT/SHIP CHANNEL PARTNERS which operates Greens Port Industrial Park, a general warehouse facility, has applied for a renewal of TPDES Permit No. WQ000050900, which authorizes the discharge of treated domestic sewage effluent at a daily average flow not to exceed 360,000 gallons per day via Outfall 003, and the discharge of stormwater on an intermittent and flow variable basis via Outfall 009. The facility is located at 13609 Industrial Road, on a tract of land bounded on the north and east by Industrial Road and on the south by the Houston Ship Channel in the City of Houston, Harris County, Texas 77015.

NORTHLAND JOINT VENTURE has applied for a renewal of TPDES Permit No. WQ0011572001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located approximately 700 feet east of Interstate Highway 45, adjacent to Northland Shopping Center and approximately 1,000 feet south-southeast of the intersection of Interstate 45 and Spring Cypress Road (Farm-to-Market Road 2920) in Harris County, Texas 77373.

WEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 7 has applied for a renewal of TPDES Permit No. WQ0012140001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located at 20356 Desert Willow Drive, at a point 1.9 miles north of Interstate Highway 10, approximately 5,500 feet northwest of the intersection of Fry Road and Franz Road on the southwest bank of South Mayde Creek and approximately 5.9 miles northwest of the intersection of Interstate Highway 10 and State Highway 6 in Harris County, Texas 77449.

PORT OF HOUSTON AUTHORITY has applied for a renewal of TPDES Permit No. WQ0012375001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 22,000 gallons per day. The facility is located at 16203 Peninsula Boulevard, Houston, approximately 3,500 feet upstream of the confluence of Carpenters Bayou and the Houston Ship Channel in Harris County, Texas 77015.

FIRST NATIONAL BANK has applied for a renewal of TCEQ Permit No. WQ0014798001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 46,000 gallons per day via a subsurface area drip dispersal system on 10.39 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located 2,100 feet east-southeast of the intersection of Reed Park Road and Farm-to-Market Road 1431 that is closest to Jonestown in Travis County, Texas 78646.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201300228

Bridget Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 23, 2013

Golden Crescent Workforce Development Board

Public Notice

The Golden Crescent Workforce Development Board's 2013-2017 Strategic and Operational Plan is available for viewing and public comment on the Board's website at www.gcworkforce.org and at its physical location, 120 South Main, Suite #501, Victoria, Texas 77901.

Please contact Mike Milson at (361) 576-5872 or gcjobs@gcworkforce.org with any comments. Comments will be considered through **February 22, 2013**.

TRD-201300229

Henry Guarjardo

Executive Director

Golden Crescent Workforce Development Board

Filed: January 23, 2013

Office of the Governor

Notice of Application and Priorities for the Justice Assistance Grant Program Federal Application

The Governor's Criminal Justice Division (CJD) is preparing its application for the 2013 federal Edward Byrne Justice Assistance Grant Program (JAG). The Federal Fiscal Year (FFY) 2013 allocation to the state of Texas is expected to be \$12 million.

CJD proposes to use the FFY 2013 award to fund initiatives that target violent crimes, organized criminal activity, improve technology, substance abuse diversion programs and enhance border security.

Comments on the application or the priorities may be submitted in writing to Judy Switzer by email at judy.switzer@gov.texas.gov or mailed to the Criminal Justice Division, Office of the Governor, P.O. Box 12428, Austin, Texas 78711. Comments must be received or post-marked no later than 30 days from the date of publication of this announcement in the *Texas Register*.

TRD-201300207

David Zimmerman

Assistant General Counsel

Office of the Governor

Filed: January 22, 2013

Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rate for 3rd Quarter 2012 Healthcare Common Procedure Coding System Update for Physician-Administered Drugs

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 13, 2013, at 1:30 p.m., to re-

ceive comment on the proposed Medicaid payment rate for 3rd Quarter 2012 Healthcare Common Procedure Coding System Update for physician-administered drugs.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rate for the 3rd quarter 2012 HCPCS update regarding physician-administered drugs is proposed to be effective April 1, 2013.

Methodology and Justification. The proposed payment rate was calculated in accordance with:

1 TAC §355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services; and

1 TAC §355.8085, which addresses the reimbursement methodology for physicians and other medical professionals, including medical services, surgery, assistant surgery, and physician-administered drugs/biologics; medical services, surgery, assistant surgery, radiology, laboratory, and radiation therapy.

Briefing Package. A briefing package describing the proposed payment will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after January 30, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rate 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 attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201300199

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: January 22, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rates for 2013 Annual Healthcare Common Procedure Coding System Update

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 13, 2013, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the annual Healthcare Common Procedure Coding System (HCPCS) update.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for HCPCS are proposed to be effective January 1, 2013, for the following services:

- (1) Ambulatory Surgical Centers
- (2) Dental Services
- (3) Durable Medical Equipment, Prosthetics, Orthotics and Supplies
- (4) Medical Services
- (5) Nonclinical Laboratory Services
- (6) Physician-Administered Drugs (Non-Oncology)
- (7) Physician-Administered Drugs (Oncology)
- (8) Hospital Outpatient Imaging Services
- (9) Radiation Therapy
- (10) Radiology Services
- (11) Surgery and Assistant Surgery

Methodology and Justification. The proposed payment rates were calculated in accordance with:

1 TAC §355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics, and supplies;

1 TAC §355.8061, which addresses payment for hospital services;

1 TAC §355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services;

1 TAC §355.8085, which addresses the reimbursement methodology for physicians and other medical professionals, including medical services, surgery, assistant surgery, and physician-administered drugs/biologics; medical services, surgery, assistant surgery, radiology, laboratory, and radiation therapy;

1 TAC §355.8121, which addresses the reimbursement methodology for ambulatory surgical centers; and

1 TAC §355.8441, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps).

The reimbursement rates proposed reflect applicable reductions directed by the 2012 - 2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session (Article II, Health and Human Services Commission, §16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at <http://public.tmhpc.com/FeeSchedules/Default.aspx>.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after January 30, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will 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 attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201300203

Steve Aragon
Chief Counsel

Texas Health and Human Services Commission
Filed: January 22, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rates for Aerosol Treatments

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 13, 2013, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for aerosol treatments.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for aerosol treatments are proposed to be effective April 1, 2013.

Methodology and Justification. The proposed payment rates were calculated in accordance with:

1 TAC §355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services; and

1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners.

The reimbursement rates proposed reflect applicable reductions directed by the 2012 - 2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session (Article II, Health and Human Services Commission, §16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at <http://public.tnhp.com/FeeSchedules/Default.aspx>.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after January 30, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will 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 attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201300200

Steve Aragon
Chief Counsel

Texas Health and Human Services Commission
Filed: January 22, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rates for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Therapeutic Dental Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 13, 2013, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) therapeutic dental services.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) therapeutic dental services are proposed to be effective April 1, 2013.

Methodology and Justification. The proposed payment rates were calculated in accordance with:

1 TAC §355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services; and

1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners; and

1 TAC §355.8441(11), which addresses the reimbursement methodology for dental services under the EPSDT Program.

The reimbursement rates proposed reflect applicable reductions directed by the 2012 - 2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session (Article II, Health and Human Services Commission, §16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at <http://public.tmhp.com/FeeSchedules/Default.aspx>.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after January 30, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will 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 attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201300201
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: January 22, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rates for Evoked Response Tests and Neuromuscular Procedures

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 13, 2013, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for evoked response tests and neuromuscular procedures.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for evoked response tests and neuromuscular procedures are proposed to be effective April 1, 2013.

Methodology and Justification. The proposed payment rates were calculated in accordance with:

1 TAC §355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services; and

1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners.

The reimbursement rates proposed reflect applicable reductions directed by the 2012-2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session (Article II, Health and Human Services Commission, Section 16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at <http://public.tmhp.com/FeeSchedules/Default.aspx>.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after January 30, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will 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 attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201300195
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: January 18, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rates for Medicaid Biennial Calendar Fee Review

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 13, 2013, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Medicaid Biennial Calendar Fee Review.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for Medicaid Biennial Calendar Fee Review are proposed to be effective April 1, 2013, for the following services:

- (1) Clinical Laboratory Services
- (2) E-Codes (Durable Medical Equipment & Supplies)
- (3) Nonclinical Laboratory Services
- (4) Physician-Administered Drugs (Non-oncology)
- (5) Physician-Administered Drugs (Oncology)
- (6) S-Codes (Medical Services (TOS 1), Surgery (TOS 2), & Assistant Surgery (TOS 8))

Methodology and Justification. The proposed payment rates were calculated in accordance with:

1 TAC §355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics, and supplies;

1 TAC §355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services;

1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners;

1 TAC §355.8441, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as Texas Health Steps); and

1 TAC §355.8610, which addresses the reimbursement methodology for clinical laboratory services.

The reimbursement rates proposed reflect applicable reductions directed by the 2012 - 2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session (Article II, Health and Human Services Commission, §16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at <http://public.tmhpc.com/FeeSchedules/Default.aspx>.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after January 30, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will 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 attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201300204
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: January 22, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rates for Neurostimulators

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 13, 2013, at 1:30 p.m., to

receive comment on proposed Medicaid payment rates for neurostimulators.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for neurostimulators are proposed to be effective April 1, 2013.

Methodology and Justification. The proposed payment rates were calculated in accordance with:

1 TAC §355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics, and supplies;

1 TAC §355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services; and

1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners;

1 TAC §355.8121, which addresses the reimbursement methodology for ambulatory surgical centers; and

1 TAC §355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services.

The reimbursement rates proposed reflect applicable reductions directed by the 2012 - 2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session (Article II, Health and Human Services Commission, §16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at <http://public.tmhpc.com/FeeSchedules/Default.aspx>.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after January 30, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will 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 attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201300202



Notice of Public Hearing on Proposed Medicaid Payment Rates for Provisionally Licensed Psychologists

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 13, 2013, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Provisionally Licensed Psychologists (PLPs).

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for PLPs are proposed to be effective April 1, 2013.

Methodology and Justification. The proposed payment rates were calculated in accordance with:

1 TAC §355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services; and

1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners.

The reimbursement rates proposed reflect applicable reductions directed by the 2012 - 2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session (Article II, Health and Human Services Commission, §16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at <http://public.tmhpc.com/FeeSchedules/Default.aspx>.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after January 29, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will 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 attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.



Notice of Public Hearing on Proposed Medicaid Payment Rates for Telemedicine and Telehealth Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 13, 2013, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for telemedicine and telehealth services.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for telemedicine and telehealth services are proposed to be effective April 1, 2013.

Methodology and Justification. The proposed payment rates were calculated in accordance with:

1 TAC §355.7001, which addresses the reimbursement methodology for telemedicine services;

1 TAC §355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services;

1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners;

1 TAC §355.8093, which addresses the reimbursement methodology for physician assistants; and

1 TAC §355.8281, which addresses the reimbursement methodology for advanced practice nurses.

The reimbursement rates proposed reflect applicable reductions directed by the 2012 - 2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session (Article II, Health and Human Services Commission, §16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at <http://public.tmhpc.com/FeeSchedules/Default.aspx>.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after January 30, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will 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 attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to

esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201300205
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: January 22, 2013



Notice of Public Hearing on Proposed Medicaid Payment Rates for Vaccines and Toxoids

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 13, 2013, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for vaccines and toxoids.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for vaccines and toxoids are proposed to be effective April 1, 2013.

Methodology and Justification. The proposed payment rates were calculated in accordance with:

§355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services; and

§355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners.

The reimbursement rates proposed reflect applicable reductions directed by the 2012 - 2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session (Article II, Health and Human Services Commission, §16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at <http://public.tmhpc.com/FeeSchedules/Default.aspx>.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after January 29, 2013. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will 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 attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas

78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201300206
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: January 22, 2013



Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective February 1, 2013.

The purpose of this amendment is to update the fee schedules in the current state plan by including fees for new services and by modifying fees for existing services. Under §355.8085(1)(B), Texas Medicaid Reimbursement Methodology for Physicians and Certain Other Practitioners under Title 1, Part 15, Chapter 355, Subchapter J, of the Texas Administrative Code, the Health and Human Services Commission must review fees for individual services at least once every two years. The Health and Human Services Commission recently has undertaken such a fee review and has determined that amendments to the fee schedule are appropriate.

Accordingly, the amendments will modify the fee schedules in the Texas Medicaid State Plan as a result of Medicaid fee adjustments for:

Physicians and Other Practitioners

The proposed amendment is estimated to result in an additional annual cost of \$989,009 for federal fiscal year (FFY) 2013, consisting of \$586,482 in federal funds and \$402,527 in state general revenue. For FFY 2014, the estimated annual cost is \$1,567,571 consisting of \$920,007 in federal funds and \$647,564 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201300131
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: January 16, 2013



Texas Lottery Commission

Instant Game Number 1496 "3 Times Lucky"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1496 is "3 TIMES LUCKY". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1496 shall be \$1.00 per Ticket.

1.2 Definitions in Instant Game No. 1496.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: \$1.00, \$2.00, \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$100, \$1,000, \$3,000, 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, and 3 SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1496 - 1.2D

PLAY SYMBOL	CAPTION
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$30.00	THIRTY
\$100	ONE HUND
\$1,000	ONE THOU
\$3,000	THR THOU
1	ONE
2	TWO
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
3 SYMBOL	TRP

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier-Prize - A prize of \$1.00, \$2.00, \$3.00, \$5.00, \$10.00, or \$15.00.

G. Mid-Tier-Prize - A prize of \$30.00, \$45.00, or \$100.

H. High-Tier-Prize - A prize of \$1,000 or \$3,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1496), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 1496-0000001-001.

K. Pack - A Pack of "3 TIMES LUCKY" Instant Game Tickets contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages

of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "3 TIMES LUCKY" Instant Game No. 1496 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "3 TIMES LUCKY" Instant Game is determined once the latex on the Ticket is scratched off to expose 11 (eleven) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to the WINNING NUMBER Play Symbol, the player wins PRIZE for that number. If a player reveals a "3" Play Symbol, the player wins TRIPLE the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 11 (eleven) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to five (5) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical Play and Prize symbol patterns. Two (2) Tickets have identical Play and Prize symbol patterns if they have the same Play and Prize symbols in the same positions.

C. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

D. No Ticket will ever contain more than two (2) identical non-winning Prize Symbols.

E. The "3" Play Symbol will never appear in the "WINNING NUMBER" Play Symbol spot.

F. The "3" Play Symbol will only appear as dictated by the prize structure.

G. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

H. The top Prize Symbol will appear on every Ticket unless otherwise restricted.

I. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and \$5).

2.3 Procedure for Claiming Prizes.

A. To claim a "3 TIMES LUCKY" Instant Game prize of \$1.00, \$2.00, \$3.00, \$5.00, \$10.00, \$15.00, \$30.00, \$45.00, or \$100, a claimant shall

sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$45.00, or \$100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "3 TIMES LUCKY" Instant Game prize of \$1,000 or \$3,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "3 TIMES LUCKY" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:
 - a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
 - b. in default on a loan made under Chapter 52, Education Code; or
 - c. in default on a loan guaranteed under Chapter 57, Education Code; and
2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "3 TIMES LUCKY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "3 TIMES LUCKY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 Tickets in the Instant Game No. 1496. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1496 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	800,000	7.50
\$2	160,000	37.50
\$3	200,000	30.00
\$5	80,000	75.00
\$10	30,000	200.00
\$15	20,000	300.00
\$30	20,000	300.00
\$45	1,950	3,076.92
\$100	375	16,000.00
\$1,000	125	48,000.00
\$3,000	10	600,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.57. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1496 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1496, 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-201300218
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: January 22, 2013



Instant Game Number 1498 "Maximum Jackpot"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1498 is "MAXIMUM JACKPOT". The play style is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1498 shall be \$5.00 per Ticket.

1.2 Definitions in Instant Game No. 1498.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 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, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$500, \$1,000, \$100,000, CHERRY SYMBOL, GOLD BAR SYMBOL, LEMON SYMBOL, MOON SYMBOL and STAR SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1498 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FTO
42	FFT
43	FTE
44	FRF
45	FRV
46	FRS

47	FSN
48	FRE
49	FNI
50	FTY
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY
\$500	FIV HUND
\$1,000	ONE THOU
\$100,000	HUN THOU
CHERRY SYMBOL	CHERRY
GOLD BAR SYMBOL	GOLD BAR
LEMON SYMBOL	LEMON
MOON SYMBOL	MOON
STAR SYMBOL	STAR

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100 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 Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1498), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1498-0000001-001.

K. Pack - A Pack of "MAXIMUM JACKPOT" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MAXIMUM JACKPOT" Instant Game No. 1498 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "MAXIMUM JACKPOT" Instant Game is determined once the latex on the Ticket is scratched off to expose 50 (fifty) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the JACKPOT NUMBERS Play Symbols, the player wins the prize for that NUMBER. BONUS ADD UP: The player adds up the two numbers Play Symbols. If the total equals "7", the player wins \$25. BONUS MATCH 3: If a player reveals three identical Play Symbols, the player wins \$100 instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 50 (fifty) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut, and have exactly 50 (fifty) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 50 (fifty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 50 (fifty) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to twenty-two (22) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical Play and Prize Symbol patterns. Two (2) Tickets have identical Play

and Prize Symbol patterns if they have the same symbols in the same positions.

C. Each Ticket will have five (5) unique "JACKPOT NUMBERS" Play Symbols.

D. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

E. Non-winning Prize Symbols will never appear more than three (3) times.

F. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

G. The top Prize Symbol (\$100,000) will appear on every Ticket unless otherwise restricted.

H. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and \$5).

I. BONUS ADD UP: A combination of "7" will only be used as dictated by the prize structure.

J. BONUS ADD UP: BONUS Add Up Play Symbols will not appear in the main play area or in the BONUS Match 3 play spots.

K. BONUS MATCH 3: Three identical BONUS Match 3 Play Symbols will only be used as dictated by the prize structure.

L. BONUS MATCH 3: BONUS Match 3 Play Symbols will not appear in the main play area or in Bonus Add Up play spots.

2.3 Procedure for Claiming Prizes.

A. To claim a "MAXIMUM JACKPOT" Instant Game prize of \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MAXIMUM JACKPOT" Instant Game prize of \$1,000 or \$100,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MAXIMUM JACKPOT" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that

the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "MAXIMUM JACKPOT" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "MAXIMUM JACKPOT" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 Tickets in the Instant Game No. 1498. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1498 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	964,800	8.33
\$10	1,072,000	7.50
\$20	160,800	50.00
\$25	160,800	50.00
\$50	40,736	197.37
\$100	12,730	631.58
\$500	536	15,000.00
\$1,000	180	44,666.67
\$100,000	8	1,005,000.00

*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 3.33. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1498 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1498, 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-201300194
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: January 18, 2013

◆ ◆ ◆
Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) seeks a vendor or vendors that can supply pre-paid fuel cards usable for the purchase of fuel by workforce development program customers at outlets in the Panhandle Workforce Development Area (PWDA).

Cards must be available pre-loaded in various denominations directly from the vendor and limited to fuel purchases only.

PRPC makes no guarantees of purchases from the selected vendor(s) and reserves the right to use alternative methods to purchase fuel.

Interested vendors may obtain a copy of the solicitation packet by contacting Leslie Hardin at (806) 372-3381/(800) 477-4562 or lhardin@theprpc.org. The packet may also be picked up at PRPC's offices located at 415 West Eighth in Amarillo, Texas. The required information should be submitted to PRPC no later than February 15, 2013.

TRD-201300208
 Leslie Hardin
 Workforce Development Facilities, Training and Support Coordinator
 Panhandle Regional Planning Commission
 Filed: January 22, 2013

◆ ◆ ◆
Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on January 22, 2013, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebridge Acquisition, L.P. d/b/a Suddenlink Communications to Amend Its State-Issued Certificate of Franchise Authority, Project Number 41154.

The requested amendment is to expand the service area footprint to include the city limits of Georgetown, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by 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 at (512) 936-7136 or use

Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 41154.

TRD-201300232
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 23, 2013

◆ ◆ ◆
Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 16, 2013, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of T2 Communications L.L.C. for a Service Provider Certificate of Operating Authority, Docket Number 41141.

Applicant intends to provide data, facilities-based, and resale telecommunications services.

Applicant seeks to provide service within the exchanges of AT&T Texas and Verizon Southwest throughout the state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than February 8, 2013. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 41141.

TRD-201300192
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 18, 2013

◆ ◆ ◆
Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 17, 2013, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of 911 Datamaster, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 41142.

Applicant intends to provide 9-1-1 database services *via* its own system and resources or through supplemental contracted systems and resources.

Applicant proposes to provide service in all Texas Local Access Transport Areas and interact with all Incumbent Local Exchange Carriers in Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than February 8, 2013. Hearing and speech-impaired individuals with text telephone (TTY) may contact the com-

mission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 41142.

TRD-201300193
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 18, 2013

◆ ◆ ◆
Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on January 18, 2013, to amend a certificate of convenience and necessity for a proposed transmission line in Wheeler County, Texas.

Docket Title and Number: Application of Golden Spread Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line within Wheeler County. Docket Number 41025.

The Application: The application of Golden Spread Electric Cooperative, Inc. is designated as the Huff 115-kV Transmission Line Project. The facilities include construction of a proposed 115-kV transmission line to a new substation north of Wheeler approximately 4.75 miles north of Highway 152 on the west side of Highway 592. The total estimated cost for the project ranges from approximately \$7.5 million to \$7.9 million depending on the route chosen. The proposed project is estimated to be approximately 12.1 to 14.2 miles in length.

The proposed project is presented with two alternate routes. Any of the routes or route segments presented in the application could, however, be approved by the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is March 4, 2013. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 41025.

TRD-201300216
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 22, 2013

◆ ◆ ◆
Notice of Award

Award of Request for Proposal 473-13-00020 - To act as the Independent Market Monitor for the ERCOT Region

The Public Utility Commission of Texas (PUCT) is issuing an award of proposal for the Independent Market Monitor to act as the PUCT's wholesale electric market monitor to detect and prevent market manipulation strategies and recommend measures to enhance the efficiency of the wholesale market. The IMM operates under the supervision and oversight of the PUCT.

Description of Services:

The contractor shall develop tools to gather and analyze information and data as needed for its market monitoring activities and actively

monitor the wholesale electricity market in the ERCOT power region, pursuant to the direction of the PUCT, including the following:

- Develop tools that assist it in the identification of abnormal events in the ERCOT wholesale electricity market, through the use of market screens and indices;
- Regularly monitor market screens and indices to identify any abnormal wholesale market events;
- Conduct market power tests and other analyses related to market power determination;
- Analyze events that fail the screens and indices and other abnormal activities and market events, using computer simulation and advanced quantitative tools as necessary, and initiate informal discussion of events with ERCOT staff and market participants, if appropriate;
- Conduct investigations of specific market events when anomalies are discovered and prepare reports. Procedures shall be established for PUCT approval of investigations that require significant resources;
- Develop and regularly monitor performance measures to evaluate Market Participant compliance with ERCOT Protocols (Protocols) and the effectiveness of ERCOT's system operations;
- Evaluate whether ERCOT manages the markets it administers in accordance with the Protocols;
- Analyze the Protocols and proposed changes to the Protocols to identify potential reliability impacts, opportunities for strategic manipulation, and other economic inefficiencies; and
- Recommend measures to enhance market efficiency and improve market design.

Name of Contractor:

Potomac Economics
9990 Fairfax Boulevard, Suite 560, Fairfax, Virginia 22030

Duration of Contract and Award Amount:

January 1, 2013 through December 31, 2013

\$3.2 million

TRD-201300186
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 17, 2013



Public Notice of Workshop

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding amending Chapter 21 (relating to Interconnection Agreements for Telecommunications Service Providers) and P.U.C. Substantive Rule §26.272 (relating to Interconnection) on Wednesday, February 27, 2013, at 9:30 a.m. in the Commissioners' Hearing Room (CHR), located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 41057, *Rulemaking to Amend Procedural Rules Chapter 21, Relating to Interconnection Agreements for Telecommunications Service Providers and Substantive Rule §26.272, Relating to Interconnection* has been established for this proceeding. In this workshop the commission seeks input to identify options for the designation of a presiding officer or mediator to process requests made by a party for the arbitration of an interconnection agreement and resolving open issues pursuant to the Federal Telecommunications Act of 1996 (FTA) and

requests made by a party for post-interconnection agreement dispute resolution pursuant to the FTA. In particular, the commission solicits input on whether or not the commission has authority to require parties to an arbitration to use and pay for the services of a neutral, third-party arbitrator or mediator. The commission also seeks input on whether the Chapter 21 rules should be amended to update the causes and types of sanctions that may be imposed in a Chapter 21 proceeding, update references in the Chapter 21 rules for internal consistency, correct references to commission divisions, provide for service of process by email, require electronic filing of all filed documents, and modify the process for issuance of an arbitration award. Finally, the commission seeks input on whether P.U.C. Substantive Rule §26.272 should be amended in order to consolidate into Chapter 21, the rules regarding requests pursuant to the FTA for arbitration of an interconnection agreement, resolving open issues, and post-interconnection agreement dispute resolution.

On Friday, February 1, 2013, the commission shall make available in Central Records under Project Number 41057 a copy of a draft straw-man rule.

This notice is not a formal notice of proposed rulemaking; however, the parties' comments at the workshop will assist the commission in developing a commission policy or determining the necessity for a related rulemaking.

Questions concerning the workshop or this notice should be referred to Liz Kayser, Market Economist, Competitive Markets Division, (512) 936-7390; or Davida Dwyer, Attorney, Legal Division, (512) 936-7256. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201300217
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 22, 2013



Texas Department of Transportation

Notice of Public Hearings on Proposed Restrictions on Use of State Highways

The Texas Department of Transportation (department) will conduct public hearings to receive comments on a proposed restriction initiated by the department establishing lane use restrictions for certain classes of vehicles on the following highways:

1. United States Highway 83 in Hidalgo and Cameron Counties from 0.5 mi. west of Showers Road east of Peñitas to United States Highway 77 in Harlingen;
2. United States Highway 77 in Cameron County from United States Highway 83 in Harlingen to East Loop/University Drive in Brownsville;
3. United States Highway 281 in Hidalgo County from United States Highway 83 in Pharr to north of Russell Rd. in Edinburg.

In accordance with Transportation Code, §545.0651 and 43 TAC §§25.601 - 25.604, the department is proposing to initiate a lane use restriction applicable to trucks, as defined in Transportation Code, §541.201, with three or more axles, and to truck tractors, also as defined in Transportation Code, §541.201, regardless of whether the truck tractor is drawing another vehicle or trailer. The proposed restriction would prohibit those vehicles from using the left or inside lane on the following highways:

1. United States Highway 83 in Hidalgo and Cameron Counties from 0.5 mi. west of Showers Road east of Peñitas to United States Highway 77 in Harlingen;
2. United States Highway 77 in Cameron County from United States Highway 83 in Harlingen to East Loop/University Drive in Brownsville;
3. United States Highway 281 in Hidalgo County from United States Highway 83 in Pharr to north of Russell Rd. in Edinburg.

The proposed restrictions would apply 24 hours a day, 7 days a week, and would allow the operation of those vehicles in a prohibited traffic lane for the purposes of passing another vehicle or entering or exiting the highway.

In accordance with 43 TAC §25.603(f) - (h), the department will evaluate the impact of the proposed restriction's compliance with the requirements of Transportation Code, §545.0651 and 43 TAC §§25.601 - 25.604, and will hold a public hearing to receive comments on the proposed restriction. The hearing, preceded by a 30 minute open house, will be held at the following time and location:

Texas Department of Transportation Conference Center, 600 W. US 83 Expressway, Pharr, Texas 78577, on Wednesday, February 27, 2013 at 6:00 p.m.

All interested citizens are invited to attend any of the hearings and to provide input. Those desiring to make official comments may register starting at 5:30 p.m. Oral and written comments may be presented at any of the public hearings and written comments may be submitted by regular postal mail during the 30-day public comment period. Written comments may be submitted to Mr. Mario R. Jorge, P.E., District Engineer, Pharr District, Texas Department of Transportation, P.O. Box 1717, Pharr, Texas 78577. The deadline for receipt of written comments is 5:00 p.m. on March 4, 2013.

Persons with disabilities who plan to attend the public hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, or non-English speakers, readers, large print, or Braille, are requested to contact Norma Robledo at (956) 702-6161 at least two business days prior to the hearing so that appropriate arrangements can be made. For more information concerning the public hearing, please contact Jesus S. Leal, P.E. at (956) 702-6127.

TRD-201300220
 Joanne Wright
 Deputy General Counsel
 Texas Department of Transportation
 Filed: January 22, 2013



Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Monday, February 25, 2013 at 10:00 a.m. at 200 East Riverside Drive, Room 1A-2, in Austin, Texas to receive public comments on the February 2013 Quarterly Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2013-2016.

The STIP reflects the federally funded transportation projects in the FY 2013-2016 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed February 2013 Quarterly Revisions to the FY 2013-2016 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5033, and on the department's website at:

www.txdot.gov/government/programs/stips

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Friday, February 22, 2013, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive Austin, Texas 78704-1205, (512) 486-5038. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the proposed February 2013 Quarterly Revisions to the FY 2013-2016 STIP to Marc Williams, P.E., Director of Planning, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, March 4, 2013.

TRD-201300221
 Joanne Wright
 Deputy General Counsel
 Texas Department of Transportation
 Filed: January 22, 2013



Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings

Or visit www.txdot.gov, How Do I Find Hearings and Meetings, choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PI-LOT.

TRD-201300219

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: January 22, 2013

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Texas Water Development Board

Applications for January 2013

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #21725, a request from the City of Alpine, 100 N. 13th Street, Alpine, Texas 79830, received September 12, 2012, for a loan in the amount of \$3,500,000 from the Texas Water Development Fund to finance wastewater system improvements, utilizing the pre-design funding option.

Project ID #62548, a request from the City of Carbon, P.O. Box 414, Carbon, Texas 76435-0414, received September 4, 2012, for financial assistance in the amount of \$200,000 in loan forgiveness from the Drinking Water State Revolving Fund to finance planning, acquisition and design costs relating to water system improvements.

Project ID #21606, a request from the Coastal Water Authority, 1801 Main, Suite 800, Houston, Texas 77002, received September 19, 2012, for financial assistance in the amount of \$28,754,000 from the State Participation program to finance water system improvements, utilizing the pre-design funding option (the Luce Bayou Interbasin Transfer Project).

Project ID #62553, a request from the City of DeLeon, P.O. Box 318, DeLeon, Texas 76444-0318, received August 31, 2012, for financial assistance in the amount of \$160,000 consisting of an \$80,000 loan and \$80,000 in loan forgiveness from the Drinking Water State Revolving Fund to finance planning and design costs relating to water system improvements.

Project ID #62560, a request from the City of Goldthwaite, P.O. Box 450, Goldthwaite, Texas 76844-0450, received August 31, 2012, for financial assistance in the amount of \$2,100,296 consisting of a \$1,480,000 loan and \$620,296 in loan forgiveness from the Drinking Water State Revolving Fund to finance water system improvements, utilizing the pre-design commitment option.

Project ID #62537, a request from the City of Hondo, 1600 Avenue M, Hondo, Texas 78861, received July 24, 2012, for financial assistance in the amount of \$533,074, consisting of a \$490,000 loan and \$43,074 in loan forgiveness from the Drinking Water State Revolving Fund to finance planning and design costs relating to water system improvements.

Project ID #62567, a request from the Lake Livingston Water Supply and Sewer Service Corporation, P.O. Box 1149, Livingston, Texas 77351-0020, received September 4, 2012, for financial assistance in the amount of \$3,669,850 consisting of a \$3,130,000 loan and \$539,850 in loan forgiveness from the Drinking Water State Revolving Fund to finance water system improvements, utilizing the pre-design commitment option.

Project ID #62568, a request from the City of Lawn, P.O. Box 246, Lawn, Texas 79530-0246, received September 4, 2012, for financial assistance in the amount of \$200,000 in loan forgiveness from the Drinking Water State Revolving Fund to finance planning, acquisition and design costs relating to water system improvements.

Project ID #62570, a request from the City of New Deal, P.O. Box 126, New Deal, Texas 79350-0126, received September 4, 2012, for financial assistance in the amount of \$142,000 in loan forgiveness from the Drinking Water State Revolving Fund to finance planning, acquisition, and design costs relating to water system improvements.

Project ID #62571, a request from the New Ulm Water Supply Corporation, One East Main, Bellville, Texas 77418, received September 4, 2012, for financial assistance in the amount of \$535,216 in loan forgiveness from the Drinking Water State Revolving Fund to finance water system improvements, utilizing the pre-design commitment option.

Project ID #62575, a request from the City of Reklaw, P.O. Box 250, Reklaw, Texas 75784-0250, received September 4, 2012, for financial assistance in the amount of \$176,810 in loan forgiveness from the Drinking Water State Revolving Fund to finance planning, acquisition, and design costs related to water system improvements.

Project ID #62577, a request from the City of San Juan, 709 S. Nebraska, San Juan, Texas 78589, received August 31, 2012, for financial assistance in the amount of \$2,000,000, consisting of a \$1,400,000 loan and \$600,000 in loan forgiveness from the Drinking Water State Revolving Fund to finance water system improvements, utilizing the pre-design commitment option.

Project ID #62579, a request from the City of Smyer, P.O. Box 203, Smyer, Texas 79367-0203, received September 4, 2012, for financial assistance in the amount of \$369,767, consisting of a \$135,000 loan and \$234,767 in loan forgiveness from the Drinking Water State Revolving Fund to finance water system improvements, utilizing the pre-design commitment option.

Project ID #62582, a request from the Upper Leon River Municipal Water District, 2250 Hwy. 2861, Comanche, Texas 76442, received August 31, 2012, for financial assistance in the amount of \$1,176,272, consisting of a \$775,000 loan and \$401,272 in loan forgiveness from the Drinking Water State Revolving Fund to finance planning and design costs relating to water system improvements.

Project ID #62584, a request from the Valley Water Supply Corporation, 515 Sterley, Spur, Texas 79370, received August 31, 2012, for financial assistance in the amount of \$121,825 in loan forgiveness from the Drinking Water State Revolving Fund to finance planning and design costs relating to water system improvements.

Project ID #62540, a request from the Zavala County Water Control and Improvement District No. 1, P.O. Box 1, La Pryor, Texas 78872, received September 13, 2012, for financial assistance in the amount of \$1,498,785 consisting of a \$760,000 loan and \$738,785 in loan forgiveness from the Drinking Water State Revolving Fund to finance water system improvements, utilizing the pre-design commitment option.

TRD-201300222

Kenneth Petersen

General Counsel

Texas Water Development Board

Filed: January 22, 2013

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How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION

Part 4. Office of the Secretary of State

Chapter 91. Texas Register

40 TAC §3.704.....950 (P)