TEXAS REGISTER

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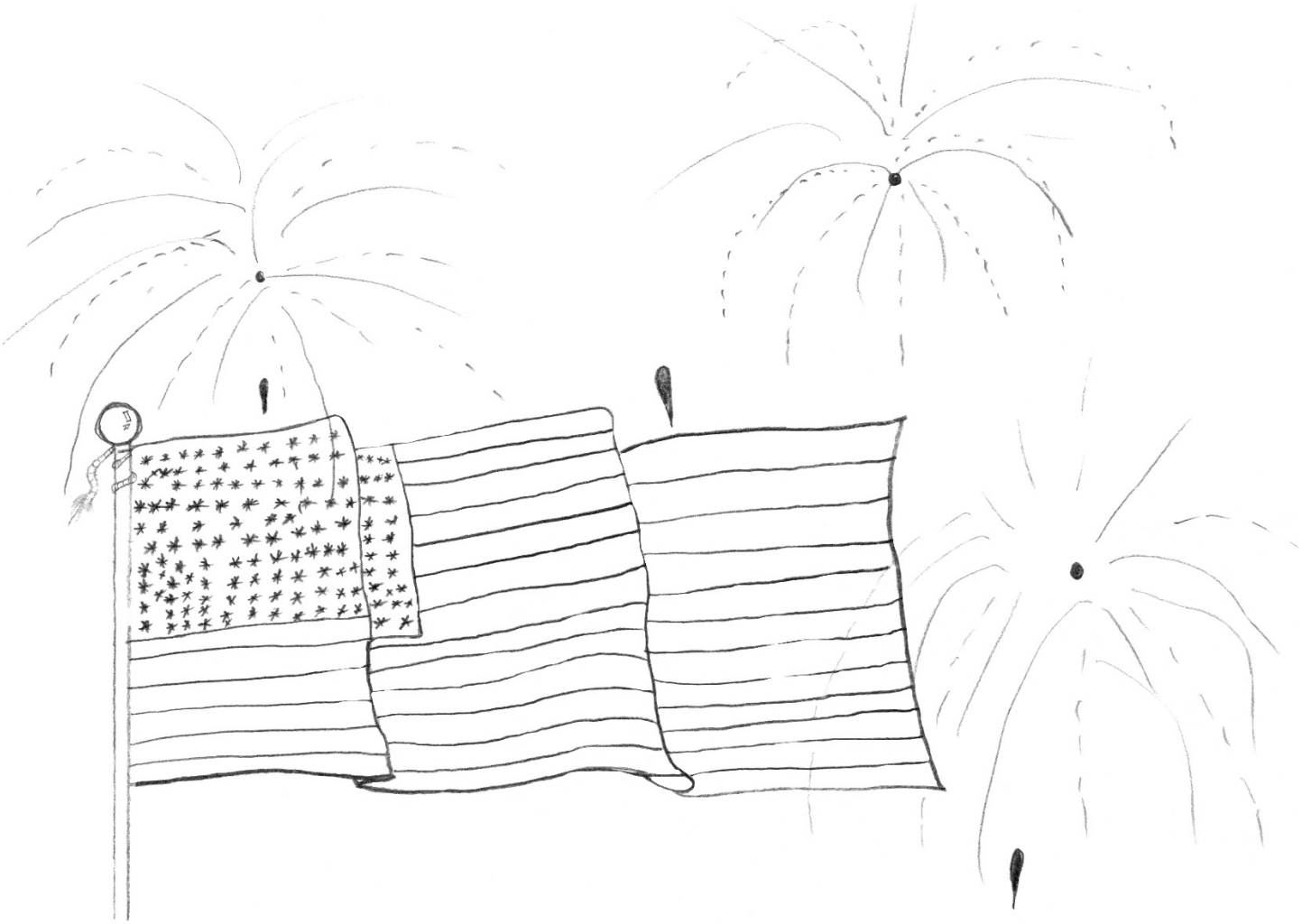

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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Open Meetings

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

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

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

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://texasattorneygeneral.gov/og/open-government

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

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

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

THE GOVERNOR

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

Appointments

Appointments for May 16, 2018

Appointed to the Texas Historical Records Commission, for a term to expire February 1, 2021, Malinda L. Cowen of Beeville (Ms. Cowen is being reappointed).

Appointments for May 31, 2018

Appointed to the Texas Ethics Commission, for a term to expire November 19, 2021, Richard S. Schmidt of Corpus Christi (replacing Thomas D. "Tom" Ramsay of Mount Vernon, whose term expired).

Appointments for June 1, 2018

Designated as President of the Texas State Board of Pharmacy, for a term to expire at the pleasure of the Governor, Dennis F. Wiesner of Austin (Mr. Wiesner is replacing Jeanne D. Waggener, Pharm.D. of Waco as president).

Appointed to the Texas State Board of Pharmacy, for a term to expire August 31, 2023, Ricardo "Rick" Fernandez of Northlake (Mr. Fernandez is replacing Christopher M. "Chris" Demby of Richardson, whose term expired).

Appointed to the Texas State Board of Pharmacy, for a term to expire August 31, 2023, Daniel Guerrero of San Marcos (Mr. Guerrero is replacing Phyllis A. Stine of Abilene, whose term expired).

Appointed to the Texas State Board of Pharmacy, for a term to expire August 31, 2023, Lori W. Henke, Pharm.D. of Amarillo (Ms. Henke is replacing Alice G. Mendoza of Kingsville, whose term expired).

Appointed to the Texas State Board of Pharmacy, for a term to expire August 31, 2023, Juliann R. "Julie" Spier of Katy (Ms. Spier is replacing Jeanne D. Waggener, Pharm.D. of Waco, whose term expired).

Appointments for June 4, 2018

Appointed to the University of North Texas Board of Regents, for a term to expire May 22, 2023, Mary C. Denny of Aubrey (Ms. Denny is replacing Donald Cullen Potts of Dallas, whose term expired).

Appointed to the University of North Texas Board of Regents, for a term to expire May 22, 2023, Milton B. Lee, II of San Antonio (Mr. Potts is being reappointed).

Appointed to the University of North Texas Board of Regents, for a term to expire May 22, 2023, Carlos Munguia of Dallas (Mr. Munguia is replacing Alfredo "Al" Silva of San Antonio, whose term expired).

Appointments for June 5, 2018

Appointed as the Student Regent for the Texas A&M University System Board of Regents, for a term to expire May 31, 2019, Ervin A. Bryant of Spring (Mr. Bryant is replacing Stephen F. Shuchart of Houston, whose term expired).

Appointed as the Student Regent for the Texas Southern University System Board of Regents, for a term to expire May 31, 2019, Kernard D. Jones of Houston (Mr. Jones is replacing Justin J. Lee of Beaumont, whose term expired).

Appointed as the Student Regent for the Texas State University System Board of Regents, for a term to expire May 31, 2019, Leanna K. Mouton of Houston (Ms. Mouton is replacing Kaitlyn A. Tyra of Spring, whose term expired).

Appointed as the Student Regent for the Texas Tech University System Board of Regents, for a term to expire May 31, 2019, Jane E.B. Gilmore of Dallas (Ms. Gilmore is replacing Jarett T. Lujan of Marfa, whose term expired).

Appointed as the Student Regent for the University of Houston System Board of Regents, for a term to expire May 31, 2019, Andrew Z. Teoh of Houston (Mr. Teoh is replacing Neelesh C. "Neel" Muytala of Sugar Land, whose term expired).

Appointed as the Student Regent for the University of North Texas System Board of Regents, for a term to expire May 31, 2019, Amanda M. Pajares of Dallas (Ms. Pajares is replacing Haley N. Leverett of North Richland Hills, whose term expired).

Appointed as the Student Regent for the University of Texas System Board of Regents, for a term to expire May 31, 2019, Brittany E. Jewell of Pearland (Ms. Jewell is replacing Jaciel M. Castro Millan of San Antonio, whose term expired).

Appointed as the Student Regent for the Texas Woman's University Board of Regents, for a term to expire May 31, 2019, Emily C. Galbraith of Waxahachie (Ms. Galbraith is replacing Rachel J. Iacobucci of Highland Village, whose term expired).

Appointed as the Student Regent for the Midwestern State University Board of Regents, for a term to expire May 31, 2019, Leia De La Garza of Wichita Falls (Ms. De La Garza is replacing Shayla L. Owens of Sherman, whose term expired).

Appointed as the Student Representative for the Texas Higher Education Coordinating Board, for a term to expire May 31, 2019, Michelle Q. Tran of Houston (Ms. Tran is replacing Andrias R. "Annie" Jones of McAllen, whose term expired).

Appointments for June 6, 2018

Appointed to the Executive Council of Physical Therapy and Occupational Therapy Examiners, for a term to expire February 1, 2019, Arthur "Roger" Matson of Georgetown (Col. Matson is being reappointed).

Appointments for June 7, 2018

Appointed to the Texas Board of Nursing, for a term to expire January 31, 2019, Melissa D. Schat of Granbury (Ms. Schat is replacing Monica Lynn Hamby of Amarillo, who resigned).

Appointed to the Texas Board of Nursing, for a term to expire January 31, 2023, Doris J. Jackson, D.H.A. of Pearland (Dr. Jackson is being reappointed).

Appointed to the Texas Board of Nursing, for a term to expire January 31, 2023, Mazie M. Jamison of Dallas (Ms. Jamison is replacing Deborah Hughes Bell of Tuscola, whose term expired).

Appointed to the Texas Board of Nursing, for a term to expire January 31, 2023, Verna Kathleen "Kathy" Shipp of Lubbock (Ms. Shipp is being reappointed).

Appointed to the Texas Board of Nursing, for a term to expire January 31, 2023, Kimberly L. "Kim" Wright of Big Spring (Ms. Wright is replacing Beverley Nutall of Bryan, whose term expired).

Appointments for June 8, 2018

Appointed to the Texas State Affordable Housing Corporation Board of Directors, for a term to expire February 1, 2019, Valerie Vargas Cardenas of San Juan (Ms. Cardenas is replacing Alejandro G. "Alex" Meade of Mission, who resigned).

Appointed to the Texas State Affordable Housing Corporation Board of Directors, for a term to expire February 1, 2023, Lori A. Cobos of Austin (Ms. Cobos is replacing Gerard "Gerry" Evenwel, Jr. of Mount Pleasant, whose term expired).

Designated as presiding officer of the Texas State Affordable Housing Corporation Board of Directors, for a term to expire at the pleasure of the Governor, William H. "Bill" Dietz, Jr. of Waco (Mr. Dietz is replacing Robert Elliott "Bob" Jones).

Appointments for June 11, 2018

Appointed to the State Commission on Judicial Conduct, for a term to expire November 19, 2023, Maricela "Mari" Alvarado of Harlingen (Ms. Alvarado is replacing Patti Hutton Johnson of Canyon Lake, whose term expired).

Appointed to the State Commission on Judicial Conduct, for a term to expire November 19, 2023, Amy F. Suhl of Sugar Land (Ms. Suhl is replacing Valerie E. Ertz of Dallas, whose term expired).

Appointed to the Public Utility Commission of Texas, for a term to expire September 1, 2019, Shelly L. Botkin of Austin (Ms. Botkin is replacing Brandy Marty Marquez of Austin, who resigned).

Appointments for June 12, 2018

Appointed to the Commission on State Emergency Communications, for a term to expire September 1, 2023, Debbie S. "Debi" Hays of Odessa (Ms. Hays is replacing Rodolfo "Rudy Madrid, Jr. of Kingsville, whose term expired).

Appointed to the Commission on State Emergency Communications, for a term to expire September 1, 2023, Catherine A. "Cathy" Skurow of Portland (Ms. Skurow is replacing Laura Gibbs Maczka of Richardson, whose term expired).

Appointed to the Texas Veterans Commission, for a term to expire December 31, 2023, Kimberlee P. "Kim" Joos of Argyle (Ms. Joos is replacing Richard A. McLeon, IV of Henderson, whose term expired).

Appointed to the Texas Veterans Commission, for a term to expire December 31, 2023, Laura G. Koerner of Fair Oaks Ranch (Ms. Koerner is replacing John K. "Jake" Ellzey of Midlothian, whose term expired).

Appointments for June 13, 2018

Appointed to the Texas State Board of Examiners of Professional Counselors, for a term to expire February 1, 2023, Steven W. Hallbauer of Rockwall (Mr. Hallbauer is replacing Lauren Polunsky Dreszer of San Antonio, whose term expired).

Appointed to the Texas State Board of Examiners of Professional Counselors, for a term to expire February 1, 2023, Roy Smith of Midland (Mr. Smith is replacing Etienne H. "Thai Hoc" Nguyen of Houston, whose term expired).

Appointed to the Texas State Board of Examiners of Professional Counselors, for a term to expire February 1, 2023, Carolyn J. "Janie" Stubblefield of Dallas (Ms. Stubblefield is replacing Glynda Corley of Jacksonville, whose term expired).

Designated as presiding officer of the Texas State Board of Examiners of Professional Counselors, for a term to expire at the pleasure of the Governor, Steven Douglas Christopherson of Pasadena (Mr. Christopherson is replacing Glynda Corley of Jacksonville).

Appointed as Commissioner of Worker's Compensation, for a term to expire February 1, 2019, Cassandra J. "Cassie" Brown of Austin (Ms. Brown is replacing William "Ryan" Brannan of Austin, who resigned).

Appointments for June 14, 2018

Appointed to the Texas Medical Board, for a term to expire April 13, 2019, Roberto D. "Robert" Martinez, M.D. of Mission (Mr. Martinez is replacing Michael R. Arambula, M.D. of San Antonio, who resigned).

Appointed to the Texas Medical Board, for a term to expire April 13, 2021, Linda G. Molina of San Antonio (Ms. Molina is replacing Tessa P. "Paulette" Southard of Alice, whose term expired).

Appointed to the Board of Pardons and Paroles, for a term to expire February 1, 2019, Carmella T. Jones of Eastland (Ms. Jones is replacing Cynthia Tauss of League City, who resigned).

Appointments for June 15, 2018

Appointed to the Texas Private Security Board, for a term to expire January 31, 2023, Derrick A. Howard of San Antonio (Mr. Howard is replacing Albert Lee Black of Austin whose term expired).

Appointed to the Texas Private Security Board, for a term to expire January 31, 2023, Alan S. Trevino of Austin (Mr. Trevino is replacing Mark L. Smith of Dallas whose term expired).

Appointed to the Texas Private Security Board, for a term to expire January 31, 2023, Stephen W. Willeford of Sutherland Springs (Mr. Willeford is replacing Howard Hans Johnsen of Dallas whose term expired).

Appointments for June 18, 2018

Appointed as presiding officer of the Hidalgo County Regional Mobility Authority, for a term to expire February 1, 2020, Samuel "David" Deanda, Jr. of Mission (Mr. Deanda is being reappointed).

Appointed to the Texas Woman's University Board of Regents, for a term to expire February 1, 2021, Teresa Doggett of Austin (Ms. Doggett is replacing John V. "Vic" Lattimore, Jr. of Plano, who resigned).

Appointed to the University of Houston System Board of Regents, for a term to expire August 31, 2023, Stephen I. "Steve" Chazen, Ph.D. of Bellaire (Mr. Chazen is replacing Joe M. Gutierrez, Jr. of Houston, who resigned).

Appointments for June 19, 2018

Appointed to the Texas Workforce Investment Council, for a term to expire September 1, 2021, Gina Aguirre Adams of Jones Creek (Ms. Adams is replacing Joyce Delores Taylor of Houston, whose term expired).

Appointed to the Texas Workforce Investment Council, for a term to expire September 1, 2021, Lindsey R. Geeslin of Lorena (Ms. Geeslin is replacing Richard G. Hatfield of Austin, whose term expired).

Appointed to the Texas Workforce Investment Council, for a term to expire September 1, 2021, Adam C. Hutchison of Woodway (Mr. Hutchison is replacing Larry F. Jeffus of Garland, whose term expired).

Appointed to the Texas Workforce Investment Council, for a term to expire September 1, 2021, Wayne J. Oswald of Angleton (Mr. Oswald is replacing Matthew Timaeus Maxfield of Brownwood, whose term expired).

Appointed to the Texas Workforce Investment Council, for a term to expire September 1, 2021, Paul J. Puente of League City (Mr. Puente is replacing Robert L. Cross of Houston, whose term expired).

Appointments for June 21, 2018

Appointed to the Guadalupe-Blanco River Authority Board of Directors, for a term to expire February 1, 2019, Stephen B. "Steve" Ehrig of Gonzales (Mr. Gonzales is replacing Darrell G. McLain of Gonzales, who is deceased).

Appointed to the Guadalupe-Blanco River Authority Board of Directors, for a term to expire February 1, 2023, Robert E. "Rusty" Brockman, Jr. of New Braunfels (Mr. Brockman is being reappointed).

Appointed to the Guadalupe-Blanco River Authority Board of Directors, for a term to expire February 1, 2023, Oscar H. Fogle of Lockhart (Mr. Fogle is being reappointed).

Appointed to the Guadalupe-Blanco River Authority Board of Directors, for a term to expire February 1, 2023, Kenneth A. Motl, D.V.M of Port Lavaca (Dr. Motl is being reappointed).

Appointed to the Lower Colorado River Authority, for a term to expire February 1, 2023, Stephen F. "Steve" Cooper of El Campo (Mr. Cooper is being reappointed).

Appointed to the Lower Colorado River Authority, for a term to expire February 1, 2023, Laura D. Figueroa of Brenham (Ms. Figueroa is replacing Sandra "Sandy" Kibby of New Braunfels, whose term expired).

Appointed to the Lower Colorado River Authority, for a term to expire February 1, 2023, Raymond A. "Ray" Gill, Jr. of Horseshoe Bay (Mr. Gill is being reappointed).

Appointed to the Lower Colorado River Authority, for a term to expire February 1, 2023, Thomas L. "Tom" Kelley of Eagle Lake (Mr. Kelley is replacing Stephen K. "Steve" Balas of Eagle Lake, whose term expired).

Appointed to the Lower Colorado River Authority, for a term to expire February 1, 2023, Nancy E. Yeary of Lampasas (Ms. Yeary is replacing John M. Franklin of Burnet, whose term expired).

Appointments for June 22, 2018

Appointed to the Texas State Library and Archives Commission, for a term to expire September 28, 2019, David C. Garza of Brownsville (Mr. Garza is replacing William S. "Scott" McAfee of Driftwood, who resigned).

Appointed to the Texas State Library and Archives Commission, for a term to expire September 28, 2021, Fenton L. "Lynwood" Givens, Ph.D. of Plano (Mr. Givens is replacing Romanita Matte-Barrera of San Antonio, who resigned).

Appointed to the Texas State Library and Archives Commission, for a term to expire September 28, 2023, Arthur T. Mann of Hillsboro (Mr. Mann is replacing Sharon T. Carr of Katy, whose term expired).

Appointed to the Texas State Library and Archives Commission, for a term to expire September 28, 2023, Darryl Tocker of Austin (Mr. Tocker is replacing Fenton L. "Lynwood" Givens, Ph.D. of Plano, whose term expired).

Appointed to the Board for Lease of Texas Department of Criminal Justice Lands, for a term to expire September 1, 2019, Erin E. Lunceford of Houston (Judge Lunceford is being reappointed).

Appointments for June 27, 2018

Appointed to the Texas Optometry Board, for a term to expire January 31, 2023, Mario Gutierrez, O.D. of San Antonio (Dr. Gutierrez is being reappointed).

Appointed to the Texas Optometry Board, for a term to expire January 31, 2023, Ty H. Sheehan of San Antonio (Mr. Sheehan is replacing Larry W. Fields of Carthage, whose term expired).

Appointed to the Texas Optometry Board, for a term to expire January 31, 2023, Billy C. "Bill" Thompson, Jr., O.D. of Richardson (Mr. Thompson is replacing John Coble, O.D. of Rockwall, whose term expired).

Designated as presiding office of the Texas Optometry Board, for a term to expire at the pleasure of the Governor, Mario Gutierrez, O.D. of San Antonio (Dr. Gutierrez is replacing John Coble, O.D. of Rockwall).

Appointments for June 28, 2018

Appointed to the Finance Commission of Texas, for a term to expire February 1, 2024, William M. "Will" Lucas of Center (Mr. Lucas is being reappointed).

Appointed to the Finance Commission of Texas, for a term to expire February 1, 2024, George C. "Cliff" McCauley of San Antonio (Mr. McCauley is replacing Hilliard J. Shands, III of Lufkin, whose term expired).

Appointed to the Finance Commission of Texas, for a term to expire February 1, 2024, Vincent E. "Vince" Puente, Sr. of Fort Worth (Mr. Puente is being reappointed).

Appointments for June 29, 2018

Appointed to the Texas Diabetes Council, for a term to expire February 1, 2019, John W. Griffin, Jr. of Victoria (Mr. Griffin is replacing Alicia Gracia of Brownsville, who resigned).

Appointed to the Texas Diabetes Council, for a term to expire February 1, 2023, Felicia Fruia-Edge of Rancho Viejo (Ms. Fruia-Edge is replacing John W. Griffin, Jr. of Victoria, whose term expired).

Appointed to the Texas Diabetes Council, for a term to expire February 1, 2023, Ardis A. Reed of Hideaway (Ms. Reed is replacing Maria O. Duarte-Gardea, Ph.D. of El Paso, whose term expired).

Greg Abbott, Governor

TRD-201803070

♦ ♦ ♦

Proclamation 41-3582

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on August 23, 2017, certifying that Hurricane Harvey posed a threat of imminent disaster for Aransas, Austin, Bee, Brazoria, Calhoun, Chambers, Colorado, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Harris, Jackson, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Waller, Wharton and Wilson counties; and

WHEREAS, the disaster proclamation of August 23, 2017, was subsequently amended on August 26, August 27, August 28 and September 14 to add the following counties to the disaster proclamation: Angelina,

Atascosa, Bastrop, Bexar, Brazos, Burleson, Caldwell, Cameron, Comal, Grimes, Guadalupe, Hardin, Jasper, Kerr, Lee, Leon, Madison, Milam, Montgomery, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Washington and Willacy; and

WHEREAS, on September 20, 2017, October 20, 2017, November 19, 2017, December 18, 2017, January 17, 2018, and February 16, 2018, I issued proclamations renewing the disaster declaration for all counties listed above; and

WHEREAS, due to the catastrophic damage caused by Hurricane Harvey, a state of disaster continues to exist in those same counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for the 60 counties listed above.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 16th day of March, 2018.

Greg Abbott, Governor

TRD-201803080

♦ ♦ ♦

Proclamation 41-3583

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on August 23, 2017, certifying that Hurricane Harvey posed a threat of imminent disaster for Aransas, Austin, Bee, Brazoria, Calhoun, Chambers, Colorado, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Harris, Jackson, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Waller, Wharton and Wilson counties; and

WHEREAS, the disaster proclamation of August 23, 2017, was subsequently amended on August 26, August 27, August 28 and September 14 to add the following counties to the disaster proclamation: Angelina, Atascosa, Bastrop, Bexar, Brazos, Burleson, Caldwell, Cameron, Comal, Grimes, Guadalupe, Hardin, Jasper, Kerr, Lee, Leon, Madison, Milam, Montgomery, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Washington and Willacy; and

WHEREAS, on September 20, 2017, October 20, 2017, November 19, 2017, December 18, 2017, January 17, 2018, February 16, 2018, and March 16, 2018, I issued proclamations renewing the disaster declaration for all counties listed above; and

WHEREAS, due to the catastrophic damage caused by Hurricane Harvey, a state of disaster continues to exist in those same counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for the 60 counties listed above.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 13th day of April, 2018.

Greg Abbott, Governor

TRD-201803081

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Proclamation 41-3584

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that exceptional drought conditions pose a threat of imminent disaster in specified counties in Texas.

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

WHEREAS, these drought conditions pose an imminent threat to public health, property, and the economy; and

WHEREAS, this state of disaster includes the counties of Armstrong, Andrews, Archer, Bastrop, Baylor, Bell, Bosque, Briscoe, Burnet, Carson, Castro, Childress, Cochran, Collingsworth, Coryell, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Erath, Falls, Floyd, Foard, Gaines, Garza, Gray, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hill, Hutchinson, Johnson, Kent, King, Knox, Lee, Limestone, Lipscomb, Loving, Lubbock, Lynn, McLennan, Milam, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Robertson, Shackelford, Sherman, Somervell, Stephens, Stonewall, Swisher, Throckmorton, Travis, Wheeler, Wilbarger, Williamson, Winkler, Yoakum, and Young;

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties based on the existence of such threat.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or

rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 13th day of April, 2018.

Greg Abbott, Governor

TRD-201803082

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Proclamation 41-3585

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on Friday, April 13, 2018, certifying that exceptional drought conditions posed a threat of imminent disaster for Armstrong, Andrews, Archer, Bastrop, Baylor, Bell, Bosque, Briscoe, Burnet, Carson, Castro, Childress, Cochran, Collingsworth, Coryell, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Erath, Falls, Floyd, Foard, Gaines, Garza, Gray, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hill, Hutchinson, Johnson, Kent, King, Knox, Lee, Limestone, Lipscomb, Loving, Lubbock, Lynn, McLennan, Milam, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Robertson, Shackelford, Sherman, Somervell, Stephens, Stonewall, Swisher, Throckmorton, Travis, Wheeler, Wilbarger, Williamson, Winkler, Yoakum, and Young counties. Those same conditions continue to exist in these and other counties in Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend the aforementioned proclamation and declare a disaster in these additional counties: Borden, Callahan, Coke, Dawson, Ellis, Fisher, Glasscock, Howard, Jones, Martin, Midland, Mitchell, Navarro, Nolan, Runnels, Scurry, Sterling, Taylor, and Terry.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 19th day of April, 2018.

Greg Abbott, Governor

TRD-201803083

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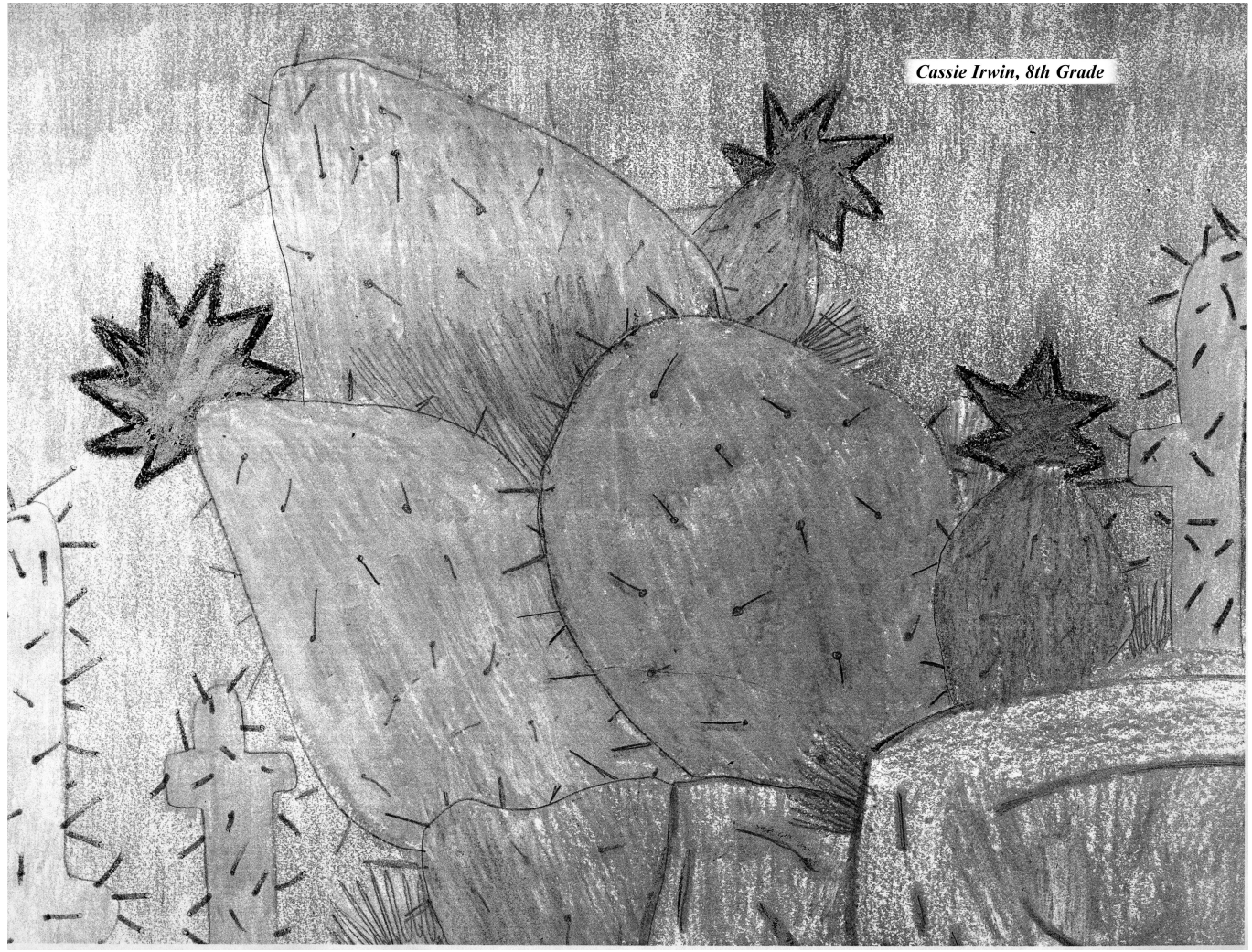
Cassie Irwin, 8th Grade

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) proposes new §355.8208, concerning Waiver Payments to Publicly-Owned Dental Providers for Uncompensated Charity Care; §355.8210, concerning Waiver Payments to Governmental Ambulance Providers for Uncompensated Charity Care; §355.8212, concerning Waiver Payments to Hospitals for Uncompensated Charity Care; and §355.8214, concerning Waiver Payments to Physician Group Practices for Uncompensated Charity Care. The new rules are proposed to be adopted in January 2019 and will apply to services provided after October 1, 2019. HHSC also proposes amendments to §355.8441, concerning Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services; §355.8600, concerning Reimbursement Methodology for Ambulance Services; §355.8201, concerning Waiver Payments to Hospitals for Uncompensated Care; and §355.8202, concerning Waiver Payments to Physician Group Practices for Uncompensated Care. The amendments are proposed to be adopted in October 2018 and will apply to services provided between October 1, 2018, and September 30, 2019. The new rules and amendments are necessary to implement revised definitions of eligible uncompensated costs and funding requirements contained in the state's approved Section 1115(a) waiver extension and to implement other policy changes.

BACKGROUND AND PURPOSE

On December 21, 2017, the Centers for Medicare & Medicaid Services (CMS) approved the state's request to extend Texas' section 1115(a) demonstration waiver project, entitled "Texas Healthcare Transformation and Quality Improvement Program" (Project Number 11-W-00278/6).

For uncompensated-care payments attributable to services provided before October 1, 2019, the current payment and funding methodologies remain in effect, except for changes described below that are unrelated to the waiver extension. For uncompensated-care payments attributable to services provided after October 1, 2019, the terms of the extension: (1) revise the current definition of eligible uncompensated-care costs that may be reimbursed through the waiver uncompensated-care pool; and (2) require that payment amounts be unrelated to the source of the non-federal share of the payments.

The terms of the waiver extension also require that the state publish the final administrative rules describing the revised payment methodologies no later than January 30, 2019, and be effective no later than September 30, 2019. Failure to comply with this requirement will result in a reduction in funding for uncompensated-care payments.

To avoid confusion during the lengthy period between publication of the final rules in January 2019 and the date HHSC implements the revised methodologies in October of that year, HHSC is proposing new rules that will govern the revised payment and funding methodologies. The existing rules as amended will continue to govern payments made before the new methodologies go into effect.

OVERVIEW OF PROPOSED CHANGES TO EXISTING RULES

HHSC is proposing amendments to the existing rules to clarify an end date to the methodologies described in those rules. At a later time, HHSC will propose the repeal of §§355.8201 and 355.8202 and amendments to §§355.8441 and 355.8600 to remove obsolete language.

Additionally, HHSC proposes to amend §355.8201 to remove the definition of a "Rider 38 hospital" and replace it with a definition of "rural hospital." The definition of "rural hospital" differs from the current definition of a "Rider 38 hospital" in that a rural referral center (RRC) with more than 100 beds located in a metropolitan statistical area will no longer be recognized as a rural hospital for the purpose of UC waiver payments. The change is proposed to be effective for UC payments in demonstration year eight. The proposed change is in response to the growing number of large urban hospitals that have obtained Medicare designations as RRCs in the past two years. Giving preferential treatment to large urban hospitals in UC reimbursement is inconsistent with HHSC's original intent that the payment methodology provide "a certain level of protection in UC in recognition of the financial vulnerability of [rural] hospitals and the critical role they play in preserving the rural safety net." 39 TexReg 4844 (June 27, 2014).

OVERVIEW OF PROPOSED NEW RULES AND HOW THEY DIFFER FROM CURRENT METHODOLOGIES

Currently, payments from the waiver uncompensated-care pool may be used to defray the actual uncompensated cost of medical services that meet the definition of medical assistance contained in section 1905(a) of the Social Security Act that are provided to Medicaid eligible or uninsured individuals by hospitals, physician group practices, governmental ambulance providers, and publicly-owned dental providers. Starting October 1, 2019, the terms of the waiver limit payments from this pool to only defray the actual uncompensated cost of medical services that are provided to uninsured individuals as charity care. Charity-care includes full or partial discounts provided to uninsured patients

who meet the provider's charity care policy and that adhere to the charity care principles of the Healthcare Financial Management Association (available at http://www.hfma.org/WorkArea/DownloadAsset.aspx?id=14589).

Additionally, the terms of the waiver require that the methodology used by the state to determine uncompensated-care payments must ensure that payments are distributed based on uncompensated cost, without any relationship to source of non-federal share.

HHSC is proposing the new payment rules to implement the revised definitions of eligible uncompensated costs and funding requirements contained in the terms of the approved waiver extension.

In addition, the proposed new §355.8212 contains the following changes from the current methodology described in §355.8201:

(1) HHSC proposes eliminating non-state-owned hospital pools by hospital type (i.e., large urban, small public, and private). Instead, the funds allocated to all non-state-owned hospitals are distributed to individual hospitals based on calculated maximum payment amounts. The hospitals are then grouped into subpools by their geographic location within Medicaid service delivery areas (SDAs).

(2) HHSC proposes reimbursing rural hospitals 100 percent of their eligible charity-care costs, while non-rural hospitals will receive a lower percentage of costs. Estimates of the distribution of UC funds beginning in demonstration year nine indicate that rural hospitals will face a reduction in UC reimbursement when the definition of eligible costs is limited to charity-care. HHSC's proposal to benefit rural hospitals continues the policy of providing a certain level of protection in UC in recognition of the financial vulnerability of rural hospitals and the critical role they play in preserving the rural safety net. The proposed definition of "rural hospital" in §355.8212 is the same as the definition of "Rider 38 hospital" proposed in §355.8201.

Estimates of UC funding for demonstration year nine also indicate that children's hospitals will see a decline in UC funding. HHSC is interested in receiving comments from interested parties on whether children's hospitals, or any other hospital class or type, should also receive preferential treatment in payment calculations similar to that proposed for rural hospitals.

(3) HHSC proposes revising the methodology for determining advanced payment amounts for demonstration year nine. Currently, advance payments are based on a percentage of the maximum payment amount for the prior year. However, there is a high likelihood that payment amounts in demonstration year nine will vary significantly from demonstration year eight due to the limitation to uninsured charity-care costs. For that reason, HHSC proposes basing demonstration-year-nine advance payments on estimates of eligible charity-care costs that will be incurred by each hospital or physician group practice during the demonstration year.

(4) HHSC proposes eliminating the requirement that a secondary reconciliation be performed for hospitals that submitted a request for an adjustment to the interim hospital-specific limit, as described in §355.8201(i)(2). This proposed change is in response to requests from stakeholders.

(5) HHSC proposes eliminating the penalty for failure to complete Category 4 reporting requirements for Regional Healthcare Partnerships. This change is proposed to reduce the burden on hospitals and for administrative convenience.

Section-by-Section Summary

Proposed new §355.8208, Waiver Payments to Publicly-Owned Dental Providers for Uncompensated Charity Care, describes the eligibility requirements for publicly-owned dental providers to receive payments from the waiver uncompensated-care pool and the methodology for calculating payment amounts.

Subsection (a) introduces the rule.

Subsection (b) defines terms used in the rule.

Subsection (c) describes eligibility criteria for receiving a payment under this section.

Subsection (d) limits the sources for funding the non-federal share of payment to public funds from governmental entities.

Subsection (e) describes payment frequency.

Subsection (f) describes limitations on total funding amounts.

Subsection (g) describes the methodology for calculating uncompensated-care maximum payment amounts.

Subsection (h) describes the payment methodology.

Subsection (i) describes the process HHSC will use to recoup any overpayments to the provider.

Proposed amended §355.8441, Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services, limits application of the section describing supplemental payments to dental providers to services provided through September 30, 2019.

Subsection (a)(1) - (10): no changes are proposed.

Subsection (a)(11)(C) limits application of the subparagraph to services provided through September 30, 2019, and directs the reader to section 355.8208 of the title for a description of the methodology that will apply for services provided after that date.

Subsection (a)(12) - (b): no changes are proposed.

Proposed new §355.8210, Waiver Payments to Governmental Ambulance Providers for Uncompensated Charity Care, describes the eligibility requirements for governmental ambulance providers to receive payments from the waiver uncompensated-care pool and the methodology for calculating payment amounts.

Subsection (a) introduces the rule.

Subsection (b) defines terms used in the rule.

Subsection (c) describes eligibility criteria for receiving a payment under this section.

Subsection (d) limits the sources for funding the non-federal share of payment to public funds from governmental entities.

Subsection (e) describes payment frequency.

Subsection (f) describes limitations on total funding amounts.

Subsection (g)(1) describes the use of cost reports to document actual costs incurred by the provider and specifies deadlines for submission and other requirements related to the cost reports.

Subsection (g)(2) describes the methodology for calculating uncompensated-care maximum payment amounts.

Subsection (g)(3) describes the methodology used to ensure that total payments to providers in the pool stay within allocation amount.

Subsection (h) describes the process HHSC will use to recoup any overpayments to the provider.

Proposed amended §355.8600, Reimbursement Methodology for Ambulance Services, limits application of the section describing supplemental payments to governmental ambulance providers to services provided through September 30, 2019.

Subsection (a) - (b): no changes are proposed.

Subsection (c) proposes limiting application of the subparagraph to services provided through September 30, 2019, and directs the reader to section 355.8210 of the title for a description of the methodology that will apply for services provided after that date. No other changes to the subsection are proposed.

Subsection (d): no changes are proposed.

Proposed new §355.8212, Waiver Payments to Hospitals for Uncompensated Charity Care, describes the eligibility requirements for hospitals to receive payments from the waiver uncompensated-care pool and the methodology for calculating payment amounts.

Subsection (a) introduces the rule.

Subsection (b) defines terms used in the rule.

Subsection (c) describes eligibility criteria for receiving a payment under this section.

Subsection (d) limits the sources for funding the non-federal share of payment to public funds from governmental entities and explains that HHSC will survey the governmental entities that provide public funds for payments to providers in the pool to determine total funding available to support payments from the pool.

Subsection (e) describes payment frequency.

Subsection (f)(1) limits payments by the maximum amount of funds allocated to the hospital uncompensated-care pool.

Subsection (f)(2) identifies the uncompensated-care pools and sub-pools, describes the providers eligible for reimbursement from each pool, and explains the method for determining the amount of funds allocated to each pool and sub-pool.

Subsection (f)(3) limits payments by the availability of funds identified in subsection (d).

Subsection (g)(1) describes the use of uncompensated-care applications to document actual costs incurred by the provider.

Subsection (g)(2) describes the components used to calculate a hospital's maximum uncompensated-care payment amount.

Subsection (g)(3) defines eligible hospital charity-care costs to be consistent with definitions in schedule S-10 of the CMS 2552-10 cost report and describes the source of the data for hospitals that submit S-10 schedules and hospitals that do not do so.

Subsection (g)(4) describes costs, other than inpatient and outpatient charity-care costs, that a hospital may claim for reimbursement from the hospital uncompensated-care pool.

Subsection (g)(5) describes adjustments the hospital may request to the cost and payment data on the hospital's cost report used to calculate interim payment amounts.

Subsection (g)(6) describes the methodology used to ensure that total payments to providers in the pool stay within allocation amounts.

Subsection (g)(7) describes the non-state-owned hospital subpools.

Subsection (g)(8) prohibits duplication of costs.

Subsection (g)(9) describes the methodology for calculating advance payment amounts.

Subsection (h) describes the payment methodology, including the contents of the notice HHSC will provide prior to making payments under this section, the methodology for determining payments if governmental entities transfer less than the amount necessary to fully fund hospitals in the pool, and the final payment opportunity for the demonstration year.

Subsection (i) describes the process HHSC will use to reconcile actual costs incurred by the hospital for the demonstration year with uncompensated-care payments made to the hospital for the same period.

Subsection (j) describes the process to recoup any overpayments to the provider.

Proposed amendments to §355.8201, Waiver Payments to Hospitals for Uncompensated Care, clarify that the rule applies only for services provided between October 1, 2018, and September 30, 2019. The proposed amendment also replaces the definition of a "Rider 38 hospital" with a definition of "rural hospital," clarifies that applications are no longer used in the reconciliation process, and removes references to transition payments, which were only available during the first demonstration year.

Subsection (a) introduces the rule and proposes to limit application of the rule to services provided between October 1, 2018, and September 30, 2019.

Subsection (b): defines terms used in the rule and proposes to replace the definition of "Rider 38" hospital with a definition of "rural hospital" that excludes large hospital (i.e., more than 100 beds) located in metropolitan statistical areas.

Subsection (c) describes eligibility criteria for receiving a payment under this section. Paragraph (3)(A) removes obsolete language, since applications are no longer used in the reconciliation process.

Subsection (d): no changes are proposed.

Subsection (e) describes payment frequency and proposes revising the rule to post the schedule on HHSC's website.

Subsection (f) describes funding limitations based on the maximum amount of funds allocated to the hospital uncompensated-care pool and on the availability of non-federal funds. HHSC proposes eliminating references to obsolete language in paragraph (2)(C)(iii)(I) and (III).

Subsection (g)(1) describes the uncompensated-care payment application. HHSC proposes removing references to the use of the application for purposes of the reconciliation process.

Subsections (g)(2) - (4): no changes are proposed.

Subsection (g)(5) describes the reduction to stay within uncompensated-care pool aggregate limits and includes changes to replace the term "Rider 38" with "rural."

Subsections (g)(6) - (7) and (h): no changes are proposed.

Subsection (i) describes the process HHSC will use to reconcile actual costs incurred by the hospital for the demonstration year with uncompensated-care payments made to the hospital for the same period. HHSC proposes removing obsolete references to

the third demonstration year and to transition payments. HHSC also proposes adding paragraph (4) to require all hospitals that received a payment during the demonstration year to cooperate in the reconciliation process, even if the hospital closed or withdrew from participation in the program.

Subsection (j): no changes are proposed.

Proposed new §355.8214, Waiver Payments to Physician Group Practices for Uncompensated Charity Care, describes the eligibility requirements for certain physician group practices to receive payments from the waiver uncompensated-care pool and the methodology for calculating payment amounts.

Subsection (a) introduces the rule.

Subsection (b) defines terms used in the rule.

Subsection (c) describes eligibility criteria for receiving a payment under this section.

Subsection (d) limits the sources for funding the non-federal share of payment to public funds from governmental entities and explains that HHSC will survey the governmental entities that provide public funds for payments to providers in the pool to determine total funding available to support payments from the pool.

Subsection (e) describes payment frequency.

Subsection (f)(1) limits payments by the maximum amount of funds allocated to the physician group practice uncompensated-care pool, as described in §355.8212.

Subsection (f)(2) limits payments by the availability of funds identified in subsection (d).

Subsection (g)(1) describes the use of uncompensated-care applications to document actual costs incurred by the provider.

Subsection (g)(2) describes the components used to calculate provider's maximum uncompensated-care payment amount.

Subsection (g)(3) describes adjustments the provider may request to the cost and payment data used to calculate interim payment amounts.

Subsection (g)(4) describes the methodology used to ensure that total payments to providers in the pool stay within allocation amounts.

Subsection (g)(5) describes the methodology for calculating advance payment amounts.

Subsection (h) describes the payment methodology, including the contents of the notice HHSC will provide prior to making payments under this section and the methodology for determining payments if governmental entities transfer less than the amount necessary to fully fund providers in the pool.

Subsection (i) describes the process HHSC will use to reconcile actual costs incurred by the hospital for the demonstration year with uncompensated-care payments made to the hospital for the same period.

Subsection (j) describes the process to recoup any overpayments to the provider.

Proposed amendments to §355.8202, Waiver Payments to Physician Group Practices for Uncompensated Care, clarify that the rule applies only for services provided through September 30, 2019, and clarifies the payments schedule.

Subsection (a) introduces the rule and proposes to limit application of the rule to services provided through September 30, 2019.

Subsections (b) - (d): no changes are proposed.

Subsection (e) describes payment frequency and proposes posting the schedule on HHSC's website.

Subsections (f) - (j): no changes are proposed.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state government as a result of enforcing and administering the sections as proposed.

The new methodology that will be implemented for UC will have both a positive and negative impact on the revenues that publicly owned hospitals, physician groups, and ambulance and dental providers will receive for their uncompensated cost of care each year. The impact to local governments will also be positive and negative, depending on the providers in their area and to what extent the local government is responsible for funding the non-federal share of the UC payment. This impact will vary depending on how the uncompensated cost of care for patients classified as charity care patients differ from the uncompensated cost of care for Medicaid and uninsured patients on which UC payment amounts were previously based. HHSC lacks data to provide an estimate of the change in UC payments amounts for specific local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the section(s) will be in effect:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of employee positions;

(3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;

(4) the proposed rules will not affect fees paid to the agency;

(5) the proposed rules will create new rules;

(6) the proposed rules will not expand existing rules;

(7) the proposed rules will not change the number of individuals subject to the rule; and

(8) HHSC has insufficient information to determine the proposed rules' effect on the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Greta Rymal, Deputy Executive Commissioner for Financial Services, has also determined that there is a possibility for adverse economic impacts to rural communities.

The change in methodology from reimbursing uncompensated cost of care for Medicaid and uninsured patients to reimbursing uncompensated cost of care for charity patients for hospital and non-hospital providers will affect the reimbursement to healthcare providers in communities around the state. Some hospitals located in rural communities have informed HHSC they do not have the ability to adequately record their charity care charges and costs. It is possible that without complete records of charity

care, these rural hospitals might experience lower reimbursement with the change in reimbursement methodology. HHSC lacks data to provide an estimate of the fiscal impact in the rural communities where these hospitals are located.

There will be no adverse economic effect on small businesses or micro-businesses. There are no providers eligible for uncompensated-care payments that meet the definition of a small business or micro-business.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There is a possibility of a negative impact on local employment in some communities and a positive impact in others. The change in methodology from reimbursing uncompensated cost of care for Medicaid and uninsured patients to reimbursing uncompensated cost of care for charity patients for hospital and non-hospital providers will affect the reimbursement to healthcare providers in communities around the state. Certain providers will receive greater reimbursement while others will receive less, depending on the shift in their cost of uncompensated care when calculated using patients who qualify for the providers' charity care policy instead of Medicaid and uninsured patients.

The change in payment amounts will affect revenue received by the healthcare provider, as well as the amount of local and state dollars needed as the non-federal share of the payments. HHSC lacks sufficient data at this time both to predict those communities in which there may be an employment impact and to determine the potential impacts on local employment in those communities.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to receive a source of federal funds or comply with federal law.

PUBLIC BENEFIT

Selvadas Govind, Director of Rate Analysis, has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections will be that local communities and private providers will continue to receive federal matching funds for some uncompensated costs of services provided to charity-care patients, which would not otherwise be available. The public will also benefit from a better understanding of the policies and methodologies governing payment calculations.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing is scheduled for Thursday, September 13, 2018, beginning at 9:00 a.m. (central time) in the Public Hearing Room of the Brown Heatly Building located at 4900 N. Lamar, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Andrew Robertson at (512) 424-6892.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Mariah Ramon, Project Manager, P.O. Box 149030, Mail Code H-100, Austin, Texas 78714-9030, or street address 4900 North Lamar Blvd., Austin, Texas 78751; or e-mailed to uctools@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 60 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate "Comments on Proposed Rule 18R034" in the subject line.

DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §§355.8201, 355.8202, 355.8208, 355.8210, 355.8212, 355.8214

STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32.

The amendments and new sections affect Human Resources Code Chapter 32 and Government Code Chapters 531.

§355.8201. Waiver Payments to Hospitals for Uncompensated Care.

(a) Introduction. Texas Healthcare Transformation and Quality Improvement Program §1115(a) Medicaid demonstration waiver payments are available under this section for services provided between October 1, 2018, and September 30, 2019, by eligible hospitals described in subsection (c) of this section. Waiver payments to hospitals for uncompensated charity care provided beginning October 1, 2019, are described in §355.8212 of this division (relating to Waiver Payments to Hospitals for Uncompensated Charity Care). Waiver payments to hospitals must be in compliance with the Centers for Medicare & Medicaid Services approved waiver Program Funding and Mechanics Protocol, HHSC waiver instructions and this section.

(b) Definitions.

(1) - (19) (No change.)

(20) Rural hospital--A hospital enrolled as a Medicaid provider that is:

(A) located in a county with 60,000 or fewer persons according to the 2010 U.S. Census; or

(B) designated by Medicare as a Critical Access Hospital (CAH) or a Sole Community Hospital (SCH); or

(C) designated by Medicare as a Rural Referral Center (RRC) and is not located in a Metropolitan Statistical Area (MSA), as defined by the U.S. Office of Management and Budget, or is located in an MSA but has 100 or fewer beds.

[(20) Rider 38 hospital--A hospital located in a county with 60,000 or fewer persons according to the most recent United States Census, a Medicare-designated Rural Referral Center, a Sole Community Hospital, or a Critical Access Hospital.]

(21) - (26) (No change.)

(c) Eligibility. A hospital that meets the requirements described in this subsection may receive payments under this section.

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

(3) Changes that may affect eligibility for uncompensated-care payments.

(A) If a hospital closes, loses its license, loses its Medicare or Medicaid eligibility, withdraws from participation in an RHP, or files bankruptcy before receiving all or a portion of the uncompensated-care payments for a demonstration year, HHSC will determine the hospital's eligibility to receive payments going forward on a case-by-case basis. In making the determination, HHSC will consider multiple factors including whether the hospital was in compliance with all requirements during the demonstration year and whether it can satisfy the requirement to cooperate in the reconciliation process as described in subsection (i) [submit an uncompensated-care application for the demonstration year as described in subsection (g)(1)(C)] of this section.

(B) A hospital must notify HHSC Rate Analysis Department in writing within 30 days of the filing of bankruptcy or of changes in ownership, operation, licensure, Medicare or Medicaid enrollment, or affiliation that may affect the hospital's continued eligibility for payments under this section.

(d) Source of funding. The non-federal share of funding for payments under this section is limited to timely receipt by HHSC of public funds from a governmental entity.

(e) Payment frequency. HHSC will distribute waiver payments [as follows and] on a schedule to be determined by HHSC and posted on HHSC's website.[:]

[(1) Uncompensated-care payments will be distributed at least quarterly after the uncompensated-care application is processed.]

[(2) The payment schedule or frequency may be modified as specified by CMS or HHSC.]

(f) Funding limitations.

(1) (No change.)

(2) HHSC will establish the following seven uncompensated-care pools: a state-owned hospital pool; a large public hospital pool; a small public hospital pool; a private hospital pool; a physician group practice pool; a governmental ambulance provider pool; and a publicly owned dental provider pool as follows:

(A) (No change.)

(B) Rural hospital [Rider 38] set-aside amounts. HHSC will determine rural hospital [Rider 38] set-aside amounts as follows:

(i) Divide the amount of funds approved by CMS for uncompensated-care payments for the demonstration year by the amount of funds approved by CMS for uncompensated-care payments for the 2013 demonstration year and round the result to four decimal places.

(ii) Determine the small rural public hospital [Rider 38] set-aside amount by multiplying the value from clause (i) of this subparagraph by the sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all rural [Rider 38] hospitals that are eligible to receive uncompensated-care payments under this section and that meet the definition of a small public hospital from subsection (b)(21) of this section. Truncate the resulting value to zero decimal places.

(iii) Determine the private rural hospital [Rider 38] set-aside amount by multiplying the value from clause (i) of this subparagraph by the sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all rural [Rider 38] hospitals that are eligible to receive uncompensated-care payments under this section and that meet the definition of a private hospital from subsection (b)(16) of this section. Truncate the resulting value to zero decimal places.

(iv) Determine the total rural hospital [Rider 38] set-aside amount by summing the results of clauses (ii) and (iii) of this subparagraph.

(C) Non-state-owned provider pools. HHSC will allocate the remaining available uncompensated-care funds, if any, and the rural hospital [Rider 38] set-aside amount among the non-state-owned provider pools as described in this subparagraph. The remaining available uncompensated-care funds equal the amount of funds approved by CMS for uncompensated-care payments for the demonstration year less the sum of funds allocated to the state-owned hospital pool under subparagraph (A) of this paragraph and the rural hospital [Rider 38] set-aside amount from subparagraph (B) of this paragraph.

(i) HHSC will allocate the funds among non-state-owned provider pools based on the following amounts:

(I) (No change.)

(II) Small public hospitals:

(-a-) The sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all non-rural [non-Rider 38] small public hospitals, as defined in subsection (b)(21) of this section, eligible to receive uncompensated-care payments under this section; plus

(-b-) An amount equal to the IGTs transferred to HHSC by small public hospitals to support DSH payments to themselves for Pass One and Pass Two payments for the same demonstration year.

(III) Private hospitals: The sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all non-rural [non-Rider 38] private hospitals, as defined in subsection (b)(16) of this section, eligible to receive uncompensated-care payments under this section.

(IV) - (VI) (No change.)

(ii) (No change.)

(iii) HHSC will calculate the aggregate limit for each non-state-owned provider pool as follows:

(I) To determine the large public hospital pool aggregate limit:

(-a-) multiply the remaining available uncompensated-care funds, from this subparagraph, by the amount calculated in clause (i)(I) of this subparagraph; and

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places.[; and]

[(-c-) for the third demonstration year only, add $136,309,422.]

(II) (No change.)

(III) To determine the private hospital pool aggregate limit:

(-a-) multiply the remaining available uncompensated-care funds from this subparagraph by the amount calculated in clause (i)(III) of this subparagraph;

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places; and

(-c-) add the result from item (-b-) of this subclause to the amount calculated in subparagraph (B)(iii) of this paragraph.[; and]

[(-d-) for the third demonstration year only, reduce the amount calculated in item (-c-) of this subclause by $136,309,422.]

(IV) - (VI) (No change.)

(3) Payments made under this section are limited by the availability of funds identified in subsection (d) of this section. If sufficient funds are not available for all payments for which a hospital is eligible, HHSC will reduce payments as described in subsection (h)(2) of this section.

(g) Uncompensated-care payment amount.

(1) Application.

(A) Cost and payment data reported by the hospital in the uncompensated-care application is used to[:]

[(i)] calculate the annual maximum uncompensated-care payment amount for the applicable demonstration year, as described in paragraph (2) of this subsection.[; and]

[(ii) reconcile the actual uncompensated-care costs reported by the hospital for the data year with uncompensated-care waiver payments, if any, made to the hospital for the same period. The reconciliation process is more fully described in subsection (i) of this section.]

(B) (No change.)

[(C) If a hospital withdraws from participation in an RHP, the hospital must submit an uncompensated-care application reporting its actual costs and payments for any period during which the hospital received uncompensated-care payments. The application will be used for the purpose described in paragraph (1)(A)(ii) of this subsection. If a hospital fails to submit the application reporting its actual costs, HHSC will recoup the full amount of uncompensated-care payments to the hospital for the period at issue.]

(2) - (4) (No change.)

(5) Reduction to stay within uncompensated-care pool aggregate limits. Prior to processing uncompensated-care payments for any payment period within a waiver demonstration year for any uncompensated-care pool described in subsection (f)(2) of this section, HHSC will determine if such a payment would cause total uncompensated-care payments for the demonstration year for the pool to exceed the aggregate limit for the pool and will reduce the maximum uncompensated-care payment amounts providers in the pool are eligible to receive for that period as required to remain within the pool aggregate limit.

(A) - (E) (No change.)

(F) Notwithstanding the calculations described in subparagraphs (A) - (E) of this paragraph, if the payment period is the final payment period for the demonstration year, to the extent the payment is supported by IGT, each rural [Rider 38] hospital is guaranteed a payment at least equal to its interim hospital specific limit from paragraph (2)(A) of this subsection multiplied by the value from subsection (f)(2)(B)(i) of this section for the demonstration year less any prior period payments. If this guarantee will cause payments for a pool to exceed the aggregate pool limit, the reduction required to stay within the pool limit will be distributed proportionally across all non-rural [non-Rider 38] providers in the pool based on each provider's resulting payment from subparagraphs (A) - (E) of this paragraph as compared to the payments to all non-rural [non-Rider 38] hospitals in the pool resulting from subparagraphs (A) - (E) of this paragraph.

(6) - (7) (No change.)

(h) (No change.)

(i) Reconciliation. HHSC will [Beginning in the third demonstration year, data on the uncompensated-care application will be used to] reconcile actual costs incurred by the hospital for the demonstration [data] year with uncompensated-care payments, if any, made to the hospital for the same period:

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

[(3) Transition payments are not subject to reconciliation under this subsection.]

(3) [(4)] If a hospital submitted a request as described in subsection (g)(4)(A)(i) of this section that impacted its interim hospital-specific limit, that hospital will be subject to an additional reconciliation as follows:

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

(4) Each hospital that received an uncompensated-care payment during a demonstration year must cooperate in the reconciliation process by reporting its actual costs and payments for that period on the form provided by HHSC for that purpose, even if the hospital closed or withdrew from participation in the uncompensated-care program. If a hospital fails to cooperate in the reconciliation process, HHSC may recoup the full amount of uncompensated-care payments to the hospital for the period at issue.

(j) - (k) (No change.)

§355.8202. Waiver Payments to Physician Group Practices for Uncompensated Care.

(a) Introduction. Payments are available under this section for services provided through September 30, 2019, by an eligible physician group practice described in subsection (c) of this section. Waiver payments to physician group practices for uncompensated charity care provided beginning October 1, 2019, are described in §355.8214 of this division (relating to Waiver Payments to Physician Group Practices for Uncompensated Charity Care). Waiver payments to an eligible physician group practice must be in compliance with the Centers for Medicare and Medicaid Services approved waiver Program Funding and Mechanics Protocol, HHSC waiver instructions, and this section.

(b) - (d) (No change.)

(e) Payment frequency. HHSC will distribute waiver payments [~~as follows and~~] on a schedule to be determined by HHSC and posted on HHSC's website. [~~:~~]

[~~(1) Uncompensated-care payments will be distributed at least quarterly after the uncompensated-care physician application is processed.~~]

[~~(2) The payment schedule or frequency may be modified as specified by CMS or HHSC.~~]

(f) - (j) (No change.)

§355.8208. Waiver Payments to Publicly-Owned Dental Providers for Uncompensated Charity Care.

(a) Introduction. Beginning October 1, 2019, Texas Healthcare Transformation and Quality Improvement 1115 Waiver payments are available under this section for eligible publicly-owned dental providers to help defray the uncompensated cost of charity care. Waiver payments to publicly-owned dental providers for uncompensated care provided before October 1, 2019, are described in §355.8441 of this subchapter (relating to Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services).

(b) Definitions.

(1) Centers for Medicare & Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(2) Charity care--Healthcare services provided without expectation of reimbursement to uninsured patients who meet the provider's charity-care policy. The charity-care policy should adhere to the charity-care principles of the Healthcare Financial Management Association. Charity care includes full or partial discounts given to uninsured patients who meet the provider's financial assistance policy. Charity care does not include bad debt, courtesy allowances, or discounts given to patients who do not meet the provider's charity-care policy or financial assistance policy.

(3) Demonstration year--The 12-month period beginning October 1 for which the payments calculated under this section are made. Demonstration year one was October 1, 2011, through September 30, 2012.

(4) Governmental entity--A state agency or a political subdivision of the state. A governmental entity includes a hospital authority, hospital district, city, county, or state entity.

(5) HHSC--The Texas Health and Human Services Commission or its designee.

(6) Intergovernmental transfer (IGT)--A transfer of public funds from a governmental entity to HHSC.

(7) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a governmental entity. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(8) Publicly-owned dental provider--A dental provider that uses paid government employees to provide dental services directly funded by a governmental entity.

(9) Uncompensated-care application--A form prescribed by HHSC to identify uncompensated costs for Medicaid-enrolled providers.

(10) Uncompensated-care payments--Payments intended to defray the uncompensated costs of charity care as defined in paragraph (2) of this subsection.

(11) Uninsured patient--An individual who has no health insurance or other source of third-party coverage for the services provided. The term includes an individual enrolled in Medicaid who received services that do not meet the definition of medical assistance in section 1905(a) of the Social Security Act (Medicaid services), if such inclusion is specified in the hospital's charity-care policy or financial assistance policy and the patient meets the hospital's policy criteria.

(12) Waiver--The Texas Healthcare Transformation and Quality Improvement Program Medicaid demonstration waiver under §1115 of the Social Security Act.

(c) Eligibility. To be eligible for payments under this section, a publicly-owned dental provider must submit to HHSC an acceptable uncompensated-care application for the demonstration year, as is more fully described in subsection (g)(1) of this section, by the deadline specified by HHSC.

(d) Source of funding. The non-federal share of funding for payments under this section is limited to public funds from governmental entities.

(e) Payment frequency. HHSC will distribute uncompensated-care payments on a schedule to be determined by HHSC.

(f) Funding limitations.

(1) Payments made under this section are limited by the amount of funds allocated to the provider's uncompensated-care pool for the demonstration year as described in §355.8212 of this division (relating to Waiver Payments to Hospitals for Uncompensated Charity Care). If payments for uncompensated care for the publicly-owned dental provider pool attributable to a demonstration year are expected to exceed the amount of funds allocated to that pool by HHSC for that demonstration year, HHSC will reduce payments to providers in the pool as described in subsection (g)(3) of this section.

(2) Payments made under this section are limited by the availability of funds identified in subsection (d) of this section. If sufficient funds are not available for all payments for which all publicly-owned dental providers are eligible, HHSC will reduce payments as described in subsection (h)(2) of this section.

(g) Uncompensated-care payment amount.

(1) Uncompensated-care application. Payments to eligible publicly-owned dental providers are based on cost and payment data reported by the provider on an application form prescribed by HHSC and on supporting documentation. Providers must certify that uncompensated-care costs reported on the application have not been claimed on any other application or cost report.

(2) (2) Calculation. A dental provider's annual maximum uncompensated-care payment amount is calculated as follows:

(A) As detailed in the cost report instructions, the provider must report their charges associated with charity-care services to uninsured patients and any payments attributable to those services.

(B) A cost-to-billed-charges ratio will be used to calculate total allowable cost.

(C) The result of subparagraph (B) of this paragraph will be reduced by any related payments to determine the provider's annual maximum uncompensated-care payment amount.

(3) Reduction to stay within the publicly-owned dental provider uncompensated-care pool allocation amount. Prior to

processing uncompensated-care payments for any payment period within a waiver demonstration year, HHSC will determine if such a payment would cause total uncompensated-care payments for the demonstration year for the publicly-owned dental provider pool to exceed the allocation amount for the pool and will reduce the maximum uncompensated-care payment amounts for each provider in the pool by the same percentage as required to remain within the pool allocation amount.

(h) Payment methodology.

(1) Notice. Prior to making any payment described in subsection (g) of this section, HHSC will give notice of the following information:

(A) the payment amount for each publicly-owned dental provider in the pool;

(B) the maximum IGT amount necessary for providers in the pool to receive the amounts described in subparagraph (A) of this paragraph; and

(C) the deadline for completing the IGT.

(2) Payment amount. The amount of the payment to providers in the pool will be determined based on the amount of funds transferred by the governmental entities as follows:

(A) If the governmental entities transfer the maximum amount referenced in paragraph (1) of this subsection, the providers will receive the full payment amount calculated for that payment period.

(B) If the governmental entities do not transfer the maximum amount referenced in paragraph (1) of this subsection, each provider in the pool will receive a portion of its payment amount for that period, based on the provider's percentage of the total payment amounts for all providers in the pool.

(i) Recoupment.

(1) In the event of an overpayment identified by HHSC or a disallowance by CMS of federal financial participation related to a provider's receipt or use of payments under this section, HHSC may recoup an amount equivalent to the amount of the overpayment or disallowance. The non-federal share of any funds recouped from the provider will be returned to the entity that owns or is affiliated with the provider.

(2) Payments under this section may be subject to adjustment for payments made in error, including, without limitation, adjustments under §371.1711 of this title (relating to Recoupment of Overpayments and Debts), 42 CFR Part 455, and Chapter 403 of the Texas Government Code. HHSC may recoup an amount equivalent to any such adjustment.

(3) HHSC may recoup from any current or future Medicaid payments as follows:

(A) HHSC will recoup from the provider against which any overpayment was made or disallowance was directed.

(B) If, within 30 days of the provider's receipt of HHSC's written notice of recoupment, the provider has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all future Medicaid payments from the provider until HHSC has recovered an amount equal to the amount overpaid or disallowed.

§355.8210. Waiver Payments to Governmental Ambulance Providers for Uncompensated Charity Care.

(a) Introduction. Beginning October 1, 2019, Texas Healthcare Transformation and Quality Improvement 1115 Waiver payments are available under this section for eligible governmental ambulance providers to help defray the uncompensated cost of charity care. Waiver payments to governmental ambulance providers for uncompensated care provided before October 1, 2019, are described in §355.8600 of this subchapter (relating to Reimbursement Methodology for Ambulance Services).

(b) Definitions.

(1) Centers for Medicare & Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(2) Certified public expenditure (CPE)--An expenditure certified by a governmental entity to represent its contribution of public funds in providing services that are eligible for federal matching Medicaid funds.

(3) Charity care--Healthcare services provided without expectation of reimbursement to uninsured patients who meet the provider's charity-care policy. The charity-care policy should adhere to the charity-care principles of the Healthcare Financial Management Association. Charity care includes full or partial discounts given to uninsured patients who meet the provider's financial assistance policy. Charity care does not include bad debt, courtesy allowances, or discounts given to patients who do not meet the provider's charity-care policy or financial assistance policy.

(4) Demonstration year--The 12-month period beginning October 1 for which the payments calculated under this section are made. Demonstration year one was October 1, 2011, through September 30, 2012.

(5) Governmental entity--A state agency or a political subdivision of the state. A governmental entity includes a hospital authority, hospital district, city, county, or state entity.

(6) HHSC--The Texas Health and Human Services Commission or its designee.

(7) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a governmental entity. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(8) Governmental ambulance provider--An ambulance provider that uses paid government employees to provide ambulance services. The ambulance services must be directly funded by a governmental entity. A private ambulance provider under contract with a governmental entity to provide ambulance services is not considered a governmental ambulance provider for the purposes of this section.

(9) Uncompensated-care application--A form prescribed by HHSC to identify uncompensated costs for Medicaid-enrolled providers.

(10) Uncompensated-care payments--Payments intended to defray the uncompensated costs of charity care as defined in paragraph (3) of this subsection.

(11) Uninsured patient--An individual who has no health insurance or other source of third-party coverage for the services provided. The term includes an individual enrolled in Medicaid who received services that do not meet the definition of medical assistance in section 1905(a) of the Social Security Act (Medicaid services), if such

inclusion is specified in the hospital's charity-care policy or financial assistance policy and the patient meets the hospital's policy criteria.

(12) Waiver--The Texas Healthcare Transformation and Quality Improvement Program Medicaid demonstration waiver under §1115 of the Social Security Act.

(c) Eligibility.

(1) A governmental ambulance provider must submit a written request for eligibility for supplemental payment in a form prescribed by HHSC to the HHSC Rate Analysis Department by a date specified each year by HHSC. An acceptable request must include:

(A) an overview of the governmental agency;

(B) a complete organizational chart of the governmental agency;

(C) a complete organizational chart of the ambulance department within the governmental agency providing ambulance services;

(D) an identification of the specific geographic service area covered by the ambulance department, by ZIP code;

(E) copies of all job descriptions for staff types or job categories of staff who work for the ambulance department and an estimated percentage of time spent working for the ambulance department and for other departments of the governmental agency;

(F) a primary contact person for the governmental agency who can respond to questions about the ambulance department; and

(G) a signed letter documenting the governmental ambulance provider's voluntary contribution of non-federal funds.

(2) If eligible, a governmental ambulance provider may begin to claim uncompensated-care costs related to services provided on or after the first day of the month after the request for eligibility is approved.

(d) Source of funding. The non-federal share of funding for payments under this section is limited to public funds from governmental entities. Prior to processing uncompensated-care payments for any payment period within a waiver demonstration year, HHSC will survey the governmental entities that provide public funds for the governmental ambulance providers in the pool to determine the amount of funding available to support payments from that pool.

(e) Payment frequency. HHSC will distribute uncompensated-care payments on a schedule to be determined by HHSC.

(f) Funding limitations.

(1) Payments made under this section are limited by the amount of funds allocated to the provider's uncompensated-care pool for the demonstration year as described in §355.8212 of this division (relating to Waiver Payments to Hospitals for Uncompensated Charity Care). If payments for uncompensated care for the governmental ambulance provider pool attributable to a demonstration year are expected to exceed the amount of funds allocated to that pool by HHSC for that demonstration year, HHSC will reduce payments to providers in the pool as described in subsection (g)(3) of this section.

(2) Payments made under this section are limited by the availability of funds identified in subsection (d) of this section. If sufficient funds are not available for all payments for which all governmental ambulance providers are eligible, HHSC will reduce payments as described in subsection (h)(2) of this section.

(g) Uncompensated-care payment amount.

(1) Cost reports. Governmental ambulance providers that are eligible for supplemental payments must submit an annual cost report for ground, water, and air ambulance services delivered to individuals who meet the provider's charity-care policy.

(A) The cost report form will be specified by HHSC. Providers certify through the cost report process their total actual federal and non-federal costs and expenditures for the cost reporting period.

(B) Cost reports must be completed for the full demonstration year for which payments are being calculated. HHSC may require a newly eligible provider to submit a partial-year cost report for their first year of eligibility. The beginning date for the partial-year cost report is the provider's first day of eligibility for supplemental payments as determined by HHSC. The ending date of the partial-year cost report is the last day of the demonstration year that encompasses the cost report beginning date.

(C) The cost report is due on or before March 31 of the year following the cost reporting period ending date and must be certified in a manner specified by HHSC.

(i) If March 31 falls on a federal or state holiday or weekend, the due date is the first working day after March 31.

(ii) A provider may request in writing an extension of up to 30 days after the due date to submit a cost report. HHSC will respond to all written requests for extensions, indicating whether the extension is granted. HHSC must receive a request for extension before the cost report due date. A request for extension received after the due date is considered denied.

(iii) A provider whose cost report is not received by the due date or the HHSC-approved extended due date is ineligible for supplemental payments for the federal fiscal year.

(iv) The individual who completes the cost report on behalf of the provider ("the preparer") must complete the state-sponsored cost report training every other year for the odd-year cost report in order to receive credit to complete both that odd-year cost report and the following even-year cost report. If a new preparer wishes to complete an even-year cost report and has not completed the previous odd-year cost report training, to receive training credit to complete the even-year cost report, the preparer must complete an even-year cost report training. No exemptions from the cost report training requirements will be granted.

(D) A cost report documents the provider's actual allowable charity-care costs for delivering ambulance services in accordance with the applicable state and federal regulations. Because the cost report is used to determine supplemental payments, a provider must submit a complete and acceptable cost report to be eligible for a supplemental payment.

(E) The uncompensated-care payment is contingent upon the governmental ambulance provider's CPEs related to charity-care services. There are two CPE forms that must be submitted with each cost report:

(i) The cost report certification form formally acknowledges that the cost report is true, correct, and complete, and was prepared in accordance to all applicable rules and regulations.

(ii) The certification of funds form acknowledges that the claimed expenditures are allocable and allowable to the State Medicaid program under Title XIX of the Social Security Act, and in accordance with all procedures, instructions, and guidance issued by the single state agency and in effect during the cost report federal fiscal year.

(2) Calculation. An ambulance provider's annual maximum uncompensated-care payment amount is calculated as follows:

(A) As detailed in the cost report instructions, a provider must report their charges associated with charity-care services provided to uninsured patients and any payments attributable to those services.

(B) A provider's total allowable reported costs for ambulance services are allocated to uninsured charity-care patients based on the ratio of charges for uninsured charity-care patients to the charges for all patients. Only allocable expenditures related to uninsured charity care as defined in subsection (b)(3) of this section will be included in calculating the uncompensated-care payment.

(C) The result of subparagraph (B) of this paragraph will be reduced by any related payments reported on the cost report to determine the provider's annual maximum uncompensated-care payment amount.

(3) Reduction to stay within the governmental ambulance provider uncompensated-care pool allocation amount. Prior to processing uncompensated-care payments for any payment period within a waiver demonstration year, HHSC will determine if such a payment would cause total uncompensated-care payments for the demonstration year for the governmental ambulance provider pool to exceed the allocation amount for the pool and will reduce the maximum uncompensated-care payment amounts for each provider in the pool by the same percentage as required to remain within the pool allocation amount.

(h) Recoupment.

(1) In the event of an overpayment identified by HHSC or a disallowance by CMS of federal financial participation related to a provider's receipt or use of payments under this section, HHSC may recoup an amount equivalent to the amount of the federal share of the overpayment or disallowance.

(2) Payments under this section may be subject to adjustment for payments made in error, including, without limitation, adjustments under §371.1711 of this title (relating to Recoupment of Overpayments and Debts), 42 CFR Part 455, and Chapter 403 of the Texas Government Code. HHSC may recoup an amount equivalent to any such adjustment.

(3) HHSC may recoup from any current or future Medicaid payments as follows:

(A) HHSC will recoup from the provider against which any overpayment was made or disallowance was directed.

(B) If, within 30 days of the provider's receipt of HHSC's written notice of recoupment, the provider has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all future Medicaid payments from the provider until HHSC has recovered an amount equal to the amount overpaid or disallowed.

§355.8212. Waiver Payments to Hospitals for Uncompensated Charity Care.

(a) Introduction. Texas Healthcare Transformation and Quality Improvement Program §1115(a) Medicaid demonstration waiver payments are available under this section to help defray the uncompensated cost of charity care provided by eligible hospitals on or after October 1, 2019. Waiver payments to hospitals for uncompensated care provided before October 1, 2019, are described in §355.8201 of this division (relating to Waiver Payments to Hospitals for Uncompensated Care). Waiver payments to hospitals must be in compliance with the Centers for Medicare & Medicaid Services approved waiver Program Funding and Mechanics Protocol, HHSC waiver instructions, and this section.

(b) Definitions.

(1) Affiliation agreement--An agreement, entered into between one or more privately-operated hospitals and a governmental entity that does not conflict with federal or state law. HHSC does not prescribe the form of the agreement.

(2) Allocation amount--The amount of funds approved by the Centers for Medicare & Medicaid Services for uncompensated-care payments for the demonstration year that is allocated to each uncompensated-care provider pool or sub-pool, as described in subsection (f)(2) of this section.

(3) Anchor--The governmental entity identified by HHSC as having primary administrative responsibilities on behalf of a Regional Healthcare Partnership (RHP).

(4) Centers for Medicare & Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(5) Charity care--Healthcare services provided without expectation of reimbursement to uninsured patients who meet the provider's charity-care policy. The charity-care policy should adhere to the charity-care principles of the Healthcare Financial Management Association. Charity care includes full or partial discounts given to uninsured patients who meet the provider's financial assistance policy. Charity care does not include bad debt, courtesy allowances, or discounts given to patients who do not meet the provider's charity-care policy or financial assistance policy.

(6) Data year--A 12-month period that is described in §355.8066 of this subchapter (relating to Hospital-Specific Limit Methodology) and from which HHSC will compile cost and payment data to determine uncompensated-care payment amounts. This period corresponds to the Disproportionate Share Hospital data year.

(7) Delivery System Reform Incentive Payments (DSRIP)--Payments related to the development or implementation of a program of activity that supports a hospital's efforts to enhance access to health care, the quality of care, and the health of patients and families it serves. These payments are not considered patient-care revenue and are not offset against the hospital's costs when calculating the hospital-specific limit as described in §355.8066 of this subchapter.

(8) Demonstration year--The 12-month period beginning October 1 for which the payments calculated under this section are made. This period corresponds to the Disproportionate Share Hospital (DSH) program year. Demonstration year one corresponded to the 2012 DSH program year.

(9) Disproportionate Share Hospital (DSH)--A hospital participating in the Texas Medicaid program that serves a disproportionate share of low-income patients and is eligible for additional reimbursement from the DSH fund.

(10) Governmental entity--A state agency or a political subdivision of the state. A governmental entity includes a hospital authority, hospital district, city, county, or state entity.

(11) HHSC--The Texas Health and Human Services Commission or its designee.

(12) Institution for mental diseases (IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness.

(13) Intergovernmental transfer (IGT)--A transfer of public funds from a governmental entity to HHSC.

(14) Large public hospital--An urban public hospital - Class one as defined in §355.8065 of this subchapter (relating to Disproportionate Share Hospital Reimbursement Methodology).

(15) Mid-Level Professional--Medical practitioners which include the following professions only:

(A) Certified Registered Nurse Anesthetists;

(B) Nurse Practitioners;

(C) Physician Assistants;

(D) Dentists;

(E) Certified Nurse Midwives;

(F) Clinical Social Workers;

(G) Clinical Psychologists; and

(H) Optometrists.

(16) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a governmental entity. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(17) Regional Healthcare Partnership (RHP)--A collaboration of interested participants that work collectively to develop and submit to the state a regional plan for health care delivery system reform. Regional Healthcare Partnerships will support coordinated, efficient delivery of quality care and a plan for investments in system transformation that is driven by the needs of local hospitals, communities, and populations.

(18) RHP plan--A multi-year plan within which participants propose their portion of waiver funding and DSRIP projects.

(19) Rural hospital--A hospital enrolled as a Medicaid provider that is:

(A) located in a county with 60,000 or fewer persons according to the 2010 U.S. Census;

(B) designated by Medicare as a Critical Access Hospital (CAH) or a Sole Community Hospital (SCH); or

(C) designated by Medicare as a Rural Referral Center (RRC) and is not located in a Metropolitan Statistical Area (MSA), as defined by the U.S. Office of Management and Budget, or is located in an MSA but has 100 or fewer beds.

(20) Service Delivery Area (SDA)--The counties included in any HHSC-defined geographic area as applicable to each MCO.

(21) Uncompensated-care application--A form prescribed by HHSC to identify uncompensated costs for Medicaid-enrolled providers.

(22) Uncompensated-care payments--Payments intended to defray the uncompensated costs of charity care as defined in paragraph (5) of this subsection.

(23) Uninsured patient--An individual who has no health insurance or other source of third-party coverage for the services provided. The term includes an individual enrolled in Medicaid who received services that do not meet the definition of medical assistance in section 1905(a) of the Social Security Act (Medicaid services), if such inclusion is specified in the hospital's charity-care policy or financial assistance policy and the patient meets the hospital's policy criteria.

(24) Waiver--The Texas Healthcare Transformation and Quality Improvement Program Medicaid demonstration waiver under §1115 of the Social Security Act.

(c) Eligibility. A hospital that meets the requirements described in this subsection may receive payments under this section.

(1) Generally. To be eligible for any payment under this section:

(A) a hospital must be enrolled as a Medicaid provider in the State of Texas at the beginning of the demonstration year; and

(B) if it is a hospital not operated by a governmental entity, it must have filed with HHSC an affiliation agreement and the documents described in clauses (i) and (ii) of this subparagraph.

(i) The hospital must certify on a form prescribed by HHSC:

(I) that it is a privately-operated hospital;

(II) that no part of any payment to the hospital under this section will be returned or reimbursed to a governmental entity with which the hospital affiliates; and

(III) that no part of any payment to the hospital under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the hospital's receipt of the supplemental funds.

(ii) The governmental entity that is party to the affiliation agreement must certify on a form prescribed by HHSC:

(I) that the governmental entity has not received and has no agreement to receive any portion of the payments made to any hospital that is party to the agreement;

(II) that the governmental entity has not entered into a contingent fee arrangement related to the governmental entity's participation in the waiver program;

(III) that the governmental entity adopted the conditions described in the certification form prescribed by or otherwise approved by HHSC pursuant to a vote of the governmental entity's governing body in a public meeting preceded by public notice published in accordance with the governmental entity's usual and customary practices or the Texas Open Meetings Act, as applicable; and

(IV) that all affiliation agreements, consulting agreements, or legal services agreements executed by the governmental entity related to its participation in this waiver payment program are available for public inspection upon request.

(iii) Submission requirements.

(I) Initial submissions. The parties must initially submit the affiliation agreements and certifications described in this subsection to the HHSC Rate Analysis Department on the earlier of the following occurrences after the documents are executed:

(-a-) the date the hospital submits the uncompensated-care application that is further described in paragraph (2) of this subsection; or

(-b-) thirty days before the projected deadline for completing the IGT, which is posted on HHSC Rate Analysis Departments website for each payment under this section, for the first payment under the affiliation agreement.

(II) Subsequent submissions. The parties must submit revised documentation to HHSC as follows:

(-a-) When the nature of the affiliation changes or parties to the agreement are added or removed, the parties must submit the revised affiliation agreement and related hospital and governmental entity certifications.

(-b-) When there are changes in ownership, operation, or provider identifiers, the hospital must submit a revised hospital certification.

(-c-) The parties must submit the revised documentation thirty days before the projected deadline for completing the IGT for the first payment under the revised affiliation agreement. The projected deadline for completing the IGT is posted on HHSC Rate Analysis Department's website for each payment under this section.

(III) A hospital that submits new or revised documentation under subclause (I) or (II) of this clause must notify the Anchor of the RHP in which the hospital participates.

(IV) The certification forms must not be modified except for those changes approved by HHSC prior to submission.

(-a-) Within 10 business days of HHSC Rate Analysis Department receiving a request for approval of proposed modifications, HHSC will approve, reject, or suggest changes to the proposed certification forms.

(-b-) A request for HHSC approval of proposed modifications to the certification forms will not delay the submission deadlines established in this clause.

(V) A hospital that fails to submit the required documentation in compliance with this subparagraph is not eligible to receive a payment under this section.

(2) Uncompensated-care payments. For a hospital to be eligible to receive uncompensated-care payments, in addition to the requirements in paragraph (1) of this subsection, the hospital must:

(A) submit to HHSC an uncompensated-care application for the demonstration year, as is more fully described in subsection (g)(1) of this section, by the deadline specified by HHSC; and

(B) submit to HHSC documentation of:

(i) its participation in an RHP; or

(ii) approval from CMS of its eligibility for uncompensated-care payments without participation in an RHP.

(3) Changes that may affect eligibility for uncompensated-care payments.

(A) If a hospital closes, loses its license, loses its Medicare or Medicaid eligibility, withdraws from participation in an RHP, or files bankruptcy before receiving all or a portion of the uncompensated-care payments for a demonstration year, HHSC will determine the hospital's eligibility to receive payments going forward on a case-by-case basis. In making the determination, HHSC will consider multiple factors including whether the hospital was in compliance with all requirements during the demonstration year and whether it can satisfy the requirement to cooperate in the reconciliation process as described in subsection (i) of this section.

(B) A hospital must notify HHSC Rate Analysis Department in writing within 30 days of the filing of bankruptcy or of changes in ownership, operation, licensure, Medicare or Medicaid enrollment, or affiliation that may affect the hospital's continued eligibility for payments under this section.

(d) Source of funding. The non-federal share of funding for payments under this section is limited to public funds from governmental entities. Prior to processing uncompensated-care payments for any payment period within a waiver demonstration year for any uncompensated-care pool or sub-pool described in subsection (f)(2) of this section, HHSC will survey the governmental entities that provide public funds for the hospitals in that pool or sub-pool to determine the amount of funding available to support payments from that pool or sub-pool.

(e) Payment frequency. HHSC will distribute waiver payments on a schedule to be determined by HHSC and posted on HHSC's website.

(f) Funding limitations.

(1) Payments made under this section are limited by the maximum aggregate amount of funds allocated to the provider's uncompensated-care pool or sub-pool for the demonstration year. If payments for uncompensated care for an uncompensated-care pool or sub-pool attributable to a demonstration year are expected to exceed the aggregate amount of funds allocated to that pool or sub-pool by HHSC for that demonstration year, HHSC will reduce payments to providers in the pool or sub-pool as described in subsection (g)(6) of this section.

(2) HHSC will establish the following uncompensated-care pools: a state-owned hospital pool, a non-state-owned hospital pool that is divided into sub-pools corresponding to the Medicaid managed care service delivery areas (SDAs), a physician group practice pool, a governmental ambulance provider pool, and a publicly owned dental provider pool.

(A) The state-owned hospital pool.

(i) The state-owned hospital pool funds uncompensated-care payments to state-owned teaching hospitals, state-owned IMDs, and the Texas Center for Infectious Disease.

(ii) HHSC will determine the allocation for this pool at an amount less than or equal to the total annual maximum uncompensated-care payment amount for these hospitals as calculated in subsection (g)(2) of this section.

(B) Non-state-owned provider pool and sub-pools. HHSC will allocate the remaining available uncompensated-care funds, if any, among the non-state-owned provider pools as described in this subparagraph. The remaining available uncompensated-care funds equal the amount of funds approved by CMS for uncompensated-care payments for the demonstration year less the sum of funds allocated to the state-owned hospital pool under subparagraph (A) of this paragraph. HHSC will allocate the funds among non-state-owned provider pools and sub-pools based on the following amounts.

(i) For the physician group practice pool, the governmental ambulance provider pool, and the publicly owned dental provider pool:

(I) for demonstration year nine, an amount to equal the percentage of the applicable total uncompensated-care pool amount paid to each group in demonstration year six; and

(II) for demonstration years ten and after, an amount to equal a percentage determined by HHSC annually based on factors including the amount of reported charity-care costs for the previous demonstration year and the ratio of reported charity-care costs to hospitals' charity-care costs.

(ii) For the non-state-owned hospital pool, all of the remaining funds after the allocations described in clause (i) of this subparagraph. HHSC will create non-state-owned hospital sub-pools as follows:

(I) calculate a revised maximum payment amount for each non-state-owned hospital as described in subsection (g)(6) of this section; and

(II) group all non-state-owned hospitals into sub-pools based on their geographic location within one of the state's Medicaid service delivery areas (SDAs), as described in subsection (g)(7) of this section.

(3) Payments made under this section are limited by the availability of funds identified in subsection (d) of this section and timely received by HHSC. If sufficient funds are not available for all payments for which the providers in each pool or sub-pool are eligible, HHSC will reduce payments as described in subsection (h)(2) of this section.

(g) Uncompensated-care payment amount.

(1) Application.

(A) Cost and payment data reported by a hospital in the uncompensated-care application is used to calculate the annual maximum uncompensated-care payment amount for the applicable demonstration year, as described in paragraph (2) of this subsection.

(B) Unless otherwise instructed in the application, a hospital must base the cost and payment data reported in the application on its applicable as-filed CMS 2552 Cost Report(s) For Electronic Filing Of Hospitals corresponding to the data year and must comply with the application instructions or other guidance issued by HHSC.

(i) When the application requests data or information outside of the as-filed cost report(s), a hospital must provide all requested documentation to support the reported data or information.

(ii) For a new hospital, the cost and payment data period may differ from the data year, resulting in the eligible uncompensated costs based only on services provided after the hospital's Medicaid enrollment date. HHSC will determine the data period in such situations.

(2) Calculation.

(A) A hospital's annual maximum uncompensated-care payment amount is the sum of the components described in clauses (i) - (iv) of this subparagraph.

(i) The hospital's inpatient and outpatient charity-care costs pre-populated in or reported on the uncompensated-care application, as described in paragraph (3) of this subsection, reduced by interim DSH payments for the same program period, if any, that reimburse the hospital for the same costs. To identify DSH payments that reimburse the hospital for the same costs, HHSC will:

(I) Use self-reported information on the application to identify charges that can be claimed by the hospital in both DSH and UC and convert the charges to cost;

(II) Calculate a DSH-only uninsured shortfall by reducing the hospital's total uninsured costs, calculated as described in §355.8066 of this chapter, by the result from subclause (I) of this clause;

(III) Reduce the interim DSH payment amount by the sum of:

(-a-) the DSH-only uninsured shortfall calculated as described in subclause (II) of this clause; and

(-b-) the hospital's Medicaid shortfall, calculated as described in §355.8066 of this chapter.

(ii) Other eligible costs for the data year, as described in paragraph (4) of this subsection;

(iii) Cost and payment adjustments, if any, as described in paragraph (5) of this subsection; and

(iv) For each large public hospital, the amount transferred to HHSC by that hospital's affiliated governmental entity to support DSH payments for the same demonstration year.

(B) A hospital also participating in the DSH program cannot receive total uncompensated-care payments under this section (related to inpatient and outpatient hospital services provided to uninsured charity-care individuals) and DSH payments that exceed the hospital's total eligible uncompensated costs. For purposes of this requirement, "total eligible uncompensated costs" means the hospital's DSH hospital-specific limit (HSL) plus the unreimbursed costs of non-covered inpatient and outpatient services provided to uninsured charity-care patients.

(3) Hospital charity-care costs. The definitions of eligible hospital charity-care costs are consistent with the definitions contained in schedule S-10 of the CMS 2552-10 cost report.

(A) For each hospital required by Medicare to submit schedule S-10, HHSC will pre-populate the uncompensated-care application described in paragraph (1) of this subsection with the charity-care charges for services provided to uninsured patients reported by the hospital on schedule S-10 for the cost reporting period two years before the demonstration year.

(B) For each hospital not required by Medicare to submit schedule S-10 of the CMS 2552-10 cost report, the hospital must report its hospital charity-care charges for services provided to uninsured patients for the cost reporting period two years before the demonstration year on the uncompensated-care application described in paragraph (1) of this subsection. The definitions of eligible charity-care costs in the application instructions will be consistent with definitions in schedule S-10.

(4) Other eligible costs.

(A) In addition to inpatient and outpatient charity-care costs, a hospital may also claim reimbursement under this section for uncompensated charity care, as specified in the uncompensated-care application, that is related to the following services provided to uninsured patients who meet the hospital's charity-care policy:

(i) direct patient-care services of physicians and mid-level professionals; and

(ii) certain pharmacy services.

(B) A payment under this section for the costs described in subparagraph (A) of this paragraph are not considered inpatient or outpatient Medicaid payments for the purpose of the DSH audit described in §355.8065 of this subchapter.

(5) Adjustments. When submitting the uncompensated-care application, a hospital may request that cost and payment data from the data year be adjusted to reflect increases or decreases in costs resulting from changes in operations or circumstances.

(A) A hospital:

(i) may request that costs not reflected on the as-filed cost report, but which would be incurred for the demonstration year, be included when calculating payment amounts; and

(ii) may request that costs reflected on the as-filed cost report, but which would not be incurred for the demonstration year, be excluded when calculating payment amounts.

(B) Documentation supporting the request must accompany the application. HHSC will deny a request if it cannot verify that costs not reflected on the as-filed cost report will be incurred for the demonstration year.

(C) Notwithstanding the availability of adjustments impacting the cost and payment data described in this section, no adjustments to the interim hospital-specific limit will be considered for purposes of Medicaid DSH payment calculations described in §355.8065 of this subchapter.

(6) Reduction to stay within uncompensated-care pool allocation amounts. Prior to processing uncompensated-care payments for any payment period within a waiver demonstration year for any uncompensated-care pool described in subsection (f)(2) of this section, HHSC will determine if such a payment would cause total uncompensated-care payments for the demonstration year for the pool to exceed the allocation amount for the pool and will reduce the maximum uncompensated-care payment amounts providers in the pool are eligible to receive for that period as required to remain within the pool allocation amount.

(A) Calculations in this paragraph will be applied to each of the uncompensated-care pools separately.

(B) HHSC will calculate the following data points:

(i) For each provider, prior period payments to equal prior period uncompensated-care payments for the demonstration year.

(ii) For each provider, a maximum uncompensated-care payment for the payment period to equal the sum of:

(I) the portion of the annual maximum uncompensated-care payment amount calculated for that provider (as described in this section and the sections referenced in subsection (f)(2)(B) of this section) that is attributable to the payment period; and

(II) the difference, if any, between the portions of the annual maximum uncompensated-care payment amounts attributable to prior periods and the prior period payments calculated in clause (i) of this subparagraph.

(iii) The cumulative maximum payment amount to equal the sum of prior period payments from clause (i) of this subparagraph and the maximum uncompensated-care payment for the payment period from clause (ii) of this subparagraph for all members of the pool combined.

(iv) A pool-wide total maximum uncompensated-care payment for the demonstration year to equal the sum of all pool members' annual maximum uncompensated-care payment amounts for the demonstration year from paragraph (2) of this subsection.

(v) A pool-wide ratio calculated as the pool allocation amount from subsection (f)(2) of this section divided by the pool-wide total maximum uncompensated-care payment amount for the demonstration year from clause (iv) of this subparagraph.

(C) If the cumulative maximum payment amount for the pool from subparagraph (B)(iii) of this paragraph is less than the allocation amount for the pool, each provider in the pool is eligible to receive its maximum uncompensated-care payment for the payment period from subparagraph (B)(ii) of this paragraph without any reduction to remain within the pool allocation amount.

(D) If the cumulative maximum payment amount for the pool from subparagraph (B)(iii) of this paragraph is more than the allocation amount for the pool, HHSC will calculate a revised maximum uncompensated-care payment for the payment period for each provider in the pool as follows:

(i) The physician group practice pool, the governmental ambulance provider pool, and the publicly owned dental provider pool. HHSC will calculate a capped payment amount equal to the product of each provider's annual maximum uncompensated-care payment amount for the demonstration year from paragraph (2) of this subsection and the pool-wide ratio calculated in subparagraph (B)(v) of this paragraph.

(ii) The non-state-owned hospital pool.

(I) For rural hospitals, HHSC will:

(-a-) sum the annual maximum uncompensated-care payment amounts from paragraph (2) of this subsection for all rural hospitals in the pool;

(-b-) in demonstration year:

(-1-) nine, allocate to rural hospitals the amount calculated in item (-a-) of this subclause; or

(-2-) ten and after, allocate to rural hospitals the lesser of the amount calculated in item (-a-) of this subclause or the amount allocated to rural hospitals in demonstration year nine;

(-c-) calculate a ratio to equal the rural hospital allocation amount from item (-b-) of this subclause divided by the total annual maximum uncompensated-care payment amount for rural hospitals from item (-a-) of this subclause; and

(-d-) calculate a capped payment amount equal to the product of each rural hospital's annual maximum uncompensated-care payment amount for the demonstration year from paragraph (2) of this subsection and the ratio calculated in item (-c-) of this subclause.

(II) For non-rural hospitals, HHSC will:

(-a-) sum the annual maximum uncompensated-care payment amounts from paragraph (2) of this subsection for all non-rural hospitals in the pool;

(-b-) allocate to non-rural hospitals an amount to equal the difference between the pool allocation amount from subsection (f)(2) of this section and the result of subclause (I)(-a-) or (-b-) of this clause;

(-c-) calculate a ratio to equal the non-rural hospital allocation amount from item (-b-) of this subclause divided by the total annual maximum uncompensated-care payment amount for non-rural hospitals from item (-a-) of this subclause; and

(-d-) calculate a capped payment amount equal to the product of each non-rural hospital's annual maximum uncompensated-care payment amount for the demonstration year from paragraph (2) of this subsection and the ratio calculated in item (-c-) of this subclause.

(III) The revised maximum uncompensated-care payment for the payment period equals the lesser of:

(-a-) the maximum uncompensated-care payment for the payment period from subparagraph (B)(ii) of this paragraph; or

(-b-) the difference between the capped payment amount from subclause (II) of this clause and the prior period payments from subparagraph (B)(i) of this paragraph.

(7) Non-state-owned hospital SDA sub-pools. After HHSC completes the calculations described in paragraph (6) of this subsection, HHSC will place each non-state-owned hospital into a sub-pool based on the hospital's geographic location in a designated Medicaid SDA for purposes of the calculations described in subsection (h) of this section.

(8) Prohibition on duplication of costs. Eligible uncompensated-care costs cannot be reported on multiple uncompensated-care applications, including uncompensated-care applications for other

programs. Reporting on multiple uncompensated-care applications is duplication of costs.

(9) Advance payments.

(A) In a demonstration year in which uncompensated-care payments will be delayed pending data submission or for other reasons, HHSC may make advance payments to hospitals that meet the eligibility requirements described in subsection (c)(2) of this section and submitted an acceptable uncompensated-care application for the preceding demonstration year from which HHSC calculated an annual maximum uncompensated-care payment amount for that year.

(B) The amount of the advance payments will:

(i) in demonstration year nine, be based on estimates of eligible charity-care costs that will be incurred by each hospital during the demonstration year; and

(ii) in demonstration years ten and after, be a percentage, to be determined by HHSC, of the annual maximum uncompensated-care payment amount calculated by HHSC for the preceding demonstration year.

(C) Advance payments are considered to be prior period payments as described in paragraph (6)(B)(i) of this subsection.

(D) A hospital that did not submit an acceptable uncompensated-care application for the preceding demonstration year is not eligible for an advance payment.

(E) If a partial year uncompensated-care application was used to determine the preceding demonstration year's payments, data from that application may be annualized for use in computation of an advance payment amount.

(h) Payment methodology.

(1) Notice. Prior to making any payment described in subsection (g) of this section, HHSC will give notice of the following information:

(A) the payment amount for each hospital in a pool or sub-pool for the payment period (based on whether the payment is made quarterly, semi-annually, or annually);

(B) the maximum IGT amount necessary for hospitals in a pool or sub-pool to receive the amounts described in subparagraph (A) of this paragraph; and

(C) the deadline for completing the IGT.

(2) Payment amount. The amount of the payment to hospitals in each pool or sub-pool will be determined based on the amount of funds transferred by the affiliated governmental entities as follows:

(A) If the governmental entities transfer the maximum amount referenced in paragraph (1) of this subsection, the hospitals in the pool or sub-pool will receive the full payment amount calculated for that payment period.

(B) If the governmental entities do not transfer the maximum amount referenced in paragraph (1) of this subsection, each hospital in the pool or sub-pool will receive a portion of its payment amount for that period, based on the hospital's percentage of the total payment amounts for all hospitals in the pool or sub-pool.

(3) Final payment opportunity. Within payments described in this section, governmental entities that do not transfer the maximum IGT amount described in paragraph (1) of this subsection during a demonstration year will be allowed to fund the remaining payments to hospitals in the pool or sub-pool at the time of the final payment for that demonstration year. The IGT will be applied in the following order:

(A) to the final payments up to the maximum amount; and

(B) to remaining balances for prior payment periods in the demonstration year.

(i) Reconciliation. HHSC will reconcile actual costs incurred by the hospital for the demonstration year with uncompensated-care payments, if any, made to the hospital for the same period:

(1) If a hospital received payments in excess of its actual costs, the overpaid amount will be recouped from the hospital, as described in subsection (j) of this section.

(2) If a hospital received payments less than its actual costs, and if HHSC has available waiver funding for the demonstration year in which the costs were accrued, the hospital may receive reimbursement for some or all of those actual documented unreimbursed costs.

(3) Each hospital that received an uncompensated-care payment during a demonstration year must cooperate in the reconciliation process by reporting its actual costs and payments for that period on the form provided by HHSC for that purpose, even if the hospital closed or withdrew from participation in the uncompensated-care program. If a hospital fails to cooperate in the reconciliation process, HHSC may recoup the full amount of uncompensated-care payments to the hospital for the period at issue.

(j) Recoupment.

(1) In the event of an overpayment identified by HHSC or a disallowance by CMS of federal financial participation related to a hospital's receipt or use of payments under this section, HHSC may recoup an amount equivalent to the amount of the overpayment or disallowance. The non-federal share of any funds recouped from the hospital will be returned to the entity that owns or is affiliated with the hospital.

(2) Payments under this section may be subject to adjustment for payments made in error, including, without limitation, adjustments under §371.1711 of this title (relating to Recoupment of Overpayments and Debts), 42 CFR Part 455, and Chapter 403 of the Texas Government Code. HHSC may recoup an amount equivalent to any such adjustment.

(3) HHSC may recoup from any current or future Medicaid payments as follows:

(A) HHSC will recoup from the hospital against which any overpayment was made or disallowance was directed.

(B) If, within 30 days of the hospital's receipt of HHSC's written notice of recoupment, the hospital has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all future Medicaid payments from the hospital until HHSC has recovered an amount equal to the amount overpaid or disallowed.

§355.8214. Waiver Payments to Physician Group Practices for Uncompensated Charity Care.

(a) Introduction. Beginning October 1, 2019, payments are available under this section to help defray the uncompensated charity-care costs incurred by eligible physician group practices described in subsection (c) of this section. Waiver payments to physician group practices for uncompensated care provided before October 1, 2019, are described in §355.8202 of this division (relating to Waiver Payments to Physician Group Practices for Uncompensated Care). Waiver payments to an eligible physician group practice must be in compliance

with the Centers for Medicare & Medicaid Services approved waiver Program Funding and Mechanics Protocol, HHSC waiver instructions, and this section.

(b) Definitions.

(1) Allocation amount--The amount of funds approved by the Centers for Medicare & Medicaid Services for uncompensated-care payments for the demonstration year that is allocated to the physician group practice uncompensated-care pool, as described in §355.8212 of this division (relating to Waiver Payments to Hospitals for Uncompensated Charity Care).

(2) Centers for Medicare & Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(3) Charity care--Healthcare services provided without expectation of reimbursement to uninsured patients who meet the provider's charity-care policy. The charity-care policy should adhere to the charity-care principles of the Healthcare Financial Management Association. Charity care includes full or partial discounts given to uninsured patients who meet the provider's financial assistance policy. Charity care does not include bad debt, courtesy allowances, or discounts given to patients who do not meet the provider's charity-care policy or financial assistance policy.

(4) Demonstration year--The 12-month period beginning October 1 for which the payments calculated under this section are made. Demonstration year one was October 1, 2011, through September 30, 2012.

(5) Governmental entity--A state agency or a political subdivision of the state. A governmental entity includes a hospital authority, hospital district, city, county, or state entity.

(6) HHSC--The Texas Health and Human Services Commission or its designee.

(7) Intergovernmental transfer (IGT)--A transfer of public funds from a governmental entity to HHSC.

(8) Mid-Level Professional--Medical practitioners which include the following professions only:

(A) Certified Registered Nurse Anesthetists;

(B) Nurse Practitioners;

(C) Physician Assistants;

(D) Dentists;

(E) Certified Nurse Midwives;

(F) Clinical Social Workers;

(G) Clinical Psychologists; and

(H) Optometrists.

(9) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a governmental entity. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(10) Regional Healthcare Partnership (RHP)--A collaboration of interested participants that work collectively to develop and submit to the state a regional plan for health care delivery system reform. Regional Healthcare Partnerships will support coordinated, efficient delivery of quality care and a plan for investments in system transformation that is driven by the needs of local hospitals, communities, and populations.

(11) Uncompensated-care payments--Payments intended to defray the uncompensated costs of charity care as defined in paragraph (3) of this subsection.

(12) Uncompensated-care physician application--A form prescribed by HHSC to identify uncompensated costs for Medicaid-enrolled providers.

(13) Uninsured patient--An individual who has no health insurance or other source of third-party coverage for services, as defined by CMS. The term includes an individual enrolled in Medicaid who received services that do not meet the definition of medical assistance in section 1905(a) of the Social Security Act (Medicaid services), if such inclusion is specified in the hospital's charity-care policy or financial assistance policy and the patient meets the hospital's policy criteria.

(14) Waiver--The Texas Healthcare Transformation and Quality Improvement Program Medicaid demonstration waiver under §1115 of the Social Security Act.

(c) Eligibility.

(1) A physician group practice is eligible to receive payments under this section if:

(A) it is enrolled as a Medicaid provider in the State of Texas at the beginning of the demonstration year;

(B) for a private physician group practice only, it has met the submission requirements set forth in §355.8212(c)(1)(B)(iii) of this division, only insofar as that clause relates to certifications, and it files documents with HHSC by the date specified by HHSC, certifying that:

(i) all funds transferred to HHSC as the non-federal share of the waiver payments are public funds; and

(ii) no part of any payment received by the physician group practice under this section will be returned to the governmental entity that transferred to HHSC the non-federal share of the waiver payments;

(C) it has submitted to HHSC an acceptable uncompensated-care physician application for the demonstration year by the deadline specified by HHSC; and

(D) it either:

(i) received a supplemental payment under the Texas Medicaid State Plan for claims adjudicated in one or more months between October 1, 2010, and September 30, 2011; or

(ii) is the successor in a contract to a physician group practice that received a supplemental payment under the Texas Medicaid State Plan for claims adjudicated in one or more months between October 1, 2010, and September 30, 2011.

(2) A physician group practice that fails to submit the required documentation in compliance with this subsection will not receive a payment under this section.

(d) Source of funding.

(1) The non-federal share of funding for payments under this section is limited to and obtained through IGTs from the governmental entities that own or are affiliated with the providers in the physician group practice uncompensated-care pool. Prior to processing uncompensated-care payments for any payment period within a waiver demonstration year, HHSC will survey the governmental entities that

provide public funds for the physician group practices pool to determine the amount of funding available to support payments from that pool.

(2) An IGT that is not received by the date specified by HHSC may not be accepted.

(e) Payment frequency. HHSC will distribute waiver payments on a schedule to be determined by HHSC.

(f) Funding limitations.

(1) Payments made under this section are limited by the maximum amount of funds allocated to the physician group practice uncompensated-care pool for the demonstration year as described in §355.8212 of this division. If payments for uncompensated care for the physician group practice uncompensated-care pool attributable to a demonstration year are expected to exceed the amount of funds allocated to that pool by HHSC for that demonstration year, HHSC will reduce payments to providers in the pool as described in subsection (g)(4) of this section.

(2) Payments made under this section are limited by the availability of funds identified in subsection (d) of this section. If sufficient funds are not available for all payments for which all physician group practices are eligible, HHSC will reduce payments as described in subsection (h)(2) of this section.

(g) Uncompensated-care payment amount.

(1) Uncompensated-care physician application. Payments to eligible physician group practices are based on cost and payment data reported by the physician group practice on an application form prescribed by HHSC.

(A) Cost and payment data reported by the physician group practice in the uncompensated-care physician application is used to:

(i) calculate the annual maximum uncompensated-care payment amount for the applicable demonstration year, as described in paragraph (2) of this subsection; and

(ii) reconcile the actual uncompensated-care costs reported by the physician group practice for a prior period with uncompensated-care waiver payments, if any, made to the practice for the same period. The reconciliation process is more fully described in subsection (j) of this section.

(B) Unless otherwise instructed in the uncompensated-care physician application:

(i) the cost and payment data reported in the uncompensated-care physician application must be consistent with Medicare cost-reporting principles and must comply with the application instructions or other guidance issued by HHSC, and the physician group practice must maintain sufficient documentation to support the reported data or information; and

(ii) the costs associated with an episode of care where a physician group practice is paid under contract must be reduced by any revenues associated with that episode of care prior to inclusion in the uncompensated-care physician application.

(C) If a physician group practice withdraws from participation in the waiver, the practice must submit an uncompensated-care application reporting its actual costs and payments for any period during which the practice received uncompensated-care payments. The uncompensated-care physician application will be used for the purpose described in subparagraph (A)(ii) of this paragraph. If a practice fails to submit the application reporting its actual costs, HHSC will recoup the full amount of uncompensated-care payments to the practice for the period at issue.

(2) Calculation. A physician group practice's annual maximum uncompensated-care payment amount is the sum of the following components:

(A) its unreimbursed charity-care costs, as reported on the uncompensated-care physician application; and

(B) cost and payment adjustments, if any, as described in paragraph (3) of this subsection.

(3) Adjustments. When submitting the uncompensated-care physician application, physician group practices may request that cost and payment data from the reporting period be adjusted to reflect increases or decreases in costs resulting from changes in operations or circumstances.

(A) A physician group practice may request that:

(i) costs not reflected on the financial documents supporting the application, but which would be incurred for the demonstration year, be included when calculating payment amounts; or

(ii) costs reflected on the financial documents supporting the application, but which would not be incurred for the demonstration year, be excluded when calculating payment amounts.

(B) Documentation supporting the request must accompany the application. HHSC will deny a request if it cannot verify that costs not reflected on the financial documents supporting the application will be incurred for the demonstration year.

(4) Reduction to stay within physician group practice uncompensated-care pool allocation amount. Prior to processing uncompensated-care payments for any payment period within a waiver demonstration year for the physician group practice uncompensated-care pool described in §355.8212 of this division, HHSC will determine if such a payment would cause total uncompensated-care payments for the demonstration year for the pool to exceed the allocation amount for the pool and will reduce the maximum uncompensated-care payment amounts providers in the pool are eligible to receive for that period as required to remain within the pool allocation amount.

(A) Calculations in this paragraph are limited to the physician group practice uncompensated-care pool.

(B) HHSC will calculate the following data points:

(i) for each provider, prior period payments to equal prior period uncompensated-care for the demonstration year;

(ii) for each provider, a maximum uncompensated-care payment for the payment period to equal the sum of:

(I) the portion of the annual maximum uncompensated-care payment amount calculated for that provider (as described in this section) that is attributable to the payment period; and

(II) the difference, if any, between the portions of the annual maximum uncompensated-care payment amounts attributable to prior periods and the prior period payments calculated in clause (i) of this subparagraph;

(iii) the cumulative maximum payment amount to equal the sum of prior period payments from clause (i) of this subparagraph and the maximum uncompensated-care payment for the payment period from clause (ii) of this subparagraph for all members of the pool combined;

(iv) a pool-wide total maximum uncompensated-care payment for the demonstration year to equal the sum of all pool member's annual maximum uncompensated-care payment amounts for the demonstration year from paragraph (2) of this subsection; and

(v) a pool-wide ratio calculated as the pool allocation amount from §355.8212 of this division divided by the pool-wide total maximum uncompensated-care payment amount for the demonstration year from clause (iv) of this subparagraph.

(C) If the cumulative maximum payment amount for the pool from subparagraph (B)(iii) of this paragraph is less than the allocation amount for the pool, each provider is eligible to receive their maximum uncompensated-care payment for the payment period from subparagraph (B)(ii) of this paragraph without any reduction to remain within the pool allocation amount.

(D) If the cumulative maximum payment amount for the pool from subparagraph (B)(iii) of this paragraph is more than the allocation amount for the pool, HHSC will calculate a revised maximum uncompensated-care payment for the payment period for each provider in the pool. HHSC will calculate a capped payment amount equal the product of the provider's annual maximum uncompensated-care payment amount for the demonstration year from paragraph (2) of this subsection and the pool-wide ratio calculated in subparagraph (B)(v) of this paragraph. The revised maximum uncompensated-care payment for the payment period equals the lesser of:

(i) the maximum uncompensated-care payment for the payment period from subparagraph (B)(ii) of this paragraph; or

(ii) the difference between the capped payment amount from this subparagraph and the prior period payments from subparagraph (B)(i) of this paragraph.

(E) Once reductions to ensure that uncompensated-care expenditures do not exceed the allocation amount for the demonstration year for the pool are calculated, HHSC will not re-calculate the resulting payments for any provider for the demonstration year, including if the estimates of available non-federal-share funding upon which the reduction calculations were based are different than actual IGT amounts.

(5) Advance payments.

(A) In a demonstration year in which uncompensated-care payments will be delayed pending data submission or for other reasons, HHSC may make advance payments to physician group practices that meet the eligibility requirements described in subsection (c) of this section and submitted an acceptable uncompensated-care physician application for the preceding demonstration year from which HHSC calculated an annual maximum uncompensated-care payment amount for that year.

(B) The amount of the advance payments will:

(i) in demonstration year nine, be based on estimates of eligible charity-care costs that will be incurred by each physician group practice during the demonstration year; and

(ii) in demonstration years ten and after, be a percentage, to be determined by HHSC, of the annual maximum uncompensated-care payment amount calculated by HHSC for the preceding demonstration year.

(C) Advance payments are considered to be prior period payments as described in paragraph (4)(B)(i) of this subsection.

(D) A physician group practice that did not submit an acceptable uncompensated-care physician application for the preceding demonstration year is not eligible for an advance payment.

(E) If a partial year uncompensated-care physician application was used to determine the preceding demonstration year's payments, data from that application may be annualized for use in computation of an advance payment amount.

(6) Prohibition on duplication of costs. Eligible uncompensated-care costs cannot be reported on multiple uncompensated-care applications, including uncompensated-care applications for other programs. Reporting on multiple uncompensated-care applications is duplication of costs.

(h) Payment methodology.

(1) Prior to making any payment described in subsection (g) of this section, HHSC will give notice of the following information:

(A) the payment amount for each physician group practice in the pool for the payment period (based on whether the payment is made quarterly, semi-annually, or annually);

(B) the maximum IGT amount necessary for the physician group practices to receive the amount described in subparagraph (A) of this paragraph; and

(C) the deadline for completing the IGT.

(2) The amount of the payment to the physician group practices under paragraph (1) of this subsection will be determined based on the amount of funds transferred by the affiliated governmental entities as described as follows:

(A) If the governmental entities transfer the maximum amount of funds described in paragraph (1)(B) of this subsection, the physician group practices will receive the maximum allowable payment amounts for that period.

(B) If the governmental entities do not transfer the maximum amount referenced in paragraph (1)(B) of this subsection, each physician group practice in the pool will receive a portion of its payment amount for that period, based on the physician group practice's percentage of the total payment amounts for all physician group practices in the pool.

(i) Reconciliation. Data on the uncompensated-care physician application will be used to reconcile actual costs incurred by the physician group practice for a prior period with uncompensated-care payments, if any, made to the physician group practice for the same period.

(1) If a physician group practice received payments in excess of its actual costs, the overpaid amount will be recouped from the physician group practice, as described in subsection (j) of this section.

(2) If a physician group practice received payments less than its actual costs, and if HHSC has available waiver funding for the period in which the costs were accrued, the physician group practice may receive reimbursement for some or all of those actual documented unreimbursed costs.

(j) Recoupment.

(1) In the event of a disallowance by CMS of federal financial participation related to a physician group practice's receipt or use of payments under this section, HHSC may recoup an amount equivalent to the amount of the overpayment or disallowance. The non-federal share of any funds recouped from the physician group practice will be returned to the entity that owns or is affiliated with the physician group practice.

(2) Payments under this section may be subject to adjustment for payments made in error, including, without limitation, adjustments under §371.1711 of this title (relating to Recoupment of Overpayments and Debts), 42 CFR Part 455, and Chapter 403 of the Texas

Government Code. HHSC may recoup an amount equivalent to any such adjustment.

(3) HHSC may recoup from any current or future Medicaid payments as follows:

(A) HHSC will recoup from the physician group practice against which any disallowance was directed or to which an overpayment was made.

(B) If, within 30 days of the physician group practice's receipt of HHSC's written notice of recoupment, the physician group practice has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all future Medicaid payments from the physician group practice until HHSC has recovered an amount equal to the amount overpaid or disallowed.

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

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 707-6071

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DIVISION 23. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT)

1 TAC §355.8441

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32.

The amendments affect Human Resources Code Chapter 32 and Government Code Chapters 531.

§355.8441. Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services.

(a) The following are reimbursement methodologies for services provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program, delivered to Medicaid clients under age 21, also known as Texas Health Steps (THSteps) and the THSteps Comprehensive Care Program (CCP). Reimbursement methodologies for services provided to all Medicaid clients, including clients under age 21, are located elsewhere in this chapter.

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

(11) Dental services are reimbursed in accordance with the following Medicaid reimbursement methodologies:

(A) Dental services provided by enrolled dental providers are reimbursed in accordance with §355.8085 of this subchapter.

(B) Dental services provided by federally qualified health centers (FQHCs) are reimbursed in accordance with §355.8261 of this subchapter (relating to Federally Qualified Health Center Services Reimbursement).

(C) For services provided through September 30, 2019 [~~Subject to approval by the Centers for Medicare and Medicaid Services, for services provided on or after March 1, 2012~~], publicly owned dental providers may be eligible to receive Uncompensated Care (UC) payments for dental services under the Texas Healthcare Transformation and Quality Improvement 1115 Waiver, as described in this section. For services provided beginning October 1, 2019, eligibility for publicly owned dental providers to receive waiver payments, and the methodology for calculating payment amounts, is described in section 355.8208 of this title. For purposes of this section, Uncompensated Care [~~("UC")~~] payments are payments intended to defray the uncompensated costs of services that meet the definition of "medical assistance" contained in §1905(a) of the Social Security Act. HHSC will calculate UC payments using the following methodology:

(i) - (vi) (No change.)

(12) (No change.)

(b) (No change.)

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

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DIVISION 31. AMBULANCE SERVICES

1 TAC §355.8600

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32.

The amendments affect Human Resources Code Chapter 32 and Government Code Chapters 531.

§355.8600. Reimbursement Methodology for Ambulance Services.

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

(c) Reimbursement methodologies.

(1) Fee-for-service ambulance fee. Fee-for-service reimbursement is based on the lesser of a provider's billed charges or the maximum fee established by the Texas Health and Human Services Commission (HHSC). HHSC establishes fees by reviewing the Medicare fee schedule and analyzing any other available ambulance-related data. Fee-for-service rates apply to both private and governmental ambulance providers.

(2) Supplemental payment for governmental ambulance providers. For services provided through September 30, 2019, a [~~A~~] governmental ambulance provider may be eligible to receive a supplemental payment in addition to the fee-for-service payment described in paragraph (1) of this subsection. For services provided beginning October 1, 2019, eligibility for governmental ambulance providers to receive a supplemental payment, and the methodology for calculating the payment amount, are described in §355.8210 of this chapter (relating to Waiver Payments to Governmental Ambulance Providers for Uncompensated Charity Care).

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

(d) (No change.)

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

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TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER A. GENERAL RULES

7 TAC §91.121

The Credit Union Commission (the Commission) proposes amendments to 7 TAC, Chapter 91, §91.121, concerning complaint notification. The purpose of the proposed amendments is to implement Finance Code Section 15.409, which provides that the Commission shall maintain a system to promptly and efficiently act on complaints filed with the Credit Union Department (Department).

The proposed rule changes are intended to be explanatory in nature and generally relate to four areas: (1) how to file a complaint with the Department, (2) how a complaint is handled after receipt, (3) the authority of the Department in reviewing complaints, and (4) the privacy of information provided in a complaint.

The proposed amendments to paragraph (a) delineate the purpose of the section.

The proposed new paragraph (c) describes the Department's process for filing, receipt and handling of complaints.

The proposed new paragraph (d) explains the circumstances under which a complaint may be closed with no action by the Department beyond its review.

The proposed new paragraph (e) makes clear that any information provided with a complaint will be used in investigating a complaint and that personal, confidential, or sensitive information should not be included with the complaint.

STATE AND LOCAL GOVERNMENTS

Harold E. Feeney, Commissioner, has determined that for the first five-year period that the rule changes are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rule changes.

STATEMENT OF PUBLIC COST AND BENEFITS

Mr. Feeney has also determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the proposed amendments because they will have access to information which will assist them in making complaints and will allow a better understanding of the process by which complaints are reviewed by the Department. There will be no anticipated cost to persons who are required to comply with the proposed amendments.

SMALL AND MICRO BUSINESSES AND RURAL COMMUNITIES

Mr. Feeney has also determined that for each year of the first five years the rule changes are in effect, there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There is no economic cost anticipated to the credit union system or to individuals required to comply with the rule changes as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

Except as may be described below to the contrary, for each year of the first five years that the rules will be in effect, the rules will not:

- Create or eliminate a government program;

- Require the creation of new employee positions or the elimination of existing employee positions;

- Require an increase or decrease in future legislative appropriations to the agency;

- Create new regulations;

- Expand, limit, or repeal an existing regulation;

- Increase fees paid to the department;

- Increase or decrease the number of individuals subject to the rule's applicability; or

- Positively or adversely affect this state's economy.

Written comments on the proposed amendments may be submitted to Harold E. Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@cud.texas.gov. To allow the Commission sufficient time to fully address all the comments it receives, all comments must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register.*

The rule changes are proposed under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code Title 2, Chapter 15 and Title 3, Subchapter D.

The statutory provision affected by the proposed amendments is Texas Finance Code, Section 15.409, regarding consumer information and complaints.

§91.121. Complaint Notices and Procedures [~~Notification~~].

(a) Purpose. This section implements Finance Code §15.409, which requires the Department to maintain a system to promptly and efficiently act on each complaint filed with the Department.

[~~(a) Definition. For purposes of this section "required notice"means a notice in the form set forth or provided for in subsection (b)(1) of this section.~~]

(b) Required Notice.

(1) Credit unions must provide their members with a notice that substantially conforms to the language and form of the following notice in order to let its members know how to file complaints: "If you have a problem with the services provided by this credit union, please contact us at: (Your Name) Credit Union Mailing Address Telephone Number or e-mail address. The credit union is incorporated under the laws of the State of Texas and under state law is subject to regulatory oversight by the Texas Credit Union Department. If any dispute is not resolved to your satisfaction, you may also file a complaint against the credit union by contacting the Texas Credit Union Department through one of the means indicated below: In Person or U.S. Mail: 914 East Anderson Lane, Austin, Texas 78752-1699, Telephone Number: (512) 837-9236, Facsimile Number: (512) 832-0278; email: complaints@cud.texas.gov, Website: www.cud.texas.gov."

(2) The title of this notice shall be "COMPLAINT NOTICE" and must be in all capital letters and boldface type.

(3) The credit union must provide the notice as follows:

(A) In each area where a credit union typically conducts business on a face-to-face basis, the required notice must be conspicuously posted. A notice is deemed to be conspicuously posted if a member with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included in plain view on a bulletin board on which required communications to the membership (such as equal housing posters) are posted.

(B) If a credit union maintains a website, the required notice or a link to the required notice must be conspicuously posted on the homepage of the website.

(C) If a credit union distributes a newsletter, it must include the notice on approximately the same date at least once each year in any newsletter distributed to its members.

(D) If a credit union does not distribute a newsletter, the notice must be included with any privacy notice the credit union is required to provide or send its members.

(c) Filing, Receipt, and Handling of Complaints.

(1) The Department shall make available, on its public website (www.cud.texas.gov) and at its office, information on how to file a complaint.

(2) A person who alleges that a credit union has committed an act, or failed to perform at act that may constitute a violation of the Texas Credit Union Act or Department rules may file a complaint in writing with the Department. The complainant may complete and submit to the Department the complaint form the Department maintains at the Department's office and on its public website, or the complainant may submit a complaint in a letter that addresses the matters covered by the complaint form. At a minimum, all complaints should contain information necessary for the proper processing of the complaint by the Department, including, but not limited to:

(A) Complainant's name and how the complainant may be contacted;

(B) Name and address of the credit union against whom the complaint is made;

(C) A brief statement of the nature of the complaint and relevant facts, including names of persons with knowledge, times, dates, and location; and

(D) Copies of any documents or records related to the complaint. (original records should not be sent with a complaint.)

(3) Anonymous complaints may be accepted by the Department, but the lack of a witness or the inability of the Department to secure additional information from the anonymous complainant may result in the Department's inability to secure sufficient evidence to pursue action against a credit union.

(4) The Department will review all complaints to determine whether they are within the Department's jurisdiction or authority to resolve, and will send an acknowledgement letter to the complainant within five (5) business days of receipt of a complaint. At least quarterly until final disposition of the complaint, the Department shall provide status updates to the complainant and respondent credit union, orally or in writing.

(5) Upon determining that a complaint is within the Department's jurisdiction, the Department will inform the credit union respondent of the complaint and will request a written response from the credit union. Along with a request for response, the Department will transmit to the credit union a copy of the complaint and any attachments. Within fifteen (15) days from the date of the request for response, unless the period is extended by the Department, the credit union shall provide a substantive response and set forth the credit union's position with respect to the allegations in the complaint, which shall include all data, information and documentation supporting its position, or a description of corrective measures taken or intended to be taken. The Department may request and the complainant and respondent shall provide to the Department additional information or further explanation at any time during the review of the complaint.

(6) Once the Department has received the documentation from both parties, the Department will review the information and will process the complaint in accordance with the rules of the Department. The Department will advise both parties in writing of the final disposition of the complaint.

(7) The Department shall maintain a file on each complaint filed with the agency. The file shall include:

(A) the name of the complainant;

(B) the date the complaint is received by the Department;

(C) the subject matter of the complaint;

(D) a summary of the results of the review of the complaint; and

(E) an explanation of the reason the file was closed, if the Department closed the file without taking action other than to review the complaint.

(8) The Department will maintain a database of complaints in order to identify trends or issues related to violations of state laws under the Department's jurisdiction.

(d) Complaints Closed with No Action Beyond Review. Certain complaints and disputes may be closed with no action taken other than to review the complaint. Such complaints may include those that are not within the Department authority to investigate or adjudicate, and which may be referred to as non-jurisdictional complaints. The Department, for example, will not address complaints concerning contractual matters or internal credit union practices that are not governed by the statutes or rules that the Department implements or enforces. The Department also may close without taking action other types of complaints, including undocumented factual disputes between a person and a credit union and complaints involving matters that are the subject of a pending lawsuit. The Department does not offer legal assistance and cannot represent individuals in settling claims or recovering damages. The Department does not own, operate, or control credit unions, and the Department does not establish their operating policies and procedures. Therefore, the Department may close without taking action complaints concerning the range of services a credit union offers, complaints about bad customer service, and disagreements over specific credit union policies, practices, or procedures, or about other matters that are not governed by a law or rule under the Department's jurisdiction. The Department will inform the complainant and respondent credit union when a complaint is closed with no action taken, and will inform them of the reason for closing the case.

(e) Privacy. The information collected from complainants and respondents is solicited to provide the Department with information that is necessary and useful in reviewing complaints received from persons regarding their interactions with a credit union. A complainant is not required to give the Department any information; however, without such information, the Department's ability to complete a review, to investigate, or to prosecute a matter may be hindered. It is intended that the information a person provides to the Department will be used within the Department and for the purpose of investigating and prosecuting a complaint. A person should not include personal or confidential information such as social security, credit card, or account numbers, or dates of birth when corresponding with the Department. If it is necessary to supply a document that contains personal or confidential information, the information should be redacted before the document is submitted to the Department.

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

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Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: August 26, 2018
For further information, please call: (512) 837-9236

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SUBCHAPTER D. POWERS OF CREDIT UNIONS

7 TAC §91.403

The Credit Union Commission (the Commission) proposes amendments to 7 TAC, Chapter 91, Subchapter D, §91.403, concerning debt cancellation products consistent with competitive parity with federal credit unions. The amended rule is proposed to update standards governing debt cancellation products to encourage credit unions to provide such products consistent with safe and sound credit union practices and subject to appropriate consumer protections.

A debt cancellation product is a loan term or a contractual arrangement modifying loan terms linked to a credit union's extension of credit, under which the credit union agrees to cancel or suspend all or part of a member's obligation to repay an extension of credit from that credit union upon the occurrence of a specified event. A debt cancellation product includes a debt cancellation contract (DCC) and a debt suspension agreement (DSA).

The Department has long opined that credit unions may enter into debt cancellation contracts to the same extent as federal credit unions. Interpretive rulings issued by the National Credit Union Administration (NCUA) found that a federal credit union may sell debt cancellation products to its members as an activity that is incidental to federal credit unions' express power of lending. NCUA codified this authority when it adopted its incidental powers regulation, which expressly noted debt cancellation and debt suspension agreements as permissible loan-related products (12 C.F.R. Section 721.3(g)). Pursuant to the authority set forth in Finance Code §123.003, relating to enlargement of powers and parity, a credit union may offer debt cancellation products. In addition, debt cancellation products are deemed to be loan products and not insurance products. The fee that may be charged with the sale of a debt cancellation is also authorized by Finance Code §124.101, relating to borrower payment of loan expenses.

The proposed amendments to subsection (a) clarify that credit unions must comply with the Truth in Lending Act (15 U.S.C. 1601 and the applicable provisions of Regulation Z (12 C.F.R. Part 226). The proposal also makes clear that a credit union's authority to offer debt cancellation products for a fee is based upon the authority set forth in Finance Code Sections 123.003 and 124.101.

The proposed amendments to subsection (b) remove language that could be construed to prohibit the offering of a no-refund debt cancellation product because such products are permitted for federal credit unions. The amendments reflect an effort to preserve and promote parity with federal credit unions. The amendments clarify that if the debt cancellation product does provide for a refund of unearned fees, the unearned fees must be calculated using a method that produces a result at least as favorable to the member as the actuarial method.

New subsection (f) designates certain standards that credit unions should look to for guidance and apply as best practices with respect to the offer and sale of debt cancellation products. The Commission believes that guidance is necessary to facilitate members' informed choice about whether to purchase debt cancellation products and to discourage inappropriate or abusive sales practices. In addition, the guidance promotes safety and soundness by encouraging credit unions that provide these products to maintain adequate loss reserves. The proposed rule reflects the Commission's expectation that debt cancellation products will be offered in a safe and sound manner and consistent with appropriate consumer protections. The National Credit Union Administration (NCUA) has provided as guidance to federal credit unions, the requirements set forth in the rules of the U.S. Office of the Comptroller of the Currency (12 C.F.R. Part 37), related to DCCs and DSAs. The Commission adopts

and incorporates by reference the guidance issued by NCUA in its Letter to Federal Credit Unions No. 03-FCU-06. The Commission also directs credit unions to look to 12 C.F.R. Part 37, for guidance as to best practices related to the offer and sale of debt cancellation products.

STATE AND LOCAL GOVERNMENTS

Harold E. Feeney, Commissioner, has determined that for each year of the first five years the rule changes are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule changes.

STATEMENT OF PUBLIC COST AND BENEFITS

Mr. Feeney has also determined that for each year of the first five years the rule changes are in effect, the public benefits anticipated as a result of the changes will be clear guidance on best practices that credit unions may implement that are safe and sound and that afford consumer protection with regard to the offer and sale of debt cancellation products. There will be no anticipated cost to persons who are required to comply with the proposed amendments. There is no economic cost anticipated to the credit union system or to individuals required to comply with the rule changes as proposed.

SMALL AND MICRO BUSINESSES, LOCAL ECONOMY, AND RURAL COMMUNITIES

Mr. Feeney has also determined that for each year of the first five years the rule changes are in effect, there will be no adverse economic effect on small businesses, micro-businesses, local economies, or rural communities. There is no economic cost anticipated to the credit union system or to individuals required to comply with the rule changes as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

Except as may be described below to the contrary, for each year of the first five years that the rules will be in effect, the rules will not:

- Create or eliminate a government program;

- Require the creation of new employee positions or the elimination of existing employee positions;

- Require an increase or decrease in future legislative appropriations to the agency;

- Create new regulations;

- Expand, limit, or repeal an existing regulation;

- Increase fees paid to the department;

- Increase or decrease the number of individuals subject to the rule's applicability; or

- Positively or adversely affect this state's economy.

Written comments on the proposed amendments may be submitted in writing to Harold E. Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@cud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register.* At the conclusion of business on the 31st day after the proposal is published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Finance Code Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Finance Code Sections 123.003 and 124.001, which authorizes the Commission to adopt rules regarding loans to members.

§91.403. Debt Cancellation Products; Federal Parity; Adoption by Reference.

(a) Authority. Provided it complies with this section, the Truth in Lending Act (15 U.S.C. 1601), and the applicable provisions of Regulation Z (12 C.F.R. Part 226), a credit union may offer any debt cancellation product, including a debt cancellation contract (DCC) and a debt suspension agreement (DSA), a federal credit union is permitted to offer. For the purposes of this section, a debt cancellation product is a two-party agreement between the credit union and the member under which the credit union agrees to waive, suspend, defer, or cancel all or part of a member's obligation to pay an indebtedness under a lease, loan, or other extension of credit upon the occurrence of a specified event. Debt cancellation products are considered loan products governed by this section and applicable provisions of the Finance Code, not insurance products and, consequently, are not regulated by the Texas Department of Insurance. The credit union may offer debt cancellation products for a fee pursuant to the authority set forth in Finance Code §123.003, relating to enlargement of powers and parity and the authority federal credit unions have to offer such products; the fee also is authorized by Finance Code §124.101, relating to borrower payment of loan expenses. If the debt cancellation product is offered for a fee [~~basis~~], [~~then~~] the member's participation in the debt cancellation program must be optional, and the member must be informed of the fee and that participation is optional.

(b) Anti-tying and Refund Rules. For any debt cancellation product offered by a credit union:

(1) The credit union may not extend credit nor alter the terms or conditions of an extension of credit conditioned upon the member entering into a debt cancellation product with the credit union; and

(2) If the debt cancellation product provides for a refund of unearned fees, the [~~The debt cancellation product must provide for refunding or crediting to the member any unearned fees resulting from termination of the member's participation in the product, whether by prepayment of the extension of credit or otherwise. Any~~] unearned fees must be calculated using a method that produces a result at least as favorable to the member as the actuarial method. Before the member purchases the debt cancellation product, the credit union must state in writing that the purchase of the debt cancellation product is optional, the conditions for and method of calculating any refund of the debt cancellation fee, including when fees are considered earned by the credit union, and that the member should carefully review all of the terms and conditions of the debt cancellation agreement prior to signing the agreement.

(c) Notice to Department. A credit union must notify the commissioner in writing of its intent to offer any type of debt cancellation product at least 30 days prior to the product being offered to members. The notice must contain a statement describing the type(s) of debt cancellation product(s) that the credit union will offer to its membership.

(d) Risk Management and Controls. Before offering any debt cancellation products, each credit union's board of directors shall adopt written policies that establish and maintain effective risk management and control processes for these products. Such processes include appropriate recognition and financial reporting of income, expenses, assets and liabilities, and appropriate treatment of all expected and unexpected losses associated with the products. A credit union should also assess the adequacy of its internal control and risk mitigation activities

in view of the nature and scope of its debt cancellation program. In addition, the policies shall establish reasonable fees, if any, that will be charged, the appropriate disclosures that will be given, and the claims processing procedures that will be utilized.

(e) For purposes of this section "actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

(f) Best Practices. The Commission seeks to preserve and promote parity with regard to federal credit unions, foreign credit unions, and other depository institutions, as referenced in Finance Code §§15.402(b-1) and 123.003. The National Credit Union Administration (NCUA) has provided as guidance for federal credit unions the standards set forth in the rules of the U.S. Office of the Comptroller of the Currency (OCC), related to DCCs and DSAs. The Commission, therefore, adopts by reference the guidance issued by NCUA in May 2003 (Letter No. 03-FCU-06). Credit unions should also look to OCC's rules, codified at 12 C.F.R. Part 37, for guidance as to best practices in the industry regarding the offer and sale of DCCs and DSAs. A copy of the NCUA letter and of the OCC rules may be obtained on the Department website at: www.cud.texas.gov.

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

Filed with the Office of the Secretary of State on July 13, 2018.

TRD-201803074
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: August 26, 2018
For further information, please call: (512) 837-9236

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SUBCHAPTER G. LENDING POWERS

7 TAC §91.709

The Credit Union Commission (the Commission) proposes amendments to 7 TAC, Chapter 91, Subchapter G, §91.709, concerning member business and commercial loans. The amended rule is proposed to amend the definition of member business loan (MBL) with respect to 1- to 4- family dwellings to conform with recent amendments to 12 U.S.C. 1757a(c)(1)(B)(i).

In general, the purpose of the proposal regarding §91.709 is to implement changes resulting from the Commission's review of the Chapter 91, Subchapter G under Texas Government Code, Section 2001.039. The notice of intention to review 7 TAC Chapter 91, Subchapter G, was published in the April 20, 2018, issue of the *Texas Register* (43 TexReg 2455). The agency did not receive any comments on the notice of intention to review.

On May 24, 2018, the President signed the Economic Growth, Regulatory Relief, and Consumer Protection Act, S. 2155, 115th Cong (2018) (Economic Growth Act), which among other things, amended the definition section of the MBL provisions of the Federal Credit Union Act. Prior to the Economic Growth Act, the Federal Credit Union Act defined an MBL, in relevant part, as any loan, line of credit, or letter of credit, the proceeds of which will be used for commercial, corporate or other business investment property or venture, or agricultural purpose but does not include and extension of credit that is fully secured by a lien on a 1- to 4- family dwelling *that is the primary residence of a member.*

The Economic Growth Act removed from that definition the words "that is the primary residence of a member." As a result, the federal definition of an MBL, now excludes all extensions of credit that are fully secured by a lien on a 1- to 4- family residential property regardless of the borrower's occupancy status. Because these kinds of loans are no long considered MBLs, they do not count towards the aggregate MBL cap imposed on each federal credit union by the Federal Credit Union Act.

The purpose of the proposal regarding §91.709 is a result of the change to the federal definition of MBL as discussed above. The proposed amendments will provide credit unions parity, under Texas Finance Code Section 123.003, with federal credit unions engaged in the business of making MBLs in Texas.

In general, the proposed amendments will clarify that mortgage loans for non-owner occupied 1-4 family residential properties are no longer considered commercial loans or member business loans. The proposal will reduce regulatory burden for credit unions concerned about going up against the MBL lending cap and also for smaller credit unions that can now lend money for second homes without triggering MBL obligations.

STATE AND LOCAL GOVERNMENTS

Harold E. Feeney, Commissioner, has determined that for the first five-year period the rule changes are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule changes.

STATEMENT OF PUBLIC COST AND BENEFITS

Mr. Feeney has also determined that for each year of the first five years the rule changes are in effect, the public benefits anticipated as a result of the changes will be greater clarity regarding the rule's requirements and significant regulatory relief for credit unions. There is no economic cost anticipated to the credit union system or to individuals required to comply with the rule changes as proposed.

SMALL AND MICRO BUSINESSES AND RURAL COMMUNITIES

Mr. Feeney has also determined that for each year of the first five years the rule changes are in effect, there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

GOVERNMENT GROWTH IMPACT STATEMENT

Except as may be described below to the contrary, for each year of the first five years that the rule will be in effect, the rule will not:

- Create or eliminate a government program;

- Require the creation of new employee positions or the elimination of existing employee positions;

- Require an increase or decrease in future legislative appropriations to the agency;

- Create new regulations;

- Expand or repeal an existing regulation;

- Increase fees paid to the department;

- Increase or decrease the number of individuals subject to the rule's applicability; or

- Positively or adversely affect this state's economy.

For each year of the first five years that the rule will be in effect, the rule will limit an existing regulation with respect to loans that are fully secured by a lien on a 1- to 4- family dwelling regardless of the borrower's occupancy status.

Written comments on the proposed amendments may be submitted in writing to Harold E. Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@cud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register.* At the conclusion of business on the 31st day after the proposal is published in the *Texas Register,* no further written comments will considered or accepted by the commission.

The rule changes are proposed under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code Section 124.001, which authorizes the Commission to adopt rules regarding loans to members.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code Chapter 124.

§91.709. Member Business and Commercial Loans.

(a) Definitions. Definitions in TEX. FIN. CODE §121.002, are incorporated herein by reference. As used in this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Borrower" means a member or any other person named as a borrower, obligor, or debtor in a loan or extension of credit; or any other person, including, but not limited to, a comaker, drawer, endorser, guarantor or surety who is considered to be a borrower under the requirements of subsection (i) of this section concerning aggregation and attribution for commercial loans.

(2) "Commercial loan" means a loan or an extension of credit to an individual, sole proprietorship, partnership, corporation, or business enterprise for commercial, industrial, agricultural, or professional purposes, including construction and development loans, any unfunded commitments, and any interest a credit union obtains in such loans made by another lender. A commercial loan does not include a loan made for personal expenditure purposes; a loan made by a corporate credit union; a loan made by a credit union to a federally insured credit union; a loan made by a credit union to a credit union service organization; a loan secured by a 1- to 4-family residential property (whether or not the residential property is the borrower's primary residence); a loan fully secured by shares in the credit union making the extension of credit or deposits in another financial institution; a loan secured by a vehicle manufactured for household use; and a loan that would otherwise meet the definition of commercial loan and which, when the aggregate outstanding balance plus unfunded commitments less any portion secured by shares in the credit union to a borrower, is equal to less than $50,000.

(3) "Control" means a person directly or indirectly, or acting through or together with one or more persons who:

(A) own, control, or have the power to vote twenty-five (25) percent or more of any class of voting securities of another person;

(B) control, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person; or

(C) have the power to exercise a controlling influence over the management or policies of another person.

(4) "Immediate family member" means a spouse or other family member living in the same household.

(5) "Loan secured by a lien on a 1- to 4-family residential property" means a loan that, at origination, is secured wholly or substantially by a lien on a 1- to 4-family residential property for which the lien is central to the extension of the credit; that is the borrower would not have been extended credit in the same amount or on terms as favorable without the lien. A loan is wholly or substantially secured by a lien on a 1- to 4-family residential property if the estimated value of the real estate collateral at origination (after deducting any senior liens held by others) is greater than fifty (50) percent of the principal amount of the loan.

(6) "Loan secured by a lien on a vehicle manufactured for household use" means a loan that, at origination, is secured wholly or substantially by a lien on a new and used passenger car or other vehicle such as a minivan, sport-utility vehicle, pickup truck, and similar light truck or heavy-duty truck generally manufactured for personal, family, or household use and not used as a fleet vehicle or to carry fare-paying passengers, for which the lien is central to the extension of credit. A lien is central to the extension of credit if the borrower would not have been extended credit in the same amount or on terms as favorable without the lien. A loan wholly or substantially secured by a lien on a vehicle manufactured for household use if the estimated value of the collateral at origination (after deducting any senior liens held by others) is greater than fifty (50) percent of the principal amount of the loan.

(7) "Loan-to-value ratio for collateral" means the aggregate amount of all sums borrowed and secured by the collateral, including outstanding balances plus any unfunded commitment or line of credit from another lender that is senior to the credit union's lien, divided by the current collateral value. The current collateral value must be established by prudent and accepted commercial loan practices and comply with all regulatory requirements.

(8) "Member business loan" has the meaning assigned by 12 C.F.R. Part 723.

(9) "Net worth" has the meaning assigned by 12 C.F.R. Part 702.2.

(10) "Readily marketable collateral" means financial instruments and bullion that are salable under ordinary market conditions with reasonable promptness at a fair market value determined by quotations based upon actual transactions on an auction or similarly available daily bid and ask price market.

(11) "Residential property" means a house, townhouse, condominium unit, cooperative unit, manufactured home, a combination of a home or dwelling unit and a business property that involves only minor or incidental business use, real property to be improved by the construction of such structures, or unimproved land zoned for 1- to 4-family residential use but does not include a boat, motor home, or timeshare property, even if used as a primary residence. This applies to such structure whether under construction or completed.

(b) Parity. A credit union may make, commit to make, purchase, or commit to purchase any member business loan it could make if it were operating as a federal credit union domiciled in this state, so long as for each transaction the credit union complies with all applicable regulations governing such activities by federal credit unions.

However, all such loans must be documented in accordance with the applicable requirements of this chapter.

(c) Commercial Loan Responsibilities and Operational Requirements. Prior to engaging in the business of making commercial loans, a credit union must address the responsibilities and operational requirements under this subsection:

(1) Written policies. A credit union must establish comprehensive written commercial loan policies approved by its board of directors instituting prudent loan approval, credit underwriting, loan documentation, and loan monitoring standards in accordance with this paragraph. The board must review its policies at least annually and, additionally, prior to any material change in the credit union's commercial lending program or related organizational structure, in response to any material change in the credit union's overall portfolio performance, or in response to any material change in economic conditions affecting the credit union. The board must update its policies when warranted. Policies under this paragraph must be designed to identify:

(A) type(s) of commercial loans permitted;

(B) trade area;

(C) the maximum amount of assets, in relation to net worth, allowed in secured, unsecured, and unguaranteed commercial loans and in any given category or type of commercial loan and to any one borrower;

(D) credit underwriting standards including potential safety and soundness concerns to ensure that action is taken to address those concerns before they pose a risk to the credit union's net worth; the size and complexity of the loan as appropriate to the size of the credit union; the scope of the credit union's commercial loan activities; the level and depth of financial analysis necessary to evaluate financial trends and the condition of the borrower and the ability of the borrower to meet debt service requirements; requirements for a borrower-prepared projection when historic performance does not support projected debt payments; the financial statement quality and degree of verification sufficient to support an accurate financial analysis and risk assessment; the methods to be used in evaluating collateral authorized, including loan-to-value ratio limits; the means to secure various types of collateral; and other risk assessment analyses including analysis of the impact of current market conditions on the borrower.

(E) loan approval standards including consideration, prior to credit commitment, of the borrower's overall financial condition and resources; the financial stability of any guarantor; the nature and value of underlying collateral; environmental assessment requirements; the borrower's character and willingness to repay as agreed; the use of loan covenants when warranted; and the levels of loan approval authority commensurate with the proficiency of the individuals or committee of the credit union tasked with such approval authority in evaluating and understanding commercial loan risk, when considered in terms of the level of risk the borrowing relationship poses to the credit union;

(F) loan monitoring standards including a system of independent, ongoing credit review and appropriate communication to senior management and the board of directors; the concentration of credit risk; and the risk management systems under subsection (d) of this section; and

(G) loan documentation standards including enabling the credit union to make informed lending decisions and assess risk, as necessary, on an ongoing basis; identifying the purpose of each loan and source(s) of repayment; assessing the ability of each borrower to repay the indebtedness in a timely manner; ensuring that any claim against a borrower is legally enforceable; and demonstrating appropriate administration and monitoring of each loan.

(2) Qualified Staff. A credit union must ensure that it is appropriately staffed with qualified personnel with relevant and necessary expertise and experience for the types of commercial lending in which the credit union is engaged, including appropriate experience in underwriting, processing, overseeing and evaluating the performance of a commercial loan portfolio, including rating and quantifying risk through a credit risk rating system and collections and loss mitigation activities for the types of commercial lending in which the credit union is engaged. At a minimum, a credit union making, purchasing, or holding any commercial loans must internally have a senior management employee that has a thorough understanding of the role of commercial lending in the credit union's overall business model and establish risk management processes and controls necessary to safely conduct commercial lending as provided by subsection (d) of this section.

(3) Use of Third-Party Experience. A third party may provide the requisite expertise and experience necessary for a credit union to safely conduct commercial lending if:

(A) the third party has no affiliation or contractual relationship with the borrower;

(B) the third party is independent from the commercial loan transaction and does not have a participation interest in a loan or an interest in any collateral securing a loan that the third party is responsible for reviewing, or an expectation of receiving compensation of any sort that is contingent on the closing of the loan, with the following exceptions:

(i) the third party may provide a service to the credit union that is related to the transaction, such as loan servicing;

(ii) the third party may provide the requisite experience to a credit union and purchase a loan or a participation interest in a loan originated by the credit union that the third party reviewed; and

(iii) the third party is a credit union service organization and the credit union has a controlling financial interest in the credit union service organization as determined under generally accepted accounting principles.

(C) the actual decision to grant a commercial loan resides with the credit union; and

(D) qualified credit union staff exercise ongoing oversight over the third party by regularly evaluating the quality of any work the third party performs for the credit union.

(4) De Minimis Exception. The responsibilities and operational requirements described in paragraphs (1) and (2) of this subsection do not apply to a credit union if it meets all of the following conditions:

(A) the credit union's total assets are less than $250 million;

(B) the credit union's aggregate amount of outstanding commercial loan balances (including any unfunded commitments, any outstanding commercial loan balances and unfunded commitments of participations sold, and any outstanding commercial loan balances and unfunded commitments sold and serviced by the credit union) total less than fifteen (15) percent of the credit union's net worth; and

(C) in a given calendar year, the amount of originated and sold commercial loans and the amount of originated and sold commercial loans the credit union does not continue to service, total fifteen (15) percent or less of the credit union's net worth.

(D) A credit union that relies on this de minimis exception is prohibited from engaging in any acts or practices that have the effect of evading the requirements of this subsection.

(d) Commercial Loan Risk Management Systems.

(1) Risk Management Processes. A credit union's risk management process must be commensurate with the size, scope and complexity of the credit union's commercial lending activities and borrowing relationships. The processes must, at a minimum, address the following:

(A) use of loan covenants, if appropriate, including frequency of borrower and guarantor financial reporting;

(B) periodic loan review, consistent with loan covenants and sufficient to conduct portfolio risk management, which, based upon current market conditions and trends, loan risk, and collateral conditions, must include a periodic reevaluation of the value and marketability of any collateral, and an updated loan-to-value ratio for collateral calculation;

(C) a credit risk rating system under paragraph (2) of this subsection; and

(D) a process to identify, report, and monitor commercial loans that are approved by the credit union as exceptions to the credit union's loan policies.

(2) Credit Risk Rating System. The credit risk rating system must be a formal process that identifies and assigns a relative credit risk rating to each commercial loan in a credit union's portfolio, using ordinal ratings to represent the degree of risk. The credit risk score must be determined through an evaluation of quantitative factors based on the financial performance of each commercial loan and qualitative factors based on the credit union's management, operational, market, and business environment factors. A credit risk rating must be assigned to each commercial loan at the inception of the loan. A credit risk rating must be reviewed as frequently as necessary to satisfy the credit union's risk monitoring and reporting policies, and to ensure adequate reserves as required by generally accepted accounting principles.

(3) Independent Review. Periodic independent reviews should be conducted by a person who is both qualified to conduct such a review and independent of the function being reviewed. The review should provide an objective assessment of the overall commercial loan portfolio quality and verify the accuracy of ratings and the operational effectiveness of the credit union's risk management processes. A credit union is not required to hire an outside third party to conduct this independent review, if it can be done in-house by a competent person that is considered unconnected to the function being reviewed.

(e) Collateral and Security for Commercial Loans.

(1) Collateral. A commercial loan must be secured by collateral commensurate with the level of risk associated with the size and type of the commercial loan. The collateral must be sufficient to ensure the credit union is protected by a prudent loan-to-value ratio for collateral along with appropriate risk sharing with the borrower and principal(s). A credit union making an unsecured commercial loan must determine and document in the loan file that mitigating factors sufficiently offset the relevant risk of making an unsecured loan.

(2) Personal Guarantees. A credit union that does not require the full and unconditional personal guarantee from all principals of the borrower who have a controlling interest, as defined by subsection (a)(3) of this section, in the borrower must determine and document in the loan file that mitigating factors sufficiently offset the relevant risk.

(f) Construction and Development Loans.

(1) Terms. In this subsection:

(A) "construction or development loan" means any financing arrangement to enable the borrower to acquire property or rights to property, including land or structures, with the intent to construct or renovate an income producing property, such as residential housing for rental or sale, or a commercial building, that may be used for commercial, agricultural, industrial, or other similar purposes. It also means a financing arrangement for the construction, major expansion or renovation of the property types referenced in this subsection. The collateral valuation for securing a construction or development loan depends on the satisfactory completion of the proposed construction or renovation where the loan proceeds are disbursed in increments as the work is completed. A loan to finance maintenance, repairs, or other improvements to an existing income-producing property that does not change the property's use or does not materially impact the property is not a construction or development loan.

(B) "cost to complete" means the sum of all qualifying costs necessary to complete a construction project and documented in an approved construction budget. Qualifying costs generally include on- or off-site improvements; building construction; other reasonable and customary costs paid to construct or improve a project, including a general contractor's fees; other expenses normally included in a construction contract such as bonding and contractor insurance; the value of the land, determined as the sum of the cost of any improvements to the land and the lesser of appraised market value or purchase price; interest as provided by this subparagraph; project costs as provided by this subparagraph; a contingency account to fund unanticipated overruns; and other development costs such as fees and related pre-development expenses. Interest expense is a qualifying cost only to the extent it is included in the construction budget and is calculated based on the projected changes in the loan balance up to the expected "as-complete" date for owner-occupied non-income-producing commercial real property or the "as stabilized" date for income-producing real estate. Project costs for related parties, such as developer fees, leasing expenses, brokerage commissions and management fees, are included in qualifying costs only if reasonable in comparison to the cost of similar services from a third party. Qualifying costs exclude interest or preferred returns payable to equity partners or subordinated debt holders, the developer's general corporate overhead, and selling costs to be funded out of sales proceeds such as brokerage commissions and other closing costs.

(C) "prospective market value" means the market value opinion determined by an independent appraiser in compliance with the relevant standards set forth in the Uniform Standards of Professional Appraisal Practice. Prospective value opinions are intended to reflect the current expectations and perceptions of market participants, based on available data. Two (2) prospective value opinions may be required to reflect the time frame during which development, construction, or occupancy occur. The prospective market value "as-completed" reflects the real property's market value as of the time that development is to be completed. The prospective market value "as-stabilized" reflects the real property's market value as of the time the real property is projected to achieve stabilized occupancy. For an income producing property, stabilized occupancy is the occupancy level that a property is expected to achieve after the real property is exposed to the market for lease over a reasonable period of time and at comparable terms and conditions to other similar real properties.

(2) Policies. A credit union that elects to make a construction or development loan must ensure that its commercial loan policies under subsection (c) of this section meets the following conditions:

(A) qualified personnel representing the interest of the credit union must conduct a review and approval of any line item construction budget prior to closing the loan;

(B) a requisition and loan disbursement process approved by the credit union is established;

(C) release or disbursement of loan funds occurs only after on-site inspections which are documented in a written report by qualified personnel who represents the interest of the credit union and certifies that the work requisitioned for payment has been satisfactorily completed, and the remaining funds available to be disbursed from the construction and development loan is sufficient to complete the project; and

(D) each loan disbursement is subject to confirmation that no intervening liens have been filed.

(3) Establishing Collateral Values. The current collateral value must be established by prudent and accepted commercial loan practices and comply with all regulatory requirements. The collateral value depends on the satisfactory completion of the proposed construction or renovation where the loan proceeds are disbursed in increments as the work is completed and is the lesser of the project's cost to complete or its prospective market value.

(4) Controls and Processes for Loan Advances. A credit union that elects to make a construction and development loan must have effective commercial loan control procedures in place to ensure sound loan advances and that liens are paid and released in a timely manner. Effective controls should include segregation of duties, delegation of duties to appropriate qualified personnel, and dual approval of loan disbursements.

(g) Commercial Loan Prohibitions.

(1) Ineligible borrowers. A credit union may not grant a commercial loan to the following:

(A) any senior management employee directly or indirectly involved in the credit union's commercial loan underwriting, servicing, and collection process, and any of their immediate family members;

(B) any person meeting the requirements of subsection (i) of this section concerning aggregations and attribution for commercial loans, with respect to persons identified in subparagraph (A) of this paragraph; or

(C) any director, unless the credit union's board of directors approves granting the loan and the borrowing director was recused from the board's decision making process.

(2) Equity Agreements and Joint Ventures. A credit union may not grant a commercial loan if any additional income received by the credit union or its senior management employees is tied to the profit or sale of any business or commercial endeavor that benefits from the proceeds of the loan.

(3) Fees. No director, committee member, volunteer official, or senior management employee of a credit union, or immediate family member of such director, committee member, volunteer official, or senior management employee, may receive, directly or indirectly, any commission, fee, or other compensation in connection with any commercial loan made by the credit union. Employees, other than senior management, may be partially compensated on a commission or performance based incentive, provided the compensation is governed by a written policy and internal controls established by the board of directors. The board must review the policies and controls at least annually to ensure that such compensation is not excessive or expose the credit union to inappropriate risks that could lead to material financial loss. Loan origination employees are prohibited from receiving, in connection with any commercial loan made by the credit union, any compensation from any source other than the credit union. For the purposes of this paragraph, compensation includes non-monetary items and anything reasonably regarded as pecuniary gain or pecuniary advantage, including a benefit to any other person in whose welfare the beneficiary has a direct and substantial interest, but compensation does not include nonmonetary items of nominal value.

(h) Aggregate Member Business Loan Limit.

(1) Limits. The aggregate limit on a credit union's net member business loan balances is the lesser of 1.75 times the actual net worth of the credit union, or 1.75 times the minimum net worth required under 12 U.S.C. Section 1790d(c)(1)(A). For purposes of this calculation, member business loan means any commercial loan, except that the following commercial loans are not member business loans and are not counted toward the aggregate limit on member business loans:

(A) any loan in which a federal or state agency (or its political subdivision) fully insures repayment, fully guarantees repayment, or provides an advance commitment to purchase the loan in full; [~~and~~]

(B) any non-member commercial loan or non-member participation interest in a commercial loan made by another lender, provided the credit union acquired the non-member loans or participation interest in compliance with applicable laws and the credit union is not, in conjunction with one or more other credit unions, trading member business loans to circumvent the aggregate limit under this subsection; and[~~.~~]

(C) any loan that is fully secured by a lien on a 1- to 4-family dwelling.

(2) Exceptions. Any loan secured by a lien on a [~~1 to 4 family residential property that is not a member's primary residence, any loan secured by a lien on a~~] vehicle manufactured for household use that will be used for commercial, corporate, or other business investment property or venture, and any other loan for an agricultural purpose are not commercial loans (if the outstanding aggregate net member business loan balance is $50,000 or greater), and must be counted toward the aggregate limit on a credit union's member business loans under this subsection.

(3) Exemption. A credit union that has a federal low-income designation, or participates in the federal Community Development Financial Institution program, or was chartered for the purpose of making member business loans, or which as of the date of the Credit Union Membership Access Act of 1998 had a history of primarily making commercial loans, is exempt from compliance with the aggregate member business loan limits in paragraph (1) of this subsection.

(4) Method of Calculation for Net Member Business Loan Balance. For the purposes of NCUA form 5300 reporting (call report), a credit union's net member business loan balance is determined by calculating the sum of the outstanding loan balance plus any unfunded commitments and reducing that sum by any portion of the loan that is: secured by shares in the credit union, by shares or deposits in other financial institutions, or by a lien on a borrower's primary residence; insured or guaranteed by any agency of the federal government, a state, or any political subdivision of a state; or subject to an advance commitment to purchase by any agency of the federal government, a state, or any political subdivision of a state; or sold as a participation interest without recourse and qualifying for true sales accounting under generally accepted accounting principles.

(i) Aggregation and Attribution for Commercial Loans.

(1) General Rule. A commercial loan or extension of credit to one borrower is attributed to another person, and each person will be considered a borrower, when:

(A) the proceeds of the commercial loan or extension of credit are to be used for the direct benefit of the other person, to the extent of the proceeds so used, as provided by paragraph (2) of this subsection;

(B) a common enterprise is deemed to exist between the persons as persons as provided by paragraph (3) of this subsection; or

(C) the expected source of repayment for each commercial loan or extension of credit is the same for each person as provided by paragraph (3) of this subsection.

(2) Direct Benefit. The proceeds of a commercial loan or extension of credit to a borrower is considered used for the direct benefit of another person and attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred in any manner to or for the benefit of the other person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services from such other person.

(3) Common Enterprise.

(A) Description. A common enterprise is considered to exist and commercial loans to separate borrowers will be aggregated when:

(i) the expected source of repayment for each loan or extension of credit is the same for each borrower and neither borrower has another source of income from which the loan (together with the borrower's other obligations) may be fully repaid. An employer will not be treated as a source of repayment under this subparagraph because of wages and salaries paid to an employee, unless the standards of clause (ii) of this subparagraph are met:

(ii) the loans or extension of credit are made:

(I) to borrowers who are related directly or indirectly through control as defined by subsection (a) of this section; and

(II) substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence is deemed to exist when fifty (50) percent or more of one borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and other similar receipts or payments;

(iii) separate persons borrow from a credit union to acquire a business of enterprise of which those borrowers will own more than fifty (50) percent of the voting securities of voting interest, in which case a common enterprise is deemed to exist between the borrowers for purposes of combining the acquisition loans; or

(iv) the Department determines, based upon an evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

(B) Commercial Loans to Certain Entities. A commercial loan or extension of credit:

(i) to a partnership or joint venture is considered to be a commercial loan or extension of credit to each member of the partnership or joint venture. Excepted from this subdivision is a partner or member who: is not held generally liable, by the terms of the partnership or membership agreement or by applicable law, for the debts or actions of the partnership, joint venture, or association, provided those terms are valid against third parties under applicable law; and has not otherwise agreed to guarantee or be personally liable on the loan or extension of credit.

(ii) to a member of a partnership, joint venture, or association is generally not attributed to the partnership, joint venture, or associations, or to other members of the partnership, joint venture, or association, except as otherwise provided by paragraphs (2) and (3) of this subsection, provided that a commercial loan or extension of credit made to a member of a partnership, joint venture or association for the purpose of purchasing an interest in the partnership, joint venture or association, is attributed to the partnership, joint venture or association.

(C) Guarantors and Accommodation Parties. The derivative obligation of a drawer, endorser, or guarantor of a commercial loan or extension of credit, including a contingent obligation to purchase collateral that secures a commercial loan, is aggregated with other direct commercial loans or extensions of credit to such a drawer, endorser, or guarantor.

(j) Commercial Loans to One Borrower Limit. The total aggregate dollar amount of commercial loans by a credit union to any borrower at one time may not exceed the greater of fifteen (15) percent of the credit union's net worth or $100,000, plus an additional ten (10) percent of the credit union's net worth if the amount that exceeds the credit union's fifteen (15) percent general limit is fully secured at all times with a perfected security interest in readily marketable collateral. Any insured or guaranteed portion of a commercial loan made through a program in which a federal or state agency (or its political subdivision) insures repayment, guarantees repayment, or provides an advance commitment to purchase the commercial loan in full, is excluded from this limit.

(k) Finance Code Limitation. In addition to the other limitations of this section, a credit union may not make a loan to a member or a business interest of the member if the loan would cause the aggregate amount of loans to the member and the member's business interests to exceed an amount equal to 10 percent of the credit union's total assets as provided by TEX. FIN. CODE §124.003.

(l) Commercial Loans Regarding Federal or State Guaranteed Loan Programs. A credit union may follow the loan requirements and limits of a guaranteed loan program for loans that are part of a loan program in which a federal or state agency (or its political subdivision) insures repayment, guarantees repayment, or provides an advance commitment to purchase the loan in full if that program has requirements that are less restrictive than those required by this section.

(m) Transitional Provisions.

(1) Waivers. Upon the effective date of this section, any waiver approved by the Department concerning a credit union's commercial lending activity is rendered moot, except for waivers granted for the commercial loan to one borrower limit. Borrowing relationships granted by waivers will be grandfathered however, the debt associated with those relationships may not be increased.

(2) Administrative Constraints. Limitations or other conditions imposed on a credit union in any written directive from the Department are unaffected by the adoption of this section. As of the effective date of this section, all such limitations or other conditions remain in place until such time as they are modified by the Department.

~~[(n) Effective Date. This section takes effect on January 1, 2017].~~

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

Filed with the Office of the Secretary of State on July 13, 2018.

TRD-201803075
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: August 26, 2018
For further information, please call: (512) 837-9236

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7 TAC §91.712

The Credit Union Commission (the Commission) proposes amendments to 7 TAC, Chapter 91, Subchapter G, §91.712, concerning plastic cards. The amended rule is proposed to update requirements to recognize the advancement of electronic communication.

In general, the purpose of the proposal regarding §91.712 is to implement changes resulting from the Commission's review of Chapter 91, Subchapter G under Texas Government Code, Section 2001.039. The notice of intention to review 7 TAC Chapter 91, Subchapter G, was published in the April 20, 2018, issue of the *Texas Register* (43 TexReg 2455). The agency did not receive any comments on the notice of intention to review.

The proposed amendments to paragraph (a), subparagraph (1) would allow a plastic card to be activated by logging on to the card issuer/processor's website to go through a member verification process.

STATE AND LOCAL GOVERNMENTS

Harold E. Feeney, Commissioner, has determined that for each year of the first five years the rule changes are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule changes.

STATEMENT OF PUBLIC COST AND BENEFITS

Mr. Feeney has also determined that for each year of the first five years the rule changes are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will more accurately reflect the way plastic cards may be activated. There will be no anticipated cost to persons who are required to comply with the proposed amendments. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as compared to large businesses. There is no economic cost anticipated to the credit union system or to individuals required to comply with the rule changes as proposed.

SMALL AND MICRO BUSINESSES AND RURAL COMMUNITIES

Mr. Feeney has also determined that for each year of the first five years the rule changes are in effect, there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There is no economic cost anticipated to the credit union system or to individuals required to comply with the rule changes as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

Except as may be described below to the contrary, for each year of the first five years that the rules will be in effect, the rules will not:

- Create or eliminate a government program;

- Require the creation of new employee positions or the elimination of existing employee positions;

- Require an increase or decrease in future legislative appropriations to the agency;

- Create new regulations;

- Expand, limit, or repeal an existing regulation;

- Increase fees paid to the department;

- Increase or decrease the number of individuals subject to the rule's applicability; or

- Positively or adversely affect this state's economy.

Written comments on the proposed amendments may be submitted in writing to Harold E. Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@cud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register.* At the conclusion of business on the 31st day after the proposal is published in the *Texas Register,* no further written comments will considered or accepted by the commission.

The rule changes are proposed under Texas Finance Code, Section 15.402(b-1), which authorizes the Commission to adopt reasonable rules for administering Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code Section 124.001, which authorizes the Commission to adopt rules regarding loans to members.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code Section 15.402 and in Finance Code Chapter 124.

§91.712. Plastic Cards.

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

(1) Card Activation - process of sending new plastic cards from the issuer to the legitimate cardholder in an "inactive" mode and making the card usable. [~~Once the legitimate cardholder receives the card, they~~] Upon receiving the card, the legitimate cardholder must call or log on to the issuer/processor's website [~~the issuer-processor~~] and go through a member verification process before the card is "activated".

(2) Card Security Code - a set of unique numbers encoded on the magnetic strip of plastic cards used to combat counterfeit fraud.

(3) Neural Network - a computer program that monitors usage patterns of an account and typical fraud patterns. The program analyzes activity to determine fraud risk scores to detect potentially fraudulent activity.

(4) Plastic Cards - includes credit cards, debit cards, automated teller machine (ATM) or specific network cards; and predetermined stored value and smart cards with micro-processor chips.

(b) Credit cards. A credit union may issue credit cards in accordance with the credit union's written policies, which shall include at a minimum:

(1) Credit policies to set individual limits for credit card accounts:

(2) A process for reviewing each member's payment and/or credit history periodically for the purpose of determining risk; and

(3) The credit underwriting standards for each type of card program offered.

(c) Program Review.

(1) A credit union shall review, on at least an annual basis, its plastic card program with particular emphasis on:

(A) The amount of losses caused by theft and fraud;

(B) The loss prevention measures (and their adequacy) currently employed by the credit union;

(C) The availability and possible implementation of other loss prevention measures such as card activation, card security codes, neural networks, and other evolving technology; and

(D) A cost benefit analysis of supplemental insurance coverage for theft and fraud related losses.

(2) The review shall be documented in writing, with any approved changes to the plastic card program being entered into the minutes of the board meeting.

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

Filed with the Office of the Secretary of State on July 13, 2018.

TRD-201803076
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: August 26, 2018
For further information, please call: (512) 837-9236

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER O. LEARNING TECHNOLOGY ADVISORY COMMITTEE

19 TAC §1.185, §1.187

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §1.185 and §1.187 concerning the authority and specific purposes of the Learning Technology Advisory Committee and committee membership and officers. The proposed amendments correct the reference of statutory authority in §1.185 and a grammatical error in §1.187.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of revising the sections.

Dr. Peebles has also determined that for the first five years the rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of the statutory authority for the Learning Technology Advisory Committee in §1.185 and the correction of a grammatical error in §1.187. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

There will be no impact on small businesses or rural communities, as described in Texas Government Code, Chapter 2006, and therefore an Economic Impact analysis is not required.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule; and

(7) the rules will not change the number of individuals subject to the rule.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at *AQWComments@THECB.state.tx.us.* Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Government Code, Chapter 2110, §2110.0012, which provides state agencies the authority to establish advisory committees.

The amendments affect the implementation of Texas Education Code, Chapter 61.

§1.185. Authority and Specific Purposes of the Learning Technology Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Government [~~Education~~] Code, Chapter 2110, §2110.0012.

(b) Purposes. The Learning Technology Advisory Committee is created to provide the Board with advice and recommendation(s) regarding the role that learning technology plays in Texas higher education.

§1.187. Committee Membership and Officers.

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

(c) Interested persons, such as chief academic officers, and legislative and governmental relations staff shall be regularly advised of committee meetings.

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

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: August 26, 2018
For further information, please call: (512) 427-6104

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CHAPTER 27. FIELDS OF STUDY
SUBCHAPTER DD. COMMUNICATION DISORDERS SCIENCES AND SERVICES FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.681 - 27.687

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new Subchapter DD, §§27.681 - 27.687, concerning the Communication Disorders Sciences and Services Field of Study Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to develop a Communication Disorders Sciences and Services field of study. The newly added rules will affect students when the Communication Disorders Sciences and Services field of study is adopted by the Board.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the new sections.

Dr. Peebles has also determined that for the first five years the rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in a Communication Disorders Sciences and Services degree and improved transferability and applicability of courses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

There will be no impact on small businesses or rural communities, as described in Texas Government Code, Chapter 2006, and therefore an Economic Impact analysis is not required.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will create a new rule;

(6) the rules will not limit an existing rule; and

(7) the rules will not change the number of individuals subject to the rule.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, §61.823(a), which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees and Texas Government Code, §2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

The new sections affect the implementation of Texas Education Code, Chapter 61.

§27.681. Authority and Specific Purposes of the Communication Disorders Sciences and Services Field of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.823(a).

(b) Purpose. The Communication Disorders Sciences and Services Field of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the Communication Disorders Sciences and Services field of study curricula.

§27.682. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Field of Study Curricula--The block of courses which may be transferred to a general academic teaching institution and must be substituted for that institution's lower division requirements for the degree program into which the student transfers, and the student shall receive full academic credit toward the degree program for the block of courses transferred.

(4) Institutions of Higher Education--As defined in Texas Education Code, Chapter 61.003(8).

§27.683. Committee Membership and Officers.

(a) The advisory committee shall be equitably composed of representatives of institutions of higher education.

(b) Each university system or institution of higher education which offers a degree program for which a field of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§27.684. Duration.

The Committee shall be abolished no later than October 30, 2022, in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§27.685. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§27.686. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Communication Disorders Sciences and Services Field of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Communication Disorders Sciences and Services Field of Study Curricula; and

(3) Any other issues related to the Communication Disorders Sciences and Services Field of Study Curricula as determined by the Board.

§27.687. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

Filed with the Office of the Secretary of State on July 13, 2018.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6104

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SUBCHAPTER EE. FINE AND STUDIO ARTS FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.701 - 27.707

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new Subchapter EE, §§27.701 - 27.707 concerning the Fine and Studio Arts Field of Study Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to develop a Fine and Studio Arts field of study. The newly added rules will affect students when the Fine and Studio Arts field of study is adopted by the Board.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the new sections.

Dr. Peebles has also determined that for the first five years the rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in a Fine and Studio Arts degree and improved transferability and applicability of courses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

There will be no impact on small businesses or rural communities, as described in Texas Government Code, Chapter 2006, and therefore an Economic Impact analysis is not required.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will create a new rule;

(6) the rules will not limit an existing rule; and

(7) the rules will not change the number of individuals subject to the rule.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at *AQWComments@THECB.state.tx.us.* Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, §61.823(a), which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees and Texas Government Code, §2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

The new sections affect the implementation of Texas Education Code, Chapter 61.

§27.701. Authority and Specific Purposes of the Fine and Studio Arts Field of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.823(a).

(b) Purpose. The Fine and Studio Arts Field of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the Fine and Studio Arts field of study curricula.

§27.702. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Field of Study Curricula--The block of courses which may be transferred to a general academic teaching institution and must be substituted for that institution's lower division requirements for the degree program into which the student transfers, and the student shall receive full academic credit toward the degree program for the block of courses transferred.

(4) Institutions of Higher Education--As defined in Texas Education Code, Chapter 61.003(8).

§27.703. Committee Membership and Officers.

(a) The advisory committee shall be equitably composed of representatives of institutions of higher education.

(b) Each university system or institution of higher education which offers a degree program for which a field of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§27.704. Duration.

The Committee shall be abolished no later than October 30, 2022, in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§27.705. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§27.706. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Fine and Studio Arts Field of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Fine and Studio Arts Field of Study Curricula; and

(3) Any other issues related to the Fine and Studio Arts Field of Study Curricula as determined by the Board.

§27.707. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6104

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SUBCHAPTER FF. JOURNALISM FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.721 - 27.727

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new Subchapter FF, §§27.721 - 27.727, concerning the Journalism Field of Study Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to develop a Journalism field of study. The newly added rules will affect students when the Journalism field of study is adopted by the Board.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the new sections.

Dr. Peebles has also determined that for the first five years the rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in a Journalism degree and improved transferability and applicability of courses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

There will be no impact on small businesses or rural communities, as described in Texas Government Code, Chapter 2006, and therefore an Economic Impact analysis is not required.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will create a new rule;

(6) the rules will not limit an existing rule; and

(7) the rules will not change the number of individuals subject to the rule.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, §61.823(a), which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees and Texas Government Code, §2110.005, which requires a state agency that establishes an

advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

The new sections affect the implementation of Texas Education Code, Chapter 61.

§27.721. Authority and Specific Purposes of the Journalism Field of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.823(a).

(b) Purpose. The Journalism Field of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the Journalism field of study curricula.

§27.722. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Field of Study Curricula--The block of courses which may be transferred to a general academic teaching institution and must be substituted for that institution's lower division requirements for the degree program into which the student transfers, and the student shall receive full academic credit toward the degree program for the block of courses transferred.

(4) Institutions of Higher Education--As defined in Texas Education Code, Chapter 61.003(8).

§27.723. Committee Membership and Officers.

(a) The advisory committee shall be equitably composed of representatives of institutions of higher education.

(b) Each university system or institution of higher education which offers a degree program for which a field of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§27.724. Duration.

The Committee shall be abolished no later than October 30, 2022, in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§27.725. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§27.726. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Journalism Field of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Journalism Field of Study Curricula; and

(3) Any other issues related to the Journalism Field of Study Curricula as determined by the Board.

§27.727. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

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Bill Franz
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SUBCHAPTER GG. ANIMAL SCIENCES FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.741 - 27.747

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new Subchapter GG, §§27.741 - 27.747 concerning the Animal Sciences Field of Study Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to develop an Animal Sciences field of study. The newly added rules will affect students when the Animal Sciences field of study is adopted by the Board.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the new sections.

Dr. Peebles has also determined that for the first five years the rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an Animal Sciences degree and improved transferability and applicability of courses. There are no anticipated economic costs to persons who are required to

comply with the section as proposed. There is no impact on local employment.

There will be no impact on small businesses or rural communities, as described in Texas Government Code, Chapter 2006, and therefore an Economic Impact analysis is not required.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will create a new rule;

(6) the rules will not limit an existing rule; and

(7) the rules will not change the number of individuals subject to the rule.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, §61.823(a), which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees and Texas Government Code, §2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

The new sections affect the implementation of Texas Education Code, Chapter 61.

§27.741. Authority and Specific Purposes of the Animal Sciences Field of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.823(a).

(b) Purpose. The Animal Sciences Field of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the Animal Sciences field of study curricula.

§27.742. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Field of Study Curricula--The block of courses which may be transferred to a general academic teaching institution and must be substituted for that institution's lower division requirements for the degree program into which the student transfers, and the student shall receive full academic credit toward the degree program for the block of courses transferred.

(4) Institutions of Higher Education--As defined in Texas Education Code, Chapter 61.003(8).

§27.743. Committee Membership and Officers.

(a) The advisory committee shall be equitably composed of representatives of institutions of higher education.

(b) Each university system or institution of higher education which offers a degree program for which a field of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§27.744. Duration.

The Committee shall be abolished no later than October 30, 2022, in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§27.745. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§27.746. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Animal Sciences Field of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Animal Sciences Field of Study Curricula; and

(3) Any other issues related to the Animal Sciences Field of Study Curricula as determined by the Board.

§27.747. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6104

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SUBCHAPTER HH. AGRICULTURAL BUSINESS AND MANAGEMENT FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.761 - 27.767

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new Subchapter HH, §§27.761 - 27.767, concerning the Agricultural Business and Management Field of Study Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to develop an Agricultural Business and Management field of study. The newly added rules will affect students when the Agricultural Business and Management field of study is adopted by the Board.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the new sections.

Dr. Peebles has also determined that for the first five years the rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an Agricultural Business and Management degree and improved transferability and applicability of courses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

There will be no impact on small businesses or rural communities, as described in Texas Government Code, Chapter 2006, and therefore an Economic Impact analysis is not required.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will create a new rule;

(6) the rules will not limit an existing rule; and

(7) the rules will not change the number of individuals subject to the rule.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, §61.823(a), which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees and Texas Government Code, §2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

The new sections affect the implementation of Texas Education Code, Chapter 61.

§27.761. Authority and Specific Purposes of the Agricultural Business and Management Field of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.823(a).

(b) Purpose. The Agricultural Business and Management Field of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the Agricultural Business and Management field of study curricula.

§27.762. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Field of Study Curricula--The block of courses which may be transferred to a general academic teaching institution and must be substituted for that institution's lower division requirements for the degree program into which the student transfers, and the student shall receive full academic credit toward the degree program for the block of courses transferred.

(4) Institutions of Higher Education--As defined in Texas Education Code, Chapter 61.003(8).

§27.763. Committee Membership and Officers.

(a) The advisory committee shall be equitably composed of representatives of institutions of higher education.

(b) Each university system or institution of higher education which offers a degree program for which a field of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§27.764. Duration.

The Committee shall be abolished no later than October 30, 2022, in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§27.765. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§27.766. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Agricultural Business and Management Field of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Agricultural Business and Management Field of Study Curricula; and

(3) Any other issues related to the Agricultural Business and Management Field of Study Curricula as determined by the Board.

§27.767. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

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Bill Franz
General Counsel
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER G. CIGARETTE TAX

34 TAC §3.102

The Comptroller of Public Accounts proposes amendments to §3.102, concerning applications, definitions, permits, and reports. The amendments to this section implement provisions in Senate Bill 1390, 85th Legislature, 2017 that changed the due date of the distributor's report from the last day of the month to the 25th day of the month.

The comptroller amends subsection (a) to delete paragraphs (4), (6), (9), and (12) because the definitions are not used in the section. Subsequent paragraphs are renumbered. The comptroller amends renumbered paragraphs (4) and (15) for readability. The comptroller amends renumbered paragraph (6) to correct a grammatical error and for readability. The comptroller amends renumbered paragraph (8) to delete "import broker" from the definition because the term is not used in the section.

The comptroller amends subsection (f) to add a new paragraph addressing cigarette manufacturer reports. New paragraph (1) states that the due date for cigarette manufacturer reports is the last day of the month. Senate Bill 1390 did not change the due date of the report for cigarette manufacturers. Subsequent paragraphs are renumbered.

The comptroller amends the existing language in renumbered paragraph (2) to remove the reference to cigarette manufacturer reports and to add wholesaler reports. Paragraph (2) now explains that all distributor and wholesaler reports, including those required under Health and Safety Code, §161.605 (Distributor's Report and Payment of Monthly Fee), are due on the 25th day of the month, in accordance with the provisions of Senate Bill 1390 and §154.212 (Reports by Wholesalers and Distributors of Cigarettes).

Throughout the section, titles are added to statutory references.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendments are in effect, the amendments: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends a current rule.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, proposed amendments would benefit the public by conforming the rule to current statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendments implement legislative changes to Tax Code, §154.210(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Permits required.

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

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

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

(4) A vehicle from which cigarettes are sold is considered to be a place of business and requires a permit. A motor vehicle permit is issued to a bonded agent, distributor, or wholesaler holding a current permit. Vehicle permits are issued bearing a specific motor vehicle identification number and are valid only when physically carried in the vehicle having the corresponding motor vehicle identification number. Vehicle permits may not be moved from one vehicle to another. No

cigarette permit is required for a vehicle used only to deliver invoiced cigarettes.

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

(c) Permit period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Reports.

(1) Manufacturer reports must be filed on or before the last day of each month for transactions that occurred during the preceding month.

(2) [~~(1) With the exception of reports of sales to retailers required by the comptroller under Tax Code, §154.212, all~~] All cigarette distributor and wholesaler [~~manufacturer~~] reports and payments must be filed on or before the 25th [~~last~~] day of each month for transactions that occurred during the preceding month [~~following the month in which the transactions take place~~].

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

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

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Nancy Prosser
General Counsel
Comptroller of Public Accounts
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SUBCHAPTER H. CIGAR AND TOBACCO TAX

34 TAC §3.121

The Comptroller of Public Accounts proposes amendments to §3.121, concerning definitions, imposition of tax, permits, and reports. The amendments to this section implement provisions of Senate Bill 1390, 85th Legislature, 2017, that changed the due date of the distributor's report from the last day of the month to the 25th day of the month.

The comptroller amends subsection (a) to delete paragraphs (6) and (11) because the definitions are not used in the section. The subsequent paragraphs are renumbered. The comptroller amends paragraph (5) to include a reference that the manufacturer's list price is synonymous with factory list price. The comptroller amends renumbered paragraph (7) to delete "import broker" from the definition because the term is not used in the section.

The comptroller amends subsection (b)(1)(A) to add a missing colon.

The comptroller amends subsections (b)(1)(B) to remove outdated language and to revise and move from subsection (b)(1)(B)(i) a reference on where to find rates for cans or packages that weigh more than two ounces.

The comptroller amends subsection (b)(4) to add a missing word.

The comptroller amends (c)(6) for readability.

The comptroller amends subsection (h) to add a new paragraph addressing cigar and tobacco product manufacturer reports to comply with changes made by Senate Bill 1390. New paragraph (1) states that the due date for cigar and tobacco product manu-

facturer reports is the last day of the month. Senate Bill 1390 did not change the due date of the report for cigar and tobacco product manufacturers. Subsequent paragraphs are renumbered.

The comptroller amends the existing language in renumbered paragraph (2) to remove the reference to cigar and tobacco product manufacturer reports and to add wholesaler reports. Paragraph (2) now explains that all distributor and wholesaler reports, including those required under Health and Safety Code, §161.605 (Distributor's Report and Payment of Monthly Fee), are due on the 25th day of the month, in accordance with the provisions of Senate Bill 1390 and §155.105 (Reports by Wholesalers and Distributors of Cigars and Tobacco Products).

Throughout the section, titles are added to statutory references.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the amendment: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends a current rule.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by conforming the rule to current statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendments implement legislative changes to Tax Code, §155.111(a).

§3.121. Definitions, Imposition of Tax, Permits, and Reports.

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

(1) Bonded agent--A person in Texas who is an agent for a principal located outside of Texas and who receives cigars and tobacco products in interstate commerce and stores the cigars and tobacco products for distribution or delivery to distributors under orders from the principal.

(2) Cigar--A roll of fermented tobacco that is wrapped in tobacco and that the main stream of smoke from which produces an alkaline reaction to litmus paper.

(3) Common carrier--A motor carrier registered under Transportation Code, Chapter 643 (Motor Carrier Registration), or a motor carrier operating under a certificate issued by the Interstate Commerce Commission or its successor agency.

(4) Distributor--A person who:

(A) receives tobacco products from a manufacturer for the purpose of making a first sale in Texas;

(B) brings or causes to be brought into Texas tobacco products for sale, use, or consumption.

(5) Factory list price--The published manufacturer gross cost to the distributor. The term is synonymous with manufacturer's list price.

~~[(6) Export warehouse--A location in this state from which a person receives tobacco products from manufacturers and stores the tobacco products for the purpose of making sales to authorized persons for resale, use, or consumption outside the United States.]~~

(6) [~~(7)~~] First sale--Except as otherwise provided by this section, the term means:

(A) the first transfer of possession in connection with purchase, sale, or any exchange for value of tobacco products in intrastate commerce;

(B) the first use or consumption of tobacco products in this state; or

(C) the loss of tobacco products in this state whether through negligence, theft, or other loss.

(7) [~~(8)~~] Importer [~~or import broker~~]--A person who ships, transports, or imports into Texas tobacco products manufactured or produced outside the United States for the purpose of making a first sale in this state.

(8) [~~(9)~~] Manufacturer--A person who manufactures or produces tobacco products and sells tobacco products to a distributor.

(9) [~~(10)~~] Manufacturer's representative--A person who is employed by a manufacturer to sell or distribute the manufacturer's tobacco products.

~~[(11) Manufacturer's list price--The published manufacturer gross cost to the distributor. The term is synonymous with factory list price.]~~

(10) [~~(12)~~] Manufacturer's listed net weight--For the purposes of calculating and reporting the state excise tax due on tobacco products other than cigars, the taxable net weight for a tobacco product is the weight of the finished product as shown or listed by the product manufacturer on the product can, package, shipping container, or the report required by Tax Code, §155.103(b) (Manufacturer's Records and Reports).

(11) [~~(13)~~] Permit holder--A bonded agent, distributor, importer, manufacturer, wholesaler, or retailer required to obtain a permit under Tax Code, §155.041 (Permits).

(12) [~~(14)~~] Place of business--the term means:

(A) a commercial business location where tobacco products are sold;

(B) a commercial business location where tobacco products are kept for sale or consumption or otherwise stored and may not be a residence or a unit in a public storage facility; or

(C) a vehicle from which tobacco products are sold.

(13) [~~(15)~~] Retailer--A person who engages in the practice of selling tobacco products to consumers and includes the owner of a coin-operated vending machine.

(14) [~~(16)~~] Tobacco product--A tobacco product includes: a cigar; pipe tobacco, including any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe; chewing tobacco, including plug, scrap, and any kind of tobacco suitable for chewing and that is not intended to be smoked; snuff or other preparations of finely cut, ground, powdered, pulverized or dissolvable tobacco that is not intended to be smoked; roll-your-own smoking tobacco, including granulated, plug-cut, crimp-cut, ready rubbed, any form of tobacco, which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes or cigars, or use as wrappers thereof; or other tobacco products, including an article or product that is made of tobacco or a tobacco substitute and that is not a cigarette.

(15) [~~(17)~~] Trade discount, special discount, or deals--Includes promotional incentive discounts, quantity purchase incentive discounts, and timely payment or prepayment discounts.

(16) [~~(18)~~] Weight of a cigar--The combined weight of tobacco and nontobacco ingredients that make up the total product in the form available for sale to the consumer, excluding any carton, box, label, or other packaging materials.

(17) [~~(19)~~] Wholesaler--A person, including a manufacturer's representative, who sells or distributes tobacco products in this state for resale but who is not a distributor.

(b) Imposition of tax. A tax is imposed and becomes due and payable when a permit holder receives cigars or tobacco products for the purpose of making a first sale in this state.

(1) Tax Rates.

(A) the tax on cigars is calculated at:

(i) $.01 per 10 or fraction of 10 on cigars that weigh three pounds or less per thousand;

(ii) $7.50 per thousand on cigars that weigh more than three pounds per thousand and that are sold at factory list price, exclusive of any trade discount, special discount, or deal, for 3.3 cents or less each;

(iii) $11 per thousand on cigars that weigh more than three pounds per thousand and that are sold at factory list price, exclusive of any trade discount, special discount, or deal, for more than 3.3 cents each, and that contain no substantial amount of nontobacco ingredients; and

(iv) $15 per thousand on cigars that weigh more than three pounds per thousand and that are sold at factory list price, exclusive of any trade discount, special discount, or deal, for more than 3.3 cents each, and that contain a substantial amount of nontobacco ingredients.

(B) The [~~Effective September 1, 2009, House Bill 2154, enacted by the 81st Legislature, 2009, changed the~~] tax for tobacco products, other than cigars, is [~~to a tax~~] based on the manufacturer's listed net weight for an individual product's can or package and a rate for each ounce and proportionate rate on all fractional parts of an ounce of weight for that product. The tax imposed on a can or package of a tobacco product that weighs less than 1.2 ounces is equal to the amount of the tax imposed on a can or package that weighs 1.2 ounces. [~~A new rate is imposed for state fiscal years 2010, 2011, 2012, 2013, and 2014. The rate for each ounce and proportionate rate on all fractional parts of an ounce in effect for FY 2014 apply to each fiscal year thereafter. The tax rate in effect for a state fiscal year that occurs according to this subparagraph does not affect the taxes imposed before that fiscal year, and the rate in effect when those taxes were imposed continues in effect for the purposes of the liability for and collection of those taxes.~~] The [~~new~~] rates imposed for state fiscal years 2010, 2011, 2012, 2013, 2014, and thereafter are set forth in this subparagraph. An expanded chart showing rates for cans or packages greater than two ounces is available at comptroller.texas.gov.

(i) The rate for the state Fiscal Year 2010 (September 1, 2009 through August 31, 2010), is $1.10 per ounce and a proportionate rate on all fractional parts of an ounce for up to two ounces according to the following. [~~An expanded chart showing rates for cans or packages greater than two ounces is available on the Window on State Government Web site.~~]

Figure: 34 TAC §3.121(b)(1)(B)(i) (No change.)

(ii) For the state Fiscal Year 2011 (September 1, 2010 through August 31, 2011), the tax rate and proportionate tax rate for fractional parts of an ounce for up to two ounces are as follows.

Figure: 34 TAC §3.121(b)(1)(B)(ii) (No change.)

(iii) For the state Fiscal Year 2012 (September 1, 2011 through August 31, 2012), the tax rate and proportionate tax rate for fractional parts of an ounce for up to two ounces are as follows.

Figure: 34 TAC §3.121(b)(1)(B)(iii) (No change.)

(iv) For the state Fiscal Year 2013 (September 1, 2012 through August 31, 2013), the tax rate and proportionate tax rate for fractional parts of an ounce for up to two ounces are as follows.

Figure: 34 TAC §3.121(b)(1)(B)(iv) (No change.)

(v) For state Fiscal Year 2014 (which begins September 1, 2013) and for each fiscal year thereafter, the tax rate and proportionate tax rate for fractional parts of an ounce for up to two ounces are as follows.

Figure: 34 TAC §3.121(b)(1)(B)(v) (No change.)

(C) The tax imposed on a unit that contains multiple individual cans or packages is the sum of the taxes imposed under paragraph (1)(B) of this subsection, on each individual can or package intended for sale or distribution at retail. For example, on November 1, 2009 (Fiscal Year 2010) a distributor receives from a manufacturer for the purpose of making a first sale in Texas a unit of snuff that consists of 10 individual cans. Each can weighs 1.3 ounces. The effective tax rate for each can is $1.43. The total tax due for the unit is calculated by multiplying the effective tax rate on each individual can ($1.43) by the total number of individual cans in the unit (10 cans), for a total tax due of $14.30.

(2) Free goods shall be taxed at the prevailing factory list price, except that each tobacco product other than cigars shall be taxed according to the manufacturer's listed net weight for the product and the applicable fiscal year rate for each ounce and proportionate rate for all fractional parts of an ounce according to paragraph (1)(B) of this subsection.

(3) A person who receives or possesses tobacco products on which a tax of more than $50 would be due is presumed to receive or possess the tobacco products for the purpose of making a first sale in this state. This presumption does not apply to common carriers or to manufacturers.

(4) A tax is imposed on manufacturers, who manufacture tobacco products in this state, at the time the tobacco products are first transferred in connection with a purchase, sale, or any exchange for value in intrastate commerce.

(5) The delivery of tobacco products by a principal to its bonded agent in this state is not a first sale.

(6) If a manufacturer sells tobacco products to a purchaser in Texas and ships the products at the purchaser's request to a third party distributor in Texas, then the purchaser has received the tobacco products for first sale in Texas.

(7) The person in possession of cigars or tobacco products has the burden to prove payment of the tax.

(c) Permits required. To engage in business as a distributor, importer, manufacturer, wholesaler, bonded agent, or retailer a person must apply for and receive the applicable permit from the comptroller. The permits are not transferable.

(1) A person who engages in the business of a bonded agent, distributor, importer, manufacturer, wholesaler, or retailer without a valid permit is subject to a penalty of not more than $2,000 for each violation. Each day on which a violation occurs is a separate offense. A new application is required if a change in ownership occurs (sole ownership to partnership, sole ownership to corporation, partnership to limited liability company, etc.). Each legal entity must apply for its own permit(s). All permits issued to a legal entity will have the same taxpayer number.

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

(3) Permits are valid for one place of business at the location shown on the permit. If the location houses more than one place of business under common ownership, an additional permit is required for each separate place of business. For example, a retailer must have a separate permit for each vending machine including several machines at one location.

(4) A vehicle from which cigars and tobacco products are sold is a place of business and requires a permit. A motor vehicle permit is issued to a bonded agent, retailer, distributor, or wholesaler holding a current permit. Vehicle permits are issued bearing a specific motor vehicle identification number and are valid only when physically carried in the vehicle having the corresponding motor vehicle identification number. Vehicle permits may not be moved from one vehicle to another. Each cigar or tobacco product manufacturer's sales representative is required to purchase a wholesale dealer's permit for each manufacturer's vehicle operated. No cigar and tobacco product permit is required for a vehicle used only to deliver invoiced tobacco products.

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

(6) The comptroller will not issue permits for a residence or a unit in a public storage facility because tobacco products cannot [~~must not~~] be stored at such places.

(d) Permit Period.

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

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

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

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

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

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

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

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

(6) The permit fee for a retailer permit issued or renewed is $180. Retailers who fail to obtain or renew a retailer permit in a timely manner are liable for the fee in effect for the applicable permit period, in addition to the fee described in paragraph (7) of this subsection.

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

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

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

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

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

(1) The comptroller shall issue a permit to a distributor, importer, manufacturer, wholesaler, bonded agent, or retailer if the comptroller has received an application and any applicable fee, the applicant has complied with Tax Code, §155.041, and the comptroller determines that the issuance of such permit will not jeopardize the administration and enforcement of Tax Code, Chapter 155.

(2) If the comptroller determines that an existing permit should be suspended or revoked or a permit should be denied, after notice and opportunity for hearing, because the applicant has failed to disclose any information required by Tax Code, §155.041(d), (e), and (f), including the applicant's prior conviction of a crime and the relationship of the crime to the license, the comptroller will notify the applicant or permittee in writing by personal service or by mail of the reasons for the denial, suspension, revocation, or disqualification, the review procedure provided by Occupations Code, §53.052 (Judicial Review), and the earliest date that the permit holder or applicant may appeal the denial, suspension, revocation, or disqualification.

(g) Sale and delivery of tax-free cigars and tobacco products to the United States government.

(1) Distributors may use their own vehicles to deliver previously invoiced quantities of tax-free cigars and tobacco products to instrumentalities of the United States government. These tax-free products must be packaged in a manner in which they will not commingle with any other cigars or tobacco products.

(2) Each sale of tax-free cigars and tobacco products by a distributor to an instrumentality of the United States government shall be supported by a separate sales invoice and a properly completed

Texas Certificate of Tax Exempt Sale, Form 69-302. Sales invoices must be numbered and dated and must show the name of the seller, name of the purchaser, and the destination.

(h) Reports.

(1) Manufacturer reports must be filed on or before the last day of each month for transactions that occurred during the preceding month.

(2) [~~(1)~~] All [~~With the exception of reports of sales to retailers required by the comptroller under Tax Code, §155.105, all~~] tobacco distributor and wholesaler [~~manufacturer~~] reports and payments must be filed on or before the 25th [~~last~~] day of each month for transactions that occurred during the preceding month.

(3) [~~(2)~~] All wholesaler and distributor reports of sales to retailers required by the comptroller under Tax Code, §155.105 (Reports by Wholesalers and Distributors of Cigars and Tobacco Products), shall be filed in accordance with §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

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

Filed with the Office of the Secretary of State on July 13, 2018.

TRD-201803079
Nancy Prosser
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: August 26, 2018
For further information, please call: (512) 475-2220

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PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 67. HEARINGS ON DISPUTED CLAIMS

34 TAC §67.44

The Employees Retirement System of Texas (ERS) proposes an amendment to 34 Texas Administrative Code (TAC) Chapter 67, concerning Hearings on Disputed Claims, by proposing new rule §67.44, concerning Mediation.

Following a review of ERS by the Texas Sunset Commission, the Sunset Advisory Commission issued a Staff Report which included Recommendation 5.1 to "apply standard across-the-board requirements to ERS." To implement the Commission's recommendations, the Texas Legislature added §815.1025 (SB 301) to the Texas Government Code, requiring ERS to "develop a policy to encourage the use of...appropriate alternative dispute resolution procedures."

In order to comply with the requirements of §815.1025, Texas Government Code, new rule §67.44, Mediation, is proposed to be added. The proposed new rule will allow ERS to grant mediation rights to certain individuals, as appropriate, depending on the benefits claimed, the facts of the case, and the available remedies.

GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five years the new rule will be in effect:

(1) the new rule will not create or eliminate a government program;

(2) implementation of the rule will not require the creation or elimination of employee positions;

(3) implementation of the rule will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rule will not require an increase or decrease in fees paid to the agency;

(5) the rule will create a new regulation;

(6) the rule will not expand, limit or repeal an existing regulation;

(7) the rule will not increase or decrease the number of individuals subject to the rule's applicability; and

(8) the rules will not affect the state's economy.

Paula A. Jones, Deputy Executive Director and General Counsel, has determined that for the first five year period the rule is in effect, there will be no fiscal implication for state or local government or local economies as a result of enforcing or administering the rule; and small businesses, micro-businesses and rural communities will not be affected. The proposed rule does not constitute a taking. The proposed rule reflects changes to contested case appeals setting forth factors to consider in offering mediation for appeals. To Ms. Jones' knowledge, there are no known anticipated economic costs to persons who are required to comply with the new rule as proposed unless any party seeks mediation and there are costs associated with mediation that must be paid.

The anticipated public benefit is to offer mediation rights to certain participants in the Texas Employees Group Benefits Program in accordance with the recommendations of the Texas Sunset Commission, and to comply with new statutory requirements.

Comments on the proposed new rule may be submitted to Paula A. Jones, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or by email to Ms. Jones at paula.jones@ers.texas.gov. The deadline for receiving comments is Monday, August 13, 2018, at 10:00 a.m.

The new rule is proposed under Texas Government Code §815.102(a)(4) and (5), which provides authorization for the ERS Board of Trustees to adopt rules for hearings on contested cases or disputed claims and the transaction of any other business of the Board.

No other statutes are affected by the proposed new rule.

§67.44. Mediation.

Upon receipt of a timely appeal for contested cases involving eligible claims for Nonoccupational Disability Retirement benefits, Occupational Disability Retirement benefits, Long Term Disability Income Insurance benefits, Short Term Disability Income Insurance benefits, State of Texas Dental Choice PPO benefits, and when ERS determines that a participant or a participant's dependent should be removed from the Texas Employees Group Benefits Program in accordance with applicable laws, regulations, and/or plan requirements, ERS may offer mediation rights when there are material facts at issue and there are remedies available to the Appellant under applicable law. ERS will notify the Appellant or applicable Authorized Representatives if mediation is available. After receiving notification of available mediation

rights from ERS, the Appellant, applicable Authorized Representatives or ERS may request mediation through the State Office of Administrative Hearings before the set hearing date.

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

Filed with the Office of the Secretary of State on July 13, 2018.

TRD-201803066
Paula A. Jones
Deputy Executive Director and General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: August 26, 2018
For further information, please call: (877) 275-4377

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CHAPTER 81. INSURANCE

34 TAC §81.7

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 81, concerning Insurance, by amending §81.7 (Enrollment and Participation).

Section 81.7, concerning Enrollment and Participation, is proposed to be amended due to changes by the Centers for Medicare & Medicaid Services (CMS). Effective April 1, 2018, CMS began issuing new Medicare cards, replacing the social security number based Health Insurance Claim Number (HICN), with a new Medicare Beneficiary Identifier (MBI). This change will require that ERS update its systems and modify processes to submit or exchange the previous HICN with the new MBI. As a result, ERS will be unable to enroll new participants in the Medicare Advantage Plan until their MBI is received.

Ms. Robin Hardaway, Director of Customer Benefits, has determined that for the first five year period the rules are in effect, there will be no fiscal implication for state or local government or local economies as a result of enforcing or administering the rules. To Ms. Hardaway's knowledge, there are no known anticipated economic effects to persons who are required to comply with the rules as proposed, and small businesses, micro-businesses or rural communities should not be affected. The proposed rule does not constitute a taking.

GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five years the amended rules will be in effect:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new regulation;

(6) the rules will not expand, limit or repeal an existing regulation;

(7) the rules will not increase or decrease the number of individuals subject to the rule's applicability; and

(8) the rules will not affect the state's economy.

Ms. Hardaway also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules would be to enable ERS to enroll participants in Medicare Advantage plans, and to conform the rules with recent CMS changes to the program rules regarding automatic enrollment into the Medicare Advantage and HealthSelect Medicare Rx plans.

Comments on the proposed amendments may be submitted to Paula A. Jones, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at paula.jones@ers.texas.gov. The deadline for receiving comments is August 27, 2018, at 10:00 a.m.

The amendments are proposed under Texas Insurance Code, §1551.052, which provides authorization for the ERS Board of Trustees to adopt rules necessary to carry out its statutory duties and responsibilities.

No other statutes are affected by the proposed amendments.

§81.7. Enrollment and Participation.

(a) Enrollment Categories.

(1) Full-time employees and their dependents.

(A) A new employee:

(i) who is not subject to the health insurance waiting period and is eligible under the Act and as provided for in §81.5(a)(1) of this chapter (relating to Eligibility) for automatic insurance coverage, shall be enrolled in the basic plan unless the employee completes an enrollment form to elect other coverage or to waive GBP health coverage as provided in §81.8 of this chapter (relating to Waiver of Health Coverage). Coverage of an employee under the basic plan, and other coverage selected as provided in this paragraph, becomes effective on the date on which the employee begins active duty.

(ii) who is subject to the health insurance waiting period and is eligible under the Act and as provided for in §81.5(a)(1) of this chapter for automatic insurance coverage, shall be enrolled in the basic plan beginning on the first day of the calendar month following 60 days of employment unless, before this date, the employee completes an enrollment form to elect other coverage or to waive GBP health coverage as provided in §81.8 of this chapter.

(iii) who has existing, current, and continuous GBP health coverage as of the date the employee begins active duty is not subject to the health insurance waiting period and is eligible to enroll as a new employee in health insurance and additional coverage and plans which include optional coverage by completing an enrollment form before the first day of the calendar month after the date the employee begins active duty. Health and additional coverage selected before the first day of the calendar month after the date the employee begins active duty are effective the first day of the following month.

(B) Dependent enrollment and optional coverage:

(i) To enroll eligible dependents, to elect to enroll in an approved HMO, and to elect additional coverage and plans which include optional coverage, an employee not subject to the health insurance waiting period shall complete an enrollment form within 30 days after the date on which the employee begins active duty. Coverage selected within 30 days after the date on which the employee begins active duty becomes effective on the first day of the month following the date on which the enrollment form is completed. An enrollment form completed after the initial period for enrollment as provided in

this paragraph is subject to the provisions of subsection (d) of this section.

(ii) To enroll eligible dependents or to elect to enroll in an approved HMO, an employee subject to the health insurance waiting period shall complete an enrollment form before the first day of the month following 60 days of employment. Coverage selected before the first day of the month following 60 days of employment becomes effective on the first day of the month following 60 days of employment. An employee completing an enrollment form after the initial period for enrollment as provided in this paragraph is subject to the provisions of subsection (d) of this section. The provisions of subparagraph (A)(ii) of this paragraph apply to the election of additional coverage and plans, which include optional coverage, for an employee subject to the health insurance waiting period.

(C) Except as otherwise provided in this section, an employee may not change coverage.

(D) An eligible employee who enrolls in the GBP is eligible to participate in premium conversion and shall be automatically enrolled in the premium conversion plan. The employee shall be automatically enrolled in the plan for subsequent plan years as long as the employee remains on active duty.

(E) Coverage for a newly eligible dependent, other than a dependent referred to in subparagraph (F) or (H) of this paragraph, will be effective on the first day of the month following the date the person becomes a dependent if an enrollment form is completed on or within 30 days after the date the person first becomes a dependent. If the enrollment form is completed and signed after the initial period for enrollment as provided in this paragraph, the enrollment form will be governed by the rules in subsection (d) of this section.

(F) A member's newborn natural child will be covered immediately and automatically for 30 days from the date of birth in the health plan in effect for the employee/retiree. A member's newly adopted child will be covered immediately and automatically from the date of placement for adoption for 30 days in the health plan in effect for the employee/retiree. To continue coverage for more than 30 days after the date of birth or placement for adoption, an enrollment form for GBP health coverage must be submitted by the member within 30 days after the date of birth or placement for adoption.

(G) The effective date of a newborn natural child's life and AD&D coverage will be the date of birth, if the child is born alive, as certified by an attending physician or a certified nurse-midwife. The effective date of a newly adopted child's life and AD&D coverage will be the date of placement for adoption. The effective date of all other eligible dependents' life and AD&D coverage will be as stated in subparagraph (E) of this paragraph.

(H) GBP health coverage of a member's eligible child for whom a covered employee/retiree is court-ordered to provide medical support becomes effective on the date on which the member's benefits coordinator receives a valid copy of the qualified medical child support order.

(I) The effective date of GBP health coverage for an employee's/retiree's dependent, other than a newborn natural child or newly adopted child, will be as stated in subparagraph (E) of this paragraph.

(J) For purposes of this section, an enrollment form is completed when all information necessary to effect an enrollment has been transmitted to ERS in the form and manner prescribed by ERS.

(2) Part-time employees. A part-time employee or other employee who is not automatically covered must complete an application/enrollment form provided by ERS authorizing necessary deductions for insurance required contributions for elected coverage. All other rules for enrollment stated in paragraph (1) of this subsection, other than the rule as to automatic coverage, apply to such employee:

(A) If the employee is not subject to a health insurance waiting period, this form must be submitted to ERS either through ERS Online or through his/her benefits coordinator on, or within 30 days after, the date on which the employee begins active duty.

(B) If the employee is subject to a health insurance waiting period, this form must be submitted to ERS either through ERS Online or through his/her benefits coordinator before the first day of the month following 60 days of employment.

(C) If the employee has existing, current, and continuous GBP health coverage as of the date the employee begins active duty, the employee is not subject to the health insurance waiting period and is eligible to enroll as a new employee in health insurance and additional coverage and plans which include optional coverage by completing an enrollment form before the first day of the calendar month after the date the employee begins active duty. Health and additional coverage selected before the first day of the calendar month after the date the employee begins active duty are effective the first day of the following month.

(3) Retirees and their dependents.

(A) Provided the insurance required contributions are paid or deducted, an employee's GBP health, dental, vision and term life insurance coverage (including eligible dependent coverage) may be continued upon retirement as provided in §81.5(b) of this chapter. The life insurance will be reduced to the maximum amount which the retiree is permitted to retain under the insurance plan as a retiree. All other coverage in force for an active employee, but not available to a retiree, will automatically be discontinued concurrently with the commencement of retirement status. Except as provided in subparagraph (E) of this paragraph, if a retiree retires directly from active duty and is not covered as an active employee on the day before becoming an annuitant, the retiree may enroll in the basic plan.

(B) A retiree may enroll in GBP health, dental, vision and life insurance coverage for which the retiree is eligible as provided in §81.5(b) of this chapter, including dependent coverage, by completing an enrollment form as specified in clauses (i) - (iii) of this subparagraph. For the purposes of this subparagraph, the effective date of retirement of a retiree who is eligible to receive, but who has not yet received, an annuity is the date on which ERS receives written notice of the retirement. An application/enrollment form received after the initial period for enrollment as provided in this subparagraph, is subject to the provisions of subsection (d) of this section.

(i) A retiree who is not subject to the health insurance waiting period on the effective date of retirement as provided in §81.5(b) of this chapter, may enroll in GBP health, dental, vision and life insurance coverage or waive GBP health coverage as provided in §81.8 of this chapter for which the retiree is eligible, including dependent coverage, by completing an enrollment form or waiver of coverage as applicable before, on, or within 30 days after, the retiree's effective date of retirement.

(ii) A retiree who is subject to the health insurance waiting period on the effective date of retirement as provided in §81.5(b) of this chapter, may enroll in GBP health coverage or waive GBP health coverage as provided in §81.8 of this chapter for which the retiree is eligible, including dependent coverage, by completing an enrollment form or waiver of coverage as applicable, before the first day of the calendar month following 60 days after the date of retire-

ment or before the first day of the calendar month after the retiree's 65th birthday, whichever is later as appropriate. The effective date for such coverage shall be the first day of the calendar month following 60 days after the date of retirement or the first day of the calendar month following the retiree's 65th birthday, whichever is later as appropriate.

(iii) A retiree who is ineligible for health insurance on the effective date of retirement as provided in §81.5(b) of this chapter, may enroll in GBP health coverage or waive GBP health coverage as provided in §81.8 of this chapter for which the retiree is eligible, including dependent coverage, by completing an enrollment form or waiver of coverage as applicable, before the first day of the calendar month after the retiree's 65th birthday. The effective date for such coverage shall be the first day of the calendar month following 60 days after the date of retirement or the first day of the calendar month following the retiree's 65th birthday, whichever is later.

(C) A retiree who becomes eligible for minimum retiree optional life insurance coverage or dependent life insurance coverage as provided in §81.5(b)(6) of this chapter, may apply for approval of such coverage by providing evidence of insurability acceptable to ERS.

(D) Enrollments in and applications to change coverage become effective as provided in subparagraph (B) of this paragraph unless other coverage is in effect at that time. If other coverage is in effect at that time, coverage or waiver of coverage becomes effective on the first day of the month following the date of approval of retirement by ERS; or, if cancellation of the other coverage preceded the date of approval of retirement, the first day of the month following the date the other coverage was canceled.

(E) A retiree who seeks enrollment in GBP health coverage after turning age 65 will be automatically enrolled in HealthSelect of Texas until Medicare enrollment is confirmed by CMS. A retiree who is [~~or is retired and~~] enrolled in a health plan and turns age 65 willremain enrolled in that health plan until the retiree's Medicare enrollment can be confirmed by CMS. Once Medicare enrollment is confirmed, the retiree will be automatically enrolled in the Medicare Advantage Plan unless the retiree opts out of the Medicare Advantage Plan and enrolls in other coverage by completing an enrollment form as specified in subparagraph (B)(i) - (iii) of this paragraph. If the retiree is determined to be ineligible for Medicare coverage, then he/she will be returned to the coverage in place immediately before turning 65.

(F) A Medicare-eligible retiree who seeks enrollment in GBP health coverage or is retired and enrolled in a health plan and becomes eligible for Medicare, will be automatically enrolled in the HealthSelect of Texas Prescription Drug Program until Medicare enrollment is confirmed by CMS. Upon confirmation of Medicare enrollment, the retiree will be enrolled in HealthSelect Medicare Rx. A retiree who declines HealthSelect Medicare Rx loses all GBP prescription drug coverage. If the retiree is determined to be ineligible for Medicare coverage, then he/she will be returned to the coverage in place immediately before turning 65.

(4) Medicare-eligible Dependents.

(A) A dependent as defined in §81.1 of this chapter (relating to Definitions) who becomes eligible for Medicare-primary coverage as specified in §81.1 of this chapter, either through disability, age, or other requirements as set forth by CMS, will be automatically enrolled in the Medicare Advantage Plan, once Medicare enrollment is confirmed by CMS, unless the retiree and his/her dependents opt out of the Medicare Advantage Plan and enroll in other coverage by completing an enrollment form as specified in paragraph (3)(B)(i) - (iii) of this subsection. If the dependent is determined to be ineligible for Medicare coverage, then he/she will be returned to the coverage in place immediately before turning 65.

(B) A Medicare-eligible dependent eligible for GBP health coverage will be automatically enrolled in HealthSelect Medicare Rx, once Medicare enrollment is confirmed by CMS. A Medicare-eligible dependent who declines HealthSelect Medicare Rx loses all GBP prescription drug coverage. If the dependent is determined to be ineligible for Medicare coverage, then he/she will be returned to the coverage in place immediately before turning 65.

(5) Surviving dependents.

(A) Provided that the insurance required contributions are paid or deducted, the health, dental, and vision insurance coverage of a surviving dependent may be continued on the death of the deceased employee/retiree if the dependent is eligible for such coverage as provided by §81.5(e) of this chapter.

(B) A surviving spouse who is receiving an annuity shall make insurance required contribution payments by deductions from the annuity as provided in subsection (h)(7) of this section. A surviving spouse who is not receiving an annuity may make payments as provided in subsection (h)(7) of this section.

(C) A Medicare-eligible surviving dependent eligible for GBP health coverage will be automatically enrolled in the Medicare Advantage Plan, once Medicare enrollment is confirmed by CMS, unless the surviving dependent opts out of the Medicare Advantage Plan and enrolls in other coverage.

(D) A Medicare-eligible surviving dependent eligible for GBP health coverage will be automatically enrolled in HealthSelect Medicare Rx, once Medicare enrollment is confirmed by CMS. A Medicare-eligible surviving dependent who declines HealthSelect Medicare Rx loses all GBP prescription drug coverage.

(6) Former COBRA unmarried children. A former COBRA unmarried child must provide an application to continue GBP health, dental and vision insurance coverage within 30 days after the date the notice of eligibility is mailed by ERS. Coverage becomes effective on the first day of the month following the month in which continuation coverage ends. Insurance required contribution payments must be made as provided in subsection (h)(1)(A) of this section.

(b) Premium conversion plans.

(1) An eligible employee participating in the GBP is deemed to have elected to participate in the premium conversion plan and to pay insurance required contributions with pre-tax dollars as long as the employee remains on active duty. The plan is intended to be qualified under the Internal Revenue Code, §79 and §106.

(2) Maximum benefit available. Subject to the limitations set forth in these rules and in the plan, to avoid discrimination, the maximum amount of flexible benefit dollars which a participant may receive in any plan year for insurance required contributions under this section shall be the amount required to pay the participant's portion of the insurance required contributions for coverage under each type of insurance included in the plan.

(c) Special rules for additional coverage and plans which include optional coverage.

(1) Only an employee/retiree or a former officer or employee specifically authorized to join the GBP may apply for additional coverage and plans. An employee/retiree may apply for or elect additional coverage and plans for which he/she is eligible without concurrent enrollment in GBP health coverage provided by the GBP. Additional coverage and plans, as determined by the Board of Trustees, may include:

(A) dental coverage;

(B) optional term life;

(C) dependent term life;

(D) short- and long-term disability;

(E) voluntary accidental death and dismemberment;

(F) long-term care;

(G) health care and dependent care reimbursement;

(H) commuter spending account;

(I) vision;

(J) limited purpose flexible spending account; or

(K) health savings account.

(2) An eligible member in the GBP and eligible dependents may participate in an approved HMO if they reside in the approved service area of the HMO and are otherwise eligible under the terms of the contract with the HMO.

(3) An eligible member in the GBP electing additional coverage and plans and/or Consumer Directed HealthSelect, HMO or Medicare Advantage coverage in lieu of the basic plan is obligated for the full payment of insurance required contributions. If the insurance required contributions are not paid, all coverage not fully funded by the state contribution will be canceled. A person eligible for the state contribution will retain member-only GBP health coverage as a member provided the state contribution is sufficient to cover the insurance required contribution for such coverage. If the state contribution is not sufficient for member-only coverage in the health plan selected by the member employee/retiree, the member employee/retiree will be enrolled in the basic plan or the Medicare Advantage Plan, as applicable, except as provided for in subsection (g)(2)(B) of this section.

(4) An eligible member in the GBP enrolled in an HMO and the HMO's contract is not renewed for the next fiscal year will be eligible to make one of the following elections:

(A) change to another approved HMO for which the member is eligible by completing an enrollment form during the annual enrollment period. The effective date of the change in coverage will be September 1;

(B) enroll in HealthSelect of Texas, Consumer Directed HealthSelect, or a Medicare Advantage Plan (if eligible) by completing an enrollment form during the annual enrollment period. The effective date of the change in coverage will be September 1; or

(C) if the member does not make one of the elections, as defined in subparagraphs (A) or (B) of this paragraph, the member and covered eligible dependents will automatically be enrolled in the basic plan or the Medicare Advantage Plan, as applicable.

(5) A member enrolled in an HMO whose contract with ERS is terminated during the fiscal year or that fails to maintain compliance with the terms of its contract, as determined by ERS, will be eligible to make one of the following elections:

(A) change to another approved HMO for which the member is eligible. The effective date of the change in coverage will be determined by ERS; or

(B) enroll in HealthSelect of Texas, Consumer Directed HealthSelect, or a Medicare Advantage Plan (if eligible). The effective date of the change in coverage will be determined by ERS.

(d) Changes in coverage after the initial period for enrollment.

(1) Changes for a qualifying life event.

(A) Subject to the provisions of paragraphs (3) and (4) of this subsection, a member shall be allowed to change coverage during a plan year within thirty (30) days of a qualifying life event that occurs as provided in this paragraph if the change in coverage is consistent with the qualifying life event.

(B) A qualifying life event occurs when a participant experiences one of the following changes:

(i) change in marital status;

(ii) change in dependent status;

(iii) change in employment status;

(iv) change of address that results in loss of benefits eligibility;

(v) change in Medicare or Medicaid status, or CHIP status;

(vi) significant cost of benefit or coverage change imposed by a third party provider; or

(vii) change in coverage ordered by a court.

(C) A member who loses benefits eligibility as a result of a change of address shall change coverage as provided in paragraphs (6) - (9) of this subsection.

(D) A member may apply to change coverage on, or within 30 days after, the date of the qualifying life event, provided, however, a change in election due to CHIP or Medicaid status under subparagraph (B) of this paragraph may be submitted on, or within 60 days after, the change in CHIP or Medicaid status.

(E) Except as otherwise provided in subsection (a)(1)(F) and (H) of this section, the change in coverage is effective on the first day of the month following the date on which the enrollment form is completed.

(F) Documentation may be required in support of the qualifying life event.

(G) Following a qualifying life event, a member may change applicable coverage, drop or add an eligible dependent if the change is consistent with the qualifying life event.

(2) Effects of change in cost of benefits to the premium conversion plan. There shall be an automatic adjustment in the amount of premium conversion plan dollars used to purchase optional benefits in the event of a change, for whatever reason, during an applicable period of coverage, of the cost of providing such optional benefit to the extent permitted by applicable law and regulation. The automatic adjustment shall be equal to the increase or decrease in such cost. A participant shall be deemed by virtue of participation in the plan to have consented to the automatic adjustment.

(3) An eligible member who wishes to add or increase optional coverage after the initial period for enrollment must make application for approval by providing evidence of insurability acceptable to ERS, if required. Unless not in compliance with paragraph (1) of this subsection, coverage will become effective on the first day of the month following the date approval is received by ERS, if the applicant is a retiree or an individual in a direct pay status. If the applicant is an employee whose coverage was canceled while the employee was on LWOP, the approved change in coverage will become effective on the date the employee returns to active duty if the employee returns to active duty within 30 days of the approval letter. If the date the employee returns to active duty is more than 30 days after the date on the approval letter, the approval is null and void; and a new application shall be required. An employee/retiree may withdraw the application at any time

prior to the effective date of coverage by submitting a written notice of withdrawal.

(4) The evidence of insurability provision applies only to:

(A) employees who wish to enroll in Elections III or IV optional term life insurance, except as otherwise provided in subsection (f) of this section;

(B) employees who wish to enroll in or increase optional term life insurance, dependent life insurance, or disability income insurance after the initial period for enrollment;

(C) employees enrolled in the GBP whose coverage was waived, dropped or canceled, except as otherwise provided in subsection (f) of this section; and

(D) retirees who wish to enroll in minimum optional life insurance or dependent life insurance as provided in subsection (a)(3)(C) of this section.

(5) An employee/retiree who wishes to add eligible dependents to the employee's/retiree's HMO coverage may do so:

(A) during the annual enrollment period; or

(B) upon the occurrence of a qualifying life event as provided in paragraph (1) of this subsection.

(6) A member who is enrolled in an approved HMO and who permanently moves out of the HMO service area shall make one of the following elections, to become effective on the first day of the month following the date on which the member moves out of the HMO service area:

(A) enroll in another approved HMO for which the member and all covered dependents are eligible; or

(B) if the member and all covered dependents are not eligible to enroll in an approved HMO; either:

(i) enroll in HealthSelect of Texas or Consumer Directed HealthSelect; or

(ii) enroll in an approved HMO if the member is eligible, and drop any ineligible covered dependent, unless not in compliance with §81.11(c)(3) of this chapter (relating to Cancellation of Coverage and Sanctions).

(7) When a covered dependent of a member permanently moves out of the member's HMO service area, the member shall make one of the following elections, to become effective on the first day of the month following the date on which the dependent moves out of the HMO service area:

(A) drop the ineligible dependent, unless not in compliance with §81.11(c)(3) of this chapter;

(B) enroll in an approved HMO if the member and all covered dependents are eligible; or

(C) enroll in HealthSelect of Texas or Consumer Directed HealthSelect, provided the eligible member and all dependents enroll in the same health plan at that time.

(8) An eligible member will be allowed an annual opportunity to make changes in coverage.

(A) Subject to other requirements of this section, a member will be allowed to:

(i) change or enroll themselves and any eligible dependents in an eligible health, dental or vision plan;

(ii) enroll themselves and their eligible dependents in an eligible health, dental or vision plan from a waived or canceled status;

(iii) add, decrease or cancel eligible coverage, unless prohibited by §81.11(c)(3) of this chapter;

(iv) apply for coverage as provided in paragraph (3) of this subsection; and

(v) waive any or all GBP coverage including health as provided in §81.8 of this chapter.

(B) Surviving dependents and former COBRA unmarried children are not eligible to add dependents to coverage through annual enrollment. A surviving dependent or former COBRA unmarried child may enroll an eligible dependent in dental or vision insurance coverage if the dependent is enrolled in health insurance coverage.

(C) Annual enrollment opportunities will be scheduled each year at times announced by ERS.

(9) A participant who is a retiree or a surviving dependent, or who is in a direct pay status, may decrease or cancel any coverage at any time unless such coverage is health insurance coverage ordered by a court as provided in §81.5(c) of this chapter.

(10) A member and his/her dependents who are enrolled in the Medicare Advantage Plan may collectively enroll in HealthSelect of Texas, Consumer Directed HealthSelect or an HMO.

(A) Such opportunity will be scheduled on at least an annual basis each year, at times announced by ERS.

(B) Additional opportunities will occur each month prior to an annual enrollment period. Coverage selected during these opportunities will be effective on the first of the month following processing by CMS.

(11) If a member drops coverage for his/her dependent because the dependent gained other coverage effective the first day of a month, then the effective date of the qualifying life event can be either the last day of the month preceding the gained coverage or on the first day of the month in which the gained coverage is effective.

(e) Special provisions relating to term life benefits

(1) An employee or annuitant who is enrolled in the group term life insurance plan may file a claim for an accelerated life benefit for himself or his covered dependent in accordance with the terms of the plan in effect at that time. An accelerated life benefit paid will be deducted from the amount that would otherwise be payable under the plan.

(2) An employee or annuitant who is enrolled in the group term life insurance plan may make, in conjunction with receipt of a viatical settlement, an irrevocable beneficiary designation in accordance with the terms of the plan in effect at that time.

(f) Re-enrollment in the GBP.

(1) The provisions of subsection (a)(1) of this section shall apply to the enrollment of an employee who terminates employment and returns to active duty within the same fiscal year, who transfers from one employer to another, or who returns to active duty after a period of LWOP during which coverage is canceled.

(2) An employee to whom paragraph (1) of this subsection applies shall be subject to the same requirements as a newly hired employee to re-enroll in the coverage in which the employee was previously enrolled. Provided that all applicable preexisting conditions exclusions were satisfied on the date of termination, transfer, or can-

cellation, no new preexisting conditions exclusions will apply. If not, any remaining period of preexisting conditions exclusions must be satisfied upon re-enrollment.

(3) If an employee is a member of the Texas National Guard or any of the reserve components of the United States armed forces, and the employee's coverage is canceled during a period of LWOP or upon termination of employment as the result of an assignment to active military duty, the period of active military duty shall be applied toward satisfaction of any period of preexisting conditions exclusions remaining upon the employee's return to active employment.

(g) Continuing coverage in special circumstances.

(1) Continuation of coverage for terminating employees. A terminating employee is eligible to continue all coverage through the last day of the month in which employment is terminated.

(2) Continuation of coverage for employees on LWOP status.

(A) An employee in LWOP status may continue the coverage in effect on the date the employee entered that status for the period of leave, but not more than 12 months. The employee must pay insurance required contributions directly as provided in subsection (h)(1)(A) of this section.

(B) An employee whose LWOP is a result of the Family and Medical Leave Act of 1993 will continue to receive the state contribution during such period of LWOP. The employee must pay insurance required contributions directly as defined in subsection (h)(1)(A) of this section. Failure to make the payment of insurance required contributions by the due date will result in the cancellation of all coverage except for member-only health and basic life coverage. The employee will continue in the health plan in which he/she was enrolled immediately prior to the cancellation of all other coverage.

(3) Continuation of coverage for a former member or employee of the Legislature. Provided that the insurance required contributions are paid, the GBP health, dental, vision and life insurance coverage of a former member or employee of the Legislature may be continued on conclusion of the term of office or employment.

(4) Continuation coverage for a former board member. Provided that the insurance required contributions are paid, the GBP health, dental, vision and life insurance coverage of a former member of a board or commission, or of the governing body of an institution of higher education, as both are described in §1551.109 of the Act, may be continued on conclusion of service if no lapse in coverage occurs after the term of office. Life insurance will be reduced to the maximum amount for which the former board member is eligible.

(5) Continuation of coverage for a former judge. A former state of Texas judge, who is eligible for judicial assignments and who does not serve on judicial assignments during a period of one calendar month or longer, may continue the coverage that was in effect during the calendar month immediately prior to the month in which the former judge did not serve on judicial assignments. This coverage may continue for no more than 12 continuous months during which the former judge does not serve on judicial assignments as long as, during the period, the former judge continues to be eligible for assignment.

(6) Continuation of coverage for a surviving spouse and/or dependent child/children of a deceased employee/retiree. The surviving spouse and/or dependent child/children of a deceased employee/retiree, who, in accordance with §81.5(j)(1) of this chapter, elects to continue coverage may do so by submitting the required election notification and enrollment forms to ERS. The enrollment form, including all insurance required contributions due for the election/enrollment period, must be postmarked or received by ERS on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the employee/retiree dies, provided all insurance required contributions due for the month in which the employee/retiree died and for the election/enrollment period have been paid in full.

(7) Continuation of coverage for a covered employee whose employment has been terminated, voluntarily or involuntarily (other than for gross misconduct), whose work hours have been reduced such that the employee is no longer eligible for the GBP as an employee, or whose coverage has ended following the maximum period of LWOP as provided in paragraph (2)(A) of this subsection. An employee, his/her spouse and/or dependent child/children, who, in accordance with §81.5(j)(2) of this chapter, elect to continue GBP health, dental and vision coverage may do so by submitting the required election notification and enrollment forms to ERS. The enrollment form, including all insurance required contributions due for the election/enrollment period, must be postmarked or received by ERS on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the employee's coverage ends, provided all insurance required contributions due for the month in which the coverage ends and for the election/enrollment period have been paid in full.

(8) Continuation of coverage for a spouse who is divorced from a member and/or the spouse's dependent child/children. The divorced spouse and/or the spouse's dependent child/children of an employee/retiree who, in accordance with §81.5(j)(4) of this chapter, elect to continue coverage may do so by submitting the required election notification and enrollment forms to ERS. The enrollment form, including all insurance required contributions due for the election/enrollment period, must be postmarked or received by ERS on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the divorce decree is signed, provided all insurance required contributions due for the month in which the divorce decree is signed and for the election/enrollment period have been paid in full.

(9) Continuation of coverage for a dependent child who has attained 26 years of age. A 26-year-old dependent child (not provided for by §81.5(c) of this chapter) of a member who, in accordance with §81.5(j)(5) of this chapter, elects to continue coverage may do so by submitting the required election notification and enrollment forms to ERS. The enrollment form, including all insurance required contributions due for the election/enrollment period, must be postmarked or received by ERS on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the dependent child of the member attains 26 years of age, provided all insurance required contributions due for the month in which the dependent child attained age 26 and for the election/enrollment period have been paid in full.

(10) Extension of continuation of coverage for certain dependents of former employees who are continuing coverage under the provisions of paragraph (6) of this subsection.

(A) The surviving dependent of a deceased former employee, who, in accordance with §81.5(j)(6)(A) of this chapter, elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to ERS. The enrollment form, including all insurance required contributions due for the election/enrollment period, must be postmarked or received by ERS on or before the date indicated on the continuation enrollment

form. The election/enrollment period begins on the first day of the month following the month in which the former employee died.

(B) A spouse who is divorced from a former employee and/or the divorced spouse's dependent child/children, who, in accordance with §81.5(j)(6)(B) of this chapter, elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to ERS. The enrollment form, including all insurance required contributions due for the election/enrollment period, must be postmarked or received by ERS on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the divorce decree was signed.

(C) A dependent child who has attained 26 years of age, who, in accordance with §81.5(j)(6)(C) of this chapter, elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to ERS. The enrollment form, including all insurance required contributions due for the election/enrollment period, must be postmarked or received by ERS on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the dependent child attained age 26.

(11) Continuation coverage defined. Continuation coverage as provided for in paragraphs (6) - (10) of this subsection means the continuation of only GBP health, dental and vision coverage which meets the following requirements.

(A) Type of benefit coverage. The coverage shall consist of only the GBP health, dental and vision coverage, which, as of the time the coverage is being provided, are identical to the GBP health, dental and vision coverage provided for a similarly situated person for whom a cessation of coverage event has not occurred.

(B) Period of coverage. The coverage shall extend for at least the period beginning on the first day of the month following the date of the cessation of coverage event and ending not earlier than the earliest of the following:

(i) in the case of loss of coverage due to termination of an employee's employment for other than gross misconduct, reduction in work hours, or end of maximum period of LWOP, the last day of the 18th calendar month of the continuation period;

(ii) in the case of loss of coverage due to termination of an employee's employment for other than gross misconduct, reduction in work hours, or end of maximum period of LWOP, if the employee, spouse, or dependent child has been certified by the Social Security Administration as being disabled as provided in §81.5(j)(3) of this chapter, up to the last day of the 29th calendar month of the continuation period;

(iii) in any case other than loss of coverage due to termination of an employee's employment for other than gross misconduct, reduction in work hours, or end of maximum period of LWOP, the last day of the 36th calendar month of the continuation period;

(iv) the date on which the employer ceases to provide any group health plan to any employee/retiree;

(v) the date on which coverage ceases under the plan due to failure to make timely payment of any insurance required contribution as provided in subsection (h) of this section;

(vi) the date on which the participant, after the date of election, becomes covered under any other group health plan under which the participant is not subject to a preexisting conditions limitation or exclusion; or

(vii) the date on which the participant, after the date of election, becomes entitled to benefits under the Social Security Act, Title XVIII.

(C) Insurance required contribution costs. The insurance required contribution for a participant during the continuation coverage period will be 102% of the employee's/retiree's GBP health, dental and vision coverage rate and is payable as provided in subsection (h) of this section.

(i) The insurance required contribution for a participant eligible for 36 months of coverage will be 102% of the employee's/retiree's GBP health, dental and vision coverage rate and is payable as provided in subsection (h)(1)(A) of this section.

(ii) The insurance required contribution for a participant eligible for 29 months of coverage will increase to 150% of the employee's/retiree's GBP health, dental and vision coverage rate for the 19th through 29th months of coverage and is payable as provided in subsection (h)(1)(A) of this section.

(D) No requirement of insurability. No evidence of insurability is required for a participant who elects to continue GBP health coverage under the provisions of §81.5(j)(1) - (6) of this chapter.

(E) Conversion option. An option to enroll under the conversion plan available to employees/retirees is also available to a participant who continues GBP coverage for the maximum period as provided in subparagraph (B)(i) - (iii) of this paragraph. The conversion notice will be provided to a participant during the 180-day period immediately preceding the end of the continuation period.

(h) Payment of Insurance Required Contributions.

(1) A member whose monthly cost of coverage is greater than the combined amount contributed by the state or employer for the member's coverage must pay a monthly contribution in an amount that exceeds the combined monthly contributions of the state or the employer. A member shall pay his/her monthly insurance required contributions through deductions from monthly compensation or annuity payments or by direct payment, as provided in this paragraph.

(A) A member who is not receiving a monthly compensation or an annuity payment, or is receiving a monthly compensation or annuity payment that is less than the member's monthly insurance required contribution, shall pay his/her monthly insurance required contribution under this subparagraph.

(i) An employee whose monthly compensation is less than the employee's monthly insurance required contribution shall pay his/her monthly insurance required contribution through his/her employer. A non-salaried board member of an employer shall pay his/her monthly insurance required contributions through the employer for which he/she sits as a board member.

(ii) A retiree whose monthly annuity payment is less than the retiree's monthly insurance required contribution shall pay his/her monthly insurance required contributions directly to ERS.

(B) If the member does not comply with subparagraph (A) of this subsection by the due date required, ERS will cancel all coverage not fully funded by the state contribution. If the state contribution is sufficient to cover the required insurance contribution for such coverage, the member will retain member-only health and basic life coverage. If the state contribution is not sufficient to cover the member-only coverage in the health plan selected, the member will be enrolled in the basic plan except as provided for in paragraph (2)(B) of this subsection.

(2) An institution of higher education may contribute a portion or all of the insurance required contribution for its part-time employees described by §1551.101(e)(2) of the Act, if:

(A) the institution of higher education pays the contribution with funds that are not appropriated from the general revenue fund;

(B) the institution of higher education electing to pay the contribution for its part-time employees does so for all similarly situated eligible part-time employees; and

(C) the contribution paid as provided in this paragraph is paid beginning on the first day of the month following the part-time employee's completion of any applicable waiting period.

(3) A participant who continues GBP health, dental and vision coverage under COBRA as provided in §81.5(j) of this chapter [~~(relating to Eligibility)~~] must pay his/her monthly insurance contributions on the first day of each month covered.

(A) A participant's monthly insurance required contribution is 102% of the monthly amount charged for other participants in the same coverage category and in the same plan. All insurance required contributions due for the election/enrollment period must be postmarked or received by ERS on or before the date indicated on the continuation of coverage enrollment form. Subsequent insurance required contributions are due on the first day of each month of the participant's coverage and must be postmarked or received by ERS within 30 days of the due date to avoid cancellation of coverage.

(B) A participant's monthly insurance required contribution for continuing coverage as provided in §81.5(j)[~~.~~](3) of this chapter is increased after the 18th month of coverage to 150% of the monthly amount charged for other participants in the same coverage category and in the same plan. The participant's monthly insurance required contribution is due on the first day of each month covered, and must be postmarked or received by ERS within 30 days of the due date.

(4) The full cost for GBP health, dental and vision coverage is required to be paid for a member's unmarried child who is over 26 years of age, whose coverage under COBRA expired, and who has reinstated coverage in the GBP pursuant to §1551.158 of the Act. No state contribution is paid for this coverage.

(5) Survivors of a paid law enforcement officer employed by the state or a custodial employee of the institutional division of the Texas Department of Criminal Justice who suffers a death in the line of duty as provided by Chapter 615, Government Code, are eligible for GBP coverage as provided in subparagraphs (A) - (C) of this paragraph.

(A) The insurance required contribution due under this paragraph for a surviving spouse's GBP coverage is the same amount as a member-only contribution. The state contribution applicable to member-only coverage is applied to the surviving spouse's contribution for the coverage.

(B) The insurance required contribution due under this paragraph for GBP coverage for a surviving spouse with dependent children is the same amount as the member-with-children contribution. The state contribution applicable to member-with-children coverage is applied to the contribution of the surviving spouse with dependent children for the coverage.

(C) The insurance required contribution due under this paragraph for a surviving dependent child's GBP coverage, when there is no surviving spouse, is the same amount as member-only contribution. The state contribution applicable to member-only coverage is applied to the surviving dependent child's contribution for the coverage.

(D) The surviving spouse or surviving dependent child must timely pay his/her insurance required contributions for the GBP coverage. The survivor's contribution must be either deducted by ERS from the survivor's annuity payment, if any, or submitted to ERS via direct payment. Any applicable state contribution will be paid directly to ERS by the employer that employed the deceased law enforcement officer or custodial employee.

(6) If a retiree whose eligibility for health insurance is based on §§1551.102(i), 1551.111(e) or 1551.112(c) of the Act, obtains interim health insurance as provided in §1551.323 of the Act, the retiree must pay the total contribution for such coverage for as long as the retiree wants the coverage or until the first day of the month following the retiree's 65th birthday. The amount of contribution shall be determined by the Board of Trustees based on an actuarial determination, as recommended by ERS' consulting actuary for insurance, of the estimated total claims costs for individuals eligible for such coverage. If a retiree who is eligible for coverage under this paragraph is also eligible for COBRA coverage, then COBRA coverage should be exhausted, if possible, before applying for the coverage under this paragraph.

(7) A member's surviving spouse or surviving dependent who is receiving an annuity shall authorize deductions for insurance required contributions from the annuity as provided in paragraph (1) of this subsection. A member's surviving spouse or surviving dependent who is not receiving an annuity may make payments as provided in paragraph (1)(A) of this subsection.

(i) The amount of state contribution for certain retirees is determined in accordance with §1551.3196 of the Act.

(1) An individual is grandfathered at the time of retirement and not subject to §1551.3196 of the Act, if on or before September 1, 2014, the individual has served in one or more positions for at least five years for which the individual was eligible to participate in the GBP as an employee.

(2) Records of ERS shall be used to determine whether or not an individual meets the grandfathering requirements specified in paragraph (1) of this subsection. ERS may, in its sole discretion, require an individual to provide additional documentation satisfactory to ERS that the individual meets the grandfathering requirements specified in paragraph (1) of this subsection.

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

Filed with the Office of the Secretary of State on July 11, 2018.

TRD-201803042
Paula A. Jones
Deputy Executive Director and General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: August 26, 2018
For further information, please call: (877) 275-4377

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES

SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.34

The Texas Department of Public Safety (the department) proposes the repeal of §15.34, concerning Renewal Period Prior to Expiration. The repeal of this rule is filed simultaneously with proposed new §15.34 and is necessary to inform the public of changes to the time period for renewal prior to expiration.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be additional time to renew a license prior to expiration and maximize the use of the federal requirement of allowing a license to be issued for eight years.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed repeal is in effect, the proposed repeal should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.005, are affected by this proposal.

§15.34. Renewal Period Prior to Expiration.

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

Filed with the Office of the Secretary of State on July 10, 2018.

TRD-201803021
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: August 26, 2018
For further information, please call: (512) 424-5848

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37 TAC §15.34

The Texas Department of Public Safety (the department) proposes new §15.34, concerning Renewal Period Prior to Expiration. This new rule is intended to provide greater customer convenience and flexibility by expanding the renewal period prior to expiration of most driver licenses (DL) or identification cards (ID) from one year to two years.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be additional time to renew a license prior to expiration and maximum use of the federal requirement allowing a license to be issued for eight years.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly,

the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This rule is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.005, are affected by this proposal.

§15.34. Renewal Period Prior to Expiration.

(a) Any class of driver license or identification card, except those noted in paragraphs (1) - (3) of this subsection, may be renewed 24 months before the expiration date.

(1) Provisional licenses may be renewed 30 days before expiration.

(2) Driver licenses or identification cards issued to applicants required to register under Code of Criminal Procedure, Chapter 62, Sex Offender Registration Program, may be renewed 60 days before expiration.

(3) Driver licenses with an expiration date determined by Transportation Code, §521.2711 (person at least 85 years of age) may be renewed 180 days before expiration.

(b) Any applicant for a renewal driver license or identification card must present at least one identity document listed in §15.24 of this title (relating to Identification of Applicants) if the driver license or identification card is not presented.

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

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TRD-201803022
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: August 26, 2018
For further information, please call: (512) 424-5848

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SUBCHAPTER C. EXAMINATION REQUIREMENTS

37 TAC §15.59

The Texas Department of Public Safety (the department) proposes amendments to §15.59, concerning Alternative Methods for Driver License Transactions. The amendments are intended to provide greater customer convenience by allowing commercial driver license (CDL) holders to obtain duplicates and change of address by alternative methods.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be greater convenience for eligible CDL holders to obtain duplicate cards without visiting a driver license office.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This rule is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005 and §522.005, which authorizes the department to adopt rules necessary to administer Chapter 521 and Chapter 522 of the Texas Transportation Code; and Texas Transportation Code, §§521.054, 521.146, and 522.032.

Texas Government Code, §411.004(3) and Texas Transportation Code, §§521.005, 521.054, 521.146, 522.005, and 522.032, are affected by this proposal.

§15.59. Alternative Methods for Driver License Transactions.

(a) If eligible, driver license or identification certificate holders may utilize alternative methods to renew or obtain a duplicate of their Texas driver license or identification certificate.

(b) Applicants must apply in the manner provided by the department and pay the applicable fee.

(c) Alternative renewal cannot be used for any two consecutive renewal periods for the purpose of updating the digital images.

(d) Commercial driver license applicants are not eligible to renew their driver license by alternative methods, but commercial driver license applicants are eligible to apply for a duplicate license and change of address by alternative methods.

(e) The applicants, listed in paragraphs (1) - (8) of this subsection, are not eligible to renew or apply for a duplicate of their driver license or identification certificate by alternative methods:

(1) any holder of a learner, provisional, or occupational[, ~~or commercial driver~~] license;

(2) any driver license holder who has an administrative or card status that requires review by the department, including but not limited to, a medical or physical condition that may affect the driver license holder's ability to safely operate a motor vehicle;

(3) any driver license holder applying for renewal that will be 79 years of age or older on the expiration of their current license;

(4) any driver license or identification certificate holder subject to the registration requirements of Code of Criminal Procedure, Chapter 62, Sex Offender Registration Program;

(5) any driver license or identification certificate holder who is suspended, canceled, revoked, or denied renewal;

(6) any driver license or identification certificate holder who does not have a verified social security number on file with the department;

(7) any driver license or identification certificate holder who does not have a digital image (e.g. photograph or signature) on file with the department; or

(8) any applicant whose lawful presence needs to be verified.

(f) The department may reject an application for an alternative transaction and require the personal appearance of the applicant at a driver license office if it has information concerning the eligibility of the applicant, including but not limited to, medical and vision conditions.

(g) Applicants who are eligible for alternative renewal may elect to renew at any local driver license office. A vision test will be conducted on all applicants renewing a driver license at a local driver license office, in addition to any other tests required by the department.

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

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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CHAPTER 16. COMMERCIAL DRIVER LICENSE

SUBCHAPTER A. LICENSING REQUIREMENTS, QUALIFICATIONS, RESTRICTIONS, AND ENDORSEMENTS

37 TAC §16.1

The Texas Department of Public Safety (the department) proposes amendments to §16.1, concerning General Requirements. These amendments are intended to conform to changes to Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations (CFR) part 383, as amended through May 1, 2018.

The proposed rule clarifies that Texas will follow the federal definition of a commercial motor vehicle if there is conflict between state and federal law. The amendment reduces the number of people required to operate with a CDL and allows those drivers to have a class A or B non-CDL instead.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to align the rule with federal statute.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly,

the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This rule is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §522.005, which authorizes the department to adopt rules necessary to administer Chapter 522 of the Texas Transportation Code.

Texas Government Code, §411.004(3) and Texas Transportation Code, §522.005, are affected by this proposal.

§16.1. General Requirements.

(a) The Federal Motor Carrier Safety Administration (FMCSA) is the lead federal agency responsible for regulating states' commercial driver license (CDL) programs and providing safety oversight of commercial driver licensing and commercial motor vehicles (CMV). In accordance to the Federal Commercial Motor Vehicle Safety Act, Texas is mandated to follow all federal regulations governing commercial driver licensing. Failure to adhere to or deviating from these regulations can result in the decertification of Texas' CDL program, thereby prohibiting Texas from issuing commercial driver licenses to Texas residents and the withdrawal of federal highway funding in accordance to 49 CFR §§384.401, 384.403 and 384.405.

(b) All rules and regulations adopted in this chapter apply to every person, including employers of such persons, who holds a Texas CDL [~~commercial driver license (CDL)~~] or operates a commercial motor vehicle (CMV) in this state, regardless if they are operating in interstate, foreign, or intrastate commerce.

(1) The department incorporates by reference and adopts:

(A) The Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations (CFR) Part 383 including all interpretations thereto, as amended through May 1, 2018 [~~March 1, 2016~~]. Where there is conflict between 49 CFR Part 383 and Texas Transportation Code, Chapter 522, Texas Transportation Code, Chapter 522 controls with the exception of the definition of CMV.

(B) 49 CFR §390.5--Definitions.

(2) The CFR permits states discretion to exempt or not exempt certain individuals from CDL standards, requirements, and penalties. The department, utilizing the discretion permitted by the CFR, does not adopt the CFR exemptions detailed in subparagraph (A) - (C) of this paragraph [~~The CFRs detailed in this paragraph are excepted from adoption~~]:

(A) 49 CFR §383.3(d)(3)--related to drivers employed by a local government for the purpose of removing snow and ice from roadways.

(B) 49 CFR §383.3(e)--related to certain restricted CDL issued in the State of Alaska.

(C) 49 CFR §383.3(g)--related to restricted CDL for certain drivers in the pyrotechnic industry.

(3) The Federal Commercial Motor Vehicle Safety Act and the CFR allows states to enact laws and regulations that are stricter than the federal requirements. The department does not adopt the CFR provisions detailed in subparagraph (A) and subparagraph (B) of this paragraph because Texas has enacted stricter requirements.

(A) 49 CFR §383.31(a)--related to the requirement that a person must notify the department upon conviction for a motor traffic control violation within 30 days after the date the person has been convicted. Texas Transportation Code, Chapter 522 requires the license holder to report the conviction within 7 days.

(B) 49 CFR §383.31(b)--related to the requirement that a person must notify his/her employer upon conviction for a motor traffic control violation within 30 days after the date the person has been convicted. Texas Transportation Code, Chapter 522 requires the license holder to report the conviction within 7 days.

~~[(F) 49 CFR §383.51(e)(9).]~~

~~[(G) 49 CFR §383.153(10).]~~

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

Filed with the Office of the Secretary of State on July 10, 2018.

TRD-201803024
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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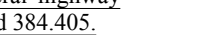
For further information, please call: (512) 424-5848



CHAPTER 37. SEX OFFENDER REGISTRATION

37 TAC §37.2

The Texas Department of Public Safety (the department) proposes amendments to §37.2, concerning Commercial Social Networking Sites. The proposed amendments clarify the process for creating a user account and update the department's email address.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the rule as proposed.

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be publication of the updated method by which social networking sites may request online identifiers from the department relating to persons required to register as a sex offender under Code of Criminal Procedure, Chapter 62, to prescreen or preclude those persons from using the site.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Michelle Farris, Crime Records, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78752-4143. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This rule is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Code of Criminal Procedure, Article 62.0061(b) which authorizes the department to establish a procedure through which a commercial social networking site may request online identifiers, and Code of Criminal Procedure, Article 62.010, which authorizes the department to adopt any rule necessary to implement Code of Criminal Procedure, Chapter 62.

Texas Government Code, §411.004(3) and Code of Criminal Procedure, Article 62.0061(b) and Article 62.010, are affected by this proposal.

§37.2. Commercial Social Networking Sites.

(a) A commercial social networking site may request access to online identifiers maintained by the department under Code of Criminal Procedure, Article 62.051(c)(7).

(b) Requests may be submitted to: Crime Records Service, Attn: Sex Offender Registration Unit, Texas Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143; or via e-mail at: txsor@dps.texas.gov [~~txsor@txdps.state.tx.us~~].

(c) Requests for access submitted to the department must contain [~~the following~~]:

(1) the name of the commercial social networking site;

(2) the website address of the commercial social networking site;

(3) the name, mailing address, e-mail address of a point of contact for the commercial social networking site;

(4) the state or country where the commercial social networking site's articles of incorporation are filed; and

(5) a statement indicating whether or not a combination of advertising revenue and subscription fees generated by the commercial social networking site is in excess of $10,000 per annum.

(d) The department will determine if a requester of online identifiers meets the definition of provider.

(e) Approved providers will be instructed to create [~~assigned~~] a user account and furnished instructions to access public information as defined by Code of Criminal Procedure, Article 62.005(b), and online identifiers maintained by the department under Code of Criminal Procedure, Article 62.051(c)(7).

(f) Information disseminated to the provider by the department is subject to the restrictions outlined by Code of Criminal Procedure, Article 62.0061.

(g) User accounts will be deactivated after six (6) months of inactivity. This does not preclude a provider from requesting reactivation of a user account.

(h) The department reserves the right to terminate a user account for a violation of any statute, administrative rule, or department policy.

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

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D. Phillip Adkins
General Counsel
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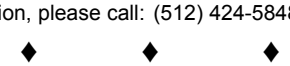
For further information, please call: (512) 424-5848



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 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 93. ADMINISTRATIVE PROCEEDINGS

The Credit Union Commission (the Commission) adopts amendments to 7 TAC, Chapter 93, §§93.101, 93.204, 93.205, 93.208 - 93.212, 93.301, 93.303, 93.401, 93.501, 93.604, and 93.605; adopts new 7 TAC §93.201; and adopts the repeal of existing 7 TAC §§93.201, 93.206, and 93.601, concerning administrative proceedings. The adopted changes affect rules contained in Subchapter A, concerning Common Terms; Subchapter B, concerning General Rules; Subchapter C, concerning Appeals of Preliminary Determinations on Applications; Subchapter D, concerning Appeals of Cease and Desist Orders and Orders of Removal; Subchapter E, concerning Appeals of Orders of Conservation; and Subchapter F, concerning Appeals of Commissioner's Final Determination to the Commission.

The Commission adopts the amendments to §§93.101, 93.204, 93.205, 93.208 - 93.212, 93.301, 93.303, 93.401, 93.501, 93.604, and 93.605; adopts new 7 TAC §93.201; and adopts the repeal of existing 7 TAC §§93.201, 93.206, and, 93.601 without changes to the proposed text as published in the March 23, 2018, issue of the *Texas Register* (43 TexReg 1779).

In general, the purpose of the adoption is to implement changes resulting from the Commission's review of Chapter 93, under Texas Government Code, Section 2001.039, which the Commission completed in March 2018.

The Commission received no written comments on the proposed rules.

The adoption generally relates to four areas: (1) consistency with the Administrative Procedure Act (Texas Government Code, Chapter 2001), (2) consistency with the State Office of Administrative Hearings (SOAH) procedural rules, (3) better readability and clarification, and (4) technical corrections.

Regarding Subchapter A, concerning common terms, many of the adopted amendments update the defined terms and conform the rule to current practices. Specifically, in §93.101 definitions for "APA", "Applicant", "Person", "Respondent", and "Sanction" are adopted for use throughout the chapter. The Scope is expanded to more accurately reflect current practice and the Severability provision was changed to specify that the rules of construction that apply to interpretations of Texas statutes and codes and the definitions in the APA govern interpretations of Chapter 93.

Regarding Subchapter B, concerning general rules, many of the adopted amendments are to rename the heading of the subchapter, clarify, better organize, improve readability, and make technical changes. Several amendments better align the rules with the APA and SOAH procedural rules.

Existing §93.201 is adopted for repeal because it is deemed unnecessary given SOAH procedural rules. A new §93.201, entitled, Appeals to the Commission, Appointment of SOAH, is adopted to reflect when the Commission is required to take action on an appeal and to officially designate SOAH as the Department's finder of fact in a contested case. However, the Department specifically retains its right to determine sanction and make final decisions on any contested case. The new rule also delineates when SOAH acquires jurisdiction over a contested case and provides clarification that SOAH procedural rules control while SOAH has jurisdiction, addresses conflicts in laws, and describes other sections of the chapter.

The adopted amendments in §93.204 remove all language related to contested case hearings, including the section title, which will be addressed in adopted new Section 93.201. The amendments also provide that any stipulation or agreed settlement must be written and signed by the parties, dictated into the record during the course of a hearing, or incorporated in an order bearing written consent to be enforceable.

The adopted amendments in §93.205 remove the detailed prescription of the information that must be included in a notice of hearing and replaces it with a general statement that any action subject to this chapter is initiated by the service of such notice as is required by applicable law and SOAH procedural rules. The adopted amendments also prescribe that a respondent or applicant must enter an appearance with SOAH within 10 days of the notice of hearing being served. In addition, the adopted amendments prescribe that Default Proceedings are governed by SOAH procedural rules.

Existing §93.206 is adopted for repeal as it will be unnecessary given SOAH's procedural rules and the adopted amendments to §93.205 previously discussed.

In §93.208, the adopted amendments will clarify that the delegation of authority is only intended to apply to ministerial duties. Delegation of discretionary authority is not allowed unless it is expressly authorized or necessarily implied by statute.

In §93.209, the adopted amendments will clarify that if the compliance date for a subpoena is less than ten days after service, the compliance date must be specifically detailed in the subpoena.

The adopted amendments in §93.210 will clarify that parties have discovery rights as delineated in the Administrative Procedure Act.

In §93.211, the adopted amendments make clear that the costs of a transcript of an administrative proceeding requested by a party are paid by that party. The amendments also improve the readability of the provisions dealing with payment of costs to transmit a copy of the record to a reviewing court in the event of an appeal of a final decision or order. In addition, language that conflicted with the Administrative Procedure Act relating to the ALJ transmitting a certified copy of the record was removed.

The adopted amendments in §93.212 make technical changes and provide a specific reference to the Administrative Procedure Act relating to the standards that must be followed in changing a recommendation of the ALJ in lieu of delineating the standards specifically in the rule.

Regarding Subchapter C, concerning appeals of preliminary determinations on applications, the adopted amendments are to clarify and improve readability.

The adopted amendments in §93.301 generally provide clarification and improve the readability of the rule concerning finality of decision, request for SOAH hearing, and waiver of appeal.

In §93.303, the adopted amendments to subsection (a) improve the readability of the rule concerning hearings on applications.

Regarding Subchapter D, concerning appeals of cease and desist orders and orders of removal, the adopted amendment to §93.401, subsection (a) is to clarify that an order becomes final and "non-appealable" when the applicable statutory time for filing an appeal expires and a timely appeal has not been filed.

Regarding Subchapter E, concerning appeals of orders of conservation, the adopted amendments delete duplicative text and improve readability. In §93.501, the adopted amendment to subsection (a) clarifies that unless a timely appeal is filed, the commissioner's order of conservation becomes final and non-appealable upon the expiration of the appeal deadline. The adopted amendments to §93.501, subsection (b) clarify the procedure for filing an appeal, and those to subsection (e) clarify the timeframes within which to file exceptions to the PFD. The adopted changes also improve the readability of the provision related to the timeframes for filing exceptions to PFDs.

Regarding Subchapter F, concerning Appeals of Commissioner's Final Determination to the Commission, the heading of the subchapter is renamed Review and Decision by the Commission; the remaining adopted amendments clarify, make technical changes, and improve consistency with the APA.

The adopted repeal of §93.601, includes moving the language contained in the repealed rule to more appropriate locations in the Chapter in §93.201 and §93.602.

In §93.604, the adopted amendments delete subsection (b) in its entirety, as it is unnecessary, and subsections are appropriately renumbered. The procedures and deadlines in the APA govern motions for rehearing.

The adopted amendments to §93.605 subsection (b) clarify that a person must exhaust all administrative remedies before seeking judicial review of a final decision or order. The amendments also delete the language related to the evidence rule the Courts would employ in reviewing a final decision or order.

SUBCHAPTER A. COMMON TERMS

7 TAC §93.101

The amendments are adopted under the authority granted by the Texas Legislature to the Commission pursuant to Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2 Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code Chapter 15 and Chapters 121 - 149.

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

Filed with the Office of the Secretary of State on July 16, 2018.

TRD-201803088
Harold E. Feeney
Commissioner
Credit Union Department
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Proposal publication date: March 23, 2018
For further information, please call: (512) 837-9236

SUBCHAPTER B. GENERAL RULES

7 TAC §93.201, §93.206

The repeals are adopted under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 3, Subchapter D of the Texas Finance Code.

The statutory provisions affected by the adopted repeals are contained in Texas Finance Code Title 2, Chapter 15, and Title 3, Subtitle D, Chapters 121 to 126, including the following: Amendments to Subchapter B. General Rules, §§93.201 to 93.212 implement Finance Code section 121.005, regarding appeals from a decision by the commissioner, in general.

Amendments to Subchapter C. Appeals of Preliminary Determination on Applications, §§93.301 to 93.303, implement Finance Code section 122.011(e), regarding appeals from a decision by the commissioner on applications to approve incorporation, to approve amendments to articles of incorporation, and to approve a merger or consolidation by credit unions.

Amendments to Subchapter D. Appeals of Cease and Desist Orders and Orders of Removal, §93.401 implement Finance Code sections 122.255 to 122.261, regarding determinations of misconduct, and appeals from cease and desist orders, orders of removal, administrative penalties, and other remedies.

Amendments to Subchapter E. Appeals of Orders of Conservation, §93.501 implement Finance Code, Chapter 126, Subchapter C, sections 126.105 to 126.108, regarding appeals and hearings relating to conservatorship orders.

Amendments to Subchapter F. Appeal of Commissioner's Final Determination to the Commission, §93.601 and §93.605, implement Finance Code section 121.005, regarding appeals to and decisions by the commission, in general.

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

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SUBCHAPTER B. APPEALS FROM COMMISSIONER DECISIONS, GENERALLY

7 TAC §§93.201, 93.204, 93.205, 93.208 - 93.212

The amendments and new rule are adopted under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 3, Subchapter D of the Texas Finance Code.

The statutory provisions affected by the adopted amendments and new rule are contained in Texas Finance Code Title 2, Chapter 15, and Title 3, Subtitle D, Chapters 121 to 126, including the following: Amendments to Subchapter B. General Rules, §§93.201 to 93.212 implement Finance Code section 121.005, regarding appeals from a decision by the commissioner, in general.

Amendments to Subchapter C. Appeals of Preliminary Determination on Applications, §§93.301 to 93.303, implement Finance Code section 122.011(e), regarding appeals from a decision by the commissioner on applications to approve incorporation, to approve amendments to articles of incorporation, and to approve a merger or consolidation by credit unions.

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Amendments to Subchapter F. Appeal of Commissioner's Final Determination to The Commission, §93.601 and §93.605, implement Finance Code section 121.005, regarding appeals to and decisions by the commission, in general.

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

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SUBCHAPTER C. APPEALS OF PRELIMINARY DETERMINATIONS ON APPLICATIONS

7 TAC §93.301, §93.303

The amendments are adopted under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 3, Subchapter D of the Texas Finance Code.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code Title 2, Chapter 15, and Title 3, Subtitle D, Chapters 121 to 126, including the following: Amendments to Subchapter B. General Rules, §§93.201 to 93.212 implement Finance Code section 121.005, regarding appeals from a decision by the commissioner, in general.

Amendments to Subchapter C. Appeals of Preliminary Determination on Applications, §§93.301 to 93.303, implement Finance Code section 122.011(e), regarding appeals from a decision by the commissioner on applications to approve incorporation, to approve amendments to articles of incorporation, and to approve a merger or consolidation by credit unions.

Amendments to Subchapter D. Appeals of Cease and Desist Orders and Orders of Removal, §93.401 implement Finance Code sections 122.255 to 122.261, regarding determinations of misconduct, and appeals from cease and desist orders, orders of removal, administrative penalties, and other remedies.

Amendments to Subchapter E. Appeals of Orders of Conservation, §93.501 implement Finance Code, Chapter 126, Subchapter C, sections 126.105 to 126.108, regarding appeals and hearings relating to conservatorship orders.

Amendments to Subchapter F. Appeal of Commissioner's Final Determination to The Commission, §93.601 and §93.605, implement Finance Code section 121.005, regarding appeals to and decisions by the commission, in general.

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

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SUBCHAPTER D. APPEALS OF CEASE AND DESIST ORDERS AND ORDERS OF REMOVAL

7 TAC §93.401

The amendments are adopted under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 3, Subchapter D of the Texas Finance Code.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code Title 2, Chapter 15, and Title 3, Subtitle D, Chapters 121 to 126, including the following: Amendments to Subchapter B. General Rules, §§93.201 to 93.212 implement Finance Code section 121.005, regarding appeals from a decision by the commissioner, in general.

Amendments to Subchapter C. Appeals of Preliminary Determination on Applications, §§93.301 to 93.303, implement Finance Code section 122.011(e), regarding appeals from a decision by the commissioner on applications to approve incorporation, to approve amendments to articles of incorporation, and to approve a merger or consolidation by credit unions.

Amendments to Subchapter D. Appeals of Cease and Desist Orders and Orders of Removal, §93.401 implement Finance Code sections 122.255 to 122.261, regarding determinations of misconduct, and appeals from cease and desist orders, orders of removal, administrative penalties, and other remedies.

Amendments to Subchapter E. Appeals of Orders of Conservation, §93.501 implement Finance Code, Chapter 126, Subchapter C, sections 126.105 to 126.108, regarding appeals and hearings relating to conservatorship orders.

Amendments to Subchapter F. Appeal of Commissioner's Final Determination to The Commission, §93.601 and §93.605, implement Finance Code section 121.005, regarding appeals to and decisions by the commission, in general.

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

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SUBCHAPTER E. APPEALS OF ORDERS OF CONSERVATION

7 TAC §93.501

The amendments are adopted under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 3, Subchapter D of the Texas Finance Code.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code Title 2, Chapter 15, and Title 3, Subtitle D, Chapters 121 to 126, including the following: Amendments to Subchapter B. General Rules, §§93.201 to 93.212 implement Finance Code section 121.005, regarding appeals from a decision by the commissioner, in general.

Amendments to Subchapter C. Appeals of Preliminary Determination on Applications, §§93.301 to 93.303, implement Finance Code section 122.011(e), regarding appeals from a decision by the commissioner on applications to approve incorporation, to approve amendments to articles of incorporation, and to approve a merger or consolidation by credit unions.

Amendments to Subchapter D. Appeals of Cease and Desist Orders and Orders of Removal, §93.401 implement Finance Code sections 122.255 to 122.261, regarding determinations of misconduct, and appeals from cease and desist orders, orders of removal, administrative penalties, and other remedies.

Amendments to Subchapter E. Appeals of Orders of Conservation, §93.501 implement Finance Code, Chapter 126, Subchapter C, sections 126.105 to 126.108, regarding appeals and hearings relating to conservatorship orders.

Amendments to Subchapter F. Appeal of Commissioner's Final Determination to The Commission, §93.601 and §93.605, implement Finance Code section 121.005, regarding appeals to and decisions by the commission, in general.

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

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SUBCHAPTER F. APPEAL OF COMMISSIONER'S FINAL DETERMINATION TO THE COMMISSION

7 TAC §93.601

The repeals are adopted under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 3, Subchapter D of the Texas Finance Code.

The statutory provisions affected by the adopted repeals are contained in Texas Finance Code Title 2, Chapter 15, and Title 3, Subtitle D, Chapters 121 to 126, including the following: Amendments to Subchapter B. General Rules, §§93.201 to 93.212 implement Finance Code section 121.005, regarding appeals from a decision by the commissioner, in general.

Amendments to Subchapter C. Appeals of Preliminary Determination on Applications, §§93.301 to 93.303, implement Finance Code section 122.011(e), regarding appeals from a decision by the commissioner on applications to approve incorporation, to approve amendments to articles of incorporation, and to approve a merger or consolidation by credit unions.

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Amendments to Subchapter F. Appeal of Commissioner's Final Determination to The Commission, §93.601 and §93.605, implement Finance Code section 121.005, regarding appeals to and decisions by the commission, in general.

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

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SUBCHAPTER F. REVIEW AND DECISION BY THE COMMISSION

7 TAC §93.604, §93.605

The amendments are adopted under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Title 3, Subchapter D of the Texas Finance Code.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code Title 2, Chapter 15, and Title 3, Subtitle D, Chapters 121 to 126, including the following: Amendments to Subchapter B. General Rules, §§93.201 to 93.212 implement Finance Code section 121.005, regarding appeals from a decision by the commissioner, in general.

Amendments to Subchapter C. Appeals of Preliminary Determination on Applications, §§93.301 to 93.303, implement Finance Code section 122.011(e), regarding appeals from a decision by the commissioner on applications to approve incorporation, to approve amendments to articles of incorporation, and to approve a merger or consolidation by credit unions.

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Amendments to Subchapter F. Appeal of Commissioner's Final Determination to The Commission, §93.601 and §93.605, implement Finance Code section 121.005, regarding appeals to and decisions by the commission, in general.

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

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1005

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1005 is not included in the print version of the Texas Register. The figure is available in the online version of the July 27, 2018, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts an amendment to §97.1005, concerning accountability and performance monitoring. The amendment is adopted with changes to the proposed text as published in the May 18, 2018 issue of the *Texas Register* (43 TexReg 3207). The amendment adopts in rule the 2018 Performance-Based Monitoring Analysis System (PBMAS) Manual. Earlier versions of the manual will remain in effect with respect to the school years for which they were developed.

REASONED JUSTIFICATION. House Bill 3459, 78th Texas Legislature, 2003, added Texas Education Code (TEC), §7.027, limiting and redirecting monitoring done by the TEA to that required to ensure school district and charter school compliance with federal law and regulations; financial accountability, including compliance with grant requirements; and data integrity for purposes of the Texas Student Data System Public Education Information Management System (TSDS PEIMS) and accountability under TEC, Chapter 39. Legislation passed in 2005 renumbered TEC, §7.027, to TEC, §7.028. To meet this monitoring requirement, the TEA developed the PBMAS, which is used in conjunction with other evaluation systems, to monitor performance and program effectiveness of special programs in school districts and charter schools.

The TEA has adopted its PBMAS Manual in rule since 2005. The PBMAS is a dynamic system that evolves over time, so the specific criteria and calculations for monitoring performance and program effectiveness may differ from year to year. The intent is to update 19 TAC §97.1005 annually to refer to the most recently published PBMAS Manual.

The adopted amendment to 19 TAC §97.1005 updates the rule by adopting the 2018 PBMAS Manual, which describes the specific criteria and calculations that will be used to assign 2018 PBMAS performance levels.

The 2018 PBMAS includes several key changes from the 2017 system. Revisions to the PBMAS include the following.

The availability of an additional year's data enables the Special Analysis component to be reinstated for all English language arts (ELA) State of Texas Assessments of Academic Readiness (STAAR®) end-of-course (EOC) indicators. The minimum level of satisfactory performance described in the 2018 PBMAS Manual corresponds with the labels adopted under 19 TAC §101.3041, Performance Standards: Approaches Grade Level (STAAR®/STAAR® Spanish) and Level II: Satisfactory Academic Performance (STAAR® Alternate 2).

Bilingual Education and English as a Second Language (BE/ESL)

For 2017 and prior, the composite ratings were calculated using, in part, the student's Texas English Language Proficiency Assessment System (TELPAS) Listening and Speaking (Grades 2-12) performance as determined by a holistic rating system. In 2018, the composite ratings will instead use the student's TELPAS Listening and Speaking performance as determined by the new item-based standardized assessments. Due to this change and the timing of standard setting in late summer, BE/ESL Indicator #8 (TELPAS Reading Beginning Proficiency Level Rate) and BE/ESL Indicator #9 (TELPAS Composite Rating Levels for Students in U.S. Schools Multiple Years) are Report Only for the 2018 PBMAS.

Career and Technical Education (CTE)

Coding for the CTE Tech Prep program was discontinued in the 2016-2017 TSDS. The CTE Tech Prep bubble, however, was available on the Summer 2017 STAAR® EOC answer documents. Any STAAR® EOC Summer answer document submitted with the CTE Tech Prep bubble marked (CTE indicator code 3) will be included in the accountable district's results for the relevant PBMAS CTE STAAR® EOC indicator(s).

Performance levels will be assigned for CTE Indicator #7 (CTE Nontraditional Course Completion Rate - Males) and CTE Indicator #8 (CTE Nontraditional Course Completion Rate - Females) in the 2018 PBMAS. Appendix A in the 2018 PBMAS Manual reflects a modified course list for CTE Indicator #8 CTE Nontraditional Course Completion Rate - Females; two courses listed in the 2017 PBMAS were deleted.

Every Student Succeeds Act (ESSA)

For the 2018 PBMAS, there are no changes specific to the ESSA program area. However, indicators in this program area are being implemented based on the overall changes described in this manual that affect all PBMAS program areas in 2018.

Special Education (SPED)

In the 2017 PBMAS, three Significant Disproportionality (SD) indicators, SPED Representation (Ages 3-21), SPED Regular Class <40% Rate (Ages 6-21), and SPED Separate Settings Rate (Ages 6-21), were implemented and reported based on federal regulations requirements under 34 Code of Federal Regulations (CFR) Part 300. In addition, five discipline indicators, SPED OSS and Expulsion ≤10 Days Rate (Ages 3-21), SPED OSS and Expulsion >10 Days Rate (Ages 3-21), SPED ISS ≤10 Days Rate (Ages 3-21), SPED ISS >10 Days Rate (Ages 3-21), and SPED Total Disciplinary Removals Rate (Ages 3-21), also have been implemented based on the federal regulations in 34 CFR Part 300 and were previewed in the 2017 Discipline Data Validation system. These five discipline SD indicators have been added as SPED Indicators #12 - #16 in the 2018 PBMAS Manual. All aforementioned SD indicators will be implemented continually based on 34 CFR Part 300. Districts designated as SD (Year 1) or SD (Year 2) will be reported in the 2018 PBMAS. SD (Year 1) reflects a district that first received an SD designation in 2018 and not in the previous year. SD (Year 2) reflects a district that received an SD designation for both 2018 and the previous year.

For all SPED SD Indicators #9 - #16, districts designated as SD (Year 1) or SD (Year 2) in the 2018 PBMAS report are only for information and planning purposes because the U.S. Department of Education has proposed a delay of these regulations.

The order for SPED Annual Dropout Rate (Grades 7-12), SPED Graduation Rate, SPED Regular Early Childhood Program Rate (Ages 3-5), SPED Regular Class ≥80% (Ages 6-21), SPED Regular Class <40% (Ages 6-21), and SPED Separate Settings Rate (Ages 6-21) indicators have been changed in the 2018 PBMAS Manual.

The following changes were made to the manual since published as proposed.

A note was added on page 38 to clarify that students with TSDS PEIMS CTE status code 3 (Tech Prep) are included in the calculation of CTE Indicator #6: CTE Graduation Rate. CTE with status code 3 was discontinued beginning with the 2016-2017 school year; however, students with a final status in earlier years of the cohort may have been identified as CTE with a 2 or 3.

The chart on page six was modified to add reference to federal authority, including 34 CFR Part 200 (SPED STAAR 3-8 Passing Rate, SPED Year-After-Exit (YAE) STAAR 3-8, SPED STAAR EOC Passing Rate and SPED STAAR Alternate 2 Participation Rate) and 34 CFR Part 300 (SPED Regular Early Childhood Program Rate Ages 3-5, SPED Regular Class ≥80% Rate Ages 6-21, SPED Annual Dropout Rate Grades 7-12 and SPED Graduation Rate).

Finally, technical changes were made on pages 16 and 84 to change references to the TEA Division of School Improvement to the TEA Office of Academics.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began May 18, 2018, and ended June 18, 2018. Public hearings on the proposed amendment were held on June 4 and 8, 2018. Following is a summary of public comments received and corresponding agency responses.

Comment. A Texas parent commented that academic and mobility performance measures, including state-mandated examinations such as STAAR®, need to be based on where a child is currently performing rather than the child's grade level to determine if actual progress is being made.

Agency Response. The comment is outside the scope of the current rule proposal.

Comment. Disability Rights Texas (DRTx) commented that TEA, together with stakeholders, should review the PBMAS manual to ensure all special education indicators are in compliance both with the letter and the spirit of IDEA and the directive from the U.S. Department of Education. DRTx encouraged TEA to move forward with the indicator with regard to disproportionality analysis in Texas school districts and, in particular, set fair but robust cut-off points for the indicators identifying significant disproportionality.

Agency Response. The agency agrees and has maintained language as proposed for the significant disproportionality indicators. TEA has determined that PBMAS indicators are in compli-

ance with state and federal laws and the strategic and corrective action plans. Stakeholders were provided multiple opportunities to share input for the proposed 2018 PBMAS Manual, including both the Texas Continuous Improvement Steering Committee and Continuing Advisory Committee Focus Group meetings as well as the May 18-June 18, 2018, public comment period for the proposed 2018 PBMAS Manual, which included two public hearings.

Comment. An educator commented that the manual contains a few abbreviations that can be confusing to parents and stakeholders.

Agency Response. The agency provides the following clarification. TEA has tried to make language as clear as possible; however, many abbreviations are embedded in federal law.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.021(b)(1), which authorizes the Texas Education Agency (TEA) to administer and monitor compliance with education programs required by federal or state law, including federal funding and state funding for those programs; TEC, §7.028, which authorizes the TEA to monitor as necessary to ensure school district and charter school compliance with federal law and regulations, financial integrity and data integrity. Section 7.028(a) also authorizes the TEA to monitor special education programs for compliance with state and federal laws. Section 7.028 also authorizes the agency to monitor school district and charter schools through its investigative process; TEC, §12.056, which requires that a campus or program for which a charter is granted under the TEC, Chapter 12, Subchapter C, is subject to any prohibition relating to the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with the TEC, Chapter 12, Subchapter C, as determined by the commissioner; high school graduation under the TEC, §28.025; special education programs under the TEC, Chapter 29, Subchapter A; bilingual education under the TEC, Chapter 29, Subchapter B; and public school accountability under the TEC, Chapter 39, Subchapters B, C, D, F, and J, and Chapter 39A; TEC, §12.104, which states that a charter granted under the TEC, Chapter 12, Subchapter D, is subject to a prohibition, restriction, or requirement, as applicable, imposed by the TEC, Title 2, or a rule adopted under the TEC, Title 2, relating to the PEIMS to the extent necessary to monitor compliance with the TEC, Chapter 12, Subchapter D, as determined by the commissioner; high school graduation requirements under the TEC, §28.025; special education programs under the TEC, Chapter 29, Subchapter A; bilingual education under the TEC, Chapter 29, Subchapter B; discipline management practices or behavior management techniques under the TEC, §37.0021; public school accountability under the TEC, Chapter 39, Subchapters B, C, D, F, G, and J, and Chapter 39A; and intensive programs of instruction under the TEC, §28.0213; TEC, §29.001, which authorizes the TEA to effectively monitor all local educational agencies (LEAs) to ensure that rules relating to the delivery of services to children with disabilities are applied in a consistent and uniform manner, to ensure that LEAs are complying with those rules, and to ensure that specific reports filed by LEAs are accurate and complete; TEC, §29.0011(b), which authorizes the TEA to meet the requirements under (1) 20 U.S.C. Section 1418(d) and its implementing regulations to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the state and in the school districts and open-enrollment charter schools in the state with respect to the: (A) Identification of children as children with disabilities, including the identification of children as children with particular impairments; (B) Placement of children with disabilities in particular educational settings; and (C) Incidence, duration, and type of disciplinary actions taken against children with disabilities including suspensions or expulsions; or (2) 20 U.S.C. Section 1416(a)(3)(C) and its implementing regulations to address in the statewide plan the percentage of schools with disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that results from inappropriate identification; TEC, §29.010(a), which authorizes the TEA to adopt and implement a comprehensive system for monitoring LEA compliance with federal and state laws relating to special education, including ongoing analysis of LEA special education data; TEC, §29.062, which authorizes the TEA to evaluate and monitor the effectiveness of LEA programs and apply sanctions concerning students with limited English proficiency; TEC, §29.066, which authorizes PEIMS reporting requirements for school districts that are required to offer bilingual education or special language programs to include the following information in the district's PEIMS report: (1) demographic information, as determined by the commissioner, on students enrolled in district bilingual education or special language programs; (2) the number and percentage of students enrolled in each instructional model of a bilingual education or special language program offered by the district; and (3) the number and percentage of students identified as students of limited English proficiency who do not receive specialized instruction; TEC, §29.182, which authorizes the State Plan for Career and Technology Education to ensure the state complies with requirements for supplemental federal career and technology funding; TEC, §39.051 and §39.052, which authorize the commissioner to determine criteria for accreditation statuses and to determine the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which authorizes the commissioner to adopt a set of indicators of the quality of learning and achievement and requires the commissioner to periodically review the indicators for consideration of appropriate revisions; TEC, §39.054(b-1), which authorizes the TEA to consider the effectiveness of district programs for special populations, including career and technical education programs, when determining accreditation statuses; TEC, §39.0541, which authorizes the commissioner to adopt indicators and standards under the TEC, Chapter 39, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §§39.056, 39.057, and 39.058, which authorize the commissioner to adopt procedures relating to monitoring reviews and special accreditation investigations; TEC, §39A.001, which authorizes the commissioner to take any of the actions authorized by the TEC, Chapter 39, Subchapter A, to the extent the commissioner determines necessary if a school does not satisfy the academic performance standards under the TEC, §39.053 or §39.054, or based upon a special accreditation investigation; TEC, §39A.002, which authorizes the commissioner to take certain actions if a school district becomes subject to commissioner action under the TEC, §39A.001; TEC, §39A.004, which authorizes the commissioner to appoint a board of managers to exercise the powers and duties of a school district's board of trustees if the district is subject to commissioner action under the TEC, §39A.001, and has a current accreditation status of accredited-warned or accredited-probation; or fails to satisfy any standard under the TEC, §39.054(e); or fails to satisfy any financial accountability standard; TEC, §39A.005, which authorizes the commissioner to revoke school accreditation if the district is subject to the TEC, §39A.001, and, for two consecutive school years has received an accreditation status of accredited-warned

or accredited-probation, failed to satisfy any standard under the TEC, §39.054(e), or has failed to satisfy a financial performance standard; TEC, §39A.007, which authorizes the commissioner to impose a sanction designed to improve high school completion rates if the district has failed to satisfy any standard under the TEC, §39.054(e), due to high school completion rates; TEC, §39A.051, which authorizes the commissioner to take action based on campus performance that is below any standard under the TEC, §39.054(e); and TEC, §39A.063, which authorizes the commissioner to accept substantially similar intervention measures as required by federal accountability measures in compliance with the TEC, Chapter 39A.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.021, 7.028, 12.056, 12.104, 29.001, 29.0011, 29.010(a), 29.062, 29.066, 29.182, 39.051, 39.052, 39.053, 39.054, 39.0541, 39.056, 39.057, 39.058, 39A.001, 39A.002, 39A.004, 39A.005, 39A.007, 39A.051, and 39A.063.

§97.1005. Performance-Based Monitoring Analysis System.

(a) In accordance with Texas Education Code, §7.028(a), the purpose of the Performance-Based Monitoring Analysis System (PBMAS) is to report annually on the performance of school districts and charter schools in selected program areas: bilingual education/English as a Second Language, career and technical education, special education, and certain Title programs under federal law. The performance of a school district or charter school is reported through indicators of student performance and program effectiveness and corresponding performance levels established by the commissioner of education.

(b) The assignment of performance levels for school districts and charter schools in the 2018 PBMAS is based on specific criteria and calculations, which are described in the 2018 PBMAS Manual provided in this subsection.
Figure: 19 TAC §97.1005(b)

(c) The specific criteria and calculations used in the PBMAS are established annually by the commissioner of education and communicated to all school districts and charter schools.

(d) The specific criteria and calculations used in the annual PBMAS manual adopted for prior school years remain in effect for all purposes, including accountability and performance monitoring, data standards, and audits, with respect to those school years.

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

Filed with the Office of the Secretary of State on July 13, 2018.

TRD-201803086
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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Proposal publication date: May 18, 2018
For further information, please call: (512) 475-1497

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CHAPTER 100. CHARTERS

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

DIVISION 1. GENERAL PROVISIONS

19 TAC §100.1010

The Texas Education Agency adopts an amendment to §100.1010, concerning charter school performance frameworks. The amendment is adopted without changes to the proposed text as published in the May 4, 2018 issue of the *Texas Register* (43 TexReg 2694) and will not be republished. The amendment adopts in rule the *2017 Charter School Performance Framework Manual,* which includes new frameworks for adult high school diploma and industry certification charter schools in accordance with Senate Bill (SB) 276, 85th Texas Legislature, Regular Session, 2017.

REASONED JUSTIFICATION. Texas Education Code (TEC), §12.1181, requires the commissioner to develop and adopt rules for performance frameworks that establish standards by which to measure the performance of open-enrollment charter schools. The frameworks are used to annually evaluate each open-enrollment charter school. However, the performance of a school on a performance framework may not be considered for purposes of renewal of a charter under TEC, §12.1141(d), or revocation of a charter under TEC, §12.115(c).

The performance frameworks consist of several indices within academic, financial, and operational categories with data drawn from various sources, as reflected in the Charter School Performance Framework (CSPF) Manual adopted as a figure in §100.1010. The performance frameworks evolve from year to year, so the criteria and standards for measuring open-enrollment charter schools in the most current year may differ to some degree over those applied in the prior year. The intention is to update §100.1010 annually to refer to the most recently published CSPF Manual.

The amendment to §100.1010 adopts in rule the *2017 Charter School Performance Framework Manual.* The manual updates the CSPF academic indices to incorporate new language pertaining to student assessment; edit grammar in one of the financial indices; and eliminate the operational indicator for community and student engagement ratings, which were repealed by House Bill 22, 85th Texas Legislature, Regular Session, 2017.

In addition, performance frameworks for adult high school diploma and industry certification charter schools were added. TEC, §29.259, enacted by the 83rd Texas Legislature, 2013, established an adult high school diploma and industry certification charter school pilot program. SB 276, 85th Texas Legislature, Regular Session, 2017, amended TEC, §29.259, to remove a cap on the number of adult high school diploma and industry certification students that was previously mandated in statute and establish reporting requirements and performance frameworks for charter schools operating under this pilot program.

The adopted amendment adds new subsection (b) to include reference to the performance frameworks for adult high school diploma and industry certification charter schools, and the 2017 CSPF Manual details the frameworks.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began May 4, 2018, and ended June 4, 2018. Following is a summary of the public comments received and the corresponding agency responses.

Comment. The Texas Charter Schools Association (TCSA) stated there is a lack of clarity for how the performance frameworks will be used in discretionary renewal and revocation decisions under TEC, §12.1141(c) and §12.115(a)(5).

Agency Response. The comment is outside the scope of the proposed rulemaking. Section 100.1010 is concerned with the creation of performance frameworks and description of criteria used for general oversight of charter school performance using the CSPF Manual.

Comment. Concerning the 2017 CSPF Manual, TCSA commented that the CSPF Manual's Operational Framework 3f improperly requires board members and school officers to have completed annually required charter board training by December 1, 2017, while 19 TAC §100.1102(b) and §100.1103(b) mandate that such training be completed within one calendar year of appointment or election.

Agency Response. The agency disagrees. The December 1, 2017 date in Operational Framework 3f is intended to establish greater timeline specificity for the authorizer. In addition, the compliance section on the Annual Governance Reporting Form asks individuals whether they have completed the annually required training and allows them the opportunity to provide an explanation if they have not yet completed the training by the December 1 submission date of the form. Therefore, the "Does Not Meet Expectations" box in Operational Framework Indicator 3f is not necessarily triggered by a "no" response on the Annual Governance Reporting Form.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §12.1181, which requires the commissioner to develop and by rule adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; and TEC, §29.259, as amended by Senate Bill 276, 85th Texas Legislature, Regular Session, 2017, which requires the commissioner to develop and by rule adopt standards by which to measure the performance a school operated under the adult high school diploma and industry certification charter school pilot program established by the statute.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §12.1181 and §29.259.

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

Filed with the Office of the Secretary of State on July 13, 2018.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY

19 TAC §109.1001

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 19 TAC §109.1001 are not included in the print version of the Texas Register. The figures are available in the on-line version of the July 27, 2018, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts an amendment to §109.1001, concerning financial accountability ratings. The amendment is adopted with changes to the proposed text as published in the April 13, 2018 issue of the *Texas Register* (43 TexReg 2240). The adopted amendment adds definitions, updates financial accountability rating information for school districts and open-enrollment charter schools, and adds financial accountability rating information for charter schools operated by public institutions of higher education (IHEs) in accordance with Senate Bill (SB) 1837, 85th Texas Legislature, Regular Session, 2017.

REASONED JUSTIFICATION. Section 109.1001 includes the financial accountability rating system and rating worksheets that explain the indicators that the TEA will analyze to assign financial accountability ratings for school districts and open-enrollment charter schools. The rule also specifies the minimum financial accountability rating information that a school district and an open-enrollment charter school is to report to parents and taxpayers in the district.

SB 1837, 85th Texas Legislature, Regular Session, 2017, amended the Texas Education Code (TEC), §39.082, to require the financial performance of a charter school operated by a public IHE under TEC, Chapter 12, Subchapter D or E, to be evaluated using indicators adopted by the commissioner that are appropriate to accurately measure the financial performance of such charter schools.

The adopted amendment to §109.1001 implements SB 1837 and includes other updates, as follows.

In subsection (a), the adopted amendment adds definitions for the terms *ceiling indicator, open-enrollment charter school,* and *public institution of higher education.* Definitions for *Financial Integrity Rating System of Texas (FIRST)* and *Public Education Information Management System (PEIMS)* were modified.

In subsections (b) and (c), the adopted amendment includes charter schools operated by a public IHE to the provisions relating to the assignment of ratings and the evaluation and modification of the rating system.

In subsection (d), the adopted amendment updates the data sources the TEA uses in calculating the financial accountability indicators for school districts, open-enrollment charter schools, and charter schools operated by public IHEs. Specifically, PEIMS was changed to Texas Student Data System (TSDS) PEIMS.

In subsections (e)(3) and (f)(3), the adopted amendment clarifies that the financial accountability rating indicators used to determine each school district's and open-enrollment charter school's 2016-2017 rating would only be for the 2016-2017 rating year and not subsequent rating years. No changes were made to the indicator calculations for the 2016-2017 rating year, but the footers of the worksheets were amended to remove language indicating that the worksheets apply to rating years after 2016-2017.

New subsections (e)(4) and (f)(4) include new rating worksheets for rating years 2017-2018 through 2019-2020 that will be used to measure each school district and open-enrollment

charter school on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner. The adopted new worksheets clarify that financial accountability ratings for a rating year are based on the data from the prior fiscal year.

New subsections (e)(5) and (f)(5) include new rating worksheets for rating year 2020-2021 and subsequent ratings years that will be used to measure each school district and open-enrollment charter school on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner. The adopted new worksheets clarify that financial accountability ratings for a rating year are based on the data from the prior fiscal year.

In response to public comment, the worksheets in subsections (e)(5) and (f)(5) were modified at adoption as follows.

In Figure: 19 TAC §109.1001(e)(5) and Figure: 19 TAC §109.1001(f)(5), Indicators 6 and 7 were modified to specify the fund type(s) used in the calculation for school districts and open-enrollment charter schools. Part II (alternate calculation) of Indicator 6's calculation was modified for school districts and charter schools to show that the total current year fund balance (districts) and total current year net assets (charter schools) must be greater than 75 days of total operating expenditures. Indicator 8 was modified to specify the data source(s) and the fund(s) or fund type(s) used in the calculation for school districts and open-enrollment charter schools. Indicator 9 was modified to specify the fund type(s), function code(s), and object code(s) used in the calculation for school districts and open-enrollment charter schools.

Indicator 10 was modified in Figure: 19 TAC §109.1001(e)(5) to clarify the fund(s) or fund type(s) that are covered by all components of the indicator, including budgeted revenues and actual revenues, and specify the data sources that will be used to complete the calculation.

Indicator 10 was modified in Figure: 19 TAC §109.1001(f)(5) to clarify that for the 2020-2021 rating year, the calculation will include revenue reported in fund 420 (Foundation School Program and Other State Aid) from revenue object code series 5700 (Revenues from Local and Intermediate Sources) and 5800 (State Program Revenues). Indicator 10 was also modified in Figure: 19 TAC §109.1001(f)(5) to align the calculation definition with TSDS Texas Education Data Standards (TEDS); update the equation for Indicator 10 of Charter FIRST for the 2020-2021 rating year to include the average variance variable; specify the fund(s) or fund type(s) that are covered by the components of the indicator; and specify the data source.

Indicator 11 was modified in Figure: 19 TAC §109.1001(e)(5) and Figure: 19 TAC §109.1001(f)(5) to specify the categories covered by the components used in the calculation, including long-term liabilities and total assets, for school districts and open-enrollment charter schools. Figure: 19 TAC §109.1001(e)(5) was also modified to remove variable C and exclude Net Pension Liability from the calculation.

Indicator 12 was modified in Figure: 19 TAC §109.1001(e)(5) to specify the fund type(s) or fund type(s) and data source(s) used in the calculation and clarify the indicator definition to specific property value category. In addition, Figure: 19 TAC §109.1001(e)(5) was modified to accurately calculate the debt per property value ratio. The modified calculation is ((A/B)*(C))/(D/100). Figure: 19 TAC §109.1001(e)(5) was also modified to exclude Net Pension Liability from the calculation.

Indicator 16 was modified in Figure: 19 TAC §109.1001(f)(5) to identify that a charter school's average daily attendance (ADA) estimate is used in the calculation.

Indicator 20 was modified in Figure: 19 TAC §109.1001(e)(5) to clarify the calculation definition.

Indicator 20 was modified in Figure: 19 TAC §109.1001(f)(5) to include an effective date as a measure for the indicator.

Indicator 21 was excluded from the 2020-2021 FIRST indicators in Figure: 19 TAC §109.1001(e)(5).

Indicator 21 was modified in Figure: 19 TAC §109.1001(f)(5) to identify the source of the indicator as the Charter School Tracking System compared to the TSDS PEIMS summer submission.

The adopted amendment adds new subsection (g) to address provisions for charter schools operated by a public IHE. New subsection (g)(1) includes new rating worksheets for charter schools operated by a public IHE for rating years 2016-2017 through 2019-2020 that will be used to measure the overall performance on the financial measurements, ratios, and other indicators established by the commissioner. The adopted new worksheets clarify that financial accountability ratings for a rating year are based on the data from the prior fiscal year. The worksheet in subsection (g)(1) was modified at adoption to update the Determination of the IHE Charter School Rating chart by clarifying the indicators that would result in a pass or fail - substandard achievement rating.

New subsection (g)(2) includes new rating worksheets for charter schools operated by a public IHE for rating year 2020-2021 and subsequent years that will be used to measure the overall performance on the financial measurements, ratios, and other indicators established by the commissioner. The adopted new worksheets clarify that financial accountability ratings for a rating year are based on the data from the prior fiscal year. The worksheet in subsection (g)(2) was modified at adoption to update the Determination of the IHE Charter School Rating chart by clarifying the indicators that would result in a pass or fail - substandard achievement rating.

New subsection (j) was added to define the terminology for the types of financial accountability ratings charter schools operated by public IHEs may receive for the 2016-2017 and subsequent rating years. The ratings will be "P" for pass and "F" for substandard achievement.

In subsection (k), the adopted amendment adds language to allow the commissioner to change a financial accountability rating in cases of disaster, flood, extreme weather conditions, fuel curtailment, or another calamity.

In subsection (m)(2), the adopted amendment includes clarifying language for the issuance of final ratings.

In subsection (n)(3), the adopted amendment adds the word "other" to indicate that the preliminary rating may be appealed for adverse issues other than those already identified in the rule. Language that is contrary to the provisions of TEC, §39.082(g), were also deleted from the paragraph.

In subsection (q)(4)(A), the adopted amendment changes the requirement for posting the notice for public hearing from once a week for two weeks prior to holding the public hearing to posting the notice only one time prior to holding the public hearing. The notice is required to be posted no earlier than 30 days or later than 10 days before the date of the hearing.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began April 13, 2018, and ended May 14, 2018. Following is a summary of the public comments received and the corresponding agency responses.

INDICATOR 6

Comment. Concerning proposed Figure: 19 TAC §109.1001(e)(5) and Figure: 19 TAC §109.1001(f)(5), the Texas Association of School Business Officials (TASBO) commented that the wording and calculation definitions for school districts and open-enrollment charter schools do not specify the fund(s) or fund type(s) that are covered by this indicator. TASBO also commented that the description for the calculation in the proposed rule appears to be in error.

Agency Response. The agency agrees and has modified Indicator 6 in Figure: 19 TAC §109.1001(e)(5) and Figure: 19 TAC §109.1001(f)(5) to specify the fund type(s) used in the calculation for school districts and open-enrollment charter schools. Part II (alternate calculation) of Indicator 6's calculation has also been modified for districts and charter schools to show that the total current year fund balance (districts) and total current year net assets (charter schools) must be greater than 75 days of total operating expenditures.

INDICATOR 7

Comment. Concerning proposed Figure: 19 TAC §109.1001(e)(5) and Figure: 19 TAC §109.1001(f)(5), TASBO commented that the wording and calculation definitions do not specify the fund(s) or fund type(s) that are covered by this indicator.

Agency Response. The agency agrees and has modified Figure: 19 TAC §109.1001(e)(5) and Figure: 19 TAC §109.1001(f)(5) to specify the fund type(s) used in the calculation for Indicator 7 for school districts and open-enrollment charter schools.

Comment. Concerning proposed Figure: 19 TAC §109.1001(e)(5) and Figure: 19 TAC §109.1001(f)(5), a school district administrator commented that the calculation for Indicator 7 does not consider the timing of payment delays enacted by the Texas Legislature nor does it include underpayments owed from the TEA to local education agencies (LEAs).

Agency Response. The agency disagrees that pending receivables (i.e., payment delays and underpayments) owed from the state should be considered in the calculation of the Days Cash on Hand. The Charter FIRST and School FIRST ratings use audited data from the charter schools' annual financial and compliance reports (AFRs), the TSDS PEIMS, and other required TEA reports that the charter schools and school districts must submit to TEA. Including pending receivables in the calculation may not yield an accurate Charter FIRST or School FIRST rating because the pending receivable amounts may be increased, decreased, or not paid at all. To ensure that TEA is using reliable and audited data, TEA has determined that all types of pending receivables will not be included in the Days Cash on Hand calculation.

INDICATOR 8

Comment. Concerning proposed Figure: 19 TAC §109.1001(e)(5) and Figure: 19 TAC §109.1001(f)(5), TASBO commented that the wording for Indicator 8 and the calculation definition do not specify the fund(s) or fund type(s) that are covered by all the components of this indicator, including current assets, current liabilities, and short-term debt. TASBO also commented that the calculation definition does not specify the data source, such as PEIMS and/or the AFR.

Agency Response. The agency agrees and has modified Figure: 19 TAC §109.1001(e)(5) and Figure: 19 TAC §109.1001(f)(5) to specify the data source(s) and the fund(s) or fund type(s) used in the calculation for Indicator 8 for school districts and open-enrollment charter schools.

INDICATOR 9

Comment. Concerning proposed Figure: 19 TAC §109.1001(e)(5) and Figure: 19 TAC §109.1001(f)(5), TASBO commented that the wording for Indicator 9 and the calculation definition do not specify the fund(s) or fund type(s), function code(s), and object code(s) that are covered by all the components of the indicator, including cash on hand, revenues, expenditures, and facilities acquisition and construction. TASBO also asked if the calculation for Indicator 9--[A/(B-C)-1] > 0--can be simplified by removing the "-1" component.

Agency Response. The agency agrees in part and has modified Figure: 19 TAC §109.1001(e)(5) and Figure: 19 TAC §109.1001(f)(5) to specify the fund type(s), function code(s), and object code(s) used in the calculation for Indicator 9 for school districts and open-enrollment charter schools. The agency disagrees that "-1" should be removed from the proposed calculation and has maintained the calculation as proposed.

Comment. A school district administrator asked if overnight investment pools (e.g., TexPool, LOGIC, Lone Star) are considered cash for purposes of Indicator 9.

Agency Response. The agency provides the following clarification. The second part of Indicator 9 takes into consideration cash and cash equivalents from the district's balance sheet that can be readily converted to cash.

Comment. Concerning proposed Figure: 19 TAC §109.1001(e)(5) and Figure: 19 TAC §109.1001(f)(5), a school district administrator commented that the calculation for Indicator 9 does not consider the timing of payment delays enacted by the Texas Legislature nor does it include underpayments owed from TEA to LEAs.

Agency Response. The agency disagrees that pending receivables (i.e., payment delays and underpayments) owed from the state should be considered in the calculation of the Days Cash on Hand. The Charter FIRST and School FIRST ratings use audited data from AFRs, TSDS PEIMS, and other required TEA reports that the charter schools and school districts must submit to TEA. Including pending receivables in the calculation may not yield an accurate Charter FIRST or School FIRST rating because the pending receivable amounts may be increased, decreased, or not paid at all. To ensure that TEA is using reliable and audited data, TEA has determined that all types pending receivables will not be included in the Days Cash on Hand calculation.

INDICATOR 10 - SCHOOL DISTRICTS

Comment. Concerning proposed Figure: 19 TAC §109.1001(e)(5), TASBO commented that the wording for Indicator 10 and the calculation definition do not specify the fund(s) or fund type(s) that are covered by all components of this indicator, including budgeted revenues and actual revenues, and do not specify the data source. One school district administrator commented that Indicator 10 needs to be specific as to which funds are included for the indicator, and

another school district administrator commented that the source of data used in the calculation should be clarified.

Agency Response. The agency agrees and has modified Figure: 19 TAC §109.1001(e)(5) to clarify the fund(s) or fund type(s) that are covered by all components of Indicator 10, including budgeted revenues and actual revenues, and specify the data sources that will be used to complete the calculation.

Comment. A school district administrator commented that Indicator 10 does not seem to be reasonable and requested that the indicator be eliminated.

Agency Response. The agency disagrees that Indicator 10 is unreasonable and should be eliminated. Budgeting is an essential and required function of each school district. Creating and maintaining an accurate budget is one of the most significant functions of a school district, and an accurate budget gives school districts the ability to make sound financial decisions concerning the allocation of financial resources received by the school district. Each school district must prepare a proposed budget of all estimated revenues and proposed expenditures; only expenditures that have been budgeted, whether in the original budget or amended budget, are allowed. In addition, proper budgeting creates transparency and discloses the quality of the school district's decision-making processes.

INDICATOR 10 - CHARTER SCHOOLS

Comment. Concerning proposed Figure: 19 TAC §109.1001(f)(5), the Texas Charter School Association (TCSA) asked that the commissioner provide additional clarity to Indicator 10 in the 2020-2021 Charter FIRST ratings. Specifically, TCSA asked that TEA state what specific revenue streams will be included in this indicator.

Agency Response. The agency agrees that clarification is needed and has modified Figure: 19 TAC §109.1001(f)(5) to provide the following clarification for Indicator 10 of Charter FIRST for the 2020-2021 rating year. Revenue reported in fund 420 (Foundation School Program and Other State Aid) from revenue object code series 5700 (Revenues from Local and Intermediate Sources) and 5800 (State Program Revenues) will be included in the calculation for Indicator 10.

Comment. A charter school administrator stated that the formula in Indicator 10 is incorrect. The commenter stated that the proposed formula shows [((A-B)/B)+((C-D)/D)+((E-F)/F)]/3 = +/- 10% variance, but that the formula should be [((A-B)/B)+((C-D)/D)+((E-F)/F)]/3 = G +/- 10% variance. The commenter also stated that the phrase "October snapshot" should clearly be defined and that TEA should clarify the data source(s) used in the calculation.

Agency Response. The agency agrees that the equation for Indicator 10 should be modified to include the average variance variable. Also, the agency agrees that "October snapshot" should be clarified and has modified the language in Figure: 19 TAC §109.1001(f)(5) related to the calculation definition to align with TSDS Texas Education Data Standards (TEDS). The equation for Indicator 10 of Charter FIRST for the 2020-2021 rating year, included in Figure: 19 TAC §109.1001(f)(5), has also been modified. Additionally, Figure: 19 TAC §109.1001(f)(5) has been modified to specify the fund(s) or fund type(s) that are covered by the components of this indicator and specify the data source.

Comment. A charter school administrator requested that correctional facility charter schools, residential charter schools, and acute care charter schools be exempt from proposed Indicator 10 because they serve a wide variety of needs for students requiring certain services and cannot accurately predict student enrollment, attendance, or revenues.

Agency Response. The agency disagrees that charter schools that serve students in a correctional facility should be exempted from this indicator and maintains the language as proposed for Figure: 19 TAC §109.1001(f)(5). The purpose of Indicator 10 is to determine if charter schools averaged less than a 10% variance (90-110%) when comparing budgeted revenues to actual revenues for the last three fiscal years. A variance of less than 10% demonstrates the charter school has put thoughtful consideration into managing its finances and knows how much money it can spend.

INDICATOR 11

Comment. Concerning proposed Figure: 19 TAC §109.1001(e)(5) and Figure: 19 TAC §109.1001(f)(5), TASBO commented that the wording for Indicator 11 and the calculation definition do not specify the categories covered by the components of the indicator, including long-term liabilities and total assets. TASBO also commented that the calculation definition "A-B/C" appears to be in error because the variable C is not defined and does not appear necessary for the calculation.

Agency Response. The agency agrees and has modified Figure: 19 TAC §109.1001(e)(5) and Figure: 19 TAC §109.1001(f)(5) to specify the categories covered by the components used in the calculation, including long-term liabilities and total assets, for Indicator 11 for school districts and open-enrollment charter schools. Figure: 19 TAC §109.1001(e)(5) was also modified to remove variable C from the calculation.

Comment. A school district administrator proposed that the Teacher Retirement System (TRS) pension liability used in the calculation be removed.

Agency Response. The agency agrees and has modified the calculation in Figure: 19 TAC §109.1001(e)(5) to exclude Net Pension Liability from the calculation.

INDICATOR 12 - CHARTER SCHOOLS

Comment. Concerning Figure: 19 TAC §109.1001(f)(5), Indicator 12, a charter school administrator commented that a charter school can only earn 10 out of 10 points if the debt service coverage ratio (DSCR) is above 1.2x; however, the Master Trust technical default is 1.0x and a complete passing covenant is 1.1x or higher. The commenter stated that the FIRST rating should not penalize a school or be stricter on a school than its own bondholder covenants. The commenter suggested that TEA revise the scale for DSCR scores to allow any school with a DSCR greater than 1.1x to receive 10 out of 10 points.

Agency Response. The agency disagrees and has maintained the point scale as proposed for Indicator 12 of Charter FIRST for the 2020-2021 rating year in Figure: 19 TAC §109.1001(f)(5). Historically, a debt service coverage ratio of 1.2, based on the calculation for Indicator 12, has been attained by most charter schools and has been a sufficient measure of cash flow available to pay current debts. Additionally, a debt service coverage ratio of 1.2 will yield the maximum of 10 points, but a debt service coverage ratio of 1.1 will yield 6 out of 10 points and does not indicate a penalty or that the charter school is unable to pay its current debts.

INDICATOR 12 - SCHOOL DISTRICTS

Comment. Concerning proposed Figure: 19 TAC §109.1001(e)(5), TASBO commented that the wording for Indicator 12 and the calculation definition do not specify the fund(s) or fund type(s) and the data source(s). TASBO also commented that the indicator definition does not refer to a specific property value category.

Agency Response. The agency agrees and has modified Figure: 19 TAC §109.1001(e)(5) to specify the fund type(s) or fund type(s) and data source(s) used in the calculation and clarify the indicator definition to specific property value category.

Comment. Concerning proposed Figure: 19 TAC §109.1001(e)(5), TASBO commented that the calculation should read ((A/B)*(C))/(D/100) where A=local revenue in the debt service fund (object codes 5700 through 5799, fund 599); B=total revenue in the debt service fund (object codes 5700 through 5999, fund 599); C=long-term liabilities from schedule A-1 in the audit report; and D=current year taxable property value for debt service.

Agency Response. The agency agrees and has modified Figure: 19 TAC §109.1001(e)(5) to accurately calculate the debt per property value ratio. The modified calculation is ((A/B)*(C))/(D/100).

Comment. An education service center employee commented that since quite a few school districts use Tax Ratification Election pennies for Interest & Sinking bond payment purposes, TEA should allow the inclusion of object code 7915 and exclude compensating absences.

Agency Response. The agency disagrees and has determined that object code 7915 will not be included and compensating absences will be excluded in the calculation. The agency does not have reliable data and a way to consistently extract the data to uniformly apply the inclusions and exclusion to all school districts.

Comment. A school district administrator proposed that the TRS pension liability used in the calculation be removed.

Agency Response. The agency agrees and has modified the calculation in Figure: 19 TAC §109.1001(e)(5) to exclude Net Pension Liability from the calculation.

INDICATOR 14

Comment. A school district administrator commented that the calculation for Indicator 14 does not consider fast growth, small school districts that enroll a disproportionate number of special education students. The commenter stated that based on a three-year lookback, this could cause a misrepresentation of data.

Agency Response. The agency disagrees. Indicator 14 is a two-part indicator that is based on a decline in student-to-staff ratio of 15% or no decrease in enrollment three years prior to the year under review. The indicator captures enrollment for school districts and open-enrollment charter schools of all sizes. The data used for this indicator is represented by data that is reported to TEA in the fall TSDS PEIMS submission. The indicator captures student enrollment compared to staff and the ratio as student enrollment and/or number of staff increases or decreases. A school district or charter school does not have to continually show a decline in students to get zero points for this indicator. If students decrease/increase and staff decrease/increase proportionately or the ratio does not change, the school district or charter school will pass this indicator.

INDICATOR 15

Comment. Concerning proposed Figure: 19 TAC §109.1001(e)(5), a school district administrator commented that Indicator 15 does not measure financial management and is erroneous if used in evaluating the financial management of school districts.

Agency Response. The agency disagrees that Indicator 15 is erroneous in evaluating the financial management practices of school districts and maintains the language as proposed for Figure: 19 TAC §109.1001(e)(5), Indicator 15. Biennial pupil projections and the ADA of each school district have a significant impact on the funding that each school district receives. Submitting accurate pupil projections allows TEA to properly calculate funding and issue payments to each school district so that each school district can create an accurate budget to pay for budgeted expenditures. Indicator 15 compares large variances between the projected ADA and the actual ADA of some school districts that have been observed over the past years by the agency. Also, TEA has observed that many school districts rely on pupil projections that have been created by TEA for each school district instead of submitting pupil projections for their school district.

INDICATOR 16 - CHARTER SCHOOLS

Comment. A charter school administrator requested that correctional facility charter schools, residential charter schools, and acute care charter schools be exempt from proposed Indicator 16 because they serve a wide variety of needs for students needing certain services and cannot accurately predict student enrollment, attendance, or revenues.

Agency Response. The agency disagrees that charter schools that serve students in a correctional facility should be exempted from this indicator and maintains the language as proposed for Figure: 19 TAC §109.1001(f)(5), Indicator 16. The purpose of Indicator 16 is to determine if charter schools are estimating their ADA reasonably. Inaccurate ADA projections would prevent charter schools from creating accurate budgets and could lead to cash flow problems and possibly financial insolvency.

Comment. TCSA requested that TEA identify whether ADA estimates for Indicator 16 come from the charter school's estimate or TEA's estimate.

Agency Response. The agency agrees that clarification is needed concerning which ADA estimates are used in the calculation for Indicator 16. The estimates for ADA come from the estimates submitted by the charter school to TEA in the summer prior to the start of a school year. Figure: 19 TAC §109.1001(f)(5), Indicator 16, has been modified to identify the ADA estimates used in the calculation.

Comment. TCSA requested that TEA exempt charter schools operating at residential treatment centers (RTCs) or juvenile correctional facilities from Indicator 16 due to a highly mobile student population that could cause the ADA to vary significantly.

Agency Response. The agency disagrees that charter schools that serve students in RTCs or juvenile correctional facilities be exempted from this indicator. The purpose of Indicator 16 is to determine if charter schools are estimating their ADA reasonably. Inaccurate ADA projections can prevent charter schools from creating accurate budgets and could lead to cash flow problems and possibly financial insolvency.

INDICATOR 19

Comment. A school district administrator commented that TEA would need to supplement Indicator 19 by publishing an exhaustive list of reports or information TEA will be looking for to satisfy this indicator.

Agency Response. The agency disagrees and maintains language as published and proposed. TEA will provide a list of reports and/or information on its website in the future; however, the list will not be exhaustive. TEA encourages LEAs to request clarification of postings from TEA if necessary.

INDICATOR 20 - SCHOOL DISTRICTS

Comment. Concerning proposed Figure: 19 TAC §109.1001(e)(5), a school district administrator commented that the calculation definition for Indicator 20 is too vague and requested clarification of TEA's terminology used in the calculation definition.

Agency Response. The agency agrees and has clarified the calculation definition for Indicator 20 in Figure: 19 TAC §109.1001(e)(5).

INDICATOR 20 - CHARTER SCHOOLS

Comment. Concerning proposed Figure: 19 TAC §109.1001(f)(5), TCSA suggested that Indicator 20 be amended to include a specific effective date. Additionally, TCSA requested that TEA create a guidance document of required postings at the start of each academic year.

Agency Response. The agency agrees that Indicator 20 should be amended and has modified Figure: 19 TAC §109.1001(f)(5) to include an effective date as a measure for the indicator. The language for Indicator 20 has been modified to read, "Did the charter school post the required financial information on its website in accordance with Government Code, Local Government Code, Texas Education Code, Texas Administrative Code, and other statutes, laws, and rules that were in effect at the charter school's fiscal year end?" In addition, the TEA may provide a reference document of required postings on the TEA website at a later date.

Comment. Concerning proposed Figure: 19 TAC §109.1001(f)(5), a charter school administrator stated that the indicator does not measure financial competency and suggested that TEA revise the indicator to follow the statutory intent for FIRST.

Agency Response. The agency disagrees that the indicator does not measure financial competency and should be revised. Timely posting of statutorily required information that informs the public of the financial health of an LEA demonstrates in part the intent of FIRST. In response to another comment, Figure: 19 TAC §109.1001(f)(5) was modified to include an effective date of fiscal year end as a measure for the indicator.

INDICATOR 21 - SCHOOL DISTRICTS

Comment. Concerning proposed Figure: 19 TAC §109.1001(e)(5), TASBO commented that Indicator 21 is unnecessary and is being enforced by the Texas Bond Review Board and the Texas Attorney General's Office, which will not approve capital appreciation bonds (CABs) for sale unless the district can demonstrate it is in compliance with the provision in Texas Government Code, §1201.0245(g). TASBO also commented that testing the provision at time of issuance is more appropriate than testing annually because an annual test may prohibit some districts from paying off bonds that are not CABs to remain in compliance with the FIRST rule. The commenter stated that this could result in the unnecessary payment of additional interest.

Agency Response. The agency agrees and has modified Figure: 19 TAC §109.1001(e)(5) to exclude Indicator 21 from the 2020-2021 FIRST indicators.

INDICATOR 21 - CHARTER SCHOOLS

Comment. Concerning proposed Figure: 19 TAC §109.1001(f)(5), TCSA commented that Indicator 21 does not provide any information about how the indicator will be measured and asked that TEA consider certain factors such as students under the conservatorship of the Department of Family and Protective Services (DFPS) remaining in the charter school even though they are outside of the geographic boundaries or students placed in a nearby RTC that is outside the charter school's geographic boundaries.

Agency Response. The agency agrees in part that certain factors should be considered for Indicator 21 such as students under the conservatorship of the DFPS remaining in the charter school even though they are outside of the geographic boundaries or students placed in a nearby RTC that is outside the charter school's geographic boundaries. The agency provides the following clarification for the calculation definition for Indicator 21. The calculation definition for Indicator 21 will use the approved geographic boundary information from the TEA Charter School Division and compare it with data the charter school reports in the TSDS PEIMS summer submission. If the comparison does not agree and results in a loss of points for the charter school, the charter school may appeal TEA's decision under 19 TAC §109.1001(n). The calculation definition in Figure: 19 TAC §109.1001(f)(5) for Indicator 21 has been modified to identify the source of the indicator.

Comment. Concerning proposed Figure: 19 TAC §109.1001(f)(5), a charter school administrator requested clarification of the source data used for Indicator 21 and how TEA will address common occurrences and events that may adversely affect the charter school.

Agency Response. The agency provides the following clarification for the calculation definition for Indicator 21. The calculation definition for Indicator 21 will use the approved geographic boundary information from the TEA Charter School Division and compare it with data the charter school reports in the TSDS PEIMS summer submission. If the comparison does not agree and results in a loss of points for the charter school, the charter school may appeal TEA's decision under 19 TAC §109.1001(n). The calculation definition in Figure: 19 TAC §109.1001(f)(5) for Indicator 21 has been modified to identify the source of the indicator.

OTHER

Comment. The Texas Classroom Teachers Association (TCTA) commented that it supported the addition of the new solvency indicators, financial competency indicators, new point ceiling indicators, and new language to 19 TAC §109.1001(k). TCTA asked if the addition of the indicators would result in different and meaningful FIRST ratings. TCTA also recommended that TEA consider adding an indicator regarding whether school board members discussed employee compensation, by category of employee, in open session at a board meeting during budget deliberations since employee salaries are such a significant percentage of school district expenditures.

Agency Response. The agency agrees with the addition of new solvency indicators, financial competency indicators, and point ceiling indicators and maintains that the new indicators are aligned with TEC, §39.082(a)(2)(B), which enables the commissioner to provide meaningful financial oversight and improvement of district finances. The agency disagrees with adding an indicator regarding school board members discussing employee compensation at this time because TEA has an indicator that measures whether the ratio of student to total staff has decreased over a period of three years. The existing indicator enables the commissioner to provide meaningful financial oversight and improvement of district finances. However, TEA may consider the recommendation during the next evaluation of the indicators.

Comment. Texas Press Association (TPA) commented that many of the proposed changes will beneficially improve financial accountability of Texas schools. However, TPA stated that the proposed amendment to 19 TAC §109.1001(o)(4)(A), re-lettered as 19 TAC §109.1001(q)(4)(A), would significantly reduce the notice the public receives in advance of certain public hearings. TPA stated the proposed amendment would reduce transparency and the likelihood that members of the public would see the notice and that the proposed change would run contrary to the overarching purpose of financial accountability reporting requirements and impede, not promote, government transparency and accountability. For that reason, TPA objects to the proposed amendment in 19 TAC §109.1001(q)(4)(A).

Agency Response. The agency disagrees. Section 109.1001(q)(4)(A) was not intended to reduce transparency or accountability to stakeholders but to ensure school districts are creating an environment that is efficient and informative to all stakeholders.

Comment. TCSA commented that it welcomes the proposed changes to 19 TAC §109.1001(n)(3), which will allow all public schools to appeal a FIRST rating for any adverse issue that would result in a change of the preliminary rating.

Agency Response. The agency agrees and has maintained language as proposed.

Comment. TCTA recommended that TEA add an indicator that would include a classroom teacher to total staff ratio.

Agency Response. The agency disagrees. The indicators as proposed are aligned with TEC, §39.082(a)(2)(B), which enables the commissioner to provide meaningful financial oversight of school district finances.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §39.082, as amended by SB 1837, 85th Texas Legislature, Regular Session, 2017, which states that the financial performance of a charter school operated by a public IHE under the TEC, Chapter 12, Subchapter D or E, shall be evaluated using only the indicators adopted under the TEC, §39.082, determined by the commissioner by rule as appropriate to accurately measure the financial performance of such charter schools. The statute also requires the commissioner to develop and implement a financial accountability rating system for public schools and establishes certain minimum requirements for the system, including an appeals process; TEC, §39.083, which requires the commissioner to include in the financial accountability system procedures for public schools to report and receive public comment on an annual financial management report; TEC, §39.085, which requires the commissioner to adopt rules to implement the TEC, Chapter 39, Subchapter D, which addresses financial accountability for public schools; and TEC, §39.151, which requires the commissioner to provide a process by which a district or charter school can challenge an agency decision related to academic or financial accountability under TEC, Chapter 39. This process must include a committee to make recommendations to the commissioner. These provisions collectively authorize and require the commissioner to adopt the financial accountability system rules, which implement each requirement of statute applicable to districts and open-enrollment charter schools.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§39.082, as amended by SB 1837, 85th Texas Legislature, Regular Session, 2017; 39.083; 39.085; and 39.151.

§109.1001. Financial Accountability Ratings.

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

(1) Annual Financial Report (AFR)--The audited annual report required by the Texas Education Code (TEC), §44.008, that is due to the Texas Education Agency (TEA) by no later than 150 days after the close of a school district's or an open-enrollment charter school's fiscal year.

(2) Ceiling indicator--An upper limit (the maximum score) at which a score from a standard limit of a specific indicator will result regardless of overall points.

(3) Debt--An amount of money owed to a person, bank, company, or other organization.

(4) Electronic submission--The TEA electronic data feed format required for use by school districts, open-enrollment charter schools, and regional education service centers (ESCs).

(5) Financial Integrity Rating System of Texas (FIRST)--The financial accountability rating system administered by the TEA in accordance with the TEC, §39.082 and §39.085. The system provides additional transparency to public education finance and meaningful financial oversight and improvement for school districts (School FIRST) and open-enrollment charter schools and charter schools operated by a public institution of higher education under TEC, Chapter 12, Subchapters D and E (Charter FIRST).

(6) Fiscal year--The fiscal year of a school district or an open-enrollment charter school, which begins on July 1 or September 1 of each year, as determined by the board of trustees of the district or the governing body of the charter holder in accordance with the TEC, §44.0011.

(7) Foundation School Program (FSP)--The program established under the TEC, Chapters 41, 42, and 46, or any successor program of state-appropriated funding for school districts in this state.

(8) Open-enrollment charter school--A charter school authorized by the commissioner of education under TEC, Chapter 12, Subchapter D.

(9) Public institution of higher education (IHE)--A public college or university eligible to operate a school district; an open-enrollment charter school; or a TEC, Chapter 12, Subchapter E, charter school authorized by the commissioner.

(10) Summary of Finances (SOF) report--The document of record for FSP allocations. An SOF report is produced for each school district and open-enrollment charter school by the TEA divi-

sion responsible for state funding that describes the school district's or open-enrollment charter school's funding elements and FSP state aid.

(11) Texas Student Data System Public Education Information Management System (TSDS PEIMS)--The system that school districts and open-enrollment charter schools use to load, validate, and submit their data to the TEA.

(12) Warrant hold--The process by which state payments issued to payees indebted to the state, or payees with a tax delinquency, are held by the Texas Comptroller of Public Accounts until the debt is satisfied in accordance with the Texas Government Code, §403.055.

(b) The TEA will assign a financial accountability rating to each school district, open-enrollment charter school, and charter school operated by a public IHE under TEC, Chapter 12, Subchapters D and E, as required by the TEC, §39.082.

(c) The commissioner will evaluate the rating system every three years as required by the TEC, §39.082, and may modify the system in order to improve the effectiveness of the rating system. If the rating system has been modified, the TEA will communicate changes to ratings criteria and their effective dates to school districts, open-enrollment charter schools, and charter schools operated by public IHEs.

(d) The TEA will use the following sources of data in calculating the financial accountability indicators for school districts, open-enrollment charter schools, and charter schools operated by public IHEs:

(1) AFR. For each school district, open-enrollment charter school, and charter school operated by a public IHE, the TEA will use audited financial data in the district's or charter's AFR. The AFR, submitted as an electronic submission through the TEA website, must include data required in the Financial Accountability System Resource Guide (FASRG) adopted under §109.41 of this title (relating to Financial Accountability System Resource Guide);

(2) TSDS PEIMS. The TEA will use TSDS PEIMS data submitted by the school district, open-enrollment charter school, or charter school operated by a public IHE in the calculation of the financial accountability indicators.

(3) Warrant holds. The TEA will use warrant holds as reported by the Texas Comptroller of Public Accounts in the calculation of the financial accountability indicators.

(4) FSP. The TEA will use the average daily attendance (ADA) information used for FSP funding purposes for the school district, open-enrollment charter school, or charter school operated by a public IHE in the calculation of the financial accountability indicators.

(e) The TEA will base the financial accountability rating of a school district on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) The financial accountability rating indicators for rating year 2014-2015 are based on fiscal year 2014 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated August 2015 for rating year 2014-2015."
Figure: 19 TAC §109.1001(e)(1) (No change.)

(2) The financial accountability rating indicators for rating year 2015-2016 are based on fiscal year 2015 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated August 2015 for rating year 2015-2016."
Figure: 19 TAC §109.1001(e)(2) (No change.)

(3) The financial accountability rating indicators for rating year 2016-2017 are based on fiscal year 2016 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated December 2016 for rating year 2016-2017."
Figure: 19 TAC §109.1001(e)(3)

(4) The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 are based on financial data from fiscal years 2017, 2018, and 2019, respectively, and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated February 2018 for rating years 2017-2018 through 2019-2020." The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 will use the same calculations and scoring method provided in the figure in this paragraph.
Figure: 19 TAC §109.1001(e)(4)

(5) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated February 2018 for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph.
Figure: 19 TAC §109.1001(e)(5)

(6) The specific calculations and scoring methods used in the financial accountability rating worksheets for school districts for rating years prior to 2014-2015 remain in effect for all purposes with respect to those rating years.

(f) The TEA will base the financial accountability rating of an open-enrollment charter school on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) The financial accountability rating indicators for rating year 2014-2015 are based on fiscal year 2014 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2014-2015."
Figure: 19 TAC §109.1001(f)(1) (No change.)

(2) The financial accountability rating indicators for rating year 2015-2016 are based on fiscal year 2015 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2015-2016."
Figure: 19 TAC §109.1001(f)(2) (No change.)

(3) The financial accountability rating indicators for rating year 2016-2017 are based on fiscal year 2016 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2016-2017."
Figure: 19 TAC §109.1001(f)(3)

(4) The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 are based on financial data from fiscal years 2017, 2018, and 2019, respectively, and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated February 2018 for rating year 2017-2018." The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 will use the same calculations and scoring method provided in the figure in this paragraph.
Figure: 19 TAC §109.1001(f)(4)

(5) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated February 2018 for rating year 2020-2021." The finan-

cial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph.
Figure: 19 TAC §109.1001(f)(5)

(6) The specific calculations and scoring methods used in the financial accountability rating worksheets for open-enrollment charter schools for rating years prior to 2014-2015 remain in effect for all purposes with respect to those rating years.

(g) The TEA will base the financial accountability rating of a charter school operated by a public IHE on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) The financial accountability rating indicators for rating year 2016-2017 are based on fiscal year 2016 financial data and are provided in the figure in this paragraph entitled "IHE Charter FIRST - Rating Worksheet Dated February 2018 for rating years 2016-2017 through 2019-2020." The financial accountability rating indicators for rating years 2016-2017 through 2019-2020 will use the same calculations and scoring method provided in the figure in this paragraph.
Figure: 19 TAC §109.1001(g)(1)

(2) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are provided in the figure in this paragraph entitled "IHE Charter FIRST - Rating Worksheet Dated February 2018 for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph.
Figure: 19 TAC §109.1001(g)(2)

(h) The types of financial accountability ratings that school districts or open-enrollment charter schools may receive for the rating year 2014-2015 are as follows.

(1) P for pass. This rating applies only to the financial accountability rating for rating year 2014-2015 based on fiscal year 2014 financial data. In accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive a P rating if it scores within the applicable range established by the commissioner for a P rating.

(2) F for substandard achievement. This rating applies to the financial accountability rating for rating year 2014-2015 based on fiscal year 2014 financial data. In accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an F rating if it scores within the applicable range established by the commissioner for an F rating.

(i) The types of financial accountability ratings that school districts or open-enrollment charter schools may receive for the rating year 2015-2016 and all subsequent rating years are as follows.

(1) A for superior achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an A rating if it scores within the applicable range established by the commissioner for an A rating.

(2) B for above standard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive a B rating if it scores within the applicable range established by the commissioner for a B rating.

(3) C for standard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive a C rating if it scores within the applicable range established by the commissioner for a C rating.

(4) F for substandard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an F rating if it scores within the applicable range established by the commissioner for an F rating.

(5) No Rating. Beginning with the financial accountability rating for rating year 2016-2017 and all subsequent rating years, in accordance with the procedures established in this section, a school district receiving territory due to an annexation order by the commissioner under the TEC, §13.054, or consolidation under the TEC, Chapter 41, Subchapter H, will not receive a rating for two consecutive rating years beginning with the rating year that is based on financial data from the fiscal year in which the order of annexation becomes effective. After the second rating year, the receiving district will be subject to the financial accountability rating system established by the commissioner in this section.

(j) The types of financial accountability ratings that charter schools operated by public IHEs may receive for the rating year 2016-2017 and all subsequent rating years are as follows.

(1) P for pass. Beginning with the financial accountability rating for rating year 2016-2017 and all subsequent rating years, in accordance with the procedures established in this section, a charter school operated by a public IHE will receive a P rating if it scores within the applicable range established by the commissioner for a P rating.

(2) F for substandard achievement. Beginning with the financial accountability rating for rating year 2016-2017 and all subsequent rating years, in accordance with the procedures established in this section, a charter school operated by a public IHE will receive an F rating if it scores within the applicable range established by the commissioner for an F rating.

(k) The commissioner may lower a financial accountability rating based on the findings of an action conducted under the TEC, Chapter 39, or change a financial accountability rating in cases of disaster, flood, extreme weather conditions, fuel curtailment, or another calamity.

(l) A financial accountability rating remains in effect until replaced by a subsequent financial accountability rating.

(m) The TEA will issue a preliminary financial accountability rating to a school district, an open-enrollment charter school, or a charter school operated by a public IHE on or before August 8 of each year. The TEA will base the financial accountability rating for a rating year on the data from the fiscal year preceding the rating year.

(1) The TEA will not delay the issuance of the preliminary or final rating if a school district, an open-enrollment charter school, or a charter school operated by a public IHE fails to meet the statutory deadline under the TEC, §44.008, for submitting the AFR. Instead, the school district, open-enrollment charter school, or charter school operated by a public IHE will receive an F rating for substandard achievement.

(2) If the TEA receives an appeal of a preliminary rating, described by subsection (n) of this section, the TEA will issue a final rating to the school district, open-enrollment charter school, or charter school operated by a public IHE no later than 60 days after the deadline for submitting appeals.

(3) If the TEA does not receive an appeal of a preliminary rating, described by subsection (n) of this section, the preliminary rating automatically becomes a final rating 31 days after issuance of the preliminary rating.

(n) A school district, an open-enrollment charter school, or a charter school operated by a public IHE may appeal its preliminary financial accountability rating through the following appeals process.

(1) The TEA division responsible for financial accountability must receive a written appeal no later than 30 days after the TEA's release of the preliminary rating. The appeal must include adequate evidence and additional information that supports the position of the school district, open-enrollment charter school, or charter school operated by a public IHE. Appeals received 31 days or more after TEA issues a preliminary rating will not be considered.

(2) A data error attributable to the TEA is a basis for an appeal. If a preliminary rating contains a data error attributable to the TEA, a school district or an open-enrollment charter school may submit a written appeal requesting a review of the preliminary rating.

(3) A school district, an open-enrollment charter school, or a charter school operated by a public IHE may appeal any other adverse issue it identifies in the preliminary rating.

(4) The TEA will only consider appeals that would result in a change of the preliminary rating.

(5) The TEA division responsible for financial accountability will select an external review panel to independently oversee the appeals process.

(6) The TEA division responsible for financial accountability will submit the information provided by the school district, open-enrollment charter school, or charter school operated by a public IHE to the external review panel members for review.

(7) Each external review panel member will examine the appeal and supporting documentation and will submit his or her recommendation to the TEA division responsible for financial accountability.

(8) The TEA division responsible for financial accountability will compile the recommendations and forward them to the commissioner.

(9) The commissioner will make a final ratings decision.

(o) A final rating issued by the TEA under this section may not be appealed under the TEC, §7.057, or any other law or rule.

(p) A financial accountability rating by a voluntary association is a local option of the school district, open-enrollment charter school, or charter school operated by a public IHE, but it does not substitute for a financial accountability rating by the TEA.

(q) Each school district, open-enrollment charter school, and charter school operated by a public IHE is required to report information and financial accountability ratings to parents, taxpayers, and other stakeholders by implementing the following reporting procedures.

(1) Each school district, open-enrollment charter school, and charter school operated by a public IHE must prepare and distribute an annual financial management report in accordance with this subsection.

(2) Each school district, open-enrollment charter school, and charter school operated by a public IHE must provide the public with an opportunity to comment on the report at a public hearing.

(3) The annual financial management report for a school district, an open-enrollment charter school, or a charter school operated by a public IHE must include:

(A) a description of its financial management performance based on a comparison, provided by the TEA, of its performance on the indicators established by the commissioner and reflected in this section. The report will contain information that discloses:

(i) state-established standards; and

(ii) the financial management performance of the school district, open-enrollment charter school, or charter school operated by a public IHE under each indicator for the current and previous year's financial accountability ratings;

(B) any descriptive information required by the commissioner, including:

(i) a copy of the superintendent's current employment contract or other written documentation of employment if no contract exists. This must disclose all compensation and benefits paid to the superintendent. The school district, open-enrollment charter school, or charter school operated by a public IHE may publish the superintendent's employment contract on its website instead of publishing it in the annual financial management report;

(ii) a summary schedule for the fiscal year (12-month period) of expenditures paid on behalf of the superintendent and each board member and total reimbursements received by the superintendent and each board member. This includes transactions on the credit card(s), debit card(s), stored-value card(s), and any other similar instrument(s) of the school district, open-enrollment charter school, or charter school operated by a public IHE to cover expenses incurred by the superintendent and each board member. The summary schedule must separately report reimbursements for meals, lodging, transportation, motor fuel, and other items. The summary schedule of total reimbursements should not include reimbursements for supplies and materials that were purchased for the operation of the school district, open-enrollment charter school, or charter school operated by a public IHE;

(iii) a summary schedule for the fiscal year of the dollar amount of compensation and fees received by the superintendent from an outside school district, open-enrollment charter school, charter school operated by a public IHE, or any other outside entity in exchange for professional consulting or other personal services. The schedule must separately report the amount received from each entity;

(iv) a summary schedule for the fiscal year of the total dollar amount of gifts that had a total economic value of $250 or more received by the executive officers and board members. This reporting requirement applies only to gifts received by the executive officers and board members (and their immediate family as described by Government Code, Chapter 573, Subchapter B, Relationships by Consanguinity or by Affinity) of the school district, open-enrollment charter school (or charter holder), or charter school operated by a public IHE (or charter holder) from an outside entity that received payments from the school district, open-enrollment charter school (or charter holder), or charter school operated by a public IHE (or charter holder) in the prior fiscal year and to gifts from competing vendors that were not awarded contracts in the prior fiscal year. This reporting requirement does not apply to reimbursement by an outside entity for travel-related expenses when the purpose of the travel was to investigate matters directly related to an executive officer's or board member's duties or to

investigate matters related to attendance at education-related conferences and seminars with the primary purpose of providing continuing education (this exclusion does not apply to trips for entertainment purposes or pleasure trips). This reporting requirement excludes an individual gift or a series of gifts from a single outside entity that had a total economic value of less than $250 per executive officer or board member; and

(v) a summary schedule for the fiscal year of the dollar amount received by board members for the total amount of business transactions with the school district, open-enrollment charter school (or charter holder), or charter school operated by a public IHE (or charter holder). This reporting requirement is not to duplicate the items disclosed in the summary schedule of reimbursements received by board members; and

(C) any other information the board of trustees of the school district, open-enrollment charter school, or charter school operated by a public IHE determines to be useful.

(4) The board of trustees of each school district, open-enrollment charter school, or charter school operated by a public IHE must hold a public hearing on the annual financial management report within two months after receiving a final financial accountability rating. The public hearing must be held at a location in the facilities of the school district, open-enrollment charter school, or charter school operated by a public IHE. The board must give notice of the hearing to owners of real estate property in the geographic boundaries of the school district, open-enrollment charter school, or charter school operated by a public IHE and to parents of school district, open-enrollment charter school, or charter school operated by a public IHE students. In addition to other notice required by law, the board must provide notice of the hearing:

(A) to a newspaper of general circulation in the geographic boundaries of the school district, each campus of an open-enrollment charter school, or each campus of a charter school operated by a public IHE in one posting prior to holding the public meeting, providing the time and place of the hearing. The notice in the newspaper may not be earlier than 30 days or later than 10 days before the date of the hearing. If no newspaper is published in the county in which the district's central administration office is located or within the geographic boundaries of an open-enrollment charter school's campus or campus of a charter school operated by a public IHE, then the board must publish the notice in the county nearest to the county seat of the county in which the district's central administration office is located or in which the campus of the open-enrollment charter school or the campus of a charter school operated by a public IHE is located; and

(B) through electronic mail to the mass communication media serving the school district, open-enrollment charter school, or charter school operated by a public IHE, including, but not limited to, radio and television.

(5) At the hearing, the school district, open-enrollment charter school, or charter school operated by a public IHE must provide the annual financial management report to the attending parents and taxpayers.

(6) The school district, open-enrollment charter school, or charter school operated by a public IHE must retain the annual financial management report for at least three years after the public hearing and make it available to parents and taxpayers upon request.

(7) Each school district, open-enrollment charter school, or charter school operated by a public IHE that received an F rating must file a corrective action plan with the TEA, prepared in accordance with instructions from the commissioner, within one month after the public hearing of the school district, open-enrollment charter school, or charter school operated by a public IHE. The commissioner may require certain information in the corrective action plan to address the factor(s) that may have contributed to the F rating for a school district, open-enrollment charter school, or charter school operated by a public IHE.

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

Filed with the Office of the Secretary of State on July 12, 2018.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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CHAPTER 129. STUDENT ATTENDANCE
SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1027

The Texas Education Agency (TEA) adopts an amendment to §129.1027, concerning the Optional Flexible School Day Program (OFSDP). The amendment is adopted with changes to the proposed text as published in the May 11, 2018 issue of the *Texas Register* (43 TexReg 2910). The adopted amendment updates the rule to reflect statutory changes resulting from House Bill (HB) 3706, 85th Texas Legislature, Regular Session, 2017, that allow school districts to offer online dropout recovery programs as part of an OFSDP.

REASONED JUSTIFICATION. Texas Education Code (TEC), §29.0822, authorizes the commissioner of education to adopt rules for the administration of OFSDPs provided by school districts and open-enrollment charter schools for certain eligible students. Section 129.1027 specifies in rule OFSDP general provisions, definitions, student eligibility, application requirements, attendance and funding criteria, program operation requirements, and review and evaluation provisions, as well as circumstances under which OFSDP authorization would be revoked or denied. HB 3706, 85th Texas Legislature, Regular Session, 2017, amended the TEC, §29.081 and §29.0822, to allow school districts to offer online dropout recovery programs as part of an OFSDP in addition to campus-based programs. Unlike a campus-based program, statute requires that an online program have curriculum credentials, certifications, or other course offerings related directly to employment opportunities in the state. Additionally, the statute outlines a variety of requirements to ensure quality and accountability for an online program, including the use of an individual learning plan, an academic coach for each student, monthly reporting to the student's school district regarding the student's progress, and minimum education requirements for faculty and administrators.

To implement HB 3706, the adopted amendment to §129.1027 adds a definition for *community-based dropout recovery education program,* changes the definition for *instructional contact hours* to include instruction provided by faculty with a baccalau-

reate or advanced degree except in the case of campuses implementing innovative redesign, and updates student eligibility to include students who have dropped out of school and students attending community-based dropout recovery education programs.

In addition, subsection (b)(1)(B) was amended to remove outdated language referencing innovative redesign as described by 19 TAC §97.051(7)(B). Instead, a definition for *campus of innovative redesign* was added as new subsection (a)(2). Cross references to statute and other administrative rules were also updated.

Based on public comment, the definition for *instructional contact hours* has been modified in subsection (a)(4) to specify that for students attending a campus of innovative redesign, instructional contact hours are hours spent learning the curriculum under the direct supervision of an educator meeting the qualifications of the State Board for Educator Certification (SBEC) or the employing charter school.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began May 11, 2018, and ended June 11, 2018. Following is a summary of the public comment received and the corresponding agency response.

Comment: The Texas Classroom Teachers Association (TCTA) objected to the revised definition for *instructional contact hours* and its application to all types of situations in which a student may participate in the OFSDP. TCTA contended that, per HB 3706, the baccalaureate or advanced degree teacher qualification standard should only apply to students who have dropped out of school or are at risk of dropping out of school as defined by TEC, §29.081, and to students attending a community-based dropout recovery education program as defined by TEC, §29.081(e-1) and (e-2). TCTA stated that students attending a campus of innovative redesign or an approved early college high school program under TEC, §29.908, or students who will be denied credit as a result of attendance requirements under TEC, §25.092, should maintain the teacher qualification standard in the current rule, which requires teachers to meet the qualifications of the SBEC or the employing charter school.

Agency Response: The agency agrees in part, and the definition for *instructional contact hours* has been modified specific to students attending a campus of innovative redesign. These campuses, whose primary purpose is not to serve students at risk of dropping out of high school, will maintain teacher qualifications of the SBEC or the employing charter school. However, TEA disagrees in part and has maintained the definition as proposed for students attending a designated Early College High School because these campuses' primary purpose is to serve students at risk of dropping out of high school, and the campuses are already exempted from the SBEC teacher qualifications when students attend courses taught by college faculty. Additionally, TEA has determined that students who will be denied credit as a result of attendance requirements under TEC, §25.092, should have teacher qualification requirements that are consistent with students at risk of dropping out of high school because creating two separate teacher qualification standards for sub-populations within a campus to participate in the OFSDP would create an undue burden for school districts.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §29.081, as amended by House Bill (HB) 3706, 85th Texas Legislature, Regular Session, 2017, which establishes criteria for community-based campus and Internet online dropout recovery education programs; and TEC, §29.0822, as amended by HB 3706, 85th Texas Legislature, Regular Session, 2017, which authorizes an Optional Flexible School Day Program (OFSDP) to allow a student to enroll in a dropout recovery program in which courses are conducted online and creates an exception regarding the number of instructional hours required and the minimum number of minutes required for students enrolled in an online dropout recovery program. TEC, §29.0822(d), authorizes the commissioner to adopt rules for the administration of an OFSDP.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §29.081 and §29.0822.

§129.1027. Optional Flexible School Day Program.

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

(1) Campus--For the purposes of this section, a campus is an organization that provides instructional services to students, maintains a separate budget, and has an administrator whose primary duty is the full-time administration of the campus.

(2) Campus of innovative redesign--A campus with an approved campus turnaround plan in accordance with the requirements of Texas Education Code (TEC), §39.107, that:

(A) provides a rigorous and relevant academic program;

(B) provides personal attention and guidance;

(C) promotes high expectations for all students; and

(D) addresses comprehensive schoolwide improvements that cover all aspects of a school's operations, including, but not limited to, curriculum and instruction changes, structural and managerial innovations, sustained professional development, financial commitment, and enhanced involvement of parents and the community.

(3) Community-based dropout recovery education program--For the purposes of this section, a community-based dropout recovery education program is a public or private program authorized under the TEC, §29.081(e), offered on a campus or through an internet online program that leads to a high school diploma and prepares the student to enter the workforce as defined in TEC, §29.081(e-1) and (e-2).

(4) Instructional contact hours-- Except for the purposes of subsection (b)(1)(B) of this section, instructional contact hours are the hours spent learning the curriculum under faculty and administrators with baccalaureate or advanced degrees. For the purposes of subsection (b)(1)(B) of this section, instructional contact hours are hours spent learning the curriculum under the direct supervision of an educator meeting the qualifications of the State Board for Educator Certification or the employing charter school.

(5) Optional Flexible School Day Program (OFSDP)--An OFSDP is a program authorized under the Texas Education Code (TEC), §29.0822, that is approved by the commissioner to provide flexible hours and days of attendance for eligible students, as defined in subsection (b) of this section.

(6) School district--For the purposes of this section, the definition of a school district includes an open-enrollment charter school.

(7) School district board of trustees--For the purposes of this section, the definition of a school district board of trustees includes a charter holder board.

(b) Student eligibility. A student is eligible to participate in an OFSDP if:

(1) the student:

(A) has dropped out of school or is at risk of dropping out of school, as defined by the TEC, §29.081;

(B) is attending a campus implementing an innovative redesign;

(C) is attending a community-based dropout recovery education program, as defined by the TEC, §29.081(e-1) and (e-2);

(D) is attending an approved early college high school program, as defined by the TEC, §29.908; or

(E) as a result of attendance requirements under the TEC, §25.092, will be denied credit for one or more classes in which the student has been enrolled; and

(2) either:

(A) the student and the student's parent, or person standing in parental relation to the student, agree in writing to the student's participation if the student is less than 18 years of age and not emancipated by marriage or court order; or

(B) the student agrees in writing to participate if the student is 18 years of age or older or has otherwise attained legal status as an adult by reason of marriage or court order.

(c) Application to operate an OFSDP. Any school district may apply for authorization to operate an OFSDP.

(1) The Texas Education Agency (TEA) shall make available to each eligible school district an application form for initial approval or renewal that must be completed and submitted annually to the TEA for approval.

(2) The board of trustees of a school district must approve the application. The board of trustees of a school district must include the OFSDP as an item on a regular agenda for a board meeting providing options for public input concerning the proposed application before applying to operate an OFSDP.

(3) school district must submit an application in accordance with instructions provided by the TEA.

(4) As part of the application process, a school district shall include the following information:

(A) implementation plan description;

(B) staff plans;

(C) schedules; and

(D) student attendance accounting security procedures and documentation.

(5) The school district must have submitted the required annual audit report for the immediate prior fiscal year to the TEA division responsible for financial audits. The annual audit must be determined by the TEA to be in compliance with applicable audit standards.

(6) The commissioner may consider academic and financial performance at a campus or a district when reviewing application qualifications.

(7) The TEA may defer or reject an application based on pending or final audit of data submitted, irregularities in assessment administration, accreditation status, accountability ratings, or interventions or sanctions under the TEC, Chapter 39A.

(8) The TEA may grant or reject an entire application or grant or reject any campus submitted on an application.

(9) The TEA will notify each applicant of its approval or nonapproval to operate an OFSDP.

(10) The school district must receive notice of approval to continue or begin participation in the program.

(d) Attendance. A school district must report student OFSDP attendance in a manner provided by the TEA in the Student Attendance Accounting Handbook adopted under §129.1025 of this title (relating to Adoption By Reference: Student Attendance Accounting Handbook). Funding for attendance in an OFSDP is proportionate to attendance in a full-time program meeting the requirements of the TEC, §25.081 and §25.082.

(e) Funding under the TEC, Chapters 41, 42, and 46. Attendance in an OFSDP that is not authorized or does not meet the requirements of the TEC, §29.0822, or this section is not eligible for state funding. For funding purposes, attendance for a student for a 12-consecutive-month school year cannot exceed the equivalent of one student in average daily attendance with perfect attendance.

(f) Extracurricular participation. A student enrolled in an OFSDP may participate in a competition or activity sanctioned by the University Interscholastic League (UIL) only if the student meets all UIL eligibility criteria.

(g) Conditions of program operation. A school district and campus operating an OFSDP must comply with all assurances in the program application. Approved OFSDPs will be required to submit annually one progress report on a form to be provided by the TEA and signed by the district superintendent or executive officer. The data in the progress reports must be disaggregated by ethnicity, age, gender, and socioeconomic status. Approved OFSDPs will submit data as stated in the assurances section of the program application.

(1) A school district with a campus operating an OFSDP must reapply annually to continue to operate an OFSDP to verify that student eligibility requirements specified in subsection (b) of this section are met.

(2) A student participating in an OFSDP must take all assessment instruments as defined by the TEC, §39.023, during the regularly scheduled administration periods.

(3) A school district operating an OFSDP must conduct audits every other year of the OFSDP student attendance processes, procedures, and data quality to maintain eligibility for the program. Audits may be conducted by an internal auditor, external auditor, or an authorized school district administrator responsible for student attendance accounting.

(4) The commissioner may consider academic performance and student attendance accounting documentation and procedures to continue district or campus eligibility for the OFSDP.

(h) School district annual performance review.

(1) Annually, each school district shall review its progress in relation to the performance indicators required by this subsection. Progress should be assessed based on information that is disaggregated with respect to race, ethnicity, gender, and socioeconomic status.

(A) A school district must include high school graduation as one of the performance indicators for students participating in the OFSDP.

(B) A school district operating an OFSDP for a campus will select and report student performance indicators appropriate to the population being served. The selected performance indicators must measure student achievement on an annual basis.

(2) At an open meeting of the board of trustees, a school district shall establish and review annual performance goals for the OFSDP related to performance indicators appropriate to the program, as established in paragraph (1) of this subsection and approved by the TEA.

(3) A school district shall ensure that decisions on the continuation of the OFSDP are based on state student assessment results and other student performance data.

(i) Evaluation of programs.

(1) The TEA shall evaluate the OFSDP based on performance indicators established in subsection (h) of this section.

(2) In addition to the evaluation on the indicators identified in subsection (h) of this section, a school district shall be evaluated based on student assessment administration and student attendance accounting processes and procedures.

(j) Revocation of or denial to renew authorization to operate an OFSDP.

(1) The commissioner may revoke authorization or deny renewal of an OFSDP based on the following factors:

(A) noncompliance with application assurances and/or the provisions of this section;

(B) failure to keep timely and accurate audit and attendance accounting records;

(C) failure to maintain student eligibility requirements specified in subsection (b) of this section if one of these designations was used as an eligibility criteria for OFSDP;

(D) lack of program success as evidenced by progress reports or program data; or

(E) failure to provide accurate, timely, and complete information as required by the TEA to evaluate the effectiveness of the OFSDP.

(2) A revocation or nonrenewal of an approved OFSDP takes effect for the semester immediately following the date on which the revocation or nonrenewal is issued unless another date is determined by the commissioner.

(3) An OFSDP is entitled to a ten-day notice of the proposed revocation or nonrenewal and an informal review by the commissioner's designee.

(4) A decision by the commissioner to revoke the authorization or deny renewal of an OFSDP is final and may not be appealed.

(5) The OFSDP is a state program subject to a special accreditation investigation under the TEC, Chapter 39. Student attendance accounting records are subject to audit under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes). The commissioner may impose interventions and sanctions on a school district under the TEC, Chapter 39A, for failure to comply with the OFSDP requirements of this section.

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

Filed with the Office of the Secretary of State on July 13, 2018.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS SUBCHAPTER V. AUTOLOGOUS ADULT STEM CELLS

25 TAC §1.461, §1.462

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts new §1.461, concerning Investigational Stem Cell Treatments and §1.462, concerning Informed Consent for Investigational Stem Cell Treatment without changes to the proposed text as published in the June 8, 2018, issue of the *Texas Register* (43 TexReg 3720). Therefore, these rules will not be republished.

BACKGROUND AND JUSTIFICATION

House Bill (H.B.) 810, 85th Legislature, Regular Session, 2017, amended Texas Health and Safety Code, Chapter 1003, to require the Executive Commissioner of HHSC to adopt rules designating medical conditions that constitute a severe chronic disease or a terminal illness, and addressing informed consent. This would allow patients with such medical conditions to access and use investigational adult stem cell treatments if certain requirements have been met. This is a voluntary program. The bill directs the Texas Medical Board (TMB) to adopt rules relating to institutional review boards. The TMB proposed those rules in April 2018. Communications with TMB indicate that they will be filing their adoption rule packet with the *Texas Register* shortly, and that TMB will also exercise their authority for an immediate effective date. The Executive Commissioner delegated rules development for the designation of medical conditions that constitute a severe chronic disease or a terminal illness, and informed consent to DSHS.

Texas Government Code, §2001.036(a)(2) authorizes a state agency that finds an expedited effective date is necessary, due to evidence of imminent peril to the public health, safety, or welfare, and subject to applicable constitutional or statutory provisions, to authorize an effective date of less than 20 days after the filing date.

DSHS has received notification of at least one individual with a terminal illness whose life may be prolonged through investigational stem cell treatment. DSHS also suspects there are

additional individuals with a severe chronic disease or terminal illness that could benefit by having access to investigational stem cell treatments. As treatment is voluntary, DSHS has not identified any entity that would be negatively impacted by an expedited effective date. Based on Texas Government Code, §2001.036(a)(2), these rules shall be effective immediately upon filing with the *Texas Register.*

COMMENTS

The 30-day comment period ended on July 9, 2018.

During this period, DSHS received one comment from a representative of the Texas Hospital Association regarding the proposed rules. A summary of comments relating to the rules and responses follows.

Comment: The commenter supports the rules as proposed.

Response: DSHS acknowledges and appreciates the commenter's support of the rules.

STATUTORY AUTHORITY

The new rules are authorized by Texas Health and Safety Code, Chapter 1003, which requires the Executive Commissioner of HHSC to adopt rules designating medical conditions that constitute a severe chronic disease or a terminal illness and to address informed consent. Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075 authorize the Executive Commissioner to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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

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Barbara L. Klein
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-3740

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER B. PAYMENT PROCESSING--ELECTRONIC FUNDS TRANSFERS

34 TAC §§5.12, 5.14, 5.15

The Comptroller of Public Accounts adopts amendments to §5.12, concerning processing payments through electronic funds transfers, and §5.14, concerning participation in the electronic funds transfer system concerning processing payments through electronic funds transfers, with changes to the proposed text as published in the June 1, 2018, issue of the *Texas Register* (43 TexReg 3580). The Comptroller of Public Accounts adopts amendments to §5.15, concerning electronic funds transfers - paycards, without changes to the proposed text as published in the June 1, 2018, issue of the *Texas Register* (43 TexReg 3580). The amendments allow state issued paycards to be used to make retirement payments to annuitants.

The amendments to §5.12 add a new definition of "may not" in subsection (b)(14) and renumber subsequent paragraphs; add the words "or annuitant" in renumbered paragraph (19) and "or retirement" in renumbered paragraphs (19) and (25) to allow state issued paycards to be used to make retirement payments to annuitants; clarify in renumbered paragraph (25) that a reversal of certain electronic funds transfer payments initiated by the comptroller may only be initiated in compliance with National Automated Clearing House Association (NACHA) rules; and delete the word "the" in subsection (f) to ensure that the term "NACHA rules" is used in a consistent manner throughout the subchapter.

The adopted amendment updates the legal citation and the name of the federal rulemaking agency listed in the definition of Regulation E in renumbered §5.12(b)(24) by changing "12 C.F.R. Part 205" to "12 C.F.R. Part 1005" and "Board of Governors of the Federal Reserve System" to "Bureau of Consumer Financial Protection." This is a non-substantive change. In 2011, Congress transferred rulemaking authority for Regulation E from the Board of Governors of the Federal Reserve System to the Bureau of Consumer Financial Protection. The *Federal Register* in 76 FR 81020 (December 27, 2011) states that when the Bureau of Consumer Financial Protection moved Regulation E to its new location at 12 C.F.R. Part 1005, the new version of Regulation E "substantially duplicates" the former version of Regulation E, "making only certain non-substantive, technical, formatting, and stylistic changes."

The adopted amendment also corrects a grammatical error in §5.12(b)(9)(A) by replacing a comma with a semicolon.

The amendments to §5.14 delete the words "comptroller" and "comptroller's" in subsection (a)(2) when they are used to modify "EFTS forms" to clarify that not all EFTS forms are created by the comptroller; update subsection (a)(2) to reflect the comptroller's requirement that a state payee obtain EFTS forms from the payee's paying state agency, instead of accessing the forms on the comptroller's website; delete the word "the" in subsections (a)(5) and (g)(4) to ensure that the term "NACHA rules" is used in a consistent manner throughout the subchapter; delete the word "state" in subsection (c)(2) as unnecessary because the term "warrant" is defined as a state payment in renumbered §5.12(b)(29) of this title; update subsection (e)(3) and (4) to clarify that a paying agency is prohibited from initiating a reversal or a reclamation entry for an EFTS payment initiated by the comptroller on behalf of the paying state agency; add the words "or retirement" in subsection (e)(5) to allow state issued paycards to be used to make retirement payments to annuitants; update subsection (e)(5) to differentiate between reversals and reclamations of certain electronic funds transfer payments; and clarify in subsection (e)(5) that the comptroller may initiate a reversal or a reclamation of certain electronic funds transfer payments only in compliance with NACHA rules.

The adopted amendment corrects a grammatical error in §5.14(c)(1)(a) by replacing a comma with a semicolon.

The amendments to §5.15 add the words "or annuitant" in subsections (a)(2) and (c)(1) and "or retirement" in subsections (a),

(a)(1), (2), and (c)(1) to allow state issued paycards to be used to make retirement payments to annuitants; and add new subsection (c)(3) to restrict the use of a paycard account used by an annuitant only for deposits of retirement payments.

No comments were received regarding adoption of the amendments.

These sections are adopted under Government Code, §403.016(j), which requires the comptroller to adopt rules regarding an electronic funds transfer system.

These sections implement Government Code, §403.016 regarding electronic funds transfer.

§5.12. Processing Payments Through Electronic Funds Transfers.

(a) Applicability. These rules govern EFT payments by the comptroller on behalf of custodial and paying state agencies as part of the electronic funds transfer system authorized by Government Code, §403.016.

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

(1) Automated clearing house (ACH)--A central distribution and settlement point for the electronic clearing of debits and credits between financial institutions subject to regulation under rules of an automated clearing house association and applicable regulatory law.

(2) ACH rules--The operating rules and guidelines governing the ACH network published by NACHA, the Electronic Payments Association and applicable federal regulatory law.

(3) Comptroller--The Comptroller of Public Accounts for the State of Texas.

(4) Comptroller approved EFTS form--An EFTS form approved by the comptroller for use by a custodial or paying state agency in the EFTS.

(5) Credit entry--A type of EFT entry that the comptroller initiates on behalf of a paying state agency to credit a state payee's EFTS account at a domestic financial institution.

(6) Custodial state agency--A state agency that establishes and maintains the state payee's account information. The custodial state agency may or may not be the paying state agency.

(7) Direct deposit--A form of EFT payment using ACH for the electronic transfer of funds directly into a state payee EFTS account at a domestic financial institution.

(8) Electronic funds transfer (EFT)--A transfer of funds which is initiated by the comptroller as originator to the originating depository financial institution to order, instruct, or authorize a receiving depository financial institution to perform a credit entry, reversal, or reclamation in accordance with this subchapter. For purposes of these rules, an EFT does not include a transaction originated by wire transfer, check, draft, warrant, or other paper instrument.

(9) EFTS authorization--A state payee's agreement to allow the comptroller to originate state-issued payments by EFT on behalf of a paying state agency to a state payee EFTS account. A state payee may provide EFTS authorization and notice under Government Code, §403.016 by:

(A) submitting an EFTS authorization with a state payee's agreement on a comptroller approved form; or

(B) providing an agreement to a custodial state agency or a paying state agency in a manner deemed appropriate by that agency and the comptroller, and as required by law and NACHA rules.

(10) EFTS form--An electronic or paper form submitted by a state payee as part of the EFTS. An EFTS form used by a custodial state agency or paying state agency is subject to comptroller approval.

(11) Electronic funds transfer system (EFTS)--A system authorized by Government Code, §403.016, that is administered by the comptroller in accordance with these rules to make EFT payments to state payees on behalf of a paying state agency.

(12) Financial institution--A state or national bank, a state or federal savings and loan association, a mutual savings bank, or a state or federal credit union that complies with NACHA rules and may be an originating depository financial institution or a receiving depository financial institution.

(13) International ACH transaction (IAT)--An ACH entry involving a financial agency (as defined by NACHA rules) that is not located in the territorial jurisdiction of the United States. An international ACH transaction may be referred to as an IAT entry or IAT.

(14) May not--A prohibition. The term does not mean "might not" or its equivalents.

(15) NACHA--The National Automated Clearing House Association is the electronic payments association that establishes standards, rules and procedures that enable domestic financial institutions to exchange payments electronically.

(16) Notification of change (NOC)--Information sent by a financial institution through the ACH network to notify the comptroller that previously valid information for a state payee has become outdated or that information contained in a prenotification is erroneous.

(17) Originating depository financial institution--A financial institution that originates ACH entries on behalf of the comptroller and transmits ACH entries through the ACH network in accordance with NACHA rules.

(18) Originator--The comptroller acts as the originator and authorizes an originating depository financial institution to transmit, on behalf of the state, a credit entry, reclamation, reversal, or prenotification entry to a state payee EFTS account at a domestic financial institution.

(19) Paycard--A payment card issued to a state employee or annuitant that provides access to payroll or retirement funds deposited to a designated account at a domestic financial institution as part of the EFTS through the comptroller's paycard contract.

(20) Paying state agency--A state agency for which the comptroller initiates payment. The term includes the comptroller of public accounts. A paying state agency may or may not be the custodial state agency.

(21) Prenotification--A non-dollar entry sent by the comptroller through the ACH network to alert a receiving depository financial institution that a live dollar credit entry will be forthcoming and to request verification of the state payee's EFTS account information.

(22) Receiving depository financial institution--A financial institution that receives ACH entries to a state payee EFTS account.

(23) Reclamation--A request made by the comptroller in compliance with NACHA rules, to an originating depository financial institution to reclaim from a receiving depository financial institution any amounts received by a state payee after the state payee's death or legal incapacity, or the death of a beneficiary of a state payee.

(24) Regulation E--The regulations adopted by the Bureau of Consumer Financial Protection at 12 C.F.R. Part 1005, as they may be amended, to implement the Electronic Fund Transfer Act (15 U.S.C. §1693 *et seq.)*.

(25) Reversal--An EFT entry initiated by the comptroller at the request of a paying state agency to correct an erroneous credit entry previously transmitted to a state payee EFTS account. The comptroller may initiate a reversal of an EFT payment of state employee payroll or retirement in compliance with NACHA rules.

(26) State agency--

(A) a department, commission, board, office, or other agency in the executive or legislative branch of state government that is created by the constitution or a statute of this state, including the comptroller of public accounts;

(B) the supreme court of Texas, the court of criminal appeals, a court of appeals, or a state judicial agency; or

(C) a university system and an institution of higher education as defined by Education Code, §61.003 other than a public junior college.

(27) State payee--A person to whom a state payment is issued, including an individual, state employee, annuitant, business, vendor, governmental entity, or other legal recipient paid by the State of Texas.

(28) State payee EFTS account--An account at a domestic financial institution designated by a state payee for EFTS payments.

(29) Warrant--A state payment in the form of a paper instrument which is subject to applicable state law, is drawn on the State of Texas treasury funds, and is payable to a state payee on behalf of a paying state agency by the comptroller or by a state agency with delegated authority to issue warrants under Government Code, §403.060. A warrant is not an approved means of electronic funds transfer as set out in subsection (c) of this section.

(30) Wire transfer--An unconditional order to a financial institution to pay a fixed or determinable amount of money to a state payee upon receipt or on a day stated in the order that is transmitted by electronic or other means. Wire transfer is not an approved means of electronic fund transfer, as set out in subsection (c) of this section.

(c) Approved types of EFTS payments.

(1) The comptroller will approve the types of EFTS payments the state may use by rule and amend the approval based upon the comptroller's procedures and current technology.

(2) EFTS payment types approved by the comptroller to a state payee EFTS account include:

(A) direct deposit, except an IAT; and

(B) paycard.

(3) Any other type of payment which is not an approved type of EFTS payment under paragraph (2) of this subsection is not considered to be an approved type of EFTS payment under these rules. Warrants, wire transfers, and IAT are not approved types of EFTS payments.

(d) Compliance with applicable NACHA rules and regulation. Each participant in the EFTS, including the comptroller, the paying state agency, the custodial state agency, and the state payee, shall comply with applicable law and NACHA regulations in EFTS transactions.

(e) Confidentiality. Each participant in the EFTS, including the comptroller, the paying state agency, the custodial state agency, and the state payee, shall comply with applicable confidentiality requirements under the law, including maintaining the confidentiality of financial institution account numbers and state payee social security numbers.

(f) Audit. The comptroller is subject to audit by NACHA for compliance with NACHA rules concerning EFT transactions under this chapter. The comptroller may audit a paying or custodial state agency for compliance with applicable regulatory or NACHA rules concerning EFT transactions under this chapter. A paying or custodial state agency shall comply with an audit under this chapter.

(g) Notification.

(1) Any questions, comments, or complaints concerning the comptroller's electronic funds transfer system as it relates to Government Code, §403.016 and these rules may be sent to the comptroller by mail to: Texas Comptroller of Public Accounts, Fiscal Management, 111 E. 17th Street, Room 911, Austin, Texas, 78711, or by email to tins.mail@cpa.texas.gov, or at such other email address as the comptroller may designate.

(2) The comptroller may provide additional information and updates on its website regarding notification.

(3) The comptroller may require the custodial state agency, the paying state agency, the state payee, and the financial institution to provide contact information as appropriate.

(h) Conflict of law. If there is a conflict in law between any of these rules and applicable law, the applicable law shall apply. If any provision of these rules are held to be invalid, illegal, or unenforceable due to a conflict of law, it will not affect any other provisions of these rules, and the rules will be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

§5.14. Participation in the Electronic Funds Transfer System.

(a) State payee participation in electronic funds transfer system.

(1) Payee disclosure of state payee EFTS account information. The state payee must establish, change, or cancel state payee EFTS account information by providing EFTS authorization to a custodial state agency.

(2) EFTS forms. The state payee must obtain EFTS forms from the payee's paying state agency.

(3) State payee may elect to authorize payment by EFT. A state payee may choose to receive payment by EFT by providing EFTS authorization. A state payee's choice not to provide EFTS authorization constitutes notice to the comptroller to receive payment by warrant as provided in Government Code, §403.016(h)(1).

(4) Payment destination confirmation. At the time of electing to participate in the EFTS, a state payee must confirm whether payments they receive will be forwarded to a financial institution outside of the United States. A state payee must also notify the paying state agency of any change to the intended final destination of a payment or payments outside of the United States.

(5) Refusal to accept an EFT payment. A state payee may refuse to accept an EFTS payment in accordance with NACHA rules.

(6) Refusal of reversal. The state payee may not instruct their financial institution to reject a reversal made by the comptroller to correct an erroneous credit entry.

(7) Cancellation of state payee EFTS authorization. The cancellation of a state payee's EFTS authorization terminates the state

payee's participation in the ETFS until the state payee provides a new EFTS authorization.

(8) Comptroller may issue warrant. The comptroller may issue a payment to a state payee by warrant in lieu of EFT pursuant to applicable law, including Government Code, §403.016(i).

(b) Number of EFTS accounts. The comptroller may limit the number EFTS accounts that a state payee may designate for payment by EFTS, subject to the comptroller's policy and procedure.

(c) EFTS authorization.

(1) The state payee must provide EFTS authorization to establish, change, or cancel instructions for EFT payments by providing account information by:

(A) submitting an EFT authorization with a state payee's agreement on a comptroller approved form; or

(B) providing an agreement to a custodial state agency or a paying state agency in a manner deemed appropriate by that agency and the comptroller, and as required by law and NACHA rules.

(2) Upon receipt of an EFTS authorization, the comptroller will issue a warrant to a state payee during the time when prenotification is used to verify the account information is correct.

(3) A state payee may request to bypass prenotification by certifying to the custodial state agency that:

(A) the state payee requests to bypass prenotification;

(B) the state payee has verified the account information with the financial institution; and

(C) the state payee is solely responsible for the consequences of providing erroneous account information that may result in rejection, delay, or loss of an EFTS payment.

(4) The custodial state agency must provide written notification to the comptroller that the state payee has requested to bypass prenotification for EFT payments under paragraph (3) of this subsection.

(5) If the state payee's financial institution rejects the state payee's account information, neither the comptroller, the custodial state agency, or the paying state agency is liable for the consequences of the rejection.

(6) If the comptroller receives an EFTS authorization or other notification to cancel a state payee's account information, the state payee's participation in the EFTS terminates until the custodial state agency or the comptroller receives a new EFTS authorization from the state payee.

(7) To facilitate proper EFT payments in accordance with NACHA rules or other regulations, the comptroller may change or cancel a state payee's account information without prior notice to the state payee.

(8) The comptroller or custodial state agency may cancel a state payee's account information without prior notice to the state payee.

(d) Credit of EFTS payments.

(1) A payment is credited to a state payee EFTS account on the effective date of the credit entry regardless of when the receiving depository financial institution posts the credit.

(2) If payment is rejected or posted late by the receiving depository financial institution, the comptroller, a paying state agency, or a custodial state agency are not liable for any additional late payment interest, including under Government Code, Chapter 2251, or late fees or charges, including those that may be imposed by the state payee or receiving depository financial institution.

(e) EFTS initiation of reversals and reclamations.

(1) Only a paying state agency may request that the comptroller initiate a reversal or reclamation.

(2) A paying state agency must request a reversal or reclamation through the comptroller in the comptroller's prescribed manner.

(3) A paying state agency shall not initiate a reversal for an EFTS payment initiated by the comptroller on behalf of the paying state agency.

(4) A paying state agency shall not initiate a reclamation entry for an EFTS payment initiated by the comptroller on behalf of the paying state agency.

(5) The comptroller may initiate a reversal for a state payroll or retirement payment or a reclamation for a retirement or benefit payment only in compliance with NACHA rules.

(6) Failure to make funds available by a state payee or state payee's beneficiary for a reversal or reclamation entry initiated by the comptroller results in a debt under Government Code, §403.055.

(f) Reversal.

(1) Notice to comptroller. A paying state agency must submit to the comptroller a request for a reversal no later than five banking days after the effective date of the erroneous credit entry in accordance with comptroller procedures and NACHA rules.

(2) A receiving depository financial institution:

(A) may only accept a reversal entry from the comptroller for an erroneous credit entry initiated by the comptroller on behalf of a paying state agency; and

(B) in accordance with NACHA rules, shall not act upon instructions from the state payee to reject a reversal entry.

(3) Notice to state payee. A paying state agency must notify a state payee of a reversal entry no later than the effective date of the reversal in accordance with NACHA rules.

(4) Unsuccessful reversal entry.

(A) If the RFDI does not honor the comptroller's reversal entry, the state payee must reimburse the erroneous credit entry amount to the paying state agency.

(B) If the state payee fails to reimburse the paying state agency for the erroneous credit entry amount, the state payee will owe the amount of the erroneous credit entry as a debt to the state under Government Code, §403.055.

(C) A paying state agency shall report to the comptroller any state payee who fails to reimburse the paying state agency for any erroneous credit entry amounts, as required by Government Code, §403.055(f) and (g).

(g) Reclamation.

(1) A paying state agency must submit EFTS reclamation requests to the comptroller for processing within five business days of notification of the death or legal incapacity of the state payee or beneficiary of the state payee.

(2) The comptroller may initiate a reclamation request on behalf of the paying state agency to reclaim any amounts transmitted to

the state payee's account after the state payee's death or legal incapacity, or the death of a beneficiary of the state payee.

(3) The comptroller must provide prior approval to allow a paying state agency to initiate a reclamation entry for a credit entry which the comptroller initiated on behalf of a paying state agency.

(4) In accordance with NACHA rules, if the reclamation request is returned by the receiving depository financial institution, the comptroller may submit a written demand for payment of the reclamation request within fifteen days on behalf of the paying state agency.

(5) Unsuccessful reclamation entry.

(A) If the RFDI does not honor the comptroller's reclamation entry, the state payee or the state payee's beneficiary must reimburse the reclamation entry amount to the paying state agency.

(B) If the state payee or the state payee's beneficiary fails to reimburse the paying state agency for the reclamation entry amount, the state payee or the state payee's beneficiary will owe the reclamation entry amount as a debt to the state under Government Code, §403.055.

(C) A paying state agency shall report to the comptroller any state payee or state payee's beneficiary who fails to reimburse the paying state agency for any reclamation entry amounts, as required by Government Code, §403.055(f) and (g).

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

Filed with the Office of the Secretary of State on July 11, 2018.

TRD-201803041
Victoria North
Chief Counsel, Fiscal and Agency Affairs Legal Services Division
Comptroller of Public Accounts
Effective date: July 31, 2018
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For further information, please call: (512) 475-2220

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER U. CONTRACTING

37 TAC §1.265

The Texas Department of Public Safety (the department) adopts new §1.265, concerning Buy America Requirements for Iron and Steel Used in Construction. This rule is adopted without changes to the proposed text as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2951) and will not be republished.

The adopted addition of §1.265 fulfills the requirements of Senate Bill 1289 enacted by the 85th Texas Legislature. This bill added Subchapter F, concerning Certain Construction and Installation Projects, Government Code, §§2252.201 - 2252.205. Adopted rule §1.265 implements the referenced sections of the Government Code because the department is a governmental entity subject to the requirements of a project described by the referenced sections.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §2252.202(b), which authorizes certain governmental entities to adopt rules to promote compliance with the statute. The department is such a governmental entity.

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

Filed with the Office of the Secretary of State on July 10, 2018.

TRD-201803016
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: July 30, 2018
Proposal publication date: May 11, 2018
For further information, please call: (512) 424-5848

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CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER D. COMMERCIAL VEHICLE WEIGHT, LENGTH, AND SIZE ENFORCEMENT

37 TAC §4.57

The Texas Department of Public Safety (the department) adopts new §4.57, concerning Safety and Driver Training Requirements for Certain Permits. This rule is adopted without changes to the proposed text as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2952) and will not be republished.

The proposed addition of §4.57 fulfills the requirements of Senate Bill 1383 and Senate Bill 1524 enacted by the 85th Texas Legislature. These bills add Subchapter U, concerning Vehicles Transporting Fluid Milk, Transportation Code, §§623.401 - 623.407 and Subchapter U, concerning Intermodal Shipping Containers, Transportation Code, §§623.401 - 623.411. Adopted rule §4.57 implements the referenced sections of the Transportation Code by requiring additional safety and driver training for fluid milk truck drivers and drivers of trucks transporting sealed intermodal containers.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §623.407(b) as added by Senate Bill 1383 enacted by the 85th Texas Legislature and §623.411(b) as added by Senate Bill 1524 enacted by the 85th Texas Legislature which authorize the department to adopt rules requiring additional safety and driver training for permits issued for vehicles transporting fluid milk and intermodal shipping containers.

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

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TRD-201803017
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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CHAPTER 14. SCHOOL BUS SAFETY STANDARDS

SUBCHAPTER D. SCHOOL BUS SAFETY STANDARDS

37 TAC §14.52

The Texas Department of Public Safety (the department) adopts amendments to §14.52, concerning Texas School Bus Specifications. This rule is adopted without changes to the proposed text as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2952) and will not be republished.

The adopted amendment updates the rule to reflect the 2018 Texas School Bus Specifications as the current publication.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Education Code, §34.002, which authorizes the department to adopt safety standards for school buses; §547.102, which authorizes the department to adopt standards and specifications for school bus equipment; and §547.7015, which authorizes the department to adopt rules governing the design, color, lighting, and other equipment, construction, and operation of a school bus for the transportation of schoolchildren.

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

Filed with the Office of the Secretary of State on July 10, 2018.

TRD-201803019
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: July 30, 2018
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For further information, please call: (512) 424-5848

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 433. DRIVER/OPERATOR

SUBCHAPTER B. MINIMUM STANDARDS FOR DRIVER/OPERATOR-AERIAL APPARATUS

37 TAC §433.201

The Texas Commission on Fire Protection (the commission) adopts an amendment to Chapter 433, Driver/Operator, Subchapter B, Minimum Standards for Driver/Operator-Aerial Apparatus, concerning §433.201 Driver/Operator-Aerial Apparatus Certification. The amendment is adopted without changes to the proposed text as published in the June 1, 2018, *Texas Register* (43 TexReg 3584) and will not be republished.

The amendment is adopted to delete language which allowed fire protection personnel to challenge the commission examination for Driver/Operator-Aerial Apparatus during the first year that the certification was offered. The one year time frame expired on May 18, 2018.

No comments were received from the public regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties and §419.032 which allows the commission to appoint fire protection personnel.

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

Filed with the Office of the Secretary of State on July 13, 2018.

TRD-201803067
Tim Rutland
Executive Director
Texas Commission On Fire Protection
Effective date: August 2, 2018
Proposal publication date: June 1, 2018
For further information, please call: (512) 936-3812

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CHAPTER 435. FIRE FIGHTER SAFETY

37 TAC §435.1

The Texas Commission on Fire Protection (the commission) adopts an amendment to Chapter 435, Fire Fighter Safety, concerning §435.1 Protective Clothing. The amendment is adopted with changes to the proposed text as published in the May 25, 2018, *Texas Register* (43 TexReg 3333). The commission had proposed new language to expand the requirements for departments to provide clean protective clothing to on-duty fire protection personnel, including the development of a standard operating procedure regarding the selection, care and maintenance of the clothing. The commission was presented with a new recommendation from its fire fighter advisory committee stating most of the proposed language was simply restating the National Fire Protection Association (NFPA) Standard associated with protective clothing which the commission had previously adopted and which all fire departments under commission regulation must follow. The recommendation proposed adding additional language to emphasize when fire

departments must submit their standard operating procedures to the commission for review.

The adopted amendment requires all regulated fire departments to submit annually or upon request by the commission their standard operating procedures regarding the selection, care and maintenance of the protective clothing which complies with NFPA standard 1851.

The commission received one comment on the proposed amendment during the 30-day public comment period.

Public Comment: Texas State Association of Fire Fighters (TSAFF) commenter stated that this amendment will strengthen commission rules and ensure compliance amongst regulated fire departments concerning compliance with NFPA 1851.

Commission Response: The commission agreed with this sentiment.

The amendment is adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties and §419.040 which requires all fire departments to comply with the minimum requirements of the National Fire Protection Association Standards.

§435.1. Protective Clothing.

A regulated fire department shall:

(1) purchase, provide, and maintain a complete set of protective clothing for all fire protection personnel who would be exposed to hazardous conditions from fire or other emergencies or where the potential for such exposure exists. A complete set of protective clothing shall consist of garments including bunker coats, bunker pants, boots, gloves, helmets, and protective hoods, worn by fire protection personnel in the course of performing fire-fighting operations;

(2) ensure that all protective clothing which are used by fire protection personnel assigned to fire suppression duties comply with the minimum standards of the National Fire Protection Association suitable for the tasks the individual is expected to perform. The National Fire Protection Association standard applicable to protective clothing is the standard in effect at the time the entity contracts for new, rebuilt, or used protective clothing; and

(3) maintain, provide to the commission annually and/or upon request, and comply with a departmental standard operating procedure regarding the use, selection, care, and maintenance of protective clothing which complies with NFPA 1851, Standard on Selection, Care, and Maintenance of Structural Fire Fighting Protective Ensembles.

(4) To ensure that protective clothing for fire protection personnel continues to be suitable for assigned tasks, risk assessments conducted in accordance with NFPA 1851 shall be reviewed and revised as needed, but in any case, not more than five years following the date of the last risk assessment.

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

Filed with the Office of the Secretary of State on July 13, 2018.

TRD-201803068

Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: August 2, 2018
Proposal publication date: May 25, 2018
For further information, please call: (512) 936-3812

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CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §§439.7, 439.9, 439.11

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 439, Examinations For Certification, Subchapter A, Examinations For On-Site Delivery Training, concerning §439.7, Eligibility, §439.9, Grading, and §439.11, Commission-Designated Performance Skill Evaluations. Section 439.7 is adopted with minor punctuation changes to the proposed text as published in the May 25, 2018, issue of the *Texas Register,* (43 TexReg 3334) and will be republished. The amendments to §439.9 and §439.11 are adopted without changes to the proposed text as published in the May 25, 2018, issue of the *Texas Register,* (43 TexReg 3334) and will not be republished.

The amendments are adopted to update language to reflect current agency policy and procedures including added language to address issues encountered by agency staff during inspections of training programs.

No comments were received from the public regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties and §419.032 which allows the commission to appoint fire protection personnel.

§439.7. Eligibility.

(a) An examination may not be taken by an individual who currently holds an active certificate from the commission in the discipline to which the examination pertains, unless required by the commission in a disciplinary matter, or test scores have expired and the individual is testing for IFSAC seals.

(b) An individual who passes an examination and is not certified in that discipline, will not be allowed to test again if the original examination grade is still active, unless required by the commission in a disciplinary matter.

(c) In order to qualify for a commission examination, the examinee must:

(1) meet or exceed the minimum requirements set by the commission as a prerequisite for the specified examination;

(2) submit a test application, meet any other prerequisite requirements, and submit the appropriate application processing fee(s);

(3) receive from the commission an "Endorsement of Eligibility" letter and provide this letter to the lead examiner;

(4) bring to the test site, and display upon request, a current and valid government issued identification which contains the name and photograph of the examinee;

(5) report on time to the proper location; and

(6) comply with all the written and verbal instructions of the lead examiner.

(d) No examinee shall be permitted to:

(1) violate any of the fraud provisions of this section;

(2) disrupt the examination;

(3) bring into the examination site any books, notes, or other written materials related to the content of the examination;

(4) refer to, use, or possess any such written material at the examination site;

(5) give or receive answers or communicate in any manner with another examinee during the examination;

(6) communicate at any time or in any way, the contents of an examination to another person for the purpose of assisting or preparing a person to take the examination;

(7) steal, copy, or reproduce any part of the examination;

(8) engage in any deceptive or fraudulent act either during an examination or to gain admission to it;

(9) solicit, encourage, direct, assist, or aid another person to violate any provision of this section; or

(10) bring into the examination site any electronic devices.

(e) No person shall be permitted to sit for any commission examination who has an outstanding debt owed to the commission.

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

Filed with the Office of the Secretary of State on July 13, 2018.

TRD-201803069
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: August 2, 2018
Proposal publication date: May 25, 2018
For further information, please call: (512) 936-3812

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.

Proposed Rule Reviews

Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission (Commission) files this notice of intent to review Title 13, Chapter 9 of the Texas Administrative Code, in its entirety, regarding the administrative rules for the Talking Book Program, in accordance with the requirements of the Government Code, §2001.39, which require state agencies to review and consider for readoption each of their rules every four years.

The reasons for adopting the rules in Chapter 9 continue to exist. The rules were adopted pursuant to the Government Code, §441.006, that requires the Texas State Library and Archives Commission to provide library services to persons with disabilities in cooperation with the federal government.

Written comments on the review of Chapter 9 may be submitted to Ava M. Smith, Director, Talking Book Program, P.O. Box 12927, Austin, Texas 78711; by fax to (512) 936-0685; or by email to amsmith@tsl.texas.gov. The Texas State Library and Archives Commission must receive written comments postmarked no later than 30 days from the date this notice is published in the *Texas Register.*

TRD-201803096
Ava Smith
Director
Texas State Library and Archives Commission
Filed: July 16, 2018

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Adopted Rule Reviews

Credit Union Department

Title 7, Part 6

The Credit Union Commission (the Commission) has completed its review of Chapter 91, Subchapter G (Lending Powers), consisting of §91.701, and §§91.703 - 91.720. The Commission proposes to readopt these rules.

The rules were reviewed as a result of the Department's general four-year rule review under Texas Government Code Section 2001.039.

Notice of the review of 7 TAC, Part 6, Chapter 91, Subchapter G was published in the *Texas Register,* as required, on April 20, 2018 (43 TexReg 2455). The Department received no comments on the notice of intention to review.

As a result of the internal review by the Department, the Commission has determined that the reasons for initially adopting the rules continue to exist, and that most of them should be readopted, but that certain revisions are appropriate and necessary. The Commission is concurrently proposing amendments to Chapter 91, Subchapter G, as published elsewhere in this issue of the *Texas Register.* Subject to the concurrently proposed amendments to Chapter 91, Subchapter G, the Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 91, Subchapter G in accordance with the requirements of Texas Government Code, Section 2001.039. This concludes the review of 7 TAC, Part 6, Chapter 91, Subchapter G.

The Department hereby certifies that the rules have been reviewed by legal counsel and found to be with the agency's legal authority to readopt.

TRD-201803098
Harold E. Feeney
Commissioner
Credit Union Department
Filed: July 16, 2018

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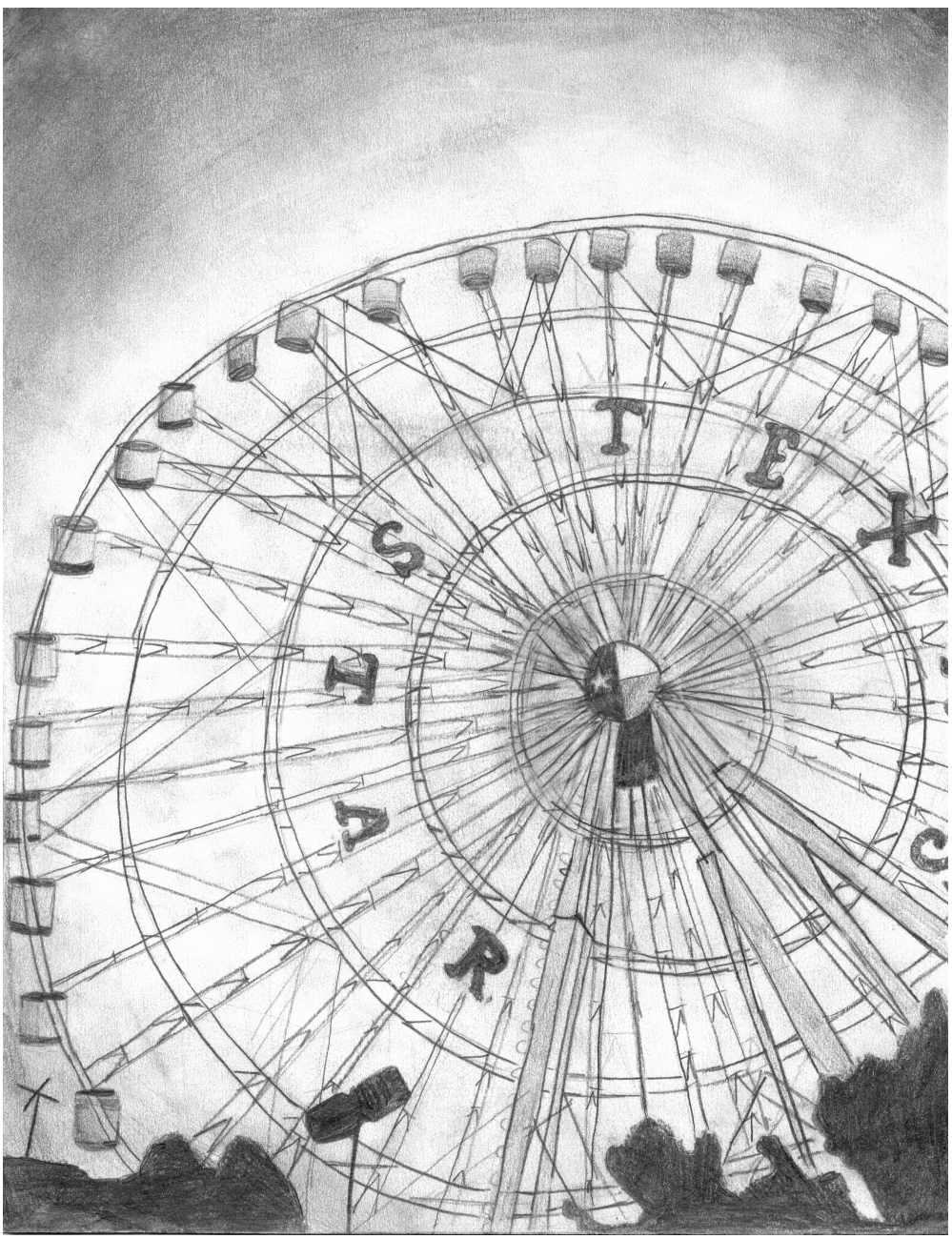
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IN ADDITION

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.

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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/23/18 - 07/29/18 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/23/18 - 07/29/18 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201803103
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 17, 2018

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Credit Union Department

Applications for Merger or Consolidation

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from Coastal Community and Teachers Credit Union (Corpus Christi) seeking approval to merge with IBEW LU 278 Federal Credit Union (Corpus Christi), with Coastal Community and Teachers Credit Union being the surviving credit union.

An application was received from Fellowship Credit Union (San Antonio) seeking approval to merge with Randolph Brooks Federal Credit Union (Live Oak), with Randolph Brooks Federal Credit Union being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201803111
Harold E. Feeney
Commissioner
Credit Union Department
Filed: July 18, 2018

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following application:

Application to Expand Field of Membership - Denied

DATCU, Denton, Texas - See *Texas Register* issue dated March 30, 2018.

TRD-201803110
Harold E. Feeney
Commissioner
Credit Union Department
Filed: July 18, 2018

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is August 27, 2018. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on August 27, 2018. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's 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: Blue Cube Operations LLC; DOCKET NUMBER: 2018-0302-AIR-E; IDENTIFIER: RN108772245; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical manufacturing; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal

Operating Permit Number O2204, General Terms and Conditions and Special Terms and Conditions Number 16, and New Source Review Permit Number 19041, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $2,438; Supplemental Environmental Project offset amount of $975; ENFORCEMENT COORDINATOR: Jo Hunsberger, (512) 239-1274; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Built Right Homes LLC; DOCKET NUMBER: 2018-0457-WQ-E; IDENTIFIER: RN109786061; LOCATION: Splendora, Montgomery County; TYPE OF FACILITY: construction site; RULES VIOLATED: TWC, §26.121(a), 30 TAC §281.25(a)(4), and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: $10,084; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: CERVELLE HOMES, INCORPORATED; DOCKET NUMBER: 2018-0490-WQ-E; IDENTIFIER: RN106636202; LOCATION: Manvel, Brazoria County; TYPE OF FACILITY: residential construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121(a), 40 Code of Federal Regulations (CFR) §122.26, and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR150028805, II. Permit Applicability and Coverage E.3.(d), by failing to submit a copy of the Notice of Intent to the local municipal separate storm sewer system prior to commencing construction activities; 30 TAC §281.25(a)(4), TWC, §26.121(a), 40 CFR §122.26, and TPDES General Permit Number TXR150028805, III. Stormwater Pollution Prevention Plans (SWP3) F.1.(f), F.1.(g)(vi), F.1.(j), and F.2.(b), by failing to maintain a complete SWP3; 30 TAC §281.25(a)(4), TWC, §26.121(a), 40 CFR §122.26, and TPDES General Permit Number TXR150028805, III. SWP3 F.2.(a), F.6.(a) and (b), by failing to install and maintain best management practices at the site; and 30 TAC §281.25(a)(4), TWC, §26.121(a), 40 CFR §122.26, and TPDES General Permit Number TXR150028805, III. SWP3 F.7.(a) and (e), by failing to conduct inspections of disturbed areas as specified in the permit; PENALTY: $4,643; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: CHEVRON PHILLIPS CHEMICAL COMPANY LP; DOCKET NUMBER: 2018-0350-PWS-E; IDENTIFIER: RN102675915; LOCATION: Brazoria, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(g)(2)(A), by failing to submit a recommendation to the executive director (ED) for source water treatment within 180 days after the end of the January 1, 2017 - June 30, 2017, monitoring period during which the copper action level was exceeded; and 30 TAC §290.117(f)(3)(A), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2017 - June 30, 2017, monitoring period during which the copper action level was exceeded; PENALTY: $107; ENFORCEMENT COORDINATOR: Soraya Bun, (512) 239-2695; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: City of Barstow; DOCKET NUMBER: 2017-1507-PWS-E; IDENTIFIER: RN101241719; LOCATION: Barstow, Ward County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required 20 sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2017 - June 30, 2017, monitoring period; 30 TAC §290.117(c)(2)(B), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2016 - December 31, 2016, monitoring period; and 30 TAC §290.117(c)(2)(C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2013 - December 31, 2015, monitoring period; PENALTY: $585; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(6) COMPANY: City of Clarksville; DOCKET NUMBER: 2018-0351-PWS-E; IDENTIFIER: RN102929734; LOCATION: Clarksville, Red River County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the locational running annual average; PENALTY: $387; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: City of Robstown; DOCKET NUMBER: 2017-1269-MWD-E; IDENTIFIER: RN104347729; LOCATION: Robstown, Nueces County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: 30 TAC §217.53(d)(3), by failing to locate collection system pipes and manholes at least nine feet from all water supply lines; PENALTY: $5,775; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(8) COMPANY: Diaz Recycle, L.L.C.; DOCKET NUMBER: 2018-0285-MLM-E; IDENTIFIER: RN108781014; LOCATION: Edinburg, Hidalgo County; TYPE OF FACILITY: metal recycling facility; RULES VIOLATED: 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the disposal of unauthorized municipal solid waste; and 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to not cause, suffer, allow, or permit outdoor burning within the state; PENALTY: $3,099; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(9) COMPANY: Fred Riter dba Canyon Lake RV Park; DOCKET NUMBER: 2018-0262-PWS-E; IDENTIFIER: RN101218584; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement for all land within 150 feet of the facility's well; 30 TAC §290.45(b)(1)(E)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a well capacity of 1.0 gallon per minute per connection; 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the facility; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: $200; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: Hedwig Francisca Leyendekker; DOCKET NUMBER: 2018-0601-AGR-E; IDENTIFIER: RN102898350; LOCATION: Hico, Erath County; TYPE OF FACILITY: concentrated animal feeding operation; RULES VIOLATED: 30 TAC §321.39(g)(3) and §305.125(1) and Texas Pollutant Discharge Elimination System Permit Number WQ0003745000, Part VII, A.6(c), by failing to collect

carcasses within 24 hours of death and properly dispose of them within three days of death; PENALTY: $675; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 580 West Lingleville Road, Suite D, Stephenville, Texas 76401-2209, (254) 552-1900.

(11) COMPANY: Jaime A. Gallegos dba El Compadre Disposal; DOCKET NUMBER: 2018-0364-SLG-E; IDENTIFIER: RN109460162; LOCATION: Brownsville, Cameron County; TYPE OF FACILITY: registered sludge transporter business; RULES VIOLATED: TWC, §26.121(a)(2) and 30 TAC §312.143, by failing to deposit wastes at a facility designated by or acceptable to the generator where the owner or operator of the facility agrees to receive the wastes and the facility has written authorization by permit or registration issued by the executive director to receive wastes; 30 TAC §312.145(a)(2) and (4) and (b), by failing to maintain complete sludge transporter trip tickets and make them immediately available for inspection upon request by agency personnel; 30 TAC §312.142(c), by failing to maintain a copy of the sludge transporter registration in a vehicle used to collect and transport waste; and 30 TAC §312.144(f), by failing to prominently mark all discharge valves and ports on all closed vehicles, tanks, or containers used to transport liquid waste; PENALTY: $3,377; ENFORCEMENT COORDINATOR: Claudia Corrales, (432) 620-6138; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(12) COMPANY: JOSHI AND NAGARKOTI LLC dba Jeff Stop; DOCKET NUMBER: 2017-1342-PST-E; IDENTIFIER: RN100774215; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: $3,225; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: KIDACIOUS ACADEMY, INCORPORATED; DOCKET NUMBER: 2018-0301-PWS-E; IDENTIFIER: RN102975562; LOCATION: Fort Bend County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic based on the running annual average; and 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites that were tested, and failing to mail a copy of the consumer notification of tap results to the executive director along with certification that the consumer notification has been distributed for the January 1, 2017 - December 31, 2017, monitoring period; PENALTY: $229; ENFORCEMENT COORDINATOR: Soraya Bun, (512) 239-2695; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: KK United Solutions Incorporated dba NYS Food Mart; DOCKET NUMBER: 2018-0469-PST-E; IDENTIFIER: RN102236890; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,438; ENFORCEMENT COORDINATOR: Berenice Munoz, (512) 239-2617; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: KUNWAR INCORPORATED dba Quick Stop 1; DOCKET NUMBER: 2018-0420-PST-E; IDENTIFIER: RN102446978; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,813; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Liberty Materials, Incorporated; DOCKET NUMBER: 2018-0382-WQ-E; IDENTIFIER: RN108195132; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: aggregate production operation; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the discharge of process water into or adjacent to any water in the state; PENALTY: $3,075; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: MNR VENTURES, LLC dba Take A Break; DOCKET NUMBER: 2018-0345-PST-E; IDENTIFIER: RN104759675; LOCATION: Wise County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $4,624; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Municipal Golf Association - SA dba Olmos Basin Golf Course; DOCKET NUMBER: 2018-0428-PST-E; IDENTIFIER: RN102359056; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $3,188; ENFORCEMENT COORDINATOR: John Paul Fennell, (512) 239-2616; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: NORTH ALAMO WATER SUPPLY CORPORATION; DOCKET NUMBER: 2018-0377-PWS-E; IDENTIFIER: RN101247922; LOCATION: Edinburg, Hidalgo County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $390; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(20) COMPANY: P.M. Petroleum Incorporated dba Hamilton Market; DOCKET NUMBER: 2018-0480-PWS-E; IDENTIFIER: RN105027791; LOCATION: Dripping Springs, Travis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(C)(i), by failing to maintain water works operation and maintenance records and make them available for review to the executive director during the investigation; 30 TAC §290.121(a)

and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; and 30 TAC §290.39(l)(4) and (5), by failing to meet the conditions for an issued exception; PENALTY: $260; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(21) COMPANY: ROSHNEIL BUSINESS INVESTMENTS INCORPORATED dba One Stop; DOCKET NUMBER: 2018-0385-PST-E; IDENTIFIER: RN101539625; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, Class B, and Class C; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: $3,338; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Sawyer Oilfield Products, LLC; DOCKET NUMBER: 2018-0534-AIR-E; IDENTIFIER: RN110096013; LOCATION: Brownwood, Brown County; TYPE OF FACILITY: fiberglass storage tank manufacturing facility; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(23) COMPANY: Scott W. Gray dba Iwanda Mobile Home Park; DOCKET NUMBER: 2018-0352-PWS-E; IDENTIFIER: RN101245751; LOCATION: Orange County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director (ED) each quarter by the tenth day of the month following the end of the quarter for the third quarter of 2017; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year, and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility, and that the information in the CCR is correct and consistent with compliance monitoring data for the calendar year 2016; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notifications and submit a copy of each public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2015 - June 30, 2015, July 1, 2015 - December 31, 2015, January 1, 2016 - June 30, 2016, and July 1, 2016 - December 31, 2016, monitoring periods and regarding the failure to timely report arsenic monitoring results for the third quarter of 2016; PENALTY: $627; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(24) COMPANY: TPC Group LLC; DOCKET NUMBER: 2018-0235-AIR-E; IDENTIFIER: RN104964267; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: organic chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), Federal Operating Permit Number O1327, General Terms and Conditions and Special Terms and Conditions Number 20, New Source Review Permit Number 20485, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $13,688; Supplemental Environmental Project offset amount of $5,475; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(25) COMPANY: Warehouse Rack Company LP; DOCKET NUMBER: 2018-0512-AIR-E; IDENTIFIER: RN100857531; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: surface coating facility; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-3415; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201803102
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 17, 2018

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Combined Notice of Public Meeting and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater for TPDES Permit for Municipal Wastewater Amendment Permit No. WQ0010549002

APPLICATION AND PRELIMINARY DECISION. City of Blanco, P.O. Box 750, Blanco, Texas 78606, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010549002 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 225,000 gallons per day to an annual average flow not to exceed 1,600,000 gallons per day. In addition, the amendment authorizes decommissioning the existing lagoon treatment facilities and irrigation facilities, to decommission Outfall 001 and Outfall 002; the construction of a new conventional wastewater treatment facility, the addition of a proposed pond, and the addition of a proposed outfall. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day with an option to dispose of treated domestic wastewater via irrigation of 68 acres of non-public access agricultural land through Outfall 002. TCEQ received this application on November 10, 2016.

The facility is located at 289 Waters Edge Road, in Blanco County, Texas 78606. The treated effluent is discharged to an unnamed ditch; thence to Upper Blanco River via Outfall 001 and will be discharged to a man-made pond; thence to two unnamed ditches; thence to Upper Blanco River via Outfall 003 in Segment No. 1813 of the Guadalupe River Basin. The unclassified receiving water use is minimal aquatic life use for the unnamed ditches and man-made pond. The designated uses for Segment No. 1813 are exceptional aquatic life use, public water supply, aquifer protection, and primary contact recreation. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.103055&lng=-98.41&zoom=13&type=r

In accordance with 30 Texas Administrative Code §307.5 and the TCEQ's Procedures to Implement the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in the Upper Blanco River, which has been identified as having exceptional aquatic life uses. Existing uses will be maintained and protected with additional effluent limitations. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Blanco City Hall, 300 Pecan Street, Blanco, Texas.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments about this application. The TCEQ will hold a public meeting on this application because it was requested by a local legislator. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application.

The public meeting will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, August 23, 2018, at 7:00 p.m.

Old Blanco County Courthouse

(Second Floor Courtroom)

300 Main Street

Blanco, Texas 78606

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/about/comments.html. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at www.tceq.texas.gov.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. **If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period.**

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s)

and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/about/comments.html within 30 days from the date of newspaper publication of this notice.

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. Search the database using the permit number for this application, which is provided at the top of this notice.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from City of Blanco at the address stated above or by calling Mayor Martha Herden at (830) 833-4525.

TRD-201803123
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 18, 2018

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Enforcement Orders

An agreed order was adopted regarding FLOMOT WATER SUPPLY CORPORATION, Docket No. 2017-0330-PWS-E on July 17, 2018, assessing $1,092 in administrative penalties with $218 deferred. Information concerning any aspect of this order may be obtained by contacting Sarah Kim, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding YOGINE LLC dba Evers Food Mart, Docket No. 2017-0822-PST-E on July 17, 2018, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KAISER BUSINESS, LLC dba Country Mart, Docket No. 2017-0828-PST-E on July 17, 2018, assessing $3,600 in administrative penalties with $720 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Monahans-Wickett-Pyote Independent School District, Docket No. 2017-0940-PST-E on July 17, 2018, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding COKE COUNTY WATER SUPPLY CORPORATION, Docket No. 2017-1107-PWS-E on July 17, 2018, assessing $388 in administrative penalties with $77 deferred. Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Z & Z, CORP. dba Quickway Food Store 2, Docket No. 2017-1162-PST-E on July 17, 2018, assessing $5,813 in administrative penalties with $1,162 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PAN WORTH INC dba Country Boy Beer and Wine, Docket No. 2017-1192-PST-E on July 17, 2018, assessing $6,461 in administrative penalties with $1,292 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Fossil Rim Wildlife Center, Inc., Docket No. 2017-1216-MWD-E on July 17, 2018, assessing $5,437 in administrative penalties with $1,087 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MJKMart LLC dba MJK Mart, Docket No. 2017-1243-PST-E on July 17, 2018, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding JPPS, INC. dba Jacks Grocery 1, Docket No. 2017-1245-PST-E on July 17, 2018, assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SUPER PETROLEUM, INC. dba Speedy Mart, Docket No. 2017-1260-PST-E on July 17, 2018, assessing $3,600 in administrative penalties with $720 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SB Fleet-Lube, LLC, Docket No. 2017-1277-PST-E on July 17, 2018, assessing $4,606 in administrative penalties with $921 deferred. Information concerning any aspect of this order may be obtained by contacting John Paul Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Cascade Holdings, L.L.C., Docket No. 2017-1359-EAQ-E on July 17, 2018, assessing $4,188 in administrative penalties with $837 deferred. Information concerning

any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 3 STARS AVALON REAL ESTATE HOLDING GP, INC. dba Avalon Mart, Docket No. 2017-1369-PST-E on July 17, 2018, assessing $6,750 in administrative penalties with $1,350 deferred. Information concerning any aspect of this order may be obtained by contacting John Paul Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BW Gas & Convenience Retail, LLC dba YESWAY 1071, Docket No. 2017-1383-PST-E on July 17, 2018, assessing $3,600 in administrative penalties with $720 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MUNISHA, INC. dba Grab All Drive In Grocery, Docket No. 2017-1501-PST-E on July 17, 2018, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The Valspar Corporation, Docket No. 2017-1513-PST-E on July 17, 2018, assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting Jo Hunsberger, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding B-Z STAR, INC. dba BZ Shop, Docket No. 2017-1521-PST-E on July 17, 2018, assessing $4,124 in administrative penalties with $824 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding T7 Enterprises LLC dba Reliable Tire Disposal, Docket No. 2017-1570-MSW-E on July 17, 2018, assessing $3,750 in administrative penalties with $750 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GIRL SCOUTS OF TEXAS OKLAHOMA PLAINS, INC., Docket No. 2017-1684-PWS-E on July 17, 2018, assessing $342 in administrative penalties with $68 deferred. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Seadrift Coke L.P., Docket No. 2017-1736-PWS-E on July 17, 2018, assessing $269 in administrative penalties with $53 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Department of Transportation, Docket No. 2017-1745-PWS-E on July 17, 2018, assessing $157 in administrative penalties with $31 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Union Carbide Corporation, Docket No. 2017-1765-AIR-E on July 17, 2018, assessing $2,813 in administrative penalties with $562 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Landmark Industries, Docket No. 2018-0023-PST-E on July 17, 2018, assessing $5,250 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Jonathan Nguyen, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Vishva, Inc. dba Pac N Go 904, Docket No. 2018-0036-PST-E on July 17, 2018, assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding THE AMERICAN LEGION, MISSING IN ACTION POST NO. 231, THE AMERICAN LEGION, DEPARTMENT OF TEXAS, POTTSBORO, TEXAS, Docket No. 2018-0048-PWS-E on July 17, 2018, assessing $438 in administrative penalties with $87 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Harlingen Medical Center, Limited Partnership, Docket No. 2018-0106-PST-E on July 17, 2018, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Murchison, Docket No. 2018-0155-PWS-E on July 17, 2018, assessing $437 in administrative penalties with $87 deferred. Information concerning any aspect of this order may be obtained by contacting Sarah Kim, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201803114
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 18, 2018

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Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application No. 40296

Application. South Texas Refuse Disposal, Inc., 1384 CR 532, Hondo, Texas 78861, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40296, to construct and operate a Type V municipal solid waste Transfer Station. The proposed facility; STRD Transfer Facility, will be located at 1384 CR

532, Hondo, Texas 78861, approximately 2 miles south of Hondo, between CR 462 and CR 531, on the north side of CR 532, in Medina County. The Applicant is requesting authorization to transfer, municipal solid waste which includes residential and commercial solid waste. The registration application is available for viewing and copying at the Hondo Public Library at 2003 Avenue K, Hondo, Texas 78861, and may be viewed online at http://www.strdi.net. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.309166&lng=-99.158611&zoom=13&type=r. For exact location, refer to application.

Public Comment/Public Meeting. Written public comments or written requests for a public meeting must be submitted to the Office of the Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the interim executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The interim executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The interim executive director is not required to file a response to comments.

Interim Executive Director Action. The interim executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the interim executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the interim executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk mail code MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically submitted to http://www14.tceq.texas.gov/epic/eComment/. If you choose to communicate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency's public record. For information about this application or the registration process, individual members of the general public may call the TCEQ Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Further information may also be obtained from South Texas Refuse Disposal, Inc. at the address stated above or by calling Felimon M. Cuellar, at (830) 426-1398.

TRD-201803116
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 18, 2018

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Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application No. 40297

Application. Fomento de Construcciones y Contratas, S.A., 10077 Grogan Mill Road, Suite 466, The Woodlands, Texas, 77380, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40297 to construct and operate a Type V municipal solid waste Materials Recovery Facility. The proposed facility, FCC Materials Recovery Facility Houston, will be located southeast of the intersection of Ley Road and Roundhouse Lane, 77078, in Harris County. The Applicant is requesting authorization to process, transfer, and recycle municipal solid waste which includes recyclables from the City of Houston's residential single stream recycling program. The registration application is available for viewing and copying at the Lakewood Library, 8815 Freand Street, Houston, Texas, 77028, and may be viewed online at http://fccenvironmental.com/services/municipal-services/. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.546666&lng=- 96.665833&zoom=13&type=r. For exact location, refer to application.

The TCEQ executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council and has determined that the action is consistent with the applicable CMP goals and policies.

Public Comment/Public Meeting. Written public comments or written requests for a public meeting must be submitted to the Office of the Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk, Mail Code MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically submitted

to http://www14.tceq.texas.gov/epic/eComment/. If you choose to communicate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency's public record. For information about this application or the registration process, individual members of the general public may call the TCEQ Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Further information may also be obtained from Fomento de Construcciones y Contratas, S.A. at the address stated above or by calling Andrea Rodriguez at (832) 792-8878.

TRD-201803115
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 18, 2018

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Notice of District Petition

Notice issued July 16, 2018

TCEQ Internal Control No. D-04132018-045; RVEST, LP and Cool Water Partners, LP (Petitioners) filed a petition for creation of Cool Water Municipal Utility District (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are four lienholders, Theron D. Vaughan, Ellie B. Vaughan, Sonterra Development, LLC, and First State Bank Central Texas on the property to be included in the proposed District and the aforementioned entities have consented to the petition; (3) the proposed District will contain approximately 312.94 acres located within Williamson County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will: (1) design, construct, acquire, maintain, and operate an adequate and efficient waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) construct, acquire, improve, maintain, and operate such other additional facilities, systems, plants and enterprises as may be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately $39,300,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement, "(I/we) request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.state.tx.us.

TRD-201803119
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 18, 2018

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Notice of Hearing Twin Cedars Environmental Services, LLC

SOAH Docket No. 582-18-4670

TCEQ Docket No. 2018-0413-MSW

Proposed Permit No. 2396

APPLICATION. Twin Cedars Environmental Services, LLC, P.O. Box 800273, LaGrange, Georgia 30240 has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit to authorize the acceptance of municipal solid waste from small trash collection vehicles, transferring the waste from the smaller collection vehicles to larger waste transfer trailers, with final transport of the waste to a landfill. The facility is proposed to be located at 13830 Spur 364, Tyler, Smith County, Texas 75709. The TCEQ received this application on January 17, 2017. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.32445&lng=-95.39637&zoom=13&type=r. For the exact location, refer to the application.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Tyler Public Library, 201 S. College Avenue, Tyler, Smith County, Texas 75702. The permit application may be viewed online at the following Web page: http://www.totalengineeringservices.com/clients/client-file-access/.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - August 27, 2018

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on June 6, 2018. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 361, Texas Health and Safety Code; TCEQ rules including 30 Texas Administrative Code (TAC) Chapter 330; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the preliminary hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at http://www.tceq.texas.gov/. The mailing address for the TCEQ is P.O. Box 13087, Austin Texas 78711-3087.

Further information may also be obtained from Twin Cedars Environmental Services, LLC at the address stated above or by calling Mr. John McConnell at (706) 773-1590.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: July 16, 2018

TRD-201803121
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 18, 2018

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Notice of Opportunity to Comment on a Shutdown/Default Order 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 Order (S/DO). 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 overfill 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 overfill 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, 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 **August 27, 2018.** 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.

A copy 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 August 27, 2018.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the S/DO and/or the comment procedure at the listed phone number; however, comments on the S/DO shall be submitted to the commission in **writing.**

(1) COMPANY: Jai Mahavir Corporation dba Chevron Quick Stop; DOCKET NUMBER: 2017-1609-PST-E; TCEQ ID NUMBER: RN101537850; LOCATION: 525 West Main Street, Grand Prairie, Dallas County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(c)(2) and 30 TAC §334.51(a)(6), by failing to ensure that all installed spill containment devices are maintained in good operating condition; TWC, §26.3475(d) and 30 TAC §334.49(a)(4), by failing to provide corrosion protection to all underground and/or totally or partially submerged metal components of an UST system; and 30 TAC §334.48(a) and (b), by failing to ensure that the UST system is operated, maintained, and managed in accordance with accepted industry practices; PENALTY: $20,500; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201803099
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 17, 2018

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 27, 2018.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 27, 2018.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Adarsh Enterprises, LLC dba Nu Way of Joaquin; DOCKET NUMBER: 2017-1294-PST-E; TCEQ ID NUMBER: RN102359510; LOCATION: 13054 United States Highway 84 East, Joaquin, Shelby County; TYPE OF FACILITY: underground storage tank (UST) system at a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; 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; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A, B, and C - for the facility; PENALTY: $13,056; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: D&A Recycling Center, LLC; DOCKET NUMBER: 2017-0807-MSW-E; TCEQ ID NUMBER: RN109742890; LOCATION: 7300 Farm-to-Market Road 1346, San Antonio, Bexar County; TYPE OF FACILITY: waste processing and disposal site; RULES VIOLATED: 30 TAC §330.7(a) and §330.15(c), by failing to obtain authorization from the TCEQ prior to engaging in any activity of storage, processing, removal, or disposal of municipal solid waste (MSW) and by causing, suffering, allowing, or permitting the unauthorized processing and storage of MSW; PENALTY: $1,250; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Dittrich, Inc. dba The Hitching Post; DOCKET NUMBER: 2017-1265-PST-E; TCEQ ID NUMBER: RN101696789; LOCATION: 14 North Kessler Avenue, Schulenburg, Fayette County; TYPE OF FACILITY: underground storage tank system at a convenience and clothing store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74(3), by failing to file a release determination report with the commission within 45 days after a suspected release has occurred; PENALTY: $6,750; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(4) COMPANY: Hobert T. Douglas II; DOCKET NUMBER: 2016-2065-MSW-E; TCEQ ID NUMBER: RN103074415; LOCATION: 3005 Farm-to-Market Road 105 North, Vidor, Orange County; TYPE OF FACILITY: property; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste; PENALTY: $3,937; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: KELLEY'S USED AUTO PARTS, INC.; DOCKET NUMBER: 2017-1001-MSW-E; TCEQ ID NUMBER: RN103759957; LOCATION: 2401 Bellmead Drive, Bellmead, McLennan County; TYPE OF FACILITY: automotive salvage yard; RULES VIOLATED: 30 TAC §330.15(c) and TCEQ AO Docket Number 2014-0879-MSW-E, Ordering Provisions Numbers 2.a. and 2.b.i., by causing, suffering, allowing, or permitting the unauthorized dumping or disposal of municipal solid waste; and 30 TAC §328.60(a) and TCEQ AO Docket Number 2014-0879-MSW-E, Ordering Provision Number 2.b.ii., by failing to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers; PENALTY: $135,000; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: Ray Eidson dba Country RV Park; DOCKET NUMBER: 2016-1370-PWS-E; TCEQ ID NUMBER: RN107349532; LOCATION: 3807 South County Road 1210 near Midland, Midland County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(4)(B), by failing to collect one raw groundwater source *Escherichia coli* sample from the facility's one active source within 24 hours of notification of a distribution total coliform-positive result on a routine sample during the month of December 2015; and 30 TAC §290.122(c)(2)(A) and (f), by failing to issue public notification and submit a copy of the public notification to the executive director regarding the failure to collect increased water samples for coliform analysis during the month of January 2016, the failure to collect repeat water samples for coliform analysis during the month of December 2015, and the failure to collect routine water samples for coliform analysis during the months of February - May, and September - November 2015; PENALTY: $835; STAFF ATTORNEY: Logan Harrell, Litigation Division, MC 175, (512) 239-1439; REGIONAL OFFICE: Midland Regional Office, 9900 West Interstate Highway 20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(7) COMPANY: Savary Mao dba Country Pantry 16; DOCKET NUMBER: 2017-1380-PST-E; TCEQ ID NUMBER: RN102260007; LOCATION: 3140 Texas Avenue, Bridge City, Orange County; TYPE

OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.55(a)(6)(D)(i) and §334.78(c), by failing to submit a site assessment report within 45 days after a UST removal activity; PENALTY: $1,312; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: T.O.F.S., LLC; DOCKET NUMBER: 2017-1710-SLG-E; TCEQ ID NUMBER: RN106901150; LOCATION 17721 Private Road 2375, Lubbock, Lubbock County; TYPE OF FACILITY: registered sludge transporter business; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §312.143, by failing to deposit wastes at an authorized facility; PENALTY: $7,993 STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-201803100
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 17, 2018

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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 the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 27, 2018.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 27, 2018.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Charles M. Watts dba Island View Landing; DOCKET NUMBER: 2018-0143-PWS-E; TCEQ ID NUMBER: RN101239606; LOCATION: 1099 Lindsey Road, Jefferson, Marion County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.122(c)(2)(A) and (f) and TCEQ Order Docket Number 2014-1754-PWS-E, Ordering Provision Number 3.a.iii., by failing to provide public notification and submit a copy of the notification to the executive director regarding the failure to collect at least five routine distribution coliform samples the month following a total coliform-positive, the failure to conduct repeat coliform monitoring, and the failure to collect one raw groundwater source *Escherichia coli* sample within 24 hours of notification of a total coliform-positive result; and 30 TAC §290.109(c)(3)(A), by failing to collect a set of repeat distribution total coliform samples within 24 hours of being notified of a total coliform-positive sample result on a routine sample; PENALTY: $2,169; STAFF ATTORNEY: Logan Harrell, Litigation Division, MC 175, (512) 239-1439; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Thomas A. Brown, Sr.; DOCKET NUMBER: 2016-0736-LII-E; TCEQ ID NUMBER: RN106101066; LOCATION: 1412 A 5th Avenue, Fort Worth, Tarrant County; TYPE OF FACILITY: irrigation business; RULES VIOLATED: TWC, §37.003, Texas Occupations Code, §1903.251, and 30 TAC §30.5(a), by failing to hold an irrigator license prior to selling, designing, installing, maintaining, altering, repairing, servicing, or providing consulting services relating to an irrigation system; PENALTY: $936; STAFF ATTORNEY: Logan Harrell, Litigation Division, MC 175, (512) 239-1439; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201803101
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 17, 2018

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Royal Mfg Co, LP dba Wright Oil

SOAH Docket No. 582-18-4651

TCEQ Docket No. 2017-0611-MLM-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - August 16, 2018

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed February 22, 2018, concerning assessing administrative penalties against and requiring certain actions of Royal Mfg Co, LP dba Wright Oil, for violations in Comal County, Texas, of: Texas Water Code §26.121, 30 Texas Administrative Code §281.25(a)(4), §§335.4, 335.62, 335.503(a), and 335.504, 40 C.F.R. §262.11, and Texas Pollutant Discharge Elimination System Multi-Sector Stormwater General Permit No. TXR05W533 (the "Permit"), Part III, Section A.

The hearing will allow Royal Mfg Co, LP dba Wright Oil, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Royal Mfg Co, LP dba Wright Oil, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of **Royal Mfg Co, LP dba Wright Oil** to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Directors Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Royal Mfg Co, LP dba Wright Oil, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and chs. 7 and 26, Texas Health and Safety Code ch. 361, and 30 Texas Administrative Code chs. 70, 281, and 335; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §§70.108 and 70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Elizabeth Harkrider, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH"

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

TRD-201803122
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 18, 2018

♦ ♦ ♦

Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of SAI UDHDIM INC dba Sachse Food Mart

SOAH Docket No. 582-18-4650

TCEQ Docket No. 2017-0719-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - August 16, 2018

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed December 4, 2017, concerning assessing administrative penalties against and requiring certain actions of SAI UDHDIM INC dba Sachse Food Mart, for violations in Dallas County, Texas, of: Tex. Water Code §26.3475(c)(1) and (d) and 30 Tex. Admin. Code §§334.10(b)(1)(B), 334.49(a)(4), (c)(2)(C), and (c)(4)(C), 334.50(b)(1)(A), and 334.51(c)(1).

The hearing will allow SAI UDHDIM INC dba Sachse Food Mart, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford SAI UDHDIM INC dba Sachse Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing.

Upon failure of SAI UDHDIM INC dba Sachse Food Mart to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. SAI UDHDIM INC dba Sachse Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7 and 26 and 30 Tex. Admin. Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jake Marx, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at

http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: July 16, 2018

TRD-201803120
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 18, 2018

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Notice of Water Rights Application

Notice issued July 17, 2018

APPLICATION NO. 14-1282A; Billy L. and Billie F. Sawyer, 700 S Irving St, San Angelo, Texas 76903, Applicants, have applied for an amendment to Certificate of Adjudication No. 14-1282 to change the diversion point for a 5.089 acre-foot portion of water to a downstream diversion reach on the South Concho River in Tom Green County and to change the place of use of their entire authorized 9.519 acre-feet of water to irrigate land in Tom Green County. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on May 5, 2017. Additional information and fees were received on March 19, 2018, May 21, 2018, and May 22, 2018. The application was declared administratively complete and filed with the Office of the Chief Clerk on June 1, 2018. The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special conditions including, but not limited to, installing a measuring device for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by August 3, 2018.

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results. A public meeting is intended for the taking of public comment, and is not a contested case hearing. The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement, "(I/we) request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns.

Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201803117
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 18, 2018

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Notice of Water Rights Application

Notice issued July 12, 2018

APPLICATION NO. 13081; Reid Road Municipal Utility District 1 and Reid Road Municipal Utility District 2, 2800 Post Oak Blvd., Suite 4100, Houston, Texas 77056, Applicants, have applied for a water use permit to authorize the use of the bed and banks of an unnamed tributary of White Oak Bayou and White Oak Bayou, San Jacinto River Basin to convey a portion of its groundwater-based return flows for subsequent diversion and use for recreational purposes in Harris County. More information on the application and how to participate in the permitting process is given below. The application and fees were received on September 19, 2013. Additional information was received on August 18, 2014, August 3, August 6, October 28, October 29, and December 14, 2015. The application was declared administratively complete and filed with the Office of the Chief Clerk on December 14, 2015. The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions including, but not limited to, streamflow restrictions and maintaining a measuring device. The application and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by August 15, 2018.

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results. A public meeting is intended for the taking of public comment, and is not a contested case hearing. The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative),

mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement, "(I/we) request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns.

Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201803118
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 18, 2018

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Lauren Staton at (512) 463-5800.

Deadline: Semiannual Report due December 5, 2017, for Committees

Bonita C. Ocampo, Abilene Fire Fighters Association Political Action Committee, 8709 Hornbeam Dr. Fort Worth, Texas 76123

Deanna Everett Tollerton, Williamson County Young Democrats, 13224 Marrero Dr., Austin, Texas 78729

Deadline: Special Session Report due September 14, 2017, for Candidates and Officeholders

Diana Arevalo, P.O. Box 100431, San Antonio, Texas 78201

Michael E. Cooper, P.O. Box 33041, Fort Worth, Texas 76162

Jay Dean, 3822 Holly Ridge, Longview, Texas 75605

Laquitta S. DeMerchant, 5826 New Territory Blvd. #812, Sugar Land, Texas 77479

Chris R. Evans, 615 County Road 358, Dublin, Texas 76446

Danny Harrison, 2745 Dallas Parkway #455, Plano, Texas 75093

Kory D. Watkins, 7760 Cochise Dr., Lone Oak, Texas 75453

Deadline: 30-Day Pre-Election Report due February 5, 2018, for Candidates and Officeholders

Michael L. Pinkard Jr., 2413 Xenops Ave., McAllen, Texas 78504

Deadline: 8-Day Pre-Election Report due February 26, 2018, for Candidates and Officeholders

Jenifer Rene Pool, P.O. Box 572211, Houston, Texas 77257

Deadline: Runoff Report due May 14, 2018, for Candidates and Officeholders

Matthew S. Beebe, 70 NE Loop 410, Ste. 755, San Antonio, Texas 78216

Deshaundra Lockhart Jones, P.O. Box 1554, DeSoto, Texas 75123

Deadline: Lobby Activities Report due February 12, 2018

Jennifer L. Fagan, Windstream Communications, 901 S. Mopac Expy, Bldg. 1, Austin, Texas 78746 ($500 Fine Reverted)

Eric Woomer, 816 Congress Ave., Ste. 701, Austin, Texas 78701

Deadline: Lobby Activities Report due May 10, 2018

Katherine Ann Carmichael, 1601 Faro Dr., #601, Austin, Texas 78741

Adam Goldman, 919 Congress Ave., Ste. 425, Austin, Texas 78701

Lucinda Dean Saxon, 2204 Hayfield Square, Pflugerville, Texas 78660

Deadline: Personal Financial Statement due February 12, 2018

Michael L. Pinkard, Jr., 2413 Xenops Ave., McAllen, Texas 78504

John Lujan III, 20003 FM 1937, San Antonio, Texas 78221

Deadline: Personal Financial Statement due May 16, 2018

Laurie M. Limbacher, 800 W. 5th Street, Austin, Texas 78701

Deadline: Personal Financial Statement due May 17, 2018

Manuel M. Quinones, Jr., P.O. Box 681568, San Antonio, Texas 78268-1568

TRD-201803044
Seana Willing
Executive Director
Texas Ethics Commission
Filed: July 12, 2018

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Department of Family and Protective Services

Correction of Error

The Department of Family and Protective Services adopted amendments to 40 TAC §745.4205 in the June 29, 2018, issue of the *Texas Register.* Due to a Texas Register editing error, the words "of this title" were inserted into subparagraph (E) of paragraph (1) in two places. The correct text for subparagraph (E) should read as follows:

"(E) Any other information that must be included in the child's record for an emergency admission, as listed in 26 TAC §748.1271 (relating to At the time of an emergency admission, what information must I document in the child's record?) or 26 TAC §749.1189 (relating to At the time of an emergency admission, what information must I document in the child's record?);"

Additionally, the insertion of the phrase "of this title" caused the section to be published in its entirety in the July 29, 2018, issue of the *Texas Register* along with the following sentence in the preamble portion of the filing:

"Section 745.4205 is adopted with changes to the proposed text as published in the March 16, 2018, issue of the *Texas Register* (43 TexReg 1619), and therefore will be republished."

This sentence was not needed as the section should have been adopted without changes and not have been republished.

TRD-201803109

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Golden Crescent Workforce Development Board

Request for Proposals for Operation and Management of the Workforce Solutions Golden Crescent Centers System

The Golden Crescent Workforce Development Board is requesting proposals for the Operation and Management of the Workforce Solutions Golden Crescent Centers system. The package can be found at http://www.gcworkforce.org/doing-business-with-us.

Deadline to submit Proposals is August 24, 2018, by 5:00 p.m. CST

TRD-201803047

Henry J. Guajardo

Executive Director

Golden Crescent Workforce Development Board

Filed: July 12, 2018

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Texas Health and Human Services Commission

Correction of Error

The Texas Health and Human Services Commission published a proposed amendment to 26 TAC §744.1301 in the June 22, 2018, issue of the *Texas Register* (43 TexReg 4069). Due to a Texas Register editing error, the figure that accompanied the proposed amendment was inadvertently omitted from the Tables & Graphics section. The figure is republished in its entirety as follows:

Figure: 26 TAC §744.1301

Type of training:	**Who is required to take the training?**	**When must the training be completed?**
(1)(A) Orientation to your operation as required by §744.1303 of this division (relating to What must orientation for employees at my operation include?).	(B) Each employee.	(C) Within seven days of employment and before having unsupervised access to a child in care.
(2)(A) Eight clock hours of pre-service training as required by §744.1305 of this division (relating to What areas of training must the pre-service training for caregivers cover?).	(B) Each non-exempt caregiver. A caregiver may be exempt from pre-service training as specified in §744.1307 of this division (relating to Are any caregivers exempt from the pre-service training?).	(C) For non-exempt caregivers, within 90 days of employment and before being counted in the child/caregiver ratio.
(3)(A) Pediatric first aid with rescue breathing and choking as required by §744.1315(a) of this division (relating to Who must have pediatric first aid and pediatric CPR training?).	(B) Each caregiver, site director, program director, and operation director.	(C)(i) Within 90 days of employment and before having unsupervised access to a child in care; and (C)(ii) The person must stay current in this training.
(4)(A) Pediatric CPR as required by §744.1315(b) of this division.	(B) Each caregiver, site director, program director, and operation director.	(C)(i) Within 90 days of employment; and (C)(ii) The person must stay current in this training.
(5)(A)15 clock hours of annual training as required by §744.1309 of this division (relating to What areas of training must the annual training for caregivers and site directors cover?).	(B) Each caregiver and site director.	(C)(i) Within 12 months of employment; and (C)(ii) During each 12-month period, and as further required by §744.1313 of this division (relating to When must annual training for my caregivers and director be obtained?).

(6)(A) 20 clock hours of annual training as required by §744.1311 of this division (relating to What areas of training must the annual training for an operation director or a program director cover?).	(B) Each program director or operation director.	(C)(i) Within 12 months of employment; and (C)(ii) During each 12-month period, and as further required by §744.1313 of this division.
(7)(A) Two clock hours of transportation training as required by §744.1317 of this division (relating to What additional training must an employee and director have if the operation transports children?).	(B)(i) The site director, and program director or operation director, if the operation transports a child whose chronological or developmental age is younger than nine years old; and (B)(ii) Each employee who transports a child whose chronological or developmental age is younger than nine years old.	(C)(i) Prior to transporting children; and (C)(ii) Annually, thereafter.

TRD-201803107

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Notice of Public Hearing on Proposed Medicaid Payment Rate for Post-Acute Rehabilitation Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 13, 2018, at 10:30 a.m., to receive public comment on the proposed Medicaid payment rates for Post-Acute Rehabilitation Services (PARS) in the Comprehensive Rehabilitation Services (CRS) program.

The public hearing will be held in the Public Hearing Room of the Brown-Heatly Building located at 4900 N. Lamar Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. Free parking is available in front of the building and in the adjacent parking garage. The hearing will be held in compliance with Texas Human Resources Code §117.074(c), which requires public notice of and the opportunity for public comment on proposed reimbursement rates paid for medical services provided under that chapter.

Proposal. HHSC proposes new payment rates for PARS effective September 1, 2018.

Methodology and Justification. The proposed payment rate was calculated in accordance with Title 1 of the Texas Administrative Code §355.9040, relating to the reimbursement methodology for the Comprehensive Rehabilitation Services Program.

Briefing Package. A briefing package describing the proposed payment rate will be available at https://rad.hhs.texas.gov/rate-packets on or after July 27, 2018. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting the HHSC Rate Analysis Department by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RAD-LTSS@hhsc.state.tx.us. In addition, the briefing package 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 Health and Human Services Commission, Rate Analysis Department, H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RAD-LTSS@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to the Health and Human Services Commission, Rate Analysis Department, H-400, Brown-Heatly Building, 4900 North Lamar Boulevard, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

TRD-201803053
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: July 12, 2018

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Public Hearing on the Proposed Plan on Long-Term Care for Persons with an Intellectual Disability or Related Conditions

The Health and Human Services Commission (HHSC) will accept public testimony regarding the Proposed Plan on Long-Term Care for Persons with an Intellectual Disability or Related Conditions (LTC Plan) at a public hearing on Tuesday, August 21, 2018, at 10:00 a.m. at the John H. Winters Human Services Complex, 701 W 51st St., Austin, Texas 78751. HHSC is required by Texas Health and Safety Code §533A.062 to develop the proposed LTC Plan.

A person with a disability who plans to attend the public hearing and requires adaptive services must request those services by contacting the HHSC Quality Reporting Unit by telephone at (512) 438-4350 or by email at CPIperformancemeasures@hhsc.state.tx.us no later than noon on August 17, 2018.

A copy of the proposed LTC Plan for Fiscal Years 2020-2021 is available on the HHSC Web site at: https://hhs.texas.gov/laws-regulations/reports-presentations. Alternatively, interested parties may request a free copy of the proposed LTC Plan by contacting the HHSC Quality Reporting Unit by U.S. mail, telephone, or by email at the address below.

Written Comments. Written comments will be accepted for 30 days and must be: (1) emailed no later than 5:00 p.m. on Thursday, September 20, 2018, to CPIperformancemeasures@hhsc.state.tx.us; or (2) postmarked no later than August 30, 2018, and addressed to:

HHSC MSS/MCS

Quality Monitoring Program

Quality Reporting Unit

Mail Code W-510

701 West 51st Street

Austin, Texas 78751

TRD-201803054
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: July 12, 2018

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Texas Department of Housing and Community Affairs

Notice of Public Hearing - Multifamily Housing Revenue Bonds (Forestwood)

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at the City of Balch Springs Public Library Learning Center, 12450 Elam Road, Balch Springs, Texas 75180 at 5:30 p.m. on August 14, 2018. The hearing is regarding an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $20,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to LDG Forestwood, LP, a Texas limited partnership, or a related person or affiliate thereof (the "Borrower"), to finance the costs of acquiring and constructing a multifamily housing development. The housing development is described as follows: an approximately 220-unit affordable, multifamily housing development to be known as Forestwood, to be located at 4540 Lasater Road, Balch Springs, Dallas County, Texas 75181 (the "Development"). Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Shannon Roth at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941; (512) 475-3929; and/or shannon.roth@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Shannon Roth in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Shannon Roth prior to the date scheduled for the hearing. Individuals who require a language interpreter for the public hearing should contact Elena Peinado at (512) 475-3814 at least five days prior to the hearing date so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this hearing should contact Shannon Roth, ADA Responsible Employee, at (512) 475-3929 or Relay Texas at (800) 735-2989 at least five days before the hearing so that appropriate arrangements can be made.

This notice is published and the hearing is to be held in satisfaction of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

http://www.tdhca.state.tx.us/multifamily/communities.htm

TRD-201803061
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 13, 2018

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"Second Amendment to 2018-1 Multifamily Direct Loan" Notice of Funding Availability

I. Sources of Multifamily Direct Loan Funds.

Multifamily Direct Loan funds are made available through program income generated from prior year HOME allocations, de-obligated funds from prior year HOME allocations, the 2016, 2017, and 2018 Grant Year HOME allocation, the 2017 and 2018 Grant Year National Housing Trust Fund ("NHTF") allocation, loan repayments from the Tax Credit Assistance Program ("TCAP Repayment funds" or "TCAP RF"), and program income generated by Neighborhood Stabilization Program Round 1 ("NSP1") loan repayments. The Department may amend this NOFA or the Department may release a new NOFA upon receiving its 2018 HOME or 2018 NHTF allocation from HUD or additional TCAP or NSP1 loan repayments. These funds have been programmed for multifamily activities including acquisition and/or refinance of affordable housing involving new construction or rehabilitation.

II. Notice of Funding Availability (NOFA).

The Texas Department of Housing and Community Affairs (the "Department") announces the availability of up to $58,304,276 in Multifamily Direct Loan funding for the development of affordable multifamily rental housing for low-income Texans. Of that amount, at least $8,215,058 will be available for eligible Community Housing Development Organizations ("CHDO") meeting the requirements of the definition of Community Housing Development Organization found in 24 CFR §92.2 and the requirements of this Notice of Funding Availability ("NOFA"); up to $22,324,041 will be available for applications propos-

ing Supportive Housing in accordance with 10 TAC §10.3(a) of the 2018 Uniform Multifamily Rules or applications that commit to setting aside units for extremely low income households as required by 10 TAC §13.4(a)(1)(A)(ii); the remaining funds will be available for applications that do not meet the requirements above.

The Multifamily Direct Loan program provides loans to for-profit and nonprofit entities to develop affordable housing for low-income Texans qualified as earning 80 percent or less of the applicable Area Median Family Income.

The 2018 Grant Year HOME allocation being added to this NOFA as a result of this Second Amendment will be subject to the Regional Allocation Formula ("RAF") in Attachment D to the Second Amendment from July 27, 2018, until 5:00 p.m. August 27, 2018, and then be available on a statewide basis within each set-aside.

The 2018 Grant Year NHTF allocation being added to this NOFA as a result of this Second Amendment will be subject to the RAF in Attachment E to the Second Amendment from July 27, 2018, until 5:00 p.m. August 27, 2018, and then be available on a statewide basis within the Supportive Housing/Soft Repayment set-aside.

All funding will be available on a statewide basis from August 28, 2018, until November 30, 2018.

III. Application Deadline and Availability.

Based on the availability of funds, Applications may be accepted until 5:00 p.m. Austin Local Time on November 30, 2018. The "Amended 2018-1 Multifamily Direct Loan" NOFA is posted on the Department's website: http://www.tdhca.state.tx.us/multifamily/nofas-rules.htm. Subscribers to the Department's LISTSERV will receive notification that the First Amendment to the NOFA is posted.

Questions regarding the 2018-1 Multifamily Direct Loan NOFA may be addressed to Andrew Sinnott at (512) 475-0538 or andrew.sinnott@tdhca.state.tx.us.

TRD-201803063
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 13, 2018

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Texas Department of Insurance

Texas Automobile Insurance Plan Association Filing Request for Amendments to Texas Plan of Operation

The Texas Automobile Insurance Plan Association (TAIPA) filed a request asking the Texas Department of Insurance (TDI) to approve amendments to the *Texas Plan of Operation* (Plan) on August 28, 2017. TDI staff identified an additional section of the Plan that was inadvertently omitted from their request, and notified TAIPA in November 2017. TAIPA filed an amended request on April 6, 2018. TAIPA's governing committee approved the initial request on August 18, 2017. On March 23, 2018, the committee approved an amendment to its initial request. The governing committee of TAIPA may amend the Plan with the commissioner's approval, under Insurance Code §2151.151(b).

The request would amend the Plan to update requirements to refund the appropriate portion of any unearned premium to the policyholder. Senate Bill 698, 83rd Legislature, Regular Session (2013), amended Insurance Code §558.002 to require an insurer to refund the appropriate portion of any unearned premium to the policyholder not later than the 15th business day after the effective date of cancellation or termination of a policy of personal automobile or residential property insurance. Following the enactment of Senate Bill 698, TDI promulgated rules requiring insurers to comply with Insurance Code §558.002(d). The rules became effective on May 31, 2017. The following sections of TAIPA's *Plan of Operation* will be affected by the requested amendments:

Sec. 6. PREMIUM DEPOSIT REQUIREMENTS AND PAYMENT OPTIONS

C. Installment Premium Payment Option

4. Return Premium--Changes

Current Language:

Return premium resulting from changes to the policy may be used to reduce the outstanding balance, or, if the outstanding balance is eliminated, any amount remaining from the return premium will be returned immediately. If any outstanding balance remains, the number and amounts of the remaining installments will be adjusted accordingly. If the return amount is less than $20 it may be treated as a separate transaction.

Proposed Language:

Return premium resulting from changes to the policy may be used to reduce the outstanding balance, or, if the outstanding balance is eliminated, any amount remaining from the return premium will be returned *"in accordance with Chapter 558, Texas Insurance Code and the rules promulgated under that Chapter."* If any outstanding balance remains, the number and amounts of the remaining installments will be adjusted accordingly*", unless the policyholder requests otherwise."* If the return amount is less than $20 it may be treated as a separate transaction*", unless the policyholder requests otherwise."*

Sec. 14. PERFORMANCE STANDARDS FOR INSURERS WRITING ASSOCIATION PRIVATE PASSENGER ASSIGNMENTS

A. Performance Standards

7. Return Premium

Current Language:

Within 30 days of receipt of a request for either cancellation or an endorsement resulting in return premium, the insurer must mail the return premium check.

Proposed Language:

"The insurer must refund return premium in accordance with Chapter 558, Texas Insurance Code, and the rules promulgated under that Chapter."

To comment on the filing or to request a hearing, submit two copies of your comments or hearing request by 5:00 p.m., Central time, on August 27, 2018. Refer to TDI ECase No. 14394.

-Send one copy to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

-Send the other copy to Marianne Baker at PropertyCasualty@tdi.texas.gov or to Marianne Baker, Property and Casualty Lines Office, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

TRD-201803064
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: July 13, 2018

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Texas Department of Insurance, Division of Workers' Compensation

Public Hearing Notice

Public Hearing Notice: 28 Texas Administrative Code (TAC) Chapter 180 - Monitoring and Enforcement.

The Texas Department of Insurance, Division of Workers' Compensation (DWC) will hold a public hearing on Thursday, August 2, 2018, in the Tippy Foster Room at the DWC Central Office, 7551 Metro Center Drive, Suite 100 in Austin, Texas. Streaming audio of the public hearing will be available at http://tdimss.tdi.texas.gov/tdi/tdi.asx.

The meeting will begin at 10:00 a.m. and DWC will receive comments on the following rules:

-Amended 28 TAC §180.8. Notices of Violations; Notices of Hearing; Default Judgments.

-Amended 28 TAC §180.26. Criteria for Imposing, Recommending and Determining Sanctions; Other Remedies.

The rule proposal was published in the May 18, 2018, issue of the *Texas Register*. DWC has extended the comment period, which closes on August 2, 2018, at 5:00 p.m. CST.

DWC offers reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require special accommodations, contact Maria Jimenez at (512) 804-4703.

TRD-201803113
Nicholas Canaday III
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: July 18, 2018

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State Commission on Judicial Conduct

Notice of Public Hearing

Pursuant to §33.0055 of the Texas Government Code, the State Commission on Judicial Conduct will be conducting its biennial Public Hearing on Wednesday, at 10:00 a.m. on August 8, 2018, in Room E2.028 in the Capitol Extension "to consider comment from the public regarding the commission's mission and operations."

Per the statute, "The comments are to be considered in a manner which does not compromise the confidentiality of matters considered by the commission."

Witnesses may register to speak by completing and submitting a Witness Affirmation Form. The form will be made available in the back of the hearing room on the day of the hearing, or may be requested in advance directly from the agency.

Testimony will be limited to 5 minutes per witness; however, written submissions will also be accepted in addition to or in lieu of oral testimony.

The sign-in period for those wishing to speak will be 9:45 a.m. - 10:15 a.m. on the day of the meeting.

For additional information, please contact Deputy Director Royce Lemoine at (512) 463-5533.

TRD-201803106
Eric Vinson
Executive Director
State Commission on Judicial Conduct
Filed: July 17, 2018

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Texas Lottery Commission

Correction of Error

The Texas Lottery Commission published the game procedure for Scratch Ticket Game Number 2022 "HUNTING FOR HUNDRED$" in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4793). Due to a Texas Register editing error, the name of the game was listed incorrectly in the title of the document. The correct name of the game is "HUNTING FOR HUNDRED$".

TRD-201803108

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Texas Department of Motor Vehicles

Correction of Error

The Texas Department of Motor Vehicles adopted amendments to 43 TAC §219.2 and §§219.34 - 219.36 in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4769). Due to a Texas Register editing error, §§219.2, 219.34 and 219.36 were not republished even though those sections were adopted with changes from the proposed rulemaking. Section 219.35 was republished even though it was adopted without changes from the proposed rulemaking.

Due to the error, §§219.2, 219.34 and 219.36 are republished in their entirety below:

§219.2. Definitions.

(a) The definitions contained in Transportation Code, Chapters 621, 622, and 623 apply to this chapter. In the event of a conflict with this chapter, the definitions contained in Transportation Code, Chapters 621, 622, and 623 control.

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

(1) Annual permit--A permit that authorizes movement of an oversize and/or overweight load for one year commencing with the effective date.

(2) Applicant--Any person, firm, or corporation requesting a permit.

(3) Axle--The common axis of rotation of one or more wheels whether power-driven or freely rotating, and whether in one or more segments.

(4) Axle group--An assemblage of two or more consecutive axles, with two or more wheels per axle, spaced at least 40 inches from center of axle to center of axle, equipped with a weight-equalizing suspension system that will not allow more than a 10% weight difference between any two axles in the group.

(5) Board--The Board of the Texas Department of Motor Vehicles.

(6) Closeout--The procedure used by the department to terminate a permit, issued under Transportation Code, §623.142 or §623.192 that will not be renewed by the applicant.

(7) Complete identification number--A unique and distinguishing number assigned to equipment or a commodity for purposes of identification.

(8) Concrete pump truck--A self-propelled vehicle designed to pump the concrete product from a ready mix truck to the point of construction.

(9) Crane--Any unladen lift equipment motor vehicle designed for the sole purpose of raising, shifting, or lowering heavy weights by means of a projecting, swinging mast with an engine for power on a chassis permanently constructed or assembled for such purpose.

(10) Credit card--A credit card approved by the department.

(11) Daylight--The period beginning one-half hour before sunrise and ending one-half hour after sunset.

(12) Department--The Texas Department of Motor Vehicles.

(13) Digital signature--An electronic identifier intended by the person using it to have the same force and effect as a manual signature. The digital signature shall be unique to the person using it.

(14) Director--The Executive Director of the Texas Department of Motor Vehicles or a designee not below the level of division director.

(15) District--One of the 25 geographical areas, managed by a district engineer of the Texas Department of Transportation, in which the Texas Department of Transportation conducts its primary work activities.

(16) District engineer--The chief executive officer in charge of a district of the Texas Department of Transportation.

(17) Electronic identifier--A unique identifier which is distinctive to the person using it, is independently verifiable, is under the sole control of the person using it, and is transmitted in a manner that makes it infeasible to change the data in the communication or digital signature without invalidating the digital signature.

(18) Escort vehicle--A motor vehicle used to warn traffic of the presence of an oversize and/or overweight vehicle.

(19) Four-axle group--Any four consecutive axles, having at least 40 inches from center of axle to center of axle, whose extreme centers are not more than 192 inches apart and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(20) Gauge--The transverse spacing distance between tires on an axle, expressed in feet and measured to the nearest inch, from center-of-tire to center-of-tire on an axle equipped with only two tires, or measured to the nearest inch from the center of the dual wheels on one side of the axle to the center of the dual wheels on the opposite side of the axle.

(21) Gross weight--The unladen weight of a vehicle or combination of vehicles plus the weight of the load being transported.

(22) Height pole--A device made of a non-conductive material, used to measure the height of overhead obstructions.

(23) Highway maintenance fee--A fee established by Transportation Code, §623.077, based on gross weight, and paid by the permittee when the permit is issued.

(24) Highway use factor--A mileage reduction figure used in the calculation of a permit fee for a permit issued under Transportation Code, §623.142 and §623.192.

(25) Hubometer--A mechanical device attached to an axle on a unit or a crane for recording mileage traveled.

(26) HUD number--A unique number assigned to a manufactured home by the U.S. Department of Housing and Urban Development.

(27) Indirect cost share--A prorated share of administering department activities, other than the direct cost of the activities, including the cost of providing statewide support services.

(28) Load-restricted bridge--A bridge that is restricted by the Texas Department of Transportation, under the provisions of Transportation Code, §621.102, to a weight limit less than the maximum amount allowed by Transportation Code, §621.101.

(29) Load-restricted road--A road that is restricted by the Texas Department of Transportation, under the provisions of Transportation Code, §621.102, to a weight limit less than the maximum amount allowed by Transportation Code, §621.101.

(30) Machinery plate--A license plate issued under Transportation Code, §502.146.

(31) Manufactured home--Manufactured housing, as defined in Occupations Code, Chapter 1201, and industrialized housing and buildings, as defined in Occupations Code, §1202.002, and temporary chassis systems, and returnable undercarriages used for the transportation of manufactured housing and industrialized housing and buildings, and a transportable section which is transported on a chassis system or returnable undercarriage that is constructed so that it cannot, without dismantling or destruction, be transported within legal size limits for motor vehicles.

(32) Motor carrier--A person that controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a public highway in this state, as defined by Transportation Code, §643.001.

(33) Motor carrier registration (MCR)--The registration issued by the department to motor carriers moving intrastate, under authority of Transportation Code, Chapter 643.

(34) Nighttime--The period beginning one-half hour after sunset and ending one-half hour before sunrise, as defined by Transportation Code, §541.401.

(35) Nondivisible load or vehicle--

(A) Any load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

(i) compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;

(ii) destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or

(iii) require more than eight workhours to dismantle using appropriate equipment. The applicant for a nondivisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

(B) Emergency response vehicles, including those loaded with salt, sand, chemicals or a combination thereof, with or without a plow or blade attached in front, and being used for the purpose of spreading the material on highways that are or may become slick or icy.

(C) Casks designed for the transport of spent nuclear materials.

(D) Military vehicles transporting marked military equipment or materiel.

(36) Oil field rig-up truck--An unladen vehicle with an overweight single steering axle, equipped with a winch and set of gin poles used for lifting, erecting, and moving oil well equipment and machinery.

(37) Oil well servicing unit--An oil well clean-out unit, oil well drilling unit, or oil well swabbing unit, which is mobile equipment, either self-propelled or trailer-mounted, constructed as a machine used solely for cleaning-out, drilling, servicing, or swabbing oil wells, and consisting in general of, but not limited to, a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for this purpose.

(38) One trip registration--Temporary vehicle registration issued under Transportation Code, §502.095.

(39) Overdimension load--A vehicle, combination of vehicles, or vehicle and its load that exceeds maximum legal width, height, length, overhang, or weight as set forth by Transportation Code, Chapter 621, Subchapters B and C.

(40) Overhang--The portion of a load extending beyond the front or rear of a vehicle or combination of vehicles.

(41) Overheight--A vehicle or load that exceeds the maximum height specified in Transportation Code, §621.207.

(42) Overlength--A vehicle, combination of vehicles, or a vehicle or vehicle combination and its load that exceed(s) the maximum length specified in Transportation Code, §§621.203, 621.204, 621.205, and 621.206.

(43) Oversize load--A vehicle, combination of vehicles, or a vehicle or vehicle combination and its load that exceed(s) maximum legal width, height, length, or overhang, as set forth by Transportation Code, Chapter 621, Subchapter C.

(44) Overweight--A vehicle, combination of vehicles, or a vehicle or vehicle combination and its load that exceed(s) the maximum weight specified in Transportation Code, §621.101.

(45) Overwidth--A vehicle or load that exceeds the maximum width specified in Transportation Code, §621.201.

(46) Permit--Authority for the movement of an oversize and/or overweight vehicle, combination of vehicles, or a vehicle or vehicle combination and its load, issued by the department under Transportation Code, Chapter 623.

(47) Permit account card (PAC)--A debit card that can only be used to purchase a permit and which is issued by a financial institution that is under contract to the department and the Comptroller of Public Accounts.

(48) Permit officer--An employee of the department who is authorized to issue an oversize/overweight permit.

(49) Permit plate--A license plate issued under Transportation Code, §502.146, to a crane or an oil well servicing vehicle.

(50) Permitted vehicle--A vehicle, combination of vehicles, or vehicle and its load operating under the provisions of a permit.

(51) Permittee--Any person, firm, or corporation that is issued an oversize/overweight permit by the department.

(52) Pipe box--A container specifically constructed to safely transport and handle oil field drill pipe and drill collars.

(53) Portable building compatible cargo--Cargo, other than a portable building unit, that is manufactured, assembled, or distributed by a portable building unit manufacturer and is transported in combination with a portable building unit.

(54) Portable building unit--The pre-fabricated structural and other components incorporated and delivered by the manufacturer as a complete inspected unit with a distinct serial number whether in fully assembled, partially assembled, or kit (unassembled) configuration when loaded for transport.

(55) Principal--The person, firm, or corporation that is insured by a surety bond company.

(56) Roll stability support safety system--An electronic system that monitors vehicle dynamics and estimates the stability of a vehicle based on its mass and velocity, and actively adjusts vehicle systems including the throttle and/or brake(s) to maintain stability when a rollover risk is detected.

(57) Shipper's certificate of weight--A form approved by the department in which the shipper certifies to the maximum weight of the shipment being transported.

(58) Single axle--An assembly of two or more wheels whose centers are in one transverse vertical plane or may be included between two parallel transverse planes 40 inches apart extending across the full width of the vehicle.

(59) Single-trip permit--A permit issued for an overdimension load for a single continuous movement over a specific route for an amount of time necessary to make the movement.

(60) State highway--A highway or road under the jurisdiction of the Texas Department of Transportation.

(61) State highway system--A network of roads and highways as defined by Transportation Code, §221.001.

(62) Surety bond--An agreement issued by a surety bond company to a principal that pledges to compensate the Texas Department of Transportation for any damage that might be sustained to the highways and bridges by virtue of the operation of the equipment for which a permit was issued. A surety bond is effective the day it is issued and expires at the end of the state fiscal year, which is August 31st. For example, if you obtain a surety bond on August 30th, it will expire the next day at midnight.

(63) Tare weight--The empty weight of any vehicle transporting an overdimension load.

(64) Temporary vehicle registration--A 72-hour temporary vehicle registration, 144-hour temporary vehicle registration, or one-trip registration.

(65) Three-axle group--Any three consecutive axles, having at least 40 inches from center of axle to center of axle, whose extreme centers are not more than 144 inches apart, and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(66) Time permit--A permit issued for a specified period of time under §219.13 of this title (relating to Time Permits).

(67) Tire size--The inches of lateral tread width.

(68) Traffic control device--All traffic signals, signs, and markings, including their supports, used to regulate, warn, or control traffic.

(69) Trailer mounted unit--An oil well clean-out, drilling, servicing, or swabbing unit mounted on a trailer, constructed as a machine used for cleaning out, drilling, servicing, or swabbing oil wells, and consisting in general of, but not limited to, a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for this purpose.

(70) Truck--A motor vehicle designed, used, or maintained primarily for the transportation of property.

(71) Truck blind spot systems--Vehicle-based sensor devices that detect other vehicles or objects located in the vehicle's adjacent lanes. Warnings can be visual, audible, vibrating, or tactile.

(72) Trunnion axle--Two individual axles mounted in the same transverse plane, with four tires on each axle, that are connected to a pivoting wrist pin that allows each individual axle to oscillate in a vertical plane to provide for constant and equal weight distribution on each individual axle at all times during movement.

(73) Trunnion axle group--Two or more consecutive trunnion axles whose centers are at least 40 inches apart and which are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(74) Two-axle group--Any two consecutive axles whose centers are at least 40 inches but not more than 96 inches apart and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(75) TxDOT--Texas Department of Transportation.

(76) Unit--Oil well clean-out unit, oil well drilling unit, oil well servicing unit, and/or oil well swabbing unit.

(77) Unladen lift equipment motor vehicle--A motor vehicle designed for use as lift equipment used solely to raise, shift, or lower heavy weights by means of a projecting, swinging mast with an engine for power on a chassis permanently constructed or assembled for such purpose.

(78) USDOT Number--The United States Department of Transportation number.

(79) Variable load suspension axles--Axles, whose controls must be located outside of and be inaccessible from the driver's compartment, that can be regulated, through the use of hydraulic and air suspension systems, mechanical systems, or a combination of these systems, for the purpose of adding or decreasing the amount of weight to be carried by each axle during the movement of the vehicle.

(80) Vehicle identification number--A unique and distinguishing number assigned to a vehicle by the manufacturer or by the department in accordance with Transportation Code, §501.032 and §501.033.

(81) Water Well Drilling Machinery--Machinery used exclusively for the purpose of drilling water wells, including machinery that is a unit or a unit mounted on a conventional vehicle or chassis.

(82) Weight-equalizing suspension system--An arrangement of parts designed to attach two or more consecutive axles to the frame of a vehicle in a manner that will equalize the load between the axles.

(83) Windshield sticker--Identifying insignia indicating that a permit has been issued in accordance with Subchapter C of this chapter.

(84) Year--A time period consisting of 12 consecutive months that commences with the effective date stated in the permit.

(85) 72-hour temporary vehicle registration--Temporary vehicle registration issued by the department authorizing a vehicle to operate at maximum legal weight on a state highway for a period not longer than 72 consecutive hours, as prescribed by Transportation Code, §502.094.

(86) 144-hour temporary vehicle registration--Temporary vehicle registration issued by the department authorizing a vehicle to operate at maximum legal weight on a state highway for a period not longer than 144 consecutive hours, as prescribed by Transportation Code, §502.094.

§219.34. North Texas Intermodal Permit.

(a) Purpose. This section prescribes the requirements, restrictions, and procedures regarding the annual permit for transporting an intermodal shipping container under the provisions of Transportation Code, §623.0172.

(b) Application for permit.

(1) To qualify for a North Texas intermodal permit, a person must submit an application to the department.

(2) The application shall be in a form prescribed by the department and at a minimum, will require the following:

(A) name and address of the applicant;

(B) name of contact person and telephone number or email address; and

(C) vehicle information, including vehicle year, make, license plate number and state of issuance, and vehicle identification number.

(3) The application shall be accompanied by the total annual permit fee of $1,000.

(4) Fees for permits issued under this section are payable as required by §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(c) Amendments. An annual permit issued under this section will not be amended except in the case of department error.

(d) Transfer of permit. A permit issued under this section may only be transferred once during the term of the permit from one vehicle to another vehicle in the permittee's fleet provided:

(1) the permitted vehicle is destroyed or otherwise becomes permanently inoperable, to an extent that it will no longer be utilized, and the permittee presents proof that the negotiable title or other qualifying documentation, as determined by the department, has been surrendered to the department; or

(2) the title to the permitted vehicle is transferred to someone other than the permittee, and the permittee presents proof that the negotiable title or other qualifying documentation, as determined by the department, has been transferred from the permittee.

(e) Restrictions pertaining to road conditions. Movement of a permitted vehicle is prohibited when road conditions are hazardous based upon the judgment of the operator and law enforcement officials. Law enforcement officials shall make the final determination regarding whether or not conditions are hazardous. Conditions that should be considered hazardous include, but are not limited to:

(1) visibility of less than 2/10 of one mile; or

(2) weather conditions such as wind, rain, ice, sleet, or snow.

(f) Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions published by the department.

(g) Construction or maintenance areas. The permitted vehicle may not travel through any state highway construction or maintenance area if prohibited by the construction restrictions published by the department.

(h) Night movement. Night movement is allowed under this permit, unless prohibited by the curfew movement restrictions published by the department.

(i) Manufacturer's tire load rating. Permits issued under this section do not authorize the vehicle to exceed the manufacturer's tire load rating.

(j) A truck-tractor and semitrailer combination is only eligible for a permit issued under this section if the truck-tractor is equipped with truck blind spot systems, and each vehicle in the combination is equipped with a roll stability support safety system.

(k) A truck-tractor and semitrailer combination is only eligible for a permit issued under this section if the distance between the front axle of the truck-tractor and the last axle of the semitrailer, measured longitudinally, is approximately 647 inches. For the purposes of this subsection, "approximately 647 inches" means the distance can be up to 15 percent above 647 inches for a total distance of 744.05 inches.

§219.36. Intermodal Shipping Container Port Permit.

(a) Purpose. This section prescribes the requirements, restrictions, and procedures regarding the annual permit for transporting an intermodal shipping container under the provisions of Transportation Code, Chapter 623, Subchapter U, as added by Chapter 108 (S.B. 1524), Acts of the 85th Legislature, Regular Session, 2017.

(b) Application for permit.

(1) To qualify for an intermodal shipping container port permit, a person must submit an application to the department.

(2) The application shall be in a form prescribed by the department and at a minimum, will require the following:

(A) name and address of the applicant;

(B) name of contact person and telephone number or email address;

(C) vehicle information, including vehicle year, make, license plate number and state of issuance, and vehicle identification number;

(D) a list of counties in which the vehicle will be operated; and

(E) a list of municipalities in which the vehicle will be operated.

(3) The application shall be accompanied by the total annual permit fee of $6,000.

(4) Fees for permits issued under this section are payable as required by §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(c) Issuance and placement of permit and windshield sticker; restrictions.

(1) A permit and a windshield sticker will be issued once the application is approved, and each will be mailed to the applicant at the address contained in the application.

(2) The windshield sticker shall be affixed to the inside of the windshield of the vehicle in accordance with the diagram printed on the back of the sticker and in a manner that will not obstruct the vision of the driver. Any attempt to remove the sticker from the windshield will render the sticker void and will require a new permit and sticker.

(3) A replacement sticker for a lost, stolen, or mutilated windshield sticker may be issued, provided that the permittee submits a request on a form approved by the department which shall include a statement, signed by the permittee, affirming that the sticker was lost, stolen, or mutilated. The replacement sticker shall only be valid for the permitted vehicle.

(d) Amendments. An annual permit issued under this section will not be amended except in the case of department error.

(e) Transfer of permit. A permit issued under this section may only be transferred once during the term of the permit from one vehicle to another vehicle in the permittee's fleet provided:

(1) the permitted vehicle is destroyed or otherwise becomes permanently inoperable, to an extent that it will no longer be utilized, and the permittee presents proof that the negotiable title or other qualifying documentation, as determined by the department, has been surrendered to the department; or

(2) the title to the permitted vehicle is transferred to someone other than the permittee, and the permittee presents proof that the negotiable title or other qualifying documentation, as determined by the department, has been transferred from the permittee.

(f) Termination of permit. An annual permit issued under this section will automatically terminate, and the windshield sticker must be removed from the vehicle:

(1) on the expiration of the permit;

(2) when the lease of the vehicle expires;

(3) on the sale or other transfer of ownership of the vehicle for which the permit was issued; or

(4) on the dissolution or termination of the partnership, corporation, or other legal entity to which the permit was issued.

(g) Restrictions pertaining to road conditions. Movement of a permitted vehicle is prohibited when road conditions are hazardous based upon the judgment of the operator and law enforcement officials. Law enforcement officials shall make the final determination regarding whether or not conditions are hazardous. Conditions that should be considered hazardous include, but are not limited to:

(1) visibility of less than 2/10 of one mile; or

(2) weather conditions such as wind, rain, ice, sleet, or snow.

(h) Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions published by the department.

(i) Construction or maintenance areas.

(1) The permitted vehicle may not travel through any state highway construction or maintenance area if prohibited by the construction restrictions published by the department.

(2) The permittee is responsible for contacting the appropriate local jurisdiction for construction or maintenance restrictions on non-state maintained roadways.

(j) Night movement. Night movement is allowed under this permit, unless prohibited by the curfew movement restrictions published by the department.

(k) Manufacturer's tire load rating. Permits issued under this section do not authorize the vehicle to exceed the manufacturer's tire load rating.

(l) A truck-tractor and semitrailer combination is only eligible for a permit issued under this section if the truck-tractor is equipped with truck blind spot systems, and each vehicle in the combination is equipped with a roll stability support safety system.

(m) A truck-tractor and semitrailer combination is only eligible for a permit issued under Transportation Code, §623.402(a) if the distance between the front axle of the truck-tractor and the last axle of the semitrailer, measured longitudinally, is approximately 647 inches. For the purposes of this subsection, "approximately 647 inches" means the distance can be up to 15 percent above 647 inches for a total distance of 744.05 inches.

(n) A truck-tractor and semitrailer combination is only eligible for a permit issued under Transportation Code, §623.402(b) if the distance between the front axle of the truck-tractor and the last axle of the semitrailer, measured longitudinally, is approximately 612 inches. For the purposes of this subsection, "approximately 612 inches" means the distance can be up to 15 percent above 612 inches for a total distance of 703.8 inches.

TRD-201803138

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Texas Department of Public Safety

Notice of Consultant Contract Award - Indirect Cost Allocation Plan

As required by the provisions of Government Code, Chapter 2254, the Department of Public Safety publishes this notice of consultant contract award. The consultant request appeared in the April 20, 2018, issue of the *Texas Register* (43 TexReg 2495). The selected consultant will perform indirect cost recovery and prepare cost allocation plans.

The consultant selected for this project is Maximus Consulting Services, Inc., 1891 Metro Center Drive, Reston, Virginia 20190. The amount of the contract will not exceed $68,500.

TRD-201803062
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Filed: July 13, 2018

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Public Utility Commission of Texas

Announcement of Application to Amend a State-Issued Certificate of Franchise Authority

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 9, 2018, to amend a state-issued certificate of franchise authority.

Project Title and Number: Application of Time Warner Cable Texas LLC dba Spectrum to Amend a State-Issued Certificate of Franchise Authority, Project Number 48515.

The applicant seeks to amend its state-issued certificate of franchise authority number 90008 to expand its service area footprint to include the incorporated areas, excluding any federal properties, in the City of Lucas.

Information on the application may be obtained by contacting the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 48515.

TRD-201803051
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 12, 2018

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Announcement of Application to Amend a State-Issued Certificate of Franchise Authority

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 11, 2018, to amend a state-issued certificate of franchise authority.

Project Title and Number: Application of Cable One, Inc. to Amend a State-Issued Certificate of Franchise Authority, Project Number 48524

The applicant seeks to expand its service area footprint to include specific geographical areas within the cities of Anna, Beaumont, Fulton, McKinney, Melissa, Portland, Rockport, and Victoria, and to provide both cable services and video services. Upon clarification, Cable One may also seek to include the cities of Lake Jackson and Midland in its service area footprint.

Information on the application may be obtained by contacting the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 48524.

TRD-201803052
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 12, 2018

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Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 10, 2018, in accordance with Public Utility Regulatory Act §§54.151 - 54.156.

Docket Title and Number: Application of Texhoma Fiber, LLC for a Service Provider Certificate of Operating Authority, Docket Number 48519.

Applicant seeks to provide facilities-based, data, and resale telecommunication services throughout the state of Texas.

Persons wishing to comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than July 20, 2018. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48519.

TRD-201803050
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 12, 2018

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 2, 2018, in accordance with the Texas Water Code.

Docket Style and Number: Application of Shelcon Services and Crest Water Company for Sale, Transfer, or Merger of Facilities and Certificate Rights in Tarrant County, Docket Number 48505.

The Application: Shelcon Services and Crest Water Company filed an application for the sale, transfer, or merger of facilities and certificate rights in Tarrant County. The applicants entered into an agreement for the purchase of Mustang Creek Estates PWS. If approved, Shelcon Services will deed the Mustang Creek Estates PWS facilities and water service area under certificate of convenience and necessity number 13055 to Crest Water Company's certificate of convenience and necessity number 12037. This transfer includes approximately 513 acres and 273 current customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 48505.

TRD-201803048
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 12, 2018

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Notice of Application to Amend a Sewer Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend a sewer certificate of convenience and necessity in Collin County.

Docket Style and Number: Application of the City of Celina to Amend its Sewer Certificate of Convenience and Necessity in Collin County, Docket Number 48506.

The Application: The City of Celina filed an application to amend its sewer certificate of convenience and necessity number 20764. The City proposed to provide sewer service to the areas that currently rely on private septic systems rather than centralized sewer service, and to provide for future growth. The affected service area requested includes approximately 28,806 acres, mostly within the City's extra-territorial jurisdiction, and 2,000 customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 48506.

TRD-201803049
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 12, 2018

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Texas Department of Transportation

Public Notice - Photographic Traffic Signal Enforcement Systems: Municipal Reporting of Traffic Crashes

The Texas Department of Transportation (department) is requesting that each municipality subject to the requirements contained in Transportation Code, §707.004 provide the required data to the department **no later than October 26, 2018,** in order for the department to meet the mandated deadline for an annual report to the Texas Legislature.

Pursuant to Transportation Code, §707.004, each municipality operating a photographic traffic signal enforcement system or planning to install such a system must compile and submit to the department certain statistical information. Before installing such a system, the municipality is required to submit a written report on the number and type of traffic crashes that have occurred at the intersection over the last 18 months prior to installation. The municipality is also required to provide annual reports to the department after installation showing the number and type of crashes that have occurred at the intersection.

The department is required by Transportation Code, §707.004 to produce an annual report of the information submitted to the department by December 1 of each year.

The department has created a web page detailing municipal reporting requirements and to allow the required data to be submitted electronically:

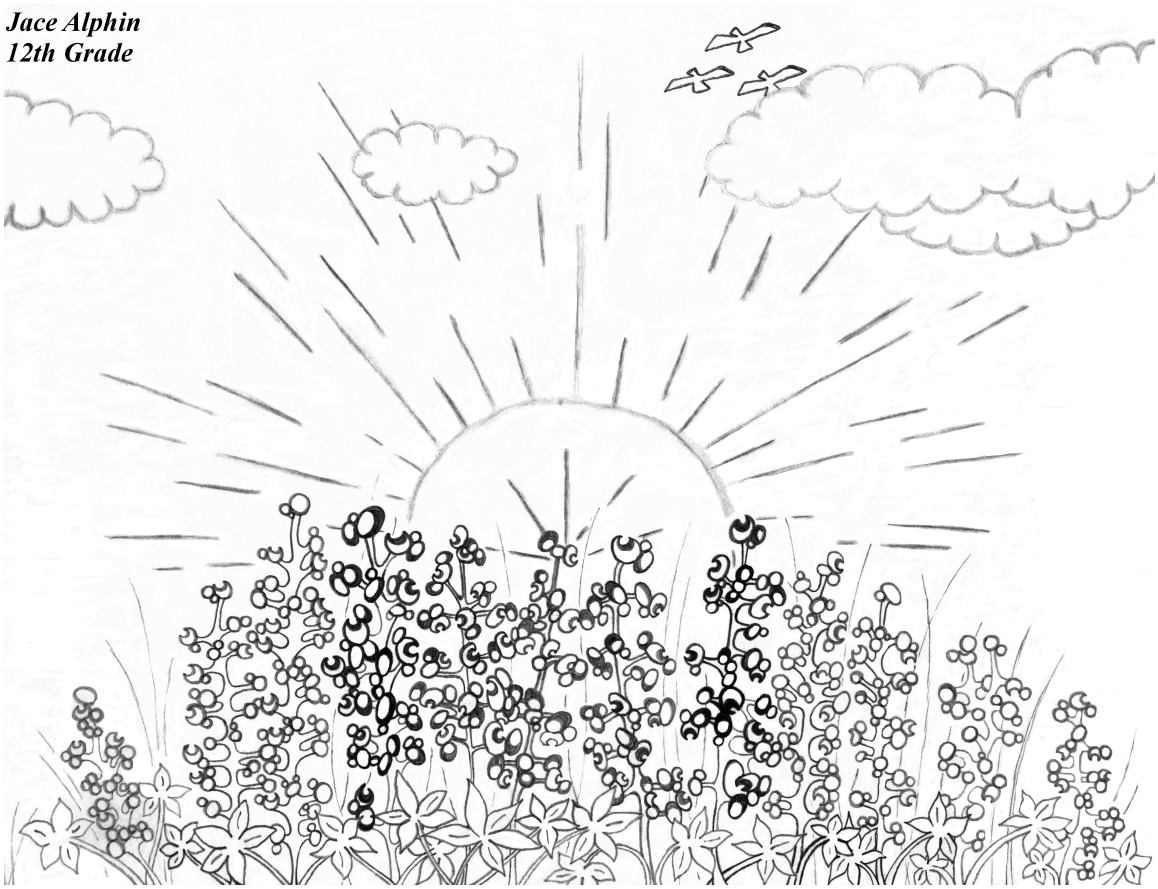
http://www.txdot.gov/driver/laws/red-light.html.

For additional information contact the Texas Department of Transportation, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483 or call (512) 416-3204.

TRD-201803045
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 12, 2018

♦ ♦ ♦

Jace Alphin
12th Grade



How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 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 "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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