TEXAS REGISTER

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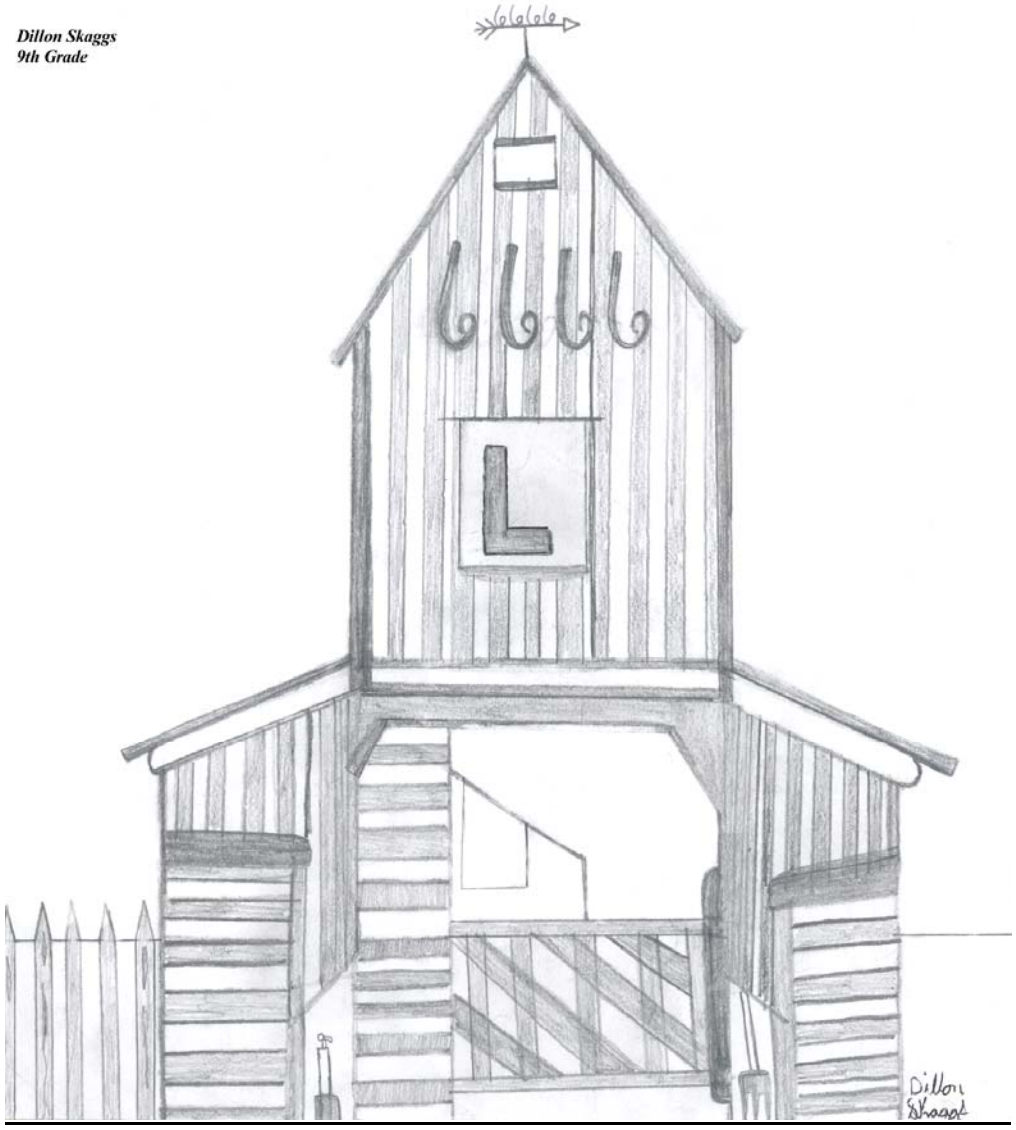

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

WITHDRAWN RULES

ADOPTED RULES

Open Meetings

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

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

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

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/open/index.shtml

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

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

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

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 November 10, 2010

Appointed as Justice of the First Appellate District, Place 6, for a term until the next General Election and until his successor shall be duly elected and qualified, Harvey G. Brown, Jr. of Houston. Judge Brown in replacing Justice George C. Hanks, Jr. who resigned.

Appointed to the Texas Veterans Commission for a term to expire December 31, 2011, Richard A. McLeon, IV of Victoria (replacing Ezell Ware, Jr. of Austin who is deceased.

Appointed to the Texas Veterans Commission for a term to expire December 31, 2015, James H. Scott of San Antonio (replacing Karen Rankin of San Antonio whose term expired).

Appointed as the Fire Fighters' Pension Commissioner, effective November 15, 2010, for a term to expire July 1, 2011, Sherri Barr Walker of Pflugerville (replacing Lisa Ivie Miller of Austin who resigned).

Appointed to the Texas Alcoholic Beverage Commission for a term to expire November 15, 2015, Jose Cuevas, Jr. of Midland (Mr. Cuevas is being reappointed).

Appointments for November 15, 2010

Appointed as Judge of the 243rd Judicial District Court, El Paso County, for a term until the next General Election and until his successor shall be duly elected and qualified, Bill D. Hicks of El Paso (replacing David Guaderrama of El Paso who vacated office).

Appointed as Judge of the 96th Judicial District Court, Tarrant County, for a term until the next General Election and until his successor shall be duly elected and qualified, Reuben H. Wallace, Jr. of Keller. Mr. Wallace is replacing Judge Jeff Walker who retired.

Appointed to the Radiation Advisory Board for a term to expire April 16, 2011, Robert J. Emery of Houston (replacing Bobby J. Haley of Pilot Point who resigned).

Appointed to the Radiation Advisory Board for a term to expire April 16, 2013, Stephen L. Harris of Bartonville (replacing Jesse R. Adams of Longview who resigned).

Appointed to the Texas Real Estate Broker Lawyer Committee for a term to expire August 31, 2015, Susan Sampson of Austin (replacing Steven Leipsner of The Hills who resigned).

Appointed to the Texas Emergency Services Retirement System for a term to expire September 1, 2011, Stephen K. Williams of Carthage (replacing Patrick Hull of Yoakum who resigned).

Appointed to the Texas Tech University System Board of Regents for a term to expire January 31, 2011, Debra Montford of San Antonio (replacing Mark Griffin of Lubbock who resigned).

Appointed as Justice of the Third Appellate District, Place 2, for a term until the next General Election and until his successor shall be duly elected and qualified, Jeffrey L. Rose of Austin. Judge Ross is replacing Justice G. Alan Waldrop who resigned.

Appointed to the 2011 Texas Inaugural Committee for a term at the pleasure of the Governor, Ida Louise "Weisie" Clement Steen of San Antonio (Ms. Steen will serve as Chair).

Appointed to the 2011 Texas Inaugural Committee for a term at the pleasure of the Governor, Patty Huffines of Austin (Ms. Huffines will serve as Vice-Chair).

Rick Perry, Governor

TRD-201006562

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PROPOSED RULES

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

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 4. PRESCRIBED BURNING BOARD ENFORCEMENT PROGRAM

SUBCHAPTER A. ENFORCEMENT, INVESTIGATION, PENALTIES AND PROCEDURES

4 TAC §§4.1 - 4.7

The Texas Department of Agriculture (department) proposes new Chapter 4, Subchapter A, §§4.1 - 4.7, concerning the Prescribed Burning Board Enforcement Program for certified and insured prescribed burn managers (CPBM or CPBMs). The new sections are adopted to establish the department's enforcement program and procedures for the Prescribed Burning program, as provided for in the Natural Resources Code, Chapter 153, and Texas Agriculture Code, Chapter 12. The new sections provide definitions, procedures for complaints and investigations, enforcement, review as contested case and settlements, and a schedule of disciplinary sanctions. The new sections and schedule of disciplinary sanctions were developed with input from the Prescribed Burning Board.

Jimmy Bush, assistant commissioner for pesticide programs, has determined that for the first five years the new sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new sections.

Mr. Bush has determined that for each year of the first five years the proposed new sections are in effect, the public benefit anticipated as a result of enforcing the new sections will be to promote public safety in regard to prescribed burning by receiving complaints against CPBMs and taking appropriate enforcement action. Administrative penalties may be assessed as part of the department's enforcement of its schedule of disciplinary sanctions, which may result in a cost to individuals that are licensed as Texas CPBMs. The establishment of an enforcement program and a schedule of penalties is required by Natural Resources Code, Chapter 153.

Comments on the proposal may be submitted to Jimmy Bush, Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

Chapter 4, Subchapter A, §§4.1 - 4.7, is proposed under Texas Agriculture Code, §12.016, which provides the department with the authority to adopt rules to administer its duties under the Code; Chapter 153, Subchapter D, of the Natural Resources Code, which requires the department to: receive and process complaints concerning CPBMs; impose, as appropriate, administrative penalties as provided by §§12.020, 12.0201, 12.0202, and 12.0261 of the Agriculture Code; and §153.102, which requires the department to adopt by rule, a schedule of disciplinary sanctions the department may impose against a CPBM.

The codes affected by the proposal are the Texas Agriculture Code, Chapter 12 and Chapter 153 of the Natural Resources Code.

§4.1. Definitions.

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

(1) Act--Chapter 153 of the Natural Resources Code.

(2) Commissioner--The commissioner of the Texas Department of Agriculture.

(3) CPBM--Certified and insured prescribed burn manager.

(4) Department--The Texas Department of Agriculture.

(5) Deputy Commissioner--The deputy commissioner of the Texas Department of Agriculture.

(6) PBB Rules--Title 4, Part 13, Chapters 225, 226, 227, 228, and 229 of the Texas Administrative Code, pertaining to the Prescribed Burning Board.

(7) SOAH--The State Office of Administrative Hearings.

§4.2. Schedule of Disciplinary Sanctions.

Pursuant to §153.102(b) of the Natural Resources Code, the department has established the following schedule of disciplinary sanctions for violations of the Act, and rules adopted thereunder by the Prescribed Burning Board and/or the department.
Figure: 4 TAC §4.2

§4.3. Complaints and Investigation.

(a) Any person with cause to believe that any provision of the Act or PBB Rules have been violated may file a complaint with the department. The department will accept either oral or written notification, but all complainants must sign and date a complaint form prescribed by the department. The complaint must set forth in detail the facts of the alleged violation.

(b) The department will prepare a written report for all complaints for which an investigation is conducted.

(c) The department's report will be provided to interested parties upon written request to the extent provided by Chapter 552 of the Government Code.

(d) The department will not estimate monetary losses sustained.

(e) No finding of violation by the department will be premised solely upon uncorroborated statements, or upon the complaint of an anonymous or unidentified complainant.

(f) The department will determine the extent of investigation that is appropriate to address each particular complaint.

§4.4. Enforcement.

In addition to the enforcement powers of the department found in the Act, the department may enter the premises of a CPBM during normal business hours to:

(1) examine records; and

(2) inspect any apparatus utilized by the CPBM for prescribed burning activities.

§4.5. Penalties.

Sections 12.020 and 12.021 of the Agriculture Code, §153.102 of the Natural Resources Code, and the department's schedule of administrative violations adopted in §4.2 of this subchapter (relating to Schedule of Disciplinary Sanctions), apply to a CPBM who violates the Act or the PBB Rules. Failure to pay an administrative penalty assessed by a final order of the department is a violation of this subchapter.

§4.6. Contested Case.

(a) A CPBM may seek review of a final administrative penalty through a contested case proceeding before SOAH.

(b) Hearings will be conducted in accordance with Title 1, Part 7, Chapter 155, of the Texas Administrative Code and §§2001.001 - 2001.902 of the Government Code. In addition, the rules contained in Title 4, Part 1, Subchapter A, §§1.1 - 1.50 will apply to a hearing to the extent they pertain to a procedural area not covered by Title 1, Part 7, Chapter 155, of the Texas Administrative Code.

§4.7. Settlement of a Contested Case.

(a) It is department policy to attempt to settle a contested case.

(b) A "contested case settlement" is an agreement between the department and a CPBM which provides for final disposition and resolution of the contested case.

(c) Contested case settlement negotiations may be in person, by phone, or through written communication, at the department's discretion, as necessary to resolve issues related to a particular contested case.

(d) Contested case settlements may incorporate any combination of authorized sanctions, additional training, remedial actions, or other action or remedy authorized by law.

(e) A contested case settlement is subject to approval by the commissioner or deputy commissioner. The commissioner or deputy commissioner shall state in writing the reasons for rejecting a proposed settlement.

(f) A contested case settlement is final and binding when reduced to writing and signed by the commissioner or deputy commissioner and the CPBM or the CPBM's attorney.

(g) If a contested case settlement is rejected by the commissioner or deputy commissioner, the contested case will be resolved through additional settlement negotiations consistent with the reasoning set forth in the commissioner or deputy commissioner's rejection of the settlement, by stipulation to the department's originally proposed penalty or sanction or combination of penalty or sanction, or through a contested case hearing.

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

Filed with the Office of the Secretary of State on November 15, 2010.

TRD-201006513
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 26, 2010
For further information, please call: (512) 463-4075

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PART 13. PRESCRIBED BURNING BOARD

CHAPTER 225. GENERAL PROVISIONS

4 TAC §225.1, §225.2

The Texas Department of Agriculture (department), on behalf of the Prescribed Burning Board (PBB), proposes to amend Title 4, Part 13, Chapter 225, §225.1(5) of the Texas Administrative Code, to refer to a "certified and insured prescribed burn manager," consistent with the statutory revisions to Chapter 153 of the Natural Resources Code made by the 81st Texas Legislature in Senate Bill 1016. The department also proposes to add new §225.2, which will require certified and insured prescribed burn managers to timely respond to all requests for information from the PBB and subject certified and insured prescribed burn managers to potential administrative penalties for non-compliance.

Jimmy Bush, assistant commissioner for pesticide programs, has determined that for the first five years the proposed amended and new sections are in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the proposal.

Mr. Bush has also determined that for each year of the first five years the proposed amended and new sections are in effect, the public benefit anticipated as a result of enforcing the proposed amended and new sections will be to promote public safety and to provide administrative efficiency to the PBB in carrying out its duties set forth in §153.046 of the Natural Resources Code. Certified and insured prescribed burn managers may incur nominal costs in responding to requests for information from the PBB. There will be no other additional costs to individuals, micro-businesses and small businesses as a result of the proposed amended and new sections set forth in this proposal.

Comments on the proposal may be submitted to Jimmy Bush, Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new section and amendments are proposed under the Natural Resources Code, §153.046, which provides the Board with

the authority to establish standards for prescribed burning, and standards for certification, recertification, and training for prescribed burn managers.

The code affected by the proposal is the Texas Natural Resources Code, Chapter 153.

§225.1. Definitions.

The following words and terms, when used in this chapter, Chapter 226 (relating to Standards for Certified Prescribed Burn Managers), Chapter 227 (relating to Certification, Recertification, and Renewal), Chapter 228 (relating to Continuing Education for Recertification/Renewal of Certification) and Chapter 229 (relating to Educational and Professional Requirements for Lead Instructors) of this title, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) Certified and Insured Prescribed Burn Manager--A person with ultimate authority, responsibility, and liability insurance coverage as required by §226.4 of this title (relating to Insurance Requirements), who has obtained certification under Chapter 227 of this title (relating to Certification, Recertification, and Renewal). All references to "Certified Prescribed Burn Manager" in this chapter and Chapters 226, 227, 228, or 229 of this title shall refer to and mean a "Certified and Insured Prescribed Burn Manager".

(6) - (21) (No change.)

§225.2. Information Requested by the Board.

(a) A certified prescribed burn manager shall timely respond to all requests for information from the Board regarding prescribed burning activities conducted by the certified and insured prescribed burn manager.

(b) If a certified prescribed burn manager fails to timely report the information as required by subsection (a) of this section, the certified and insured prescribed burn manager is subject to administrative sanctions as set forth in §§153.102 - 153.104 of the Natural Resources Code, including the enforcement rules and schedule of disciplinary sanctions adopted by the Texas Department of Agriculture.

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

Filed with the Office of the Secretary of State on November 12, 2010.

TRD-201006505
Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Prescribed Burning Board
Earliest possible date of adoption: December 26, 2010
For further information, please call: (512) 463-4075

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CHAPTER 227. CERTIFICATION, RECERTIFICATION, RENEWAL AND RECORDS

SUBCHAPTER A. CERTIFICATION REQUIREMENTS

4 TAC §227.2

The Texas Department of Agriculture (department), on behalf of the Prescribed Burning Board (PBB), proposes to amend Title 4, Part 13, Chapter 227, Subchapter A, §227.2, concerning experience requirements for certification. The amendment is proposed to clarify that the National Wildfire Coordinating Group's "Burn Boss II" qualification, and experience with prescribed fire in regions outside Texas with a specific fuel type applicable to a particular region in Texas, will qualify for the educational and training requirements to obtain certification as a commercial or private certified prescribed burn manager in Texas.

Jimmy Bush, assistant commissioner for pesticide programs, has determined that for the first five years the proposed amended section is in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the proposal.

Mr. Bush has also determined that for each year of the first five years the proposed amended section is in effect, the public benefit anticipated as a result of enforcing the proposed amended section will be to promote public safety and to provide administrative efficiency to the PBB in carrying out its duties set forth in §153.046 of the Natural Resources Code. Certain applicants who apply for certification as a commercial or private certified prescribed burn manager in Texas will incur application fees, and fees paid to sponsors of approved training and education courses, as a result of the proposed amendment. There will be no other additional costs to individuals, micro-businesses and small businesses as a result of the proposed amendment set forth in this proposal.

Comments on the proposal may be submitted to Jimmy Bush, Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. 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 the Natural Resources Code, §153.046, which provides the Board with the authority to establish standards for prescribed burning, and standards for certification, recertification, and training for prescribed burn managers.

The code affected by the proposal is the Texas Natural Resources Code, Chapter 153.

§227.2. Experience.

(a) In addition to the training required by § [~~Section~~] 227.1 of this title (relating to Training), a certified prescribed burn manager must have the following minimum level of experience:

(1) three years of prescribed burning in a particular region or with a specific fuel type applicable to a particular region; and

(2) (No change.)

(b) An individual that has achieved NWCG's "Burn Boss II" or "Burn Boss 2" qualification meets the training requirements required by this section.

(c) [~~(b)~~] The Board may determine that other experience will qualify to meet the requirements of this section.

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

Filed with the Office of the Secretary of State on November 12, 2010.

TRD-201006504
Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Prescribed Burning Board
Earliest possible date of adoption: December 26, 2010
For further information, please call: (512) 463-4075

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 53. HOME PROGRAM RULE

SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, AND REVIEW AND AWARD PROCEDURES

10 TAC §53.26

The Texas Department of Housing and Community Affairs (the "Department") proposes an amendment to 10 TAC Chapter 53, Subchapter B, §53.26. This amendment is proposed in order to temporarily suspend match requirements for the Homeowner Rehabilitation Assistance and Homebuyer Assistance Program Activities.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section as proposed.

Mr. Gerber has also determined that for each year of the first five years the amended section is in effect the public benefit anticipated as a result of enforcing the sections will be enhanced compliance with formalized policy, all contractual and statutory requirements.

There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the section as proposed. The proposed amendment will not impact local employment.

The public comment period will be held between November 26, 2010 to December 9, 2010 to receive input on this amendment. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 475-0220. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. DECEMBER 9, 2010.

This amendment is proposed pursuant to the authority of the Texas Government Code, §2306.1091(b), which provides the Department the authority to adopt rules governing the administration of the Department and its programs.

The proposed amendment affects no other code, article or statute.

§53.26. Reservation System Participant (RSP) Agreements.

(a) Terms of agreement. RSP agreements will have a twenty-four (24) month term for all Program Activities. Execution of an RSP agreement does not guarantee the availability of funds under a reservation system.

(b) Limits on Number of Reservations. The number of Homeowner Rehabilitation, Homebuyer Assistance or Single Family Development reservations for an RSP is limited to five (5) per county within the RSP's Service Area at any given time. The number of Tenant-Based Rental Assistance reservations for an RSP is limited to thirty (30) at any given time.

(c) Extremely Low-Income Households. Except for Households served with HBA or SFD funds, each RSP will be required to serve at least one (1) Household at or below 30% of AMFI out of every four (4) Households submitted and approved for assistance.

(d) Match. The requirements of this subsection are waived until August 31, 2011. An RSP must meet the tiered Match requirements per Program Activity for at least every fourth Household submitted and approved for assistance. For example, if Match is not provided for the first three (3) Households assisted by an RSP, the Match provided to the fourth Household must meet the Match requirement for all four (4) Households.

(e) Completion of Construction. For Activities involving construction, an RSP must complete construction and submit all requests for disbursement within nine (9) months from the Commitment of Funds for the Activity.

(f) Extensions. The Division Director may approve one three (3) month time extension to the Commitment of Funds to allow for the completion of construction and submission of requests for disbursement.

(g) An RSP must remain in good standing with the Department, the State of Texas, and HUD. If an RSP is not in good standing, participation in the reservation system will be suspended and may result in termination of the RSP agreement.

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

Filed with the Office of the Secretary of State on November 15, 2010.

TRD-201006520
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 26, 2010
For further information, please call: (512) 475-3916

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SUBCHAPTER C. HOMEOWNER REHABILITATION ASSISTANCE (HRA) PROGRAM ACTIVITY

10 TAC §53.30

The Texas Department of Housing and Community Affairs (the "Department") proposes an amendment to 10 TAC Chapter 53, Subchapter C, §53.30. This amendment is proposed in order to temporarily suspend match requirements for the Homeowner Rehabilitation Assistance Program Activities.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section as proposed.

Mr. Gerber has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the sections will be enhanced compliance with formalized policy, all contractual and statutory requirements.

There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the section as proposed. The proposed section will not impact local employment.

The public comment period will be held between November 26, 2010 to December 9, 2010 to receive input on this amendment. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 475-0220. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. DECEMBER 9, 2010.

This amendment is proposed pursuant to the authority of the Texas Government Code, §2306.1091(b), which provides the Department the authority to adopt rules governing the administration of the Department and its programs.

The proposed amendment affects no other code, article or statute.

§53.30. Homeowner Rehabilitation Assistance (HRA) Program Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with the following:

(1) The requirements of this subsection are waived until August 31, 2011. An itemized schedule of the proposed Match and evidence to support the Applicant's ability to provide the required Match. For Applications submitted to become an RSP, the Department may withhold disbursements if after every four reservations sufficient Match documentation has not been provided. The Department shall use population figures from the most recently available U.S. Census to determine the applicable tier for an Application. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentives may be established in the form of a threshold or selection criteria and may be different for each Program Activity. Except for Applications for disaster relief, Match shall be required based on the following tiers:

(A) zero percent of Project funds if serving a city of less than 3,000 Persons or an unincorporated area of a county with less than 20,000 Persons;

(B) ten percent of Project funds if serving a city of between 3,001 and 5,000 Persons or an unincorporated area of a county of between than 20,001 and 75,000 Persons; and

(C) twelve and one-half percent of Project funds for all other applications.

(2) Documentation of a commitment of at least $80,000 or for a Contract award 80% of the award amount, whichever is less, in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(A) Financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(B) Evidence of an available line of credit or equivalent in an amount equal to or exceeding the above requirement; or

(C) The CPA opinion letter from the most recent audit and a statement from the CPA that indicates, based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program award.

(3) Housing construction plans must be certified by a licensed architect. The Department may procure and make architect certified plans available.

(A) The Department will reimburse only for the first time a set of architectural plans are used unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer; and

(B) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

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

Filed with the Office of the Secretary of State on November 15, 2010.

TRD-201006521
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 26, 2010
For further information, please call: (512) 475-3916

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SUBCHAPTER D. HOMEBUYER ASSISTANCE (HBA) PROGRAM ACTIVITY

10 TAC §53.40

The Texas Department of Housing and Community Affairs (the "Department") proposes an amendment to 10 TAC Chapter 53, Subchapter D, §53.40. This amendment is proposed in order to temporarily suspend match requirements for the Homebuyer Assistance Program Activities.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section as proposed.

Mr. Gerber has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the sections will be enhanced compliance with formalized policy, all contractual and statutory requirements.

There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the section as proposed. The proposed section will not impact local employment.

The public comment period will be held between November 26, 2010 to December 9, 2010 to receive input on this amendment. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512)

475-0220. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. DECEMBER 9, 2010.

This amendment is proposed pursuant to the authority of the Texas Government Code, §2306.1091(b), which provides the Department the authority to adopt rules governing the administration of the Department and its programs.

The proposed amendment affects no other code, article or statute.

§53.40. Homebuyer Assistance (HBA) Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with the following:

(1) The requirements of this subsection are waived until August 31, 2011. An itemized schedule of the proposed Match and evidence to support the Applicant's ability to provide the required Match. The Department may not require such support at the time an Application is submitted when the funds are made available under a reservation system. Except for Applications for disaster relief and Persons with Disabilities set-asides, the amount of Match required must be at least 5% of Project funds requested. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentives may be established in the form of a threshold or selection criteria and may be different for each Program Activity.

(2) Documentation of a commitment of at least $80,000 or for a Contract award 100% of the award amount, whichever is less, in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(A) Financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(B) Evidence of an available line of credit or equivalent in an amount equal to or exceeding the above requirement; or

(C) The CPA opinion letter from the most recent audit and a statement from the CPA that indicates, based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program award.

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

Filed with the Office of the Secretary of State on November 15, 2010.

TRD-201006522
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 26, 2010
For further information, please call: (512) 475-3916

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SUBCHAPTER H. MULTIFAMILY (RENTAL HOUSING) DEVELOPMENT (MFD) PROGRAM ACTIVITY

10 TAC §53.80, §53.81

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 53, Subchapter H, §53.80 and §53.81. These amendments are proposed in order to update references to the Qualified Action Plan, and clarify "fixed" versus "floating" units requirement for Multifamily Developments.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section as proposed.

Mr. Gerber has also determined that for each year of the first five years the amended section is in effect the public benefit anticipated as a result of enforcing the sections will be enhanced compliance with formalized policy, all contractual and statutory requirements.

There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the section as proposed. The proposed amendment will not impact local employment.

The public comment period will be held between November 26, 2010 to December 9, 2010 to receive input on this amendment. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 475-0220. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. DECEMBER 9, 2010.

These amendments are proposed pursuant to the authority of the Texas Government Code, §2306.1091(b), which provides the Department the authority to adopt rules governing the administration of the Department and its programs.

The proposed amendments affects no other code, article or statute.

§53.80. Multifamily (Rental Housing) Development (MFD) Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with the following:

(1) If the total of Department loans equals more than 50% of the total development cost, except for developments also financed with USDA funds, the Applicant must provide:

(A) Evidence of a line of credit or equivalent financing equal to at least 10% of the total development cost from a financial institution that is available for use during the proposed development activities; or

(B) A letter from a third party CPA verifying the capacity of the owner or developer to provide at least 10% of the total development cost as a short term loan for development; and

(C) A letter from the developer's or owner's bank(s) confirming funds amounting to 10% of the total development cost are available.

(2) Applications must comply with all of the current Qualified Allocation Plan in effect at the time of Application's submission

at §49.8 or §50.8 of this title (relating to Pre-Applications for Competitive Housing Tax Credits: Submission; Communication with Departments Staff; Evaluation Process; Threshold Criteria and Review; Results (§2306.6704)) except for Applications not also seeking an allocation of housing tax credits or tax-exempt bonds: [~~§49.9 or §50.9(h) of this title, excluding paragraphs (4)(A), (J), (8)(A)(ii), (11), (12), (14)(G) and (15) and the requirements of §53.81 of this chapter, and all other federal and state rules.~~]

(A) The "Application Acceptance Period," "Resolutions Delivery Date," and "Third Party Reports Delivery Date" shall be replaced with the date that the Application for HOME funds is submitted to the Department;

(B) The date of "Commitment" and shall mean the date the HOME "Contract" is executed;

(C) The date of "10% Test Certification" and "Cost Certification" shall mean prior to release of retainage;

(D) The threshold requirement for Site Control in §49.8(8)(A) of this title must be valid for one-hundred-twenty (120) days from the date that the Application is submitted with an option to extend at least ninety (90) days.

(3) Except for applications awarded under the Persons with Disabilities set-aside or USDA §515 applications, Match equal to 2% of the HOME award must be provided. Documentation of the Applicant's ability to meet this requirement shall be required in the Application in the form of a commitment from the organization providing the Match. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentive may be established in the form of a Threshold or Selection scoring criterion. Match in the form of a property tax abatement will only be accepted if a letter from the applicable appraisal district is provided and such letter documents a cash value and duration for such exemption sufficient to meet the HUD requirements for documentation of Match.

(4) The maximum HOME award may not exceed 90% of the total development costs ("TDC") unless a resolution of support for the development is made by the local unit of government in which the proposed development resides and/or the proposed development is located in an area where the HUD Fair Market Rents are equal to the respective HOME Rent Limit for a one-bedroom unit but will be limited as reflected in Figure: 10 TAC §53.80(4). The remaining percentage of total development cost must be in the form of permanent loans with a maturity of at least twenty (20) years, in-kind contributions or grants from third-party private or public entities. Developments with USDA or other government-sponsored loans that will remain as permanent financing may be used to satisfy this requirement from a public or private entity. Loans or grants from the Department will not satisfy this requirement.

Figure: 10 TAC §53.80(4) (No change.)

(5) For Applications proposing New Construction, documentation sufficient to meet the Site and Neighborhood Standards required in 24 CFR §92.202.

§53.81. Multifamily (Rental Housing) Development (MFD) Program Requirements.

(a) Eligible activities include the acquisition or refinancing and New Construction or Rehabilitation of multifamily housing Developments. Housing assisted with HOME funds must meet all applicable codes and standards. Additionally, the Development must meet or exceed the requirements of the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or if no local building codes are in place then to the most recent version of the International Building Code.

(b) Developments involving New Construction will be limited to no more than 252 total units. This maximum unit limitation also applies to those Developments which involve a combination of Rehabilitation and New Construction. Developments that consist solely of acquisition and Rehabilitation or Reconstruction only may exceed the maximum unit restrictions. The minimum number of units shall be 8 units.

(c) This Program Activity is a CHDO-eligible activity.

(d) A Development receiving funds under this section shall have a LURA filed and recorded at the time of Loan closing and prior to any disbursement of HOME funds. The Department may require that a second LURA be filed and recorded if the restrictions to be placed on the Development exceed those of the federal requirements. Such second LURA shall include all of the requirements that exceed the federally required restrictions.

(e) In addition to the federal restrictions, Developments receiving funds under this section must meet the following rent and income restrictions:

(1) At least 20% of the total number of units in the Development must be restricted as HOME units;

(2) At least 5% of the total number of units in the Development must be set-aside for households at or below 30% of AMFI and must have rent restrictions at 30% of AMFI; and

(3) Developments receiving funds under the Persons with Disabilities set-aside are not required to meet the requirements under paragraph (1) or (2) of this subsection but must restrict all HOME units at 50% of AMFI or below and at least 5% of the HOME units at 30% of AMFI or below.

(f) Project funds awarded to Developments under this section shall be structured in the form of a loan or loans as follows:

(1) The interest rate may be as low as 2% provided all requirements of this chapter and §1.32 of this title (relating to Underwriting Rules and Guidelines) are met. To the extent that Match in an amount of 5% or more of the HOME funds is provided, an interest rate as low as 0% may be requested;

(2) Unless structured only as an interim construction or bridge loan, the loan term shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be no less than twenty (20) years and no greater than forty (40) years;

(3) The loan shall be structured with a regular monthly payment beginning at the end of the construction period and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage, the Department may approve a loan structure with annual payments payable from surplus cashflow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in §1.32 of this title. The Board may also approve, on a case-by-case basis, a cashflow loan structure provided it determines that the financial risk is outweighed by the need for the proposed housing; and

(4) The loan shall have a deed of trust with a lien position consistent with the principal amount of the loan in relation to the principal amounts of the other sources of financing. Notwithstanding the foregoing, the loan shall have a lien position that is superior to any other sources of financing that have soft repayment structures, non-amortizing balloon notes, are deferred forgivable loans or in which the lender has an Identity of Interest with any member of the development team. The Board may also approve, on a case-by-case basis, an alternative

lien priority provided it determines that the financial risk is outweighed by the need for the proposed housing.

(g) Closing on the Loan shall be conditioned upon the occurrence of closing with any superior lien holders or any other sources of funds determined to be necessary for the long-term financial feasibility of the Development and all due diligence determined by the Department to be prudent and necessary to meet the Department's rules, the HOME Final Rule, and to secure the interests of the Department.

(h) When Department funds have a first lien position, assurance of completion of the development in the form of payment and performance bonds in the full amount of the construction contract will be required or equivalent guarantee in the sole determination of the Department. Such assurance of completion will run to the Department as obligee. Development Owners also utilizing the USDA §515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA.

(i) All HOME units required under this section shall be restricted as "floating" HOME units in accordance with the meaning ascribed by HUD [~~except for units receiving funds for the development of units for persons with disabilities in which case such units shall be designated "fixed" HOME units~~]. Development Owner must use its best efforts to distribute units reserved for Low Income Families, Very Low Income Families and Extremely Low Income Families among unit sizes in proportion to the distribution of unit sizes in the Property and to avoid concentration of Low Income Families, Very Low Income Families and Extremely Low Income Families in any area or areas of the Property.

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

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Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
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CHAPTER 60. COMPLIANCE ADMINISTRATION

SUBCHAPTER A. COMPLIANCE MONITORING

10 TAC §§60.101 - 60.127

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 60, Subchapter A, §§60.101 - 60.127 in order to adopt a new 10 TAC Chapter 60, Subchapter A, §§60.101 - 60.129 which will provide clarity and additional guidance for owners of affordable housing properties monitored by the department.

Michael Gerber, Executive Director, has determined that for the first five year period the repeal is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal.

Mr. Gerber has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to permit the adoption of new rules to enhance the State's ability to provide decent, safe and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. The proposed repeal will not impact local employment.

The public comment period will be November 26, 2010 through December 27, 2010 to receive input on this repeal. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. DECEMBER 27, 2010.

The repeal is proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to repeal rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by this proposed repeal.

§60.101. Purpose and Overview.

§60.102. Definitions.

§60.103. Construction Monitoring.

§60.104. Recording of Land Use Restriction Agreement (HTC Properties).

§60.105. Reporting Requirements.

§60.106. Record keeping Requirements.

§60.107. Notices to the Department.

§60.108. Determination, Documentation and Certification of Annual Income.

§60.109. Utility Allowances.

§60.110. Lease Requirements (HTC and HOME Properties).

§60.111. Income at Recertification (Housing Tax Credit Properties).

§60.112. Requirements Pertaining to Households with Rental Assistance.

§60.113. Onsite Monitoring.

§60.114. Monitoring for Social Services.

§60.115. Monitoring for Non-Profit Participation or HUB Participation.

§60.116. Property Condition Standards.

§60.117. Notice to Owners.

§60.118. Special Rules Regarding Rents and Rent Limit Violations.

§60.119. Notices to the Internal Revenue Service (HTC Properties).

§60.120. Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period.

§60.121. Material Noncompliance Methodology.

§60.122. Previous Participation Reviews.

§60.123. Alternative Dispute Resolution (ADR).

§60.124. Liability.

§60.125. Applicability.

§60.126. Temporary Suspension of Previous Participation Reviews.

§60.127. Temporary Suspensions of other Sections of this Subchapter.

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

Filed with the Office of the Secretary of State on November 15, 2010.

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Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916

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10 TAC §§60.101 - 60.129

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 60, Subchapter A, §§60.101 - 60.129 which will provide clarity and additional guidance for owners of affordable housing properties monitored by the department.

Michael Gerber, Executive Director, has determined that for the first five year period the proposed sections are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections as proposed.

Mr. Gerber has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the new sections will be enhanced compliance with formalized policy and all contractual and statutory requirements. thereby enhancing the State's ability to provide decent, safe and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. The proposed sections will not impact local employment.

The public comment period will be November 26, 2010 through December 27, 2010 to receive input on the proposed new sections. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. DECEMBER 27, 2010.

The new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

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

§60.101. Purpose and Overview.

(a) This chapter satisfies the requirement of §42(m)(1)(B)(iii) Internal Revenue Code (Code) to provide a procedure that will be followed for monitoring for noncompliance with the provisions of the Code and to notify the IRS of such noncompliance. This chapter is consistent with requirements established under applicable state and federal laws, rules, and regulations, and the Department will monitor in accordance with this chapter. Nothing in this chapter serves to waive, alter, or amend the requirements of any duly recorded Land Use Restriction Agreement (LURA). A party to a LURA wishing to have the LURA amended must submit a formal request to the Department, and the Department will review any such request to determine if it is acceptable and, if acceptable, specify any appropriate requirements for or conditions or limitations on any such amendment. The Department monitors rental Developments receiving assistance under:

(1) the Housing Tax Credit program (HTC);

(2) the HOME Investment Partnerships program (HOME);

(3) the Tax Exempt Bond program (BOND);

(4) the Housing Trust Fund program (HTF);

(5) the Community Development Block Grant Disaster Recovery program (CDBG);

(6) the Tax Credit Assistance Program (TCAP);

(7) the Tax Credit Exchange Program (Exchange); and

(8) the Neighborhood Stabilization Program (NSP).

(b) All properties monitored by the Department are subject to the Department's enforcement rules, found in Subchapter C of this chapter (relating to Administrative Penalties).

(c) Compliance monitoring begins with the commencement of construction and continues to the end of the long term Affordability Period. The Compliance and Asset Oversight Division (CAO) monitors to ensure Owners comply with the program rules and regulations, Chapter 2306, Texas Government Code, the LURA requirements and conditions, and representations imposed by the Application or award of funds by the Department. This chapter does not address forms and other records that may be required of Development Owners by the IRS or other governmental entities, whether for purposes of filing annual returns or supporting Development Owner tax positions during an IRS or other governmental audit.

§60.102. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Other capitalized terms not defined herein are defined in §1.1 of this title (relating to Definitions for Housing Program Activities).

(1) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or federal regulation, or commences on the first day of the Compliance Period as defined by §42(i)(1) in the United States Internal Revenue Code of 1986 and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction and may be terminated upon foreclosure. The Department reserves the right to extend the Affordability Period for HOME properties that fail to meet program requirements. During the Affordability Period the Department shall monitor to ensure compliance with programmatic rules, regulations, and Application representations.

(2) Architect of Record--The architect licensed in the jurisdiction that the project is located in, who prepares, stamps and signs the construction documents, and is legally recorded as the architect for the project.

(3) Continuously Occupied--The same household has resided in the Unit for at least twelve (12) months.

(4) Extended Use Period--With respect to a HTC building, the period beginning on the first day of the Compliance Period and ending the later of:

(A) the date specified in the Land Use Restriction Agreement; or

(B) the date which is fifteen (15) years after the close of the Compliance Period.

(5) Housing Quality Standards--The property condition standards described in 24 CFR §982.401 in the Code of Federal Regulations.

(6) HTC Development--Sometimes referred to as "HTC Property." A Development using Housing Tax Credits allocated by the Department.

(7) HUD regulated Building--The rents and utility allowances of the building are reviewed by HUD on an annual basis.

(8) Material Noncompliance.

(A) A HTC or Exchange Development located within the state of Texas will be classified by the Department as being in Material Noncompliance status if the noncompliance score for such Development is equal to or exceeds a threshold of 30 points in accordance with the Material Noncompliance provisions, methodology, and point system in §60.123(l) and (m) of this chapter (relating to Material Noncompliance Methodology).

(B) Non-HTC Developments monitored by the Department with 1 - 50 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of 30 points. Non-HTC Developments monitored by the Department with 51 - 200 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of 50 points. Non-HTC Developments monitored by the Department with 201 or more Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of 80 points.

(C) For all programs, a Development will be in Material Noncompliance if the noncompliance is stated in §60.123 of this chapter to be Material Noncompliance.

(9) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.

(10) Owner--An individual, joint venture, partnership, limited partnership, trust, firm, corporation, limited liability company, other form of business organization or cooperative that is approved by the Department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing Development, subject to the regulatory powers of the Department and other terms and conditions.

(11) Substantial Construction--

(A) The minimum activity necessary to meet the requirements of substantial construction for new construction Developments will be defined as:

(i) delivery of an executed partnership agreement with the investor or other documents setting for the legal structure and ownership;

(ii) delivery of the executed construction loan and construction loan agreement;

(iii) completion of the foundation of the clubhouse (if applicable);

(iv) having all infrastructure permits;

(v) all grading completed (not including landscaping);

(vi) all necessary utilities available at the property;

(vii) all Right of Way access; and

(viii) Ten percent of the construction contract amount for the Development expended, adjusted for any change orders and certified by the inspecting architect.

(B) The minimum activity necessary to meet the requirement of Commencement of Substantial Construction for rehabilitation Developments will be defined as having:

(i) building permits issued or a clearance from the City stating that building permits are not required;

(ii) a certification that there are no reasonably foreseeable issues or circumstances which may prevent or delay the start and progress of construction or the timely successful completion of rehabilitation; and

(iii) at least 20 percent of the construction budget expended as documented by the inspecting architect.

(12) Unit Type--Units will be considered different Unit Types if there is any variation in the number of bedroom, bathrooms or a square footage difference equal to or more than one-hundred twenty (120) square feet. *Example 102(1): A two (2) bedroom/one (1) bath Unit is considered a different Unit Type than a two (2) bedroom/two (2) bath Unit. A three (3) bedroom/two (2) bath Unit with 1,000 square feet is considered a different Unit Type than a three (3) bedroom/two (2) bath Unit with 1,200 square feet. A one (1) bedroom/one (1) bath Unit with 700 square feet will be considered equivalent to a one (1) bedroom/one (1) bath Unit with 800 square feet.*

(13) UPCS--Uniform Physical Condition Standards as developed by the Real Estate Assessment Center of the U.S. Department of Housing and Urban Development.

§60.103. Construction Monitoring.

(a) The Department will monitor the entire construction phase for all applicable requirements according to the level of risk. After Final Construction during the Affordability Period, the Department will periodically monitor the Development to assure that the initial compliance review was correct.

(b) The Department will not provide any funding to any Development unless the Owner certifies that the housing Development is, or will be upon completion of construction, in compliance with the following housing laws:

(1) state and federal fair housing laws, including Chapter 301, Property Code, the Texas Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601, et seq.), and the Fair Housing Amendments of 1988 (42 U.S.C. §§3601, et seq.);

(2) the Civil Rights Act of 1964 (42 U.S.C. §§2000a, et seq.);

(3) the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101, et seq.); and

(4) Section 504, Rehabilitation Act of 1973 (29 U.S.C. §§701, et seq.). (§2306.257)

(c) Evidence of Commencement of Substantial Construction must be submitted no later than the deadline established in the Development's Commitment Notice. Four percent BOND properties are not required to submit evidence of Substantial Construction.

(d) Copies of any construction reports supplied to a syndicator must be supplied to the Department upon request.

(e) Copies of any reports issued during construction that indicate changes that affect the representations made during the Application process must be supplied to the Department upon request.

(f) Owners are required to submit evidence of construction completion within thirty (30) days of completion in a format prescribed by the Department. In addition, the Architect of Record must submit a certification that the Development was built in compliance with all applicable laws.

(g) The Department will conduct a final inspection after receipt of notification of construction completion. During the inspection, the Department will confirm that committed amenities have been provided and will inspect for compliance with the applicable laws referenced in subsection (b) of this section. In addition, a UPCS inspection may be completed.

(h) Owners will be provided a written notice after the final inspection. If any deficiencies are noted, a ninety (90) day corrective action period will be provided.

(i) Forms 8609 and final retainage will not be released until the Owner receives written notice from the Department that all noted deficiencies have been resolved.

(j) During any construction inspection, if the Owner and the Department are unable to agree that an identified issue is a violation, the Owner must request Alternative Dispute Resolution. The process for engaging ADR is outlined in §60.125 of this chapter (relating to Alternative Dispute Resolution).

§60.104. Recording of Land Use Restriction Agreements (HTC Properties).

(a) In general, no credit is allowable for a building unless there is a properly executed LURA in effect at the end of the first year of the Credit Period. A draft of the proposed LURA must be provided no later than September 1st of the calendar year in which the Owner intends to have it recorded. The Department cannot guarantee that a draft LURA received after September 1st will be processed in the same calendar year.

(b) LURAs will impose the rent and income restrictions identified in the Development's final underwriting report.

(c) The Department will not issue Forms 8609 until it receives the original, properly recorded LURA or has alternative arrangements, acceptable to the Department and its counsel in place.

§60.105. Reporting Requirements.

(a) The Department requires reports to be submitted electronically through the Department's web-based Compliance Monitoring and Tracking System (CMTS) and in the format prescribed by the Department. The Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms must be filed no later than September 1st of the year following the award. The Department will provide general instruction regarding the electronic transfer of data. Under special circumstances, the Department may, at its discretion, waive the online reporting requirements where a hardship can be demonstrated. In the absence of a written waiver, all Developments are required to submit reports online.

(b) Each Development is required to submit an Annual Owner's Compliance Report (AOCR). Depending on the property, some or all of the Report must be submitted. The first AOCR is due the second year following the award. For example: If a Development is awarded funds in calendar year 2007, the first report is due in 2009. The AOCR is comprised of four (4) sections:

(1) Part A "Owner's Certification of Program Compliance." All Development Owners must annually certify to compliance with applicable program requirements. The AOCR Part A shall include answers to all questions required by Treasury Regulation 1.42-5(b)(1) or the applicable program rules. In addition, Owners are required to report on the race and ethnicity, family composition, age, income, use of rental assistance, disability status, and monthly rental payments of individuals and families applying for and receiving assistance. HTC Developments during the Compliance Period will also be required to provide the name and mailing address of the syndicator in the Annual Owner's Compliance Report.

(2) Part B "Unit Status Report." All Developments must annually report the information related to individual household income, rent, certification dates and other necessary data to ensure compliance with applicable program regulations.

(3) Part C "Housing for Persons with Disabilities." The Department must establish a system that requires Owners of state or federally assisted housing Developments with 20 or more housing Units to report information regarding housing Units designed for persons with disabilities. The questions on Part C satisfy this requirement.

(4) Part D "Owner's Financial Certification." Developments funded by the Department must annually provide the data requested in the Owner's Financial Certification.

(c) Parts A, B and C of the Annual Owner's Compliance Report must be provided to the Department no later than March 1st of each year, reporting data current as of December 31st of the previous year (the reporting year). Part D, "Owner's Financial Certification," which includes the current audited financial statements and income and expenses of the Development for the prior year, must be submitted to the Department no later than the last day of April each year.

(d) Any Development for which the AOCR, Part A, "Owner's Certification of Program Compliance," is not received or is received past the due date will be considered not in compliance with this section. If Part A is incomplete, improperly completed, or is not submitted by the Development Owner, it will be considered not received and not in compliance with this section. The Department will report to the IRS on Form(s) 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, any HTC Development that fails to comply with this requirement.

(e) Department staff will review Part A of the AOCR for compliance with the requirements of the appropriate program. If it appears that the Development is not in compliance based upon the report, the Owner will be given written notice and provided a corrective action period to clarify or correct the report. If the Owner does not respond to the notice, the report will be subject to the sanctions listed in subsections (f) and (g) of this section.

(f) If any required section, or sections (Parts A, B, C or D), of the report are not received on or before the deadline for submission specified in subsection (c) of this section, a notice of noncompliance will be sent to the Owner, specifying a corrective action deadline. If the report is not received on or before the corrective action deadline, the Department shall:

(1) For all HTC properties, issue Form(s) 8823 notifying the IRS of the violation; and

(2) For all properties, score the noncompliance in accordance with §60.123 of this chapter (relating to Material Noncompliance Methodology).

(g) The Department may assess and enforce the following sanctions against an Owner who fails to submit the AOCR on or before March 1st of each year and has multiple, consistent, and/or repeated violations of failure to submit the AOCR by March 1st of each year:

(1) a late processing fee in the amount of $1,000; and/or

(2) a HTC Development that fails to submit the required AOCR for three (3) consecutive years may be reported to the IRS as no longer in compliance and never expected to comply.

(h) Periodic Unit Status Reports. All Developments must submit a Quarterly Unit Status report to the Department through the Compliance Monitoring and Tracking System (CMTS). Quarterly reports are due in January, April, July, and October on the 10th day of the month. The report must show occupancy as of the last day of the previous month for the reporting period. For example, the report due October 10th should report occupancy as of September 30th. The first quarterly report is due January 10, 2011.

(i) Owners are encouraged to continuously maintain current resident data in the Department's CMTS. Under certain circumstances, such as in the event of a natural disaster, the Department may require all Developments to provide current occupancy data through CMTS.

(j) All rental Developments funded or administered by the Department will be required to submit a current Unit Status Report prior to an onsite monitoring visit.

(k) Exchange developments must submit form 8609 with lines 7, 8(b), 9(b), 10(a), 10(c) and 10(d) completed thirty (30) days after the Department issues the executed form(s).

§60.106. Record Keeping Requirements.

(a) Development Owners must comply with program record-keeping requirements. Records must include sufficient information to comply with the reporting requirements of §60.105 of this chapter (relating to Reporting Requirements) and any additional programmatic requirements. HTC Development Owners must retain records sufficient to comply with the reporting requirements of Treasury Regulation 1.42-5(b)(1). Records must be kept for each qualified Low Income Unit and building in the Development, commencing with lease up activities and continuing on a monthly basis until the end of the Affordability Period.

(b) Each Development that is administered by the Department must retain records as required by the specific funding program rules and regulations. In general, retention schedules include but are not limited to the provision of subsections (c) - (f) of this section.

(c) HTC records must be retained for at least six years after the due date (with extensions) for filing the federal income tax return for that year; however, the records for the first year of the Credit Period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building (§1.42-5(b)(2) of the Code).

(d) Retention of records for HOME rental Developments and the CDBG Disaster Recovery program must comply with the provisions of 24 CFR §92.508(c), which generally requires retention of rental housing records for five years after the Affordability Period terminates.

(e) Housing Trust Fund (HTF) rental Developments must retain tenant files for at least three years beyond the date the tenant moves from the Development. Records pertinent to the funding of the award, including but not limited to the Application, Development costs and documentation, must be retained for at least five years after the Affordability Period terminates.

(f) Other rental Developments funded or administered in whole or in part by the Department must comply with record retention requirements as required by rule or deed restriction.

§60.107. Notices to the Department.

(a) If any of the events in paragraphs (1) - (3) of this subsection occur, written notice must be provided to the Department within the timeframes as follows:

(1) Any sale, transfer, exchange, of the Development or any portion of the Development. Notification must be provided at least thirty (30) days prior to this event.

(2) The Development suffers in whole or in part a casualty loss. Notification must be provided within thirty (30) days following the event of loss using the Department's Notice of Casualty Loss (for general casualty losses) or Notice of Disaster Casualty Loss (specific to loss as a result of a Presidentially Declared Disaster).

(3) Owners of Bond Developments shall notify the Department of the date 10 percent of the Units are occupied and the date 50 percent of the Units are occupied within ninety (90) days of such dates.

(b) Owners are responsible for maintaining current information (including contact persons, physical addresses, mailing addresses, email addresses, and phone numbers) for the Ownership entity and management company in the Department's Compliance Monitoring and Tracking System (CMTS). Treasury Regulations require the Department to notify Housing Tax Credit Owners of upcoming reviews and instances of noncompliance. The Department will rely on the information supplied by the Owner in CMTS to meet this requirement.

§60.108. Determination, Documentation and Certification of Annual Income.

(a) For all rental programs administered by the Department, annual income shall be determined consistent with the Section 8 Program, using the definitions of annual income described in HUD Handbook 4350.3 as amended from time to time. At the time of program designation as a low income household, owners must certify and document household income. In general, all low income households must be certified prior to move in.

(b) The Department permits Owners to use check stubs or other firsthand documentation of income and assets provided by the applicant or household in lieu of third party verification forms. It is not necessary to first attempt to obtain a third party verification form as required by the HUD Handbook 4350.3.

(c) The Department requires the use of the TDHCA Income Certification form, unless the property also participates in the Rural Development or a project Based HUD program, in which case, the other program's income certification form will be accepted.

§60.109. Utility Allowances.

(a) The Department will monitor to determine if HTC, HOME, BOND, HTF, CDBG, NSP, TCAP and Exchange properties comply with published rent limits which include an allowance for tenant paid utilities. For HTC, TCAP and Exchange buildings, if the residents pay utilities directly to the owner of the building or to a third party billing company, and the amount of the bill is based on an allocation method or "ratio utility billing system" (RUBS), this monthly amount will be considered a mandatory fee. For HTC, TCAP and Exchange buildings, if the residents pay utilities directly to the owner of the building or to a third party billing company, and the amount of the bill is based on the tenant's actual consumption, owners may account for the utility in an allowance. The rent, plus all mandatory fees, plus an allowance for those utilities paid by the resident directly to a utility provider, must be less than the allowable limit. For HOME, BOND, HTF, NSP and CDBG buildings, owners may account for utilities paid directly to the owner or to a third party billing company in their utility allowance. Where residents are responsible for some, or all, of the utilities -- other than telephone, cable, and internet -- Development Owners must use a utility allowance that complies with both this section and the applicable program regulations. An Owner may not change utility allowance methods without written approval from the Department. Any such request must include the Utility Allowance Questionnaire found on the Department's website.

(b) Rural Housing Service (RHS) buildings or buildings with RHS assisted tenants. The applicable utility allowance for the Development will be determined under the method prescribed by the RHS (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted tenants.

(c) HUD-Regulated buildings layered with any Department program. If neither the building nor any tenant in the building receives RHS rental assistance payment, and the rents and the utility allowances of the building are reviewed by HUD on an annual basis (HUD-regulated building), the applicable utility allowance for all rent restricted Units in the building is the applicable HUD utility allowance. No other utility method described in this section can be used by HUD-regulated buildings.

(d) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the following methods:

(1) The utility allowance established by the applicable Public Housing Authority (PHA) for the Section 8 Existing Housing Program. The Department will utilize Texas Local Government Code Chapter 392 to determine which PHA is the most applicable to the Development. If the PHA publishes different schedules based on building type, the owner is responsible for implementing the correct schedule based on the development's building type(s). *Example 109(1): The applicable PHA publishes a separate utility allowance schedule for Apartments (5+ units), one for Duplex/Townhomes and another for Single Family Homes. The development consist of twenty (20) buildings, ten (10) of which are Apartments (5+ units) and the other ten (10) buildings are Duplexes. The owner must use the correct schedule for each building type.* In the event the PHA publishes a utility allowance schedule specifically for energy efficient units, the owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency on an ongoing basis. If the property is located in an area that does not have a municipal, county or regional housing authority that publishes a utility allowance schedule for the Section 8 Existing Housing Program, owners must select an alternative methodology. If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the utility allowance if the resident is responsible for that utility. If an Owner chooses to implement a methodology as described in paragraph (2), (3), (4), or (5) of this subsection, for Units occupied by Section 8 voucher holders, the utility allowance remains the applicable PHA utility allowance established by the PHA from which the household's voucher is received.

(2) A written estimate from a local utility provider. If there are multiple utility companies that service the Development, the local provider must be a residential utility company that offers service to the residents of the Development requesting the methodology. The Department will use the Texas Electric Choice website: http://www.powertochoose.org/ to verify the availability of service. If the utility company is not listed as a provider in the Development's ZIP code, the request will be denied. Additionally, the estimate must be signed by the utility provider representative and specifically include all "component charges" for providing the utility service. Receipt of the information from the utility provider begins the ninety (90) day period after which the new utility allowance must be used to compute gross rent.

(3) The HUD Utility Model Schedule. A utility estimate can be calculated by using the "HUD Utility Model Schedule" that can be found at http://www.huduser.org/portal/resources/utilmodel.html (or successor URL). The rates used must be no older than the rates in effect sixty (60) days prior to the beginning of the ninety (90) day period in which the Owner intends to implement the allowance. For Owners calculating a utility allowance under this methodology, the model, along with all back-up documentation used in the model, must be submitted to the Department, on a CD, within the timeline described in subsection (f) of this section. The date entered as the "Form Date" on the "Location" tab of the spreadsheet will be the date used to begin the ninety (90) day period after which the new utility allowance must be used to compute gross rent.

(4) An energy consumption model. The utility consumption estimate must be calculated by a properly licensed mechanical engineer or an individual holding a valid Residential Energy Service Network (RESNET) or Certified Energy Manager (CEM) certification. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of building location. The ninety (90) day period after which the new utility allowance must be used to compute gross rent will begin sixty (60) days after the end on the last month of the twelve (12) month period for which data was used to compute the estimate.

(5) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and rates, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method."

(e) For a Development Owner to use the Actual Use Method they must:

(1) provide a minimum sample size of usage data for at least five (5) Continuously Occupied Units of each Unit Type or 20 percent of each Unit Type whichever is greater. *Example 109(2): A Development has twenty (20) three bedroom/one bath Units, and eighty (80) three bedroom/two bath Units. Each bedroom/bathroom equivalent Unit is within 120 square feet of the same floor area. Data must be supplied for at least five (5) of the three bedroom/one bath Units, and sixteen (16) of the three bedroom/two bath Units. If there are less than*

five (5) Units of any Unit Type, data for 100 percent of the Unit Type must be provided.

(2) the following information must be scanned onto a CD and submitted to the Department no later than the beginning of the ninety (90) day period in which the Owner intends to implement the allowance, reflecting data no older than sixty (60) days prior to the ninety (90) day implementation period. *Example 109(3): The utility provider releases the information regarding electric usage at Westover Townhomes on February 5, 2010. The data provided is from February 1, 2009 through January 31, 2010. The Owner must submit the information to the Department no later than March 31, 2010 for the information to be valid.*

(A) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the actual kilowatt usage, for each Unit for which data was obtained, and the rates in place at the time of the submission.

(B) A copy of the request to the utility provider (or billing entity for the utility provider) to provide usage data.

(C) All documentation obtained from the utility provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider.

(D) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider.

(E) Documentation of the current utility allowance used by the Development.

(3) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the utility allowance for each bedroom size using the following guidelines:

(A) If data is obtained for more than 20 percent or five (5) of each Unit Type, all data will be used to calculate the allowance.

(B) If more than twelve (12) months of data is provided for any Unit, only the data for the most current twelve (12) months will be averaged.

(C) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e. kilowatts over the last twelve (12) months by the current rate) for all Unit Types within that bedroom size. For example: If sufficient data is supplied for eighteen (18) two bedroom/one bath Units, and twelve (12) two bedroom/two bath Units, the data for all 30 Units will be averaged to calculate the allowance for all two bedroom Units.

(D) The allowance will be rounded up to the next whole dollar amount. If allowances are calculated for different utilities, each utility's allowance will be rounded up to the next whole dollar amount and then added together for the total allowance.

(E) If the data submitted indicates zero (0) usage for any month, the data for that Unit will not be used to calculate the Utility Allowance.

(4) The Department will complete its evaluation and calculation within forty-five (45) days of receipt of all the information requested in paragraph (2) of this subsection.

(5) Receipt of approval from the Department will begin the ninety (90) day period after which the new utility allowance must be used to compute gross rent.

(6) For newly constructed Developments or Developments that have Units which have not been continuously occupied, the Department, on a case by case basis, may use consumption data for Units of similar size and construction in the geographic area to calculate the utility allowance.

(f) Effective dates. If the Owner uses the methodologies as described in subsection (b), (c), or (d)(1) of this section, any changes to the allowance can be implemented immediately, but must be implemented for rent due ninety (90) days after the change. For methodologies as described in subsection (d)(2) - (5) of this section, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the ninety (90) day period in which the Owner intends to implement the utility allowance. With the exception of the methodology described in subsection (d)(5) of this section, if a response is not received by the Department within the ninety (90) day period, the Owner may temporarily use the submission as a safe harbor until the Department provides written authorization (the Owner cannot assume that the allowance is approved by the Department but can operate in good faith prior to notification). Failure to submit the proposed utility allowance to the Department and make it available to the residents will result in a finding of noncompliance.

(g) Requirements for Annual Review. Owners utilizing the methods described in subsections (b) and (c) of this section must demonstrate the utility allowance has been reviewed annually. Any change in the method described in subsection (d)(1) of this section can be implemented immediately, but must be implemented for rent due ninety (90) days after the change. Owners utilizing the methods described in subsection (d)(2) - (5) of this section must submit to the Department, once a calendar year, copies of the utility estimate and simultaneously make the estimate available to the residents by posting the estimate in a common area of the leasing office at the Development. Changes in utility allowances cannot be implemented until the estimate has been submitted to the Department and made available to the residents by posting in the leasing office for a ninety (90) day period. The back-up documentation required by the methodology the Owner has chosen must be submitted to the Department for approval no later than October 1st; however, the Department encourages Owners to submit documentation prior to the October 1st deadline in order to ensure that the Department has adequate time to review and respond to the Owner's estimate.

(h) Combining Methodologies. With the exception of HUD regulated buildings and RHS buildings, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (electric, gas, etc.). *For example:* If residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance.

(i) Increases in Utility Allowances for Developments with HOME funds. Unless otherwise instructed by HUD, the Department will permit owners to implement changes in utility allowance in the same manner as Housing Tax Credit.

(j) The owner shall maintain and make available for inspection by the tenant the data upon which the utility allowance schedule is calculated. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident man-

ager, at the dwelling Unit of the tenant at the convenience of both the apartment owner and tenant.

§60.110. Lease Requirements (HTC and HOME Properties).

(a) For HTC properties, Revenue Ruling 2004-82 prohibits the eviction or termination of tenancy of low income households for other than good cause throughout the entire Affordability Period, and for three (3) years after termination of an extended low-income housing commitment. Owners executing or renewing leases after November 1, 2007 shall specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited.

(b) For HOME properties, the HOME Final Rule prohibits Owners from evicting low income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of the tenancy period for transitional housing, or for other good cause. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy. Owners executing or renewing leases after November 1, 2007 shall specifically state in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253).

(c) The Department does not determine if an Owner has good cause or if a resident has violated the lease terms. If there is a challenge to a good cause eviction, that determination will be made by a court of competent jurisdiction or an agreement of the parties in arbitration. The Department will rely on the court decision or the agreement of the parties.

(d) HTC and BOND properties must use a lease or lease addendum that requires households to report changes in student status.

(e) Owners of Housing Tax Credit Developments are prohibited from locking out or threatening to lock out any Development resident, or seizing or threatening to seize the personal property of a resident, except by judicial process, for the purposes of performing necessary repairs or construction work, or in cases of emergency. These prohibitions must be included in the lease or lease addendum.

§60.111. Annual Recertification for all Programs and Student Requirements for HTC, Exchange, TCAP and BOND Developments.

(a) Recertification Requirements for 100 percent low income HTC, Exchange and TCAP Developments:

(1) Regardless of the requirements stated in a LURA, the Department will not monitor to determine if 100 percent low income Housing Tax Credit Developments perform annual income recertifications. Households will maintain the designation they had at initial certification.

(2) To comply with HUD reporting requirements, once every calendar year, the Development must collect a self certification from each household that reports the following: the number of household members, age, ethnicity, race, disability status, rental amounts and rental assistance (if any). In addition, the self certification will collect information about student status to establish ongoing compliance with the HTC program. The Development must collect this self certification information on the Department's Annual Eligibility Certification form (AEC) and must maintain the certification in all household files.

(3) One-Hundred percent low income Housing Tax Credit Developments that continue to complete annual income recertifications are required to obtain the AEC form described above and maintained it in all household files. The Department will not review recertification documentation during a monitoring review unless noncompliance is identified with the initial certification. Failure to complete the AEC form will result in a noncompliance finding under, "Failure to maintain or provide Annual Eligibility Certification" and scored in the Department's Compliance Status System as applicable.

(b) Recertification Requirement for Mixed Income HTC, Exchange and TCAP Developments: HTC projects (as defined on Part II question, 8b of IRS form 8609) with Market Units must complete annual income recertifications. See §60.112 of this chapter (relating to Managing Additional Income and Rent Restrictions for HTC, Exchange and TCAP Developments) for maintaining compliance with the Available Unit Rule.

(c) Student Requirements for HTC, Exchange and TCAP Developments: Changes to student status reported by the household at anytime during their occupancy or on the AEC require the Owner to determine if the household continues to be eligible under the HTC program. During the Compliance period, if the household is comprised of full-time students, the household must meet a HTC program exception, and documentation must be maintained in the household's file. The Development must have a statement in a lease addendum (or in their lease contract) that requires households to report changes in their student status. During the Compliance Period, Noncompliance with this section will result in the issuance of IRS Form(s) 8823 reporting noncompliance under, "Low-income Units occupied by nonqualified full-time students" and scored in the Department's Compliance Status System as applicable. Regardless of the requirements stated in a LURA, after the Compliance Period, the Department will not monitor to determine if households meet the student requirements of the Housing Tax Credit program.

(d) Recertification Requirements for BOND Developments: Regardless of the requirements stated in a LURA the Department will not monitor to determine if 100 percent income restricted Bond developments (all units required to be leased to low-income and eligible tenants) perform annual income recertifications. Households will maintain their designation they had at initial certification.

(e) Student Requirements for BOND Developments: Bond Developments must continue to annually screen households for student status. The Owner must use the Department's Certification of Student Eligibility form and it must be maintained in the household's file. Changes to student status that the household reports at anytime during their occupancy or during annual screening for student status, require the Owner to determine if the household continues to be eligible under the Bond program. If the household is comprised of full-time students then the household must meet a program exception, which must be documented and maintained in the household's file. If the household is not an eligible student household, it may be possible to re-designate the full-time student household to a Eligible Tenant (ET). The Development must have a statement in a lease addendum (or in their lease contract) that requires households to report changes in their student status. Noncompliance with this section will result in a noncompliance finding under, "Low-income Units occupied by nonqualified full-time students" and scored in the Department's Compliance Status System as applicable.

(f) Recertification Requirements for HOME Developments:

(1) For HOME Investment Partnership Developments, in accordance with 24 CFR §92.203 and §92.252 of the HOME Final Rule, regardless of the requirements stated in a LURA, recertification requirements will be monitored as shown in paragraph (2)(A) - (F) of this subsection.

(2) HOME Developments must complete a recertification with verifications of each HOME assisted Unit every sixth year of the Development's affordability period. For purposes of this section the

beginning of a HOME Development affordability period is the effective date on the first page of the HOME LURA. For example: A HOME Development with a LURA effective date of May 2001 will have the sixth year of the affordability period determined in *Example 111(1):*

(A) *Year 1: May 2001 - April 2002*

(B) *Year 2: May 2002 - April 2003*

(C) *Year 3: May 2003 - April 2004*

(D) *Year 4: May 2004 - April 2005*

(E) *Year 5: May 2005 - April 2006*

(F) *Year 6: May 2006 - April 2007*

(3) In the scenario in paragraph (2) of this subsection, all households in HOME Units must be recertified with source documentation between May 2006 to April 2007, even if a household moved in to the Development in 2005. In the intervening years the Development must collect a self certification from each household that is assisted with HOME funds. The form must report the following: the number of household members, age, income and assets, ethnicity, race, disability status, rental amounts and rental assistance (if any). The Development must use the Department's Income Certification form to collect this information and it must be maintained in the household's file. Noncompliance with this section will result in a noncompliance finding of, "Owner failed to maintain or provide tenant annual income recertification" and scored in the Department's Compliance Status System as applicable. If the household reports on their self certification that their household income is above the current 80 percent applicable income limit or there is evidence that the household's written statement failed to completely and accurately provide information about the household's characteristics and/or income, then a recertification with verifications is required.

(4) Fixed HOME Developments (defined as 100 percent of the Units in the Development are HOME assisted), that contain households with an annual income greater than the 80 percent applicable income limit at recertification must be designated as over income (OI) and the rent charged must be 30 percent of the household's adjusted income. The Next Available Unit must be leased to a household with an income and rent less than either the Low or High HOME limit depending on what designation the Development needs to maintain compliance with the HOME LURA. Noncompliance with this section will result in a noncompliance finding of "Household income increased above 80 percent at recertification and owner failed to properly determine rent" and scored in the Department's Compliance Status System as applicable.

(5) Floating HOME Developments with Market Units (defined when only a percentage of the Units are HOME assisted), that contain households with income greater than 80 percent at recertification must be designated as OI and the rent charged will be the lesser of 30 percent of the household's adjusted income or comparable Market rent. The Next Available non-HOME Unit on the Development must be leased to a household with income and rent less than either the Low or High HOME limit depending on what designation the Development needs to maintain compliance with the HOME LURA. The OI household may be redesignated as Market once the OI Unit is replaced with another low-income Unit and in accordance with the lease terms. A 30 day written notice of a rent increase must be provided to the OI household. Noncompliance with this section will result in a noncompliance finding of, "Household income increased above 80 percent at recertification and owner failed to properly determine rent" and scored in the Department's Compliance Status System as applicable.

(6) One-hundred percent low income HOME Developments layered with other Department affordable housing programs, that contain household's with income greater than 80 percent at recertification, must be designated as OI under the HOME program. The rent charged must be the lesser of 30 percent of the household's adjusted income or the gross rent allowable under the other program's rent limit. The Development must maintain compliance with all applicable program rent requirements. Noncompliance with this section will result in a noncompliance finding of, "Household income increased above 80 percent at recertification and owner failed to properly determine rent" and scored in the Department's Compliance Status System as applicable.

(g) Recertification Requirements for One-Hundred HTF Developments: Regardless of the requirements stated in a LURA, the Department will not monitor to determine if 100 percent low income Housing Trust Fund Developments performed annual income recertifications. The household will maintain its initial low-income designation at move in and throughout the household's occupancy i.e. (Extremely Low Income, Very Low Income and Low Income) provided that the Owner does not charge gross rent in excess of the applicable rent limit.

(h) Recertification Requirements for HTF Developments with Market units: Housing Trust Fund Developments with Market Units in one or more buildings (as evidenced in their LURA) must perform annual income recertifications of all households residing in Program Units. The HTF program requires Developments to comply with the Available Unit Rule. If a household's income exceeds 140 percent of the recertification limit (highest income tier), the household must be redesignated as OI and the Next Available Unit on the property must be leased to a household with an income and rent less than the (EVI, VL and LI) limit depending on what designation the property needs to maintain compliance with the LURA. The OI household may be redesignated in accordance with lease terms as Market once the OI Unit is replaced with another low-income Unit.

(i) Recertification Requirements for CDBG and NSP Developments: A CDBG or NSP Developments are not required to perform annual recertifications unless the CDBG and NSP LURAs specifies this requirement.

§60.112. Managing Additional Income and Rent Restrictions for HTC, Exchange and TCAP Developments.

(a) Under the Code, HTC Development Owners elect a minimum set-aside requirement of 20/50 or 40/60 (20 percent of the Units restricted to the 50 percent income and rent limit, or 40 percent of the Units restricted at the 60 percent income and rent limits). The minimum set-aside elected sets the maximum income and rent limits for the low-income units on the Development. Many Developments have additional income and rent requirements (i.e. 30 percent, 40 percent and 50 percent) that are lower than the minimum set-aside requirement. This requirement is referred to as "additional occupancy restrictions" and is reflected in the Development's Land Use Restriction Agreement (LURA). The Department will examine the actual gross rent and income levels of all households to determine if the additional income and rent requirements of the LURA are met.

(b) For 100 percent Developments that are not required to perform annual recertification, regardless of the requirements stated in the Development's LURA, the additional rent and occupancy restrictions will be monitored as follows:

(1) Households initially certified at the 30 percent income and rent limits. Households will maintain their designation they had at initial move-in. The Unit will continue to meet the 30 percent set-aside requirement provided that the Owner does not charge gross rent in excess of the 30 percent rent limit. When the household vacates the

Unit, the next available Unit on the property is leased to a household with an income and rent less than the 30 percent limit.

(2) Households initially certified at the 40 percent income and rent limits. Households will maintain their designation they had at initial move in. The Unit will continue to meet the 40 percent set-aside requirement provided that the Owner does not charge gross rent in excess of the 40 percent rent limit. When the household vacates the Unit, the next available Unit on the property is leased to a household with an income and rent less than the 40 percent limit.

(3) Households initially certified at the 50 percent income and rent limits. Households will maintain their designation they had at initial move in. The Unit will continue to meet the 50 percent set-aside requirement provided that the Owner does not charge gross rent in excess of the 50 percent rent limit. When the household vacates the Unit, the next available Unit on the property is leased to a household with an income and rent less than the 50 percent limit.

(c) Mixed Income Housing Tax Credit Developments with Market Units will be monitored as follows:

(1) The Housing Tax Credit program requires Mixed Income Developments with Market Units to comply with the Available Unit Rule. When a household's income at recertification exceeds 140 percent of the applicable current income limit elected by the minimum set-aside, the owner must comply with the Available Unit Rule and lease the next available unit (same size or smaller) in the building to a low-income household to maintain compliance. For HTC Developments that are required to perform annual recertifications, the additional rent and occupancy restrictions will be monitored as follows:

(A) Households initially certified at the 30, 40 or 50 percent income and rent limits;

(B) Households will maintain the designation they had at initial move in unless the household's income exceeds 140 percent of the highest income tier established by the minimum set-aside. The Unit will continue to meet the designation that had at initial certification provided that the Owner does not charge gross rent in excess of the additional rent and occupancy rent limit;

(C) The household will not be required to vacate the Unit for other than good cause. When the household vacates the Unit, the next available Unit on the property must be leased so as to meet the property's additional rent and occupancy restrictions;

(D) If the household's income exceeds 140 percent of the highest income tier established by the minimum set-aside the household must be redesignated as over-income (OI) and the Next Available Unit Rule must be followed. *Example 112(1): A household was initially certified at the 40 percent income limit at move in. The household's income increases at recertification above the 40 percent income limit to the 50 percent income limit. The Unit will continue to meet the 40 percent set-aside requirement provided that the Owner does not charge rent in excess of the 40 percent rent limit. When the household vacates the Unit, the Next Available Unit on the property is leased to a household with an income and rent less than the 40 percent limits.*

(2) This subsection does not require HTC Developments to lease more Units under the additional occupancy restrictions than established in their LURA.

§60.113. Household Unit Transfer Requirements for all Programs.

(a) Household Transfers for One-Hundred percent HTC and TCAP Developments. For Housing Tax Credit Developments that are 100 percent low-income, a household may transfer to any Unit within the same project, as defined as a multiple building project on Part II, question 8b of the IRS form 8609. If the Owner elected to treat each building as a separate project, as defined on Part II, question 8b of the 8609 form, households must be certified as low-income (determined by the Development's minimum set-aside election) prior to moving to another building on the property.

(b) Household Transfers for Mixed Income HTC and TCAP Developments. For Housing Tax Credit Developments that are Mixed Income with Market Units, a household may transfer to another building in the same project, as defined as a multiple building project on Part II of the IRS form 8609. if the household was not Over Income at the time of the last annual income recertification. If the Owner elected to treat each building as a separate project, as defined on Part II of the IRS form 8609, households must be certified as low-income (determined by the Development's minimum set-aside election) prior to moving to another building on the property.

(c) BOND, HTF, HOME, CDBG and NSP for Household Transfers. For BOND, HTF, HOME, CDBG and NSP Developments that are 100 percent low-income, a household may transfer to any Unit within the Development. If the Development has Market Units in one or more buildings (as evidenced in their LURA), a household may transfer to any Unit within the Development as long as the household is income certified for the new Unit prior to transfer. The household must be redesignated under the current income limit for each program requirement(s). If the Development is layered with Housing Tax Credits, default to transfer guidelines under the HTC rules.

(d) Household Transfers in the Same Building for all Programs. A Household may transfer to a new Unit within the same building. The unit designations will swap status. *Example 113(1): Building 1 has 4 low-income Units. Units 1 through 3 are occupied by low-income households and Unit 4 is a vacant low-income unit. The household in Unit 2 moves to Unit 4 and the Unit designations swap status. Unit 2 is now a vacant low-income unit.*

§60.114. Requirements Pertaining to Households with Rental Assistance.

(a) The Department will monitor to ensure Development Owners comply with §2306.269 and §2306.6728, Texas Government Code, regarding residents receiving rental assistance under §8, United States Housing Act of 1937 (42 U.S.C. §1437f).

(b) The policies, standards and sanctions established by this section apply only to:

(1) multifamily housing developments that receive the following assistance from the Department on or after January 1, 2002 (§2306.185 of the Texas Government Code):

(A) a loan or grant in an amount greater than 33 percent of the market value of the Development on the date the recipient took legal possession of the Development; or

(B) a loan guarantee for a loan in an amount greater than 33 percent of the market value of the Development on the date the recipient took legal title to the Development;

(2) multifamily rental housing Developments that applied for and were awarded housing tax credits after 1992;

(3) housing developments that benefit from the incentive program under §2306.805 of the Texas Government Code; and

(4) housing Developments that receive funding from the HOME program (24 CFR §92.252(d)).

(c) Owners of multifamily rental housing developments described in subsection (a) of this section are prohibited from:

(1) excluding an individual or family from admission to the Development because the individual or family participates in the

HOME Tenant Based Rental Assistance Program or the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1437f); and

(2) using a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income of more than 2.5 times the individual's or family's share of the total monthly rent payable to the Owner of the Development. A household participating in the voucher program or receiving any other type of rental assistance may not be required to have a minimum income exceeding $2,500 per year.

(d) To demonstrate compliance with this section, Owners shall:

(1) State in their leasing criteria that the Development will comply with state and federal fair housing and antidiscrimination laws;

(2) Apply screening criteria uniformly (rental, credit, and/or criminal history), including employment policies, and in a manner consistent with the Texas and Federal Fair Housing Acts, program guidelines, and the Department's rules;

(3) Approve and distribute an Affirmative Marketing Plan that will be used to attract prospective applicants of all minority and non-minority groups in the housing market area regardless of their race, color, religion, sex, national origin, disability, familial status, or religious affiliation. Racial groups to be marketed to may include White, African American, Native American, Alaskan Native, Asian, Native Hawaiians or Other Pacific Islanders. Other groups in the housing market area who may be subject to housing discrimination include, but are not limited to, Hispanic or Latino groups, persons with disabilities, families with children, or persons with different religious affiliations. The Affirmative Marketing plan must be provided to the property management and onsite staff. Owners are encouraged to use HUD Form 935.2A, and may use any version of this Form as applicable. The Affirmative Marketing Plan must identify the following:

(A) Which group(s) the Owner believes are least likely to apply for housing at the Development without special outreach. All Developments must select persons with disabilities as one of the groups identified as least likely to apply. When identifying racial/ethnic minority groups the property will market to, factors such as the characteristics of the housing's market area should be considered. *Example 114(1): An Owner obtains census data showing that 6.5 percent of the city's total population are identified as Asian Americans. However, the Owner's demographic data for the Development shows that zero (0) Asian American households are represented. The Owner chooses to identify Asian American groups as one of the groups least likely to apply at the Development without special outreach.*

(B) Procedures that will be used by the Owner to inform and solicit applications from persons who are least likely to apply. Specific media and community contacts that reach those groups designated as least likely to apply must be identified (community outreach contacts may include neighborhood, minority, or women's organizations, grass roots faith-based or community-based organizations, labor unions, employers, public and private agencies, disability advocates, or other groups or individuals well known in the community that connect with the identified group(s)). *Example 114(2): An Owner has identified the disabled as least likely to apply and has decided to send letters on a quarterly basis to the Case Manager at a non-profit organization coordinating housing for developmentally disabled adults. Additionally, the Owner will advertise upcoming vacancies in a monthly newsletter circulated by an organization serving the hearing impaired.*

(C) How the Owner will assess the success of Affirmative Marketing efforts. Affirmative Marketing Plans should be reviewed on an annual basis to determine if changes should be made and plans must be updated every five (5) years to fully capture demographic changes in the housing's market area.

(D) Records of marketing efforts must be maintained for review by the Department during onsite monitoring visits. *Example 114(3): The Owner keeps copies of all quarterly correspondence mailed to the contacts or community groups identified in the Affirmative Marketing Plan. The letters are dated and addressed and show that the Owner is actively marketing vacancies, or a waiting list to the groups identified in the Owner's plan. Failure to maintain a reasonable Affirmative Marketing Plan and documentation of marketing efforts on an annual basis will result in a finding of noncompliance.*

(E) If a property does not have any vacant units, Affirmative Marketing is still required and Owners must maintain a waiting list. If a property does not have any vacancies and the waiting list is closed, Affirmative Marketing is not required.

(F) In accordance with 24 CFR §92.253(d) of the HOME Final Rule, Owners of HOME developments must maintain a written waiting list and tenant selection criteria. Failure to maintain these documents will result in a finding of noncompliance.

§60.115. Onsite Monitoring.

(a) The Department may perform an onsite monitoring review of any low income Development, and review and photocopy all documents and records supporting compliance with Departmental programs through the end of the Compliance Period or the end of the period covered by the LURA, whichever is later. The Development Owner shall permit the Department access to the Development premises and records.

(b) The Department will perform onsite monitoring reviews of each low income Development. The Department will conduct:

(1) the first review of HTC, Exchange and TCAP Developments by the end of the second calendar year following the year the last building in the Development is placed in service;

(2) the first review of all other Developments as leasing commences;

(3) subsequent reviews at least once every three years during the Affordability Period;

(4) a physical inspection of the Development including the exterior of the Development, Development amenities, and an interior inspection of a sample of Units; and

(5) limited reviews of physical conditions, including follow-up inspections to verify completion of reported corrective action, may be conducted without prior notice (unless access to tenant units is required, in which case at least forty-eight (48) hours notice will be provided).

(c) The Department will perform onsite file reviews and monitor:

(1) a sampling of the low income resident files in each Development, and review the income certifications;

(2) the documentation the Development Owner has received to support the certifications; and

(3) the rent records and any additional information that the Department deems necessary.

(d) At times other than onsite reviews, the Department may request for review, in a format designated by the Department, information on tenant income and rent for each Low Income Unit and may require a Development Owner to submit copies of the tenant files, including

copies of the income certification, the documentation the Development Owner has received to support that certification, and the rent record for any low income tenant.

(e) The Department will select the Low Income Units and tenant records that are to be inspected and reviewed. Original records are required for review. The Department will not give Development Owners advance notice that a particular Unit, tenant record, or a particular year will be inspected or reviewed. However, the Department will give reasonable notice to the Development Owner that an onsite inspection or a tenant record review will occur so the Development Owner may notify tenants of the inspection or assemble original tenant records for review. If a credible complaint of fraud or other egregious noncompliance is received, the Department reserves the right to conduct unannounced onsite monitoring visits.

§60.116. Monitoring for Social Services.

(a) If a Development's LURA requires the provision of social services, the Department will confirm this requirement is being met. Owners are required to maintain sufficient documentation to evidence that services are actually being provided. Documentation will be reviewed during onsite visits and must be submitted to the Department upon request. *Example 116(1): The Owner's LURA requires provision of on-site daycare services. The Owner maintains daily sign in sheets to demonstrate attendance and keeps a roster of the households that are regularly participating in the program. The Owner also keeps copies of all newsletters and fliers mailed out to the Development tenants that reference daycare services.*

(b) Supportive services must be fully implemented prior to the issuance of IRS forms 8609 for the Housing Tax Credit program. If an Owner wishes to change the scope of services provided, prior approval from the Department is necessary. The Department, upon review of the Owner's request and the Development's original application, may also require the Owner to submit a proposed amendment to the LURA. It is not necessary to obtain prior written approval to change the provider of services unless the scope of services is being changed. Failure to comply with the requirements of this section shall result in a finding of noncompliance.

§60.117. Monitoring for Non-Profit Participation or HUB Participation.

(a) If a Development's LURA requires the material participation of a non-profit or Historically Underutilized Business (HUB), the Department will confirm this requirement is being met throughout the development phase and ongoing operations of the property. Owners are required to maintain sufficient documentation to evidence that a non-profit or HUB is materially participating. Documentation may be reviewed during onsite visits or must be submitted to the Department upon request.

(b) If an Owner wishes to change the non-profit, or HUB, prior approval from the Department is necessary. The Annual Owner's Compliance Report also requires Owners to certify to compliance with this requirement. Failure to comply with the requirements of this section shall result in a finding of noncompliance. In addition, the Internal Revenue Service will be notified if the non-profit is not materially participating on a Housing Tax Credit property during the Compliance Period.

(c) The Department does not enforce partnership agreements or determine equitable fund distributions of partnerships. These disputes are matters for a court of competent jurisdiction.

§60.118. Property Condition Standards.

(a) All Developments funded by the Department must be decent, safe, sanitary, in good repair, and suitable for occupancy throughout the Affordability Period. The Department will use HUD's Uniform Physical Condition Standards (UPCS) to determine compliance with property condition standards. In addition, Developments must comply with all local health, safety, and building codes. The Department may contract with a third party to complete UPCS inspections.

(b) Housing Tax Credit Development Owners are required by Treasury Regulation 1.42-5 to report (through the Annual Owner's Compliance Report) any local health, safety, or building code violations. HTC Developments that fail to comply with local codes shall be reported to the IRS.

(c) The Department will evaluate UPCS reports in the following manner:

(1) A finding of Major Violations will be cited if:

(A) Life threatening health, safety, or fire safety hazards are reported on the Notification of Exigent and Fire Safety Hazards Observed form and are not corrected within twenty-four (24) hours of the inspection with notification submitted to the Department within seventy-two (72) hours of the inspection. Failure to notify the Department within seventy-two (72) hours of the correction of any exigent health and safety or fire safety hazards listed on the Notification will result in a finding of Major Violations of the Uniform Physical Condition Standards for the Development; or

(B) An overall UPCS score of less than 70 percent (69 percent or below) is reported;

(2) A finding of Pattern of Minor Violations will be assessed if an overall score between 70 percent and 89 percent is reported; or

(3) Findings of both Major and Minor Violations will be assessed if deficiencies reported meet the criteria for both.

(d) The Department is required to report any HTC Development that fails to comply with any requirements of the UPCS or local codes at any time (including smoke detectors and blocked egresses) to the IRS on Form(s) 8823. Accordingly, the Department will submit Form(s) 8823 for any UPCS violation. However, if the violation(s) does not meet the conditions described in subsection (c)(1) or (2) of this section, the issue will be noted in the Department's compliance status system as Administrative Reporting and no points will be assigned in the Department's compliance status evaluation of the Development. Non-HTC properties that do not meet thresholds for Major and Pattern of Minor Violations as described in subsection (c)(1) or (2) of this section and correct all life threatening health, safety, and fire safety hazards noted at the time of inspection as directed in subsection (c)(1)(A) of this section will not receive findings for UPCS inspections. Items noted that do not exceed thresholds for Major and Pattern of Minor Violations must be corrected by submission of an Owner's Certification of Repair within the ninety (90) day corrective action period.

(e) Acceptable evidence of correction of deficiencies is a certification from an appropriate licensed professional that the item now complies with the inspection standard or other documentation that will allow the Department to reasonably determine when the repair was made and whether the repair sufficiently corrected the violation(s) of UPCS standards (examples of such documentation include work orders, photographs, and/or invoices to third party repair specialists).

(f) The Department will provide a ninety (90) day corrective action period to respond to a notice of noncompliance for violations of the UPCS. The Department will grant up to an additional ninety (90) day extension if there is good cause and the Owner clearly requests an extension during the corrective action period.

(g) 24 CFR §92.251 of the HOME Final Rule requires rental property assisted with HOME funds to be maintained in compliance

with all local codes and Housing Quality Standards (HQS) (24 CFR §982.401). To meet this requirement, all HOME rental Development Owners must annually complete an HQS inspection of all HOME assisted Units. The Department will review HQS inspection sheets for all Units for compliance with this requirement during onsite monitoring visits.

(h) Selection of Units for inspection:

(1) Vacant Units will not be inspected (alternate Units will be selected) if a Unit has been vacant for fewer than thirty (30) days.

(2) Units vacant for more than thirty (30) days are assumed to be ready for occupancy and will be inspected. No deficiencies will be cited for inspectable items if utilities are turned off and the inspectable item is present and appears to be in working order.

(i) Property damage that is the direct result of utility damage or malfunction or repair activity relating to such damage that is beyond the property owner's control, including, but not limited to, eruption of gas, sewer or storm sewer mains, water mains, and electrical fires, will not be taken into consideration in determining a compliance score, provided that the property owner did not negligently or intentionally serve as a proximate cause for the damage.

§60.119. Notice to Owners.

The Department will provide written notice to the Development Owner if the Department does not receive the Annual Owner Compliance Report (AOCR) or discovers through audit, inspection, review or any other manner that the Development is not in compliance with the provisions of the deed restrictions, conditions imposed by the Department, or program rules and regulations, including §42 of the Code. Owners may request that results of monitoring reviews be emailed if all email addresses in the Contract Monitoring Tracking System are up to date. If Owners request such notices be sent by email, a paper copy will not be mailed by the Department. The notice will specify a correction period of ninety (90) days from the date of notice to the Development Owner, during which the Development Owner may respond to the Department's findings, bring the Development into compliance, or supply any missing documentation or certifications. The Department may extend the correction period for up to six (6) months from the date of the notice to the Development Owner if there is good cause for granting an extension and the owner requests an extension during the original ninety (90) day corrective action period. If any communication to the Development Owner under this section is returned to the Department as refused, unclaimed or undeliverable, the Development may be considered not in compliance without further notice to the Development Owner. The Development Owner is responsible for providing the Department with current contact information, including address(es) and phone number(s). The Development Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department).

§60.120. Special Rules Regarding Rents and Rent Limit Violations.

(a) Rent or Utility Allowance Violations of the maximum allowable limit (HTC). Under the HTC program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that a HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the Department will report the violation as corrected on the date that the rent plus the utility allowance, plus fees, is less than the applicable limit. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.

(b) Rent or Utility Allowance Violations of additional rent restrictions (HTC). If the Owner agreed to lease Units at rents less than the maximum allowed under the Code (additional occupancy restrictions), the Department will require the Owner to refund to the affected residents the amount of rent that was overcharged. This applies during the entire Affordability Period. The noncompliance event will be considered corrected on the date which is the later of the date the overcharged rent was refunded/credited to the resident or the date that the rent plus the utility allowance is equal to or less than the applicable limit. *Example 120(1): For Code §42 purposes, the maximum allowable limit is 60 percent. However, the Owner agreed to lease some Units to households at the 30 percent income and rent limits. It was discovered that the 30 percent households were overcharged rent. The Owner will be required to reduce the current amount of rent charged and refund the excess rents to the households.*

(c) Rent Violations of the maximum allowable limit due to application fees (HTC). Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses. The amount of time Development staff spends on checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add $5.50 per Unit to their other out of pocket costs for processing an application without providing documentation. Should an Owner desire to include a higher amount to cover staff time, wage information and a time study must be supplied to the Department upon request. Documentation of Development costs for application processing or screening fees must be made available during onsite visits or upon request. The Department will review application fee documentation during onsite monitoring visits. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee, the noncompliance will be reported to the IRS on Form(s) 8823 under the category Gross rent(s) exceeds tax credit limits. The noncompliance will be corrected on the later of January 1st of the next year or as of the date the application fee is reduced and evidence of a reduced application fee is supplied to the Department. Owners are not required to refund the overcharged fee amount. If the Development refunds the overcharged fee in full or in part, the units will remain out of compliance until January 1st of the next year or until the application fee is reduced.

(d) Rent or Utility Allowance Violations on Non-HTC properties. If it is determined that the property collected rent in excess of the allowable limit, the Department will require the Owner to refund to the affected residents the amount of rent that was overcharged.

(e) Trust Account to be established. If the Owner is required to refund rent under subsection (b) or (d) of this section and cannot locate the resident, the excess rent collected must be deposited into a trust account for the tenant. The account must remain open for the shorter of a four (4) year period, or until all funds are claimed. If funds are not claimed after the four year period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be dispersed as required by Texas unclaimed property statutes.

(f) Rent Adjustments for HOME properties. 24 CFR §92.252 of the HOME Final Rule requires Owners to charge households with an income in excess of 80 percent at recertification, a rent equal to the lesser of 30 percent of the household's adjusted income or the market rent for comparable unassisted Units in the neighborhood. If at recertification the household self-certifies an income in excess of the 80 percent limit, documentation of all income, assets and allowable deductions must be obtained by the owner. The Department will find a HOME property in noncompliance with this section if the Owner fails to determine the over income household's adjusted income and main-

tain documentation of market rents for comparable unassisted Units in the neighborhood.

(g) Special conditions for NSP and CDBG properties. To determine if a Unit is rent restricted, the amount of rent paid by the household, plus an allowance for utilities, plus any rental assistance payment must be less than the applicable limit.

§60.121. Notices to the Internal Revenue Service (HTC Properties).

(a) Even when an event of noncompliance is corrected, the Department is required to file IRS Form(s) 8823 with the IRS. IRS Form(s) 8823 will be filed not later than forty-five (45) days after the end of the correction period specified in the Notice to Owner (including any extensions permitted by the Department) but will not be filed before the end of the correction period. The Department will indicate on IRS Form(s) 8823 the nature of the noncompliance and will indicate whether the Development Owner has corrected the noncompliance.

(b) The Department will retain records of noncompliance or failure to certify for six (6) years beyond the Department's filing of the respective IRS Form(s) 8823. The Department will retain the AOCRs and records for three years from the end of the calendar year the Department receives the certifications and records.

(c) The Department will send the Owner of record copies of any IRS Form(s) 8823 submitted to the IRS. Copies of Form(s) 8823 will be submitted to the syndicator for Developments awarded tax credits after January 1, 2004. The Development Owner is responsible for providing the name and mailing address of the syndicator in the Annual Owner's Compliance Report.

§60.122. Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period.

(a) HTC properties allocated credit in 1990 and after are required under §42(h)(6) of the Code to record a LURA restricting the property for at least thirty (30) years. Various sections of the Code specify monitoring rules State Housing Finance Agencies must implement during the Compliance Period.

(b) After the Compliance Period, the Department will continue to monitor Housing Tax Credit Developments using the rules detailed in paragraphs (1) - (12) of this subsection.

(1) On site monitoring visits will continue to be conducted approximately every three years, unless the Department determines that a more frequent schedule is necessary.

(2) In general, the Department will review 10 percent of the low income files. No less than five (5) files and no more than twenty (20) files will be reviewed.

(3) The exterior of the property, all building systems and 10 percent of Low Income Units. No less than five (5) but no more than thirty-five (35) of the Development's Low Income Units will be physically inspected to determine compliance with HUD's Uniform Physical Condition Standards.

(4) Each Development shall submit an annual report in the format prescribed by the Department.

(5) Reports to the Department must be submitted electronically as required in §60.105 of this chapter (relating to Reporting Requirements).

(6) Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA.

(7) All households must be income qualified upon initial occupancy of any Low Income Unit. Proper verifications of income are required, and the Department's Income Certification form must be completed unless the Development participates in the Rural Rental Housing Program or a project based HUD program.

(8) Rents will remain restricted for all Low Income Units. After the Compliance Period, utilities paid to the owner can be accounted for in the utility allowance. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit.

(9) All additional income and rent restrictions defined in the LURA remain in effect.

(10) For Additional Use Restrictions, defined in the LURA (such as supportive services, nonprofit participation, elderly, etc), refer to the property's LURA to determine if compliance is required after the completion of the compliance period.

(11) The Owner shall not terminate the lease or evict low income residents for other than good cause.

(12) The total number of required Low Income Units must be maintained Development wide.

(c) After the first fifteen (15) years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) - (4) of this subsection.

(1) The student restrictions found in §42(i)(3)(D) of the Code. An income qualified household consisting entirely of full time students may occupy a Low Income Unit.

(2) The building's applicable fraction found in the Development's Cost Certification and/or the LURA. Low income occupancy requirements will be monitored Development wide, not building by building.

(3) Household transfers between buildings restricted by §42(g)(1) of the Code. All households, regardless of HTC income level designation, will be allowed to transfer between buildings with the Development.

(4) The Department will not monitor the Development's application fee after the Compliance Period is over.

(d) Regardless of the requirements stated in a LURA, the Department will monitor in accordance with this section.

(e) Unless specifically noted in this section, all requirements of this chapter, LURA and §42 of the Code remain in effect for the Extended Use Period. These Post-Year fifteen (15) Monitoring Rules apply only to the HTC Developments administered by the Department. Participation in other programs administered by the Department may require additional monitoring to ensure compliance with the requirements of those programs.

§60.123. Material Noncompliance Methodology.

(a) The Department maintains a compliance history of each monitored Development in the Department's Compliance Status System. Developments with more than one program administered by the Department are scored by program. The Development will be considered in Material Noncompliance if the score for any single program exceeds the Material Noncompliance threshold for that program.

(b) A Development will not be assigned the scores noted in this section until after the Owner has been provided a written notice of the noncompliance and provided a corrective action deadline to show that either the Development was never in noncompliance or that the noncompliance event has been corrected.

(c) This section identifies all possible noncompliance events for all programs monitored by the Physical Inspection and Compliance Monitoring Sections of the CAO Division. However, not all issues

listed in this section pertain to all Developments. In addition, only certain noncompliance events are reportable on Form(s) 8823. Those events that are reportable under the HTC program on Form(s) 8823 are so indicated in subsections (k) and (j) of this section.

(d) For HTC Developments, all Form(s) 8823 issued by the Department will be entered into the Department's Compliance Status System. However, Form(s) 8823 issued prior to January 1, 1998 will not be considered in determining Material Noncompliance.

(e) For all programs, a Development will be in Material Noncompliance if the noncompliance event is stated in this section to be Material Noncompliance. The Department may take into consideration the representations of the Owner regarding monitoring notices and Owner responses; however, unless an Owner can prove otherwise, the compliance records of the Department shall be presumed to be correct.

(f) All Developments, regardless of status, that are or have been administered, funded, or monitored by the Department, are scored even if the Development no longer actively participates in the program, with the exception of properties in the Federal Deposit Insurance Corporation's (FDIC) Affordable Housing Disposition Program.

(g) A Development's score will be reduced by the number of points needed to be one point under the Material Noncompliance threshold provided that:

(1) The Development has no previously reported noncompliance events that are uncorrected;

(2) All newly identified noncompliance events are corrected during the corrective action period;

(3) All corrective action documentation for the newly identified noncompliance is provided to the Department during the corrective action period; and

(4) The Development was not already in Material Noncompliance at the time of its most recent monitoring review.

(h) If an owner is unable to correct all issues during the corrective action period, the owner may supply a corrective action plan for review by the Department that establishes dates that each uncorrected issue will be corrected and evidence of correction will be supplied. Provided that the Department approves the plan and the owner follows the plan, upon correction of all issues, a Development's score will be reduced by the number of points needed to be one point under the Material Noncompliance threshold provided that:

(1) The Development has no previously reported noncompliance events that are uncorrected; and

(2) The Development was not already in Material Noncompliance at the time of its most recent review.

(i) Noncompliance events are categorized as either "Development events" or "Unit/building events". Development events of noncompliance affect some or all the buildings in the Development; however, the Development will receive only one score for the noncompliance event rather than a score for each Unit or building. Other noncompliance events are identified individually by Unit and will receive the appropriate score for each Unit cited with an event. The Unit scores and the Development scores accumulate towards the total score of the Development. Violations under the HTC program are identified by Unit; however, the building is scored rather than the Unit and the building will receive the noncompliance score if one or more of the Units in that building are in noncompliance.

(j) Uncorrected noncompliance events, if applicable to the Development, will carry the maximum number of points until the noncompliance event has been reported corrected by the Department. Once reported corrected by the Department, the score will be reduced to the "corrected value." Corrected noncompliance will no longer be included in the Development score one year after the date the noncompliance was reported corrected by the Department.

(k) Each noncompliance event is assigned a point value. The possible events of noncompliance and associated "corrected" and "uncorrected" points are listed in subsection (l) of this section.

(l) Figure: 10 TAC §60.123(l) lists events of noncompliance that affect the entire Development rather than an individual Unit. The first column of the chart identifies the noncompliance event. The second column identifies the number of points assigned this event while the issue is uncorrected. The Material Noncompliance threshold for a HTC and Exchange Developments is thirty (30) points. The Material Noncompliance threshold for a non-HTC property with one (1) to fifty (50) Low Income Units is thirty (30) points. The Material Noncompliance threshold for a non-HTC property with fifty-one (51) to two hundred (200) Low Income Units is fifty (50) points. The Material Noncompliance threshold for non-HTC properties with two hundred and one (201) or more Low Income Units is eighty (80) points. The third column lists the number of points assigned to the event from the date the issue is corrected until one (1) year after correction. The fourth column indicates what programs the noncompliance event applies to. The last column indicates if the issue is reportable on Form(s) 8823 for HTC Developments.

Figure: 10 TAC §60.123(l)

(m) Figure: 10 TAC §60.123(m) lists ten (10) events of noncompliance associated with individual Units. The first column of the chart identifies the noncompliance event. The second column identifies the number of points assigned this event while the issue is uncorrected. The Material Noncompliance threshold for a HTC or Exchange property is thirty (30) points. The Material Noncompliance threshold for a non-HTC property with one (1) to fifty (50) Low Income Units is thirty (30) points. The Material Noncompliance threshold for a non-HTC property with fifty-one (51) to two hundred (200) Low Income Units is fifty (50) points. The Material Noncompliance threshold for non-HTC properties with two hundred one (201) or more Low Income Units is eighty (80) points. The third column lists the number of points assigned to the event from the date the issue is corrected until one year after the event is corrected. The fourth column indicates what programs the noncompliance event applies to. The last column indicates if the issue is reportable on Form(s) 8823 for HTC Developments.

Figure: 10 TAC §60.123(m)

§60.124. Previous Participation Reviews.

(a) Prior to providing any Department assistance, executing a Carryover Allocation Agreement, or processing a request for a Qualified Contract, the CAO Division will conduct a previous participation review to determine if the requesting entity controls a Development that is in Material Noncompliance, owes the Department any fees, is sixty (60) days delinquent on a loan payment, has a past due single audit or single audit certification form, or has any unresolved audit or monitoring findings identified by the Contract Monitoring Section of the CAO Division. Previous participation reviews will also be conducted if more than one hundred twenty (120) days elapse between Board approval of an Application and a financing. Assistance includes but is not limited to allocating any Department funds or tax credits, with the exception of CSBG funds, engaging in loan or contract modifications that result in increased funding, approving a modification to a LURA (other than a technical error) and providing incentive awards.

(b) HTC Developments with any uncorrected issues of noncompliance or with pending notices of noncompliance, will not be issued Form 8609s, Low Income Housing Credit Allocation Certifications, until all events of noncompliance are corrected.

(c) If during the previous participation review an uncorrected issue of noncompliance required by the HOME Final Rule is identified on a HOME Development monitored by the Department, the entity requesting assistance will be notified of the issue and provided five (5) business days to submit all necessary corrective action to cure the violation(s). The notification will be in writing and may be delivered by email. If the requesting entity does not cure the violation(s), the request for assistance will be terminated. If the request for assistance is terminated, the Board has the ability to reinstate the request for assistance for consideration as provided in §60.128(a) of this chapter (relating to Temporary Suspension of Previous Participation Reviews).

(d) If during the previous participation review, the Department determines that the requesting entity owes the Department any fees, is sixty (60) days delinquent on a loan payment, has a past due single audit or single audit certification form, has unresolved audit or monitoring findings identified by the Contract Monitoring section of the CAO Division, or has control of an existing Development monitored by the Department that is in Material Noncompliance, the entity requesting assistance will be notified of the issue and provided five (5) business days to submit all necessary corrective action, pay the fees, bring the loan current, or otherwise cure the violation(s). If the requesting entity does not cure the issue(s), the request for assistance will be terminated. If the request for assistance is terminated due to Material Noncompliance, the Board has the ability to reinstate the request for assistance for consideration as provided in §60.128(b) of this chapter.

(e) If during the previous participation review, the Department determines that the requesting entity or any person controlling the requesting entity is on the Department's or the Department of Housing Urban Development's debarred list, the request for assistance will be terminated. A request for assistance properly terminated for this reason cannot be reinstated for consideration. The request for assistance can be re-submitted, however, if the person or entity that is on the debarred list is no longer part of the requesting entity.

(f) For the purposes of previous participation reviews:

(1) The Department will not take into consideration the score of a Development that the requesting entity has not controlled for at least three (3) years;

(2) The Department will not take into consideration the score of a Development for which the Affordability Period ended over three (3) years ago;

(3) The Department will not take into consideration the score attributed to a Development for noncompliance with FDIC's Affordable Housing Disposition Program;

(4) If a requesting entity no longer controls a Development but has controlled the Development at any time in the last three (3) years, the Department will determine the score for the noncompliance events with a date of noncompliance identified during the time the requesting entity controlled the Development. If the points associated with the noncompliance events identified during the requesting entity's control of the Development exceed the threshold for Material Noncompliance, the request for assistance will be terminated but may be subject to reinstatement by the Board as provided in §60.128 of this chapter.

(g) Date for determining Material Noncompliance. Previous participation reviews will be conducted prior to the Board meeting when funds will be awarded, or if the request is not subject to Board action, prior to the Department providing the requested assistance. The score in effect at the completion of the previous participation review process (which includes the five (5) business day cure period referenced in subsections (c) and (d) of this section) will be used to determine if the request for assistance will be terminated. Previous participation reviews are not required to be performed if less than one hundred-twenty (120) days have elapsed since the last review, provided there is no change in the organizational structure.

(h) Treatment of units of government during a previous participation review. If a city, county or local government applies for assistance from the Department, a previous participation review will be conducted. If the city, county or unit of government controls a development that is in Material Noncompliance, owes the Department any fees, is sixty (60) days delinquent on a loan payment, has a past due single audit or single audit certification form or has unresolved audit or monitoring findings identified by the Contract Monitoring Section of the CAO Division, the process described in subsection (d) of this section will be followed. However, the previous participation of individual elected officials will not be considered provided that they are not the contract executor for the requesting entity.

(i) Treatment of nonprofits during a previous participation review. If a nonprofit applies, or is associated with, an application for assistance from the Department, a previous participation review will be conducted. If the nonprofit controls a Development that is in Material Noncompliance, owes the Department any fees, is sixty (60) days delinquent on a loan payment, has a past due Single Audit or Single Audit Certification Form or has unresolved audit or monitoring findings identified by the Contract Monitoring Section of the CAO Division, the process described in subsection (d) of this section will be followed. If it is determined that the Executive Director, Chair of the Audit Committee, Board Chair or any member of the Executive Committee of the nonprofit controls a Development that is in Material Noncompliance, owes the Department any fees, is sixty (60) days delinquent on a loan payment, has a past due Single Audit or Single Audit Certification Form or has unresolved audit or monitoring findings identified by the Contract Monitoring Section of the CAO Division, the process described in subsection (d) of this section will be followed. If within the five (5) business day period, the party with noncompliance resigns from the applicable position of the nonprofit organization requesting assistance, the noncompliance will not be taken into consideration. If it is determined that any member of the Board of the Nonprofit is on the Department's or the Department of Housing Urban Development's debarred list, the request for assistance will be terminated. A request for assistance properly terminated for this reason cannot be reinstated for consideration. The request for assistance can be re-submitted, however, if the person on the debarred list resigns from the applicable nonprofit organization requesting assistance.

(j) Previous participation review for ownership transfers. Consistent with this section, the Department will perform a previous participation review prior to approving any transfer of ownership of a Development or any change in the Owner of a Development. The previous participation review shall be conducted with respect to the Developments controlled by the person coming into ownership, not with respect to the Development or Owner being transferred.

§60.125. Alternative Dispute Resolution.

(a) It is the Department's policy to encourage the use of appropriate Alternative Dispute Resolution (ADR) procedures to assist in resolving disputes under the Department's jurisdiction. If at any time an applicant or other person would like to engage the Department in an ADR process, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title.

(b) In all phases of monitoring (construction and throughout the entire Affordability Period), if a potential issue of noncompliance has been identified, Owners will be provided a written notice of noncompliance. In general, the Department will provide up to a ninety (90)

day corrective action period which can and will be extended for an additional ninety (90) days if there is good cause and the Owner requests an extension during the corrective action period.

(c) Owners must respond to the Department's notice of noncompliance. If an Owner does not respond, this ADR process which is explained in this section cannot be initiated.

(d) If an Owner does not agree with the Department's assessment of compliance, they should clearly explain their position and provide as much supporting documentation as possible. If the position is reasonable and well supported, the issue of noncompliance will be cleared with no further action taken, i.e. for HTC properties, Form(s) 8823 will not be filed with the IRS and the issue will not be scored in the Department's compliance status system.

(e) If an Owner's response indicates disagreement with the Department's assessment of noncompliance, but does not appear to be a valid concern to the Department, staff will notify the Owner in writing of their right to engage in ADR. The Owner must respond in five (5) days and request ADR. In addition, the owner must request an extension of the corrective action deadline, if one is still available. If the owner does not respond to the staff's invitation to engage in ADR, the Department's assessment of the violation is final.

(f) The Department must meet the Treasury Regulation requirement found in §1.42-5 and file Form(s) 8823 within forty-five (45) days after the end of the corrective action period. Therefore, it is possible that the Owner and Department may still be engaged in ADR. In this circumstance, the Form(s) 8823 will be filed. However, it will be sent to the IRS with an explanation that the owner disagrees with the Department's assessment and is pursuing ADR. All Owner supplied documentation supporting their position will be supplied to the IRS. Although the violation will be reported to the IRS within the required timeframes, it will not be scored in the Department's compliance status system pending outcome of ADR.

(g) ADR is not an appropriate format for matters regarding interpretations of laws, regulations and rules. ADR can only be used when parties could reach consensus.

§60.126. Liability.

Compliance with the program requirements, including compliance with §42 of the IRC, is the sole responsibility of the Development Owner. By monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Development Owner, including the Development Owner's noncompliance with §42 of the IRC, the Fair Housing Act, §504 of the Rehabilitation Act of 1973, HOME program regulations, BOND program requirements, and all other programs monitored by the Department.

§60.127. Applicability.

Unless otherwise noted, these provisions apply to all Developments administered by the Department.

§60.128. Temporary Suspension of Previous Participation Reviews.

(a) An entity whose request for assistance is terminated under §60.124 of this chapter (relating to Previous Participation Reviews) may request reinstatement of the Application for consideration for approval. The request must be in writing and must be submitted to the Department within five (5) business days of the date of the Department's letter notifying the requesting entity of the termination/denial. A timely filed request for reinstatement shall be placed on the agenda for the next Board meeting for which it can be properly posted.

(b) If an Application for assistance was terminated under §60.124 of this chapter, the Board may consider reinstatement of the application only in the event that it determines, after consideration of the relevant, material facts and circumstances that:

(1) it is in the best interests of the Department and the State to proceed with the award;

(2) the award will not present undue increased program or financial risk to the Department or state;

(3) the applicant is not acting in bad faith; and

(4) the applicant has taken reasonable measures within its power to remedy the cause for the termination.

(c) Reinstatement of a terminated Application merely makes the Application eligible to be considered and does not, in and of itself, constitute approval.

§60.129. Temporary Suspension of other Sections of this Subchapter.

(a) Temporary suspensions of other sections of this subchapter may be granted if the Board finds one or more of the following factors applicable to a Development:

(1) A natural disaster or other act of God has made the application of this subchapter to a Development infeasible for a period of time and the Governor of Texas or President of the United States has previously made a disaster declaration for the area including the Development during the relevant time period;

(2) Due to documented shortages in items necessary to complete the requirements of the subchapter, the Owner was unable to meet the subchapter requirements, this would include but not be limited to a shortage of labor, building materials, or public utilities available;

(3) A federal rule has changed that significantly changed the ability of the Owner to deliver the services required at the time the Development was placed in service or began operation provided, however, that the Board cannot waive the rule itself and the Owner must comply, but the Board may suspend the compliance score related to the violation in this situation; and/or

(4) A Development has been subjected in part to a governmental action such as partial condemnation through no fault of the Owner, eminent domain, or zoning changes that do not allow corrections of compliance issues required by the Department.

(b) Under no circumstances can the Board suspend for any period of time compliance with the HOME Final Rule or regulations issued by HUD when required by federal law.

(c) Under no circumstances can the Board suspend for any period of time Treasury Regulations, IRS publications controlling the submission of Form(s) 8823, or any sections of 26 U.S.C. §42.

(d) Examples of items the Board could temporarily suspend include: the requirement to report online, requirement to use Department approved forms, sampling size requirements for agency calculated utility allowance, or the requirement to repay overcharged rent on a HTF property.

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

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Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 75. AIR CONDITIONING AND REFRIGERATION

16 TAC §§75.10, 75.20 - 75.30, 75.40, 75.65, 75.70, 75.71, 75.73, 75.80, 75.90, 75.91, 75.100, 75.110

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, Chapter 75, §§75.10, 75.20 - 75.28, 75.30, 75.40, 75.65, 75.70, 75.71, 75.73, 75.80, 75.90, and 75.100 and proposes new rules at §§75.29, 75.91, and 75.110, regarding the Air Conditioning and Refrigeration program rules.

The Department is proposing amendments to Chapter 75 in response to its required four-year rule review and the Texas Commission of Licensing and Regulation's ("Commission") rule simplification initiative.

The Department published a Notice of Intent to Review its air conditioning and refrigeration program rules as part of the four-year rule review required under Government Code §2001.039 in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4647). The Department reviewed these rules and determined that the rules were still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 1302, Air Conditioning and Refrigeration. The Commission re-adopted the rules in their existing form in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6350).

The Department received public comments in response to its Notice of Intent to Review. The re-adoption notice stated that the Department would address those public comments along with the suggested changes resulting from the Department's own review in a future proposed rulemaking. In addition to those suggested changes, the Commission has directed the Department's advisory boards to review their respective program rules with a goal of simplifying the rules and eliminating any unnecessary or obsolete rules.

The current proposal reflects the public comments submitted in response to the Notice of Intent to Review, the Department's own review of the rules, and input and recommendations from the Air Conditioning and Refrigeration Contractors Advisory Board ("advisory board") on the rule review proposal and the rule simplification initiative. The Department's responses to the public comments that were submitted in response to the Notice of Intent to Review are specifically addressed in this proposal.

§75.10

The proposal amends §75.10, Definitions, by adding several new definitions and amending several existing definitions.

The proposal adds a new definition under §75.10(7) for "biomedical testing." "Biomedical remediation" and "biomedical testing" are used in §75.100(c) regarding duct cleaning, but only "biomedical remediation" has been defined. The proposal adds a definition for "biomedical testing."

The proposal deletes current §75.10(10), the definition of "contracting." The definition of "air conditioning and refrigeration contracting" is already included in the statute, and the definition in the rule does not match the definition in the statute.

The proposal amends current §75.10(14), the definition of "direct supervision." The Department proposes to delete subparagraph (B) regarding contacting the customer by mail, email, or telephone to determine if the customer is satisfied with the installation and service. The purpose of direct supervision is to verify and assure the mechanical integrity of the work performed. In most cases, the customer is not in a position to know if the installation and service was done correctly or completely or if it meets applicable codes. The other three verification options involve a person knowledgeable about air conditioning and refrigeration work and about a particular job. The proposal also changes the word "and" to "or" between the verification options. Not all options must be performed on each job to satisfy "direct supervision."

The proposal clarifies current §75.10(18), the definition of "licensee." The Department proposes to add the word "contractor" to distinguish between contractor license and technician registration. The term "licensee" as used in this chapter will refer specifically to contractors. This clarification is necessary as new license types have been added to the statute, specifically certificates of registration to purchase refrigerant and technician registrations. The requirements are not the same for the various licenses, registrations and certificates of registration.

The proposal amends current §75.10(22), the definition of "proper installation and service." The Department proposes to add a reference to the International Residential Code, as applicable, to the list of codes. The proposal also deletes references to "current" codes, since a new rule is being proposed under §75.110 to identify the applicable codes. The proposal replaces references to current codes with references to the applicable edition of the codes as adopted under §75.110.

The proposal adds a new definition under §75.10(23) for "registrant." With the addition of technicians to the statute and rules, the Department proposes to add a definition in order to distinguish between contractor license requirements and technician registration requirements in the rules.

The proposal adds new definitions under §75.10(25) and §75.10(26) for "system balancing" and "system testing." The advisory board had recommended adding these definitions along with a new rule under §75.100(f), regarding system balancing and testing.

The proposal also renumbers the remaining definitions as applicable to reflect new and deleted definitions.

§75.20

The proposal amends the title of §75.20 to clarify that this section addresses contractor requirements. The proposal amends §75.20(a) by reformatting the existing paragraph into a user-friendly list format and including the use of a department approved form. The proposal also amends §75.20(b) by adding clarifying language in §75.20(b)(1) regarding the institution's program being approved by the Texas Board of Professional Engineers for the purpose of licensing engineers. This change reflects the language in the statute. The proposal also

deletes the education substitutes for practical experience under §75.20(b)(2) and (b)(3) to conform to the eligibility requirements under the statute.

§75.21

The proposal amends the title of §75.21 to clarify that this section addresses contractor requirements. The proposal deletes the language under existing §75.21(b) and replaces it with a reference to more detailed examination requirements that are found in the Department's Chapter 60 rules, which apply to all of the Department's programs. The proposal also deletes §75.21(d) because it is not necessary. The Department's third party examination contractor would not qualify a person as eligible for an examination if the person had already taken and passed the exam.

§75.22

The proposal amends the title of §75.22 to clarify that this section addresses contractor requirements. Associated Plumbing, Heating, Cooling Contractors Association submitted a comment in response to the Notice of Intent to Review. The association proposed adding a provision to this section stating: "Air conditioning and refrigeration equipment that has had its refrigerant or the primary process fluid removed still requires licensed persons to install, repair or maintain it." The Department thinks the more appropriate location for this proposed language is under §75.100(d), Process Cooling and Heating. The Department will address this comment under §75.100(d).

§75.23

The proposal makes several amendments to §75.23 based on the recommendations of the advisory board. The advisory board stated that there is still a need to have a temporary license rule. A temporary license is necessary in order for a company to continue business until a permanent contractor license could be secured; however, the advisory board recommended some changes to the existing rule. The proposal shortens the timeframes for requesting a temporary license from 30 days to 15 calendar days. The term of the temporary license remains at 30 days, although the proposal clarifies that the timeframe is 30 "calendar" days. The proposal also narrows the eligibility requirements for a temporary license to only those companies that lose their only licensed contractor due to death or disability of the contractor. The proposal removes eligibility for a temporary license due to dissolution of a company or partnership. Finally, the proposal removes the requirement that the person who will hold the temporary license - an owner, partner, or employee already associated with the firm - must meet all eligibility requirements to take an examination for a contractor license. The proposal now allows a company to just hire a new licensed contractor. Having the owner, partner or existing employee take the examination and obtain a contractor license is no longer the only option for a company to obtain a new licensed contractor.

§75.24

The proposal amends the title of §75.24 to clarify that this section addresses contractor renewal requirements. The proposal also removes references to "registration" renewal requirements. The renewal requirements for contractor licenses and technician registrations are not the same. The technician registration renewal requirements have been moved to new §75.29.

Current §75.24(a) has been redrafted in a list format to set out the requirements for what a contractor has to do to renew his license, including completing continuing education requirements. The current rules are drafted to state what a renewal application must contain, rather than what an applicant must do to renew his license. The Department has an approved form that contractors must use, and the elements in the current rule that are being deleted are already incorporated into the approved form.

Associated Plumbing, Heating, Cooling Contractors Association submitted a comment in response to the Notice of Intent to Review. The association proposed deleting §75.24(a)(4), regarding evidence of compliance with insurance requirements, due to rule changes in 2002. The association stated that §75.24(a)(4) does not agree with §75.40(d), which does not require the contractor to resubmit insurance information for renewals. The Department is proposing to delete paragraph (a)(4) from the rules, but the approved renewal form does include a signed certification by the contractor that he is in compliance with the insurance requirements. The contractor is not required to resubmit insurance documentation to the Department unless required to do so under §75.40(d).

The proposal also deletes current §75.24(b) since the license renewal requirements are set out under the Department's Chapter 60 rules, which apply to all of the Department's programs.

§75.25

The proposal deletes §75.25(g) and (h) since they are no longer necessary. These subsections were included as transition provisions when the continuing education requirements for contractors began in 2006.

Associated Plumbing, Heating, Cooling Contractors Association submitted two comments on this section in response to the Notice of Intent to Review. First, the association proposed deleting subsections (g) and (h) since they are no longer needed. The Department has already proposed deleting these subsections. Second, the association proposed requiring eight hours of annual continuing education for all technicians and persons holding certificates of registration to purchase refrigerants. Currently, only licensed contractors are required to take eight hours of annual continuing education. The Department did not incorporate the association's suggestions into this proposal since continuing education is generally only required for license types which have pre-license education and/or examinations.

§75.26

The proposal makes several amendments to §75.26. The proposal amends §75.26(a) by reformatting the existing paragraph into a user-friendly list format and including the use of a department approved form. The proposal adds a new §75.26(b), which states that the certificate is not transferable from one person to another. This language is similar to the language for contractor licenses and technician registrations.

The proposal makes technical corrections to renumbered §75.26(c) (currently §75.26(b)). The changes link this subsection back to subsection (a), which sets out the two categories of persons who are required under the statute to obtain a certificate of registration - maintenance personnel and licensed engineers. It also removes the term "registrant" since this is a term used for technicians. Persons holding certificates of registration to purchase refrigerants are referenced elsewhere in this section as "certificate holders."

The proposal deletes current §75.26(c) and (d), which address the certificate of registration to purchase refrigerant being valid or invalid based on the person's employment status. The statute

does not provide that a certificate automatically becomes invalid if the person ceases employment or changes jobs.

The proposal also deletes current §75.26(f), which states that a flammable refrigerant or refrigerant substitute that has been listed as acceptable by the U.S. Environmental Protection Agency (EPA) may be sold and used in accordance with the rules issued by the EPA. Occupations Code §1302.352 already requires a person who purchases, sells or uses a refrigerant in Texas to comply with the requirements of the federal Clean Air Act and rules adopted under that Act. It is unnecessary to address this requirement again in the Department's rules.

The proposal also deletes current §75.26(g), which addresses the purchase of equipment classified as a small appliance under the federal regulations. The exemption for small appliances as defined by the federal regulations is already addressed under Occupations Code §1302.351. It is unnecessary to address this exemption again in the Department's rules.

§75.27

The proposal clarifies the title of §75.27. It also amends §75.27(a) by reformatting the existing paragraph into a user-friendly list format and including the use of a department approved form.

Two public comments were submitted on §75.27 in response to the Notice of Intent to Review. One individual from Nance International submitted a comment opposing the registration of technicians. The Department did not make any changes in response to this public comment. The statute requires technicians to be registered, and it requires that rules be adopted to provide for the registration of technicians and to establish fees for the issuance and renewal of these registrations.

A second individual commented that the term "technician" should be changed to "journeyman." The individual wants the air conditioning and refrigeration occupation to have journeyman and apprentice terminology and levels similar to electricians and plumbers. The Department did not make any changes in response to this public comment. This suggestion would require a statutory change by the legislature.

§75.28

The proposal makes technical corrections to §75.28. It clarifies the title and §75.28(c) by replacing "certification" with "certified technician designation." These changes make the provisions consistent with the statute and §75.28(b) and will provide clarification under §75.80. Fees. The proposal also requires the use of a department approved form.

§75.29

The proposal adds new §75.29, which addresses the renewal requirements for technician registrations. These requirements are currently combined with the contractor license renewal requirements under §75.24. The proposal also clarifies that a technician must renew his registration annually, regardless of whether or not he has a certified technician designation. It is the underlying registration that must be renewed.

§75.30

The proposal makes several amendments to §75.30, Exemptions. The proposal adds clarifying introduction language (current subsection (a)) that ties the exemptions back to those listed in the statute.

The proposal amends exemption (1) (current paragraph (a)(1)) by changing the reference from "public utility" to "electric or gas utility" to match the statute. The Department is retaining the exemption in the rule because it includes clarifying language that the person is performing air conditioning and refrigeration services in connection with his employment with the electric or gas utility. The provision does not allow a person employed by an electric or gas utility to perform air conditioning and refrigeration contracting for anyone other than the utility he is employed by.

The proposal amends exemption (2) (current paragraph (a)(2)) to conform to the scope of the exemption in the statute. The exemption in the statute only applies to a person who performs air conditioning and refrigeration contracting on a building owned by the person as the person's home ("homeowner exemption"). The Department is amending and retaining the exemption in the rules because the language clarifies that the person is not performing air conditioning and refrigeration services for the general public and is not performing air conditioning and refrigeration services in a building other than the person's own home. It also clarifies that the exemption only applies to the homeowner, not someone assisting the homeowner.

The proposal deletes exemption (4) (current paragraph (a)(4)) from the rules since it is outside the scope of the statute. The Associated Plumbing, Heating, Cooling Contractors Association submitted a comment on this exemption in response to the Notice of Intent to Review. The association proposed deleting §75.30(a)(4) so only electricians and appliance installers can work on this equipment. The Department has already proposed deleting this exemption.

The proposal does not make any changes to current exemption (5) (to be renumbered as exemption (4)). The Department is retaining the exemption in the rules because it contains clarifying language that the person may not install, repair or remove any other part of the exhaust system. The Associated Plumbing, Heating, Cooling Contractors Association submitted a comment on §75.30(a)(5) in response to the Notice of Intent to Review. The association proposed deleting §75.30(a)(5) so only electricians and appliance installers can work on this equipment. The Department did not make the association's suggested change, since this exemption is in the statute.

The proposal deletes the exemption under §75.30(b). Associated Plumbing, Heating, Cooling Contractors Association submitted a comment in response to the Notice of Intent to Review. The association proposed deleting this exemption and explained that it "gives general contractors the right to bid on a/c & refrigeration jobs if they include at least one other type of job. Other licensing programs, such as plumbers and electricians, do not allow this." The Department has deleted subsection (b) in response to this comment.

§75.40

The proposal amends the title of §75.40 to clarify that this section addresses contractor requirements. The proposal also amends §75.40(e), which addresses a request to waive the insurance requirements because the license holder does not contract with the public. Specifically, the proposal deletes §75.40(e)(3), which requires that the waiver request be accompanied by a confirmation of employment by the current employer when working under the license of another contractor as an employee. The Department has determined that this provision is unnecessary and that any necessary information would be captured under §75.40(e)(2),

which requires a detailed explanation of the conditions under which the waiver is requested.

§75.70

The proposal makes technical corrections to §75.70. It amends the title to clarify that this section addresses contractor requirements, and it clarifies that "30 days" is "30 calendar days" under §75.70(h)(1) and §75.70(h)(2).

Associated Plumbing, Heating, Cooling Contractors Association submitted a comment in response to the Notice of Intent to Review. The association suggested adding a provision stating that a licensee can only use licensed contractors or registered technicians for maintenance work. The Department is proposing new §75.70(a)(11) in response to this comment.

§75.71

The proposal makes technical corrections to §75.71. It shortens the title of the section, and it changes "30 business days" to "30 calendar days" under §75.71(a)(1). This change makes the provision consistent with other provisions that have 30-day timeframes. The proposal also amends §75.71(i) to include the Department's website address in the Department information that is included on proposals and invoices, written contracts and certain signs. The proposed date for including the website information on these documents is September 1, 2011.

Associated Plumbing, Heating, Cooling Contractors Association submitted a comment in response to the Notice of Intent to Review. The association suggested adding a provision stating that a contracting company can only use licensed contractors or registered technicians for maintenance work. The Department is proposing new §75.71(k) in response to this comment.

§75.73

The proposal makes technical corrections to §75.73. It shortens the title of the section and clarifies that "30 days" is "30 calendar days" under §75.73(d).

§75.80

The proposal amends the contractor fees under §75.80(b) by deleting the contractor examination fee of $90. The contractor examination fees are established by and are payable to the Department's third-party examination contractor. This fee no longer needs to be included in the Department rules.

The proposal reorganizes the technician fees under §75.80(d) and clarifies the certified technician designation fee. The technician registration renewal fee has been moved to new paragraph (3) and it applies whether the technician has a certified technician designation or not. The underlying registration must be renewed. The proposal adds clarity to new paragraph (2) (currently paragraph (3)) regarding the certified technician designation application fee. Language has been added to clarify that this fee is in addition to the technician registration application fee. Current paragraphs (4) and (5) have been consolidated into one provision, paragraph (4). A revised or duplicate technician registration application, with or without the certified technician registration, is $15. The proposal does not make any changes to the existing fee amounts.

An individual from Austin Industrial Refrigeration submitted a comment in response to the Notice of Intent to Review. The commenter opposed the technician registration fees and viewed these fees as a tax. The Department did not make any changes in response to the public comment. The statute requires technicians to be registered, and it requires that rules be adopted to provide for the registration of technicians and to establish fees for the issuance and renewal of these registrations.

§75.90

The proposal makes technical changes to the title and substance of §75.90.

§75.91

The proposal adds new §75.91, which provides notice that the Department has new enforcement authority under Texas Occupations Code, Chapter 51 due to the 81st Legislative Session (2009). Chapter 51 was amended to make the Department's enforcement authority consistent across programs, especially as new programs or occupations are moved to the Department. The enforcement authority under Chapter 51 is in addition to that set out under the air conditioning and refrigeration statute and rules.

§75.100

The proposal amends §75.100(a), Electrical Connections. Section 75.100(a)(4) is amended to add a reference to the "International Residential Code, where applicable."

The proposal amends §75.100(b), Piping. The proposal amends §75.100(b)(3) by changing "Mechanical piping" to "Other piping, fittings, valves and controls." Paragraph (b)(1) addresses fuel gas piping, paragraph (b)(2) addresses drain piping, and paragraph (b)(3) as amended addresses all other piping and related parts.

The proposal amends §75.100(c), Duct Cleaning. The proposal amends subsection (c) to clarify that biomedical remediation requires a contractor license under Texas Occupations Code, Chapter 1302 and that biomedical testing does not require a contractor license under Tecas Occupations Code, Chapter 1302. It also removes references to "an unlicensed person or company" and replaces these references with "a person or entity that does not hold a contractor license under Texas Occupations Code, Chapter 1302." This proposal is in response to a request for clarification from the advisory board and a member of the public at the advisory board's meeting on August 26, 2010.

The proposal amends §75.100(d), Process Cooling and Heating. The proposal adds clarifying language to §75.100(d)(2) regarding a person or entity that does not hold a contractor license performing maintenance, service and repairs on the secondary open loop components after a licensed contractor has deactivated and rendered inert the primary closed loop system. This language reflects a recommended change that was offered at previous advisory board meetings.

Associated Plumbing, Heating, Cooling Contractors Association submitted a comment in response to the Notice of Intent to Review. The association had suggested adding language to §75.22, but the Department thinks it is more appropriate to consider the suggested language under §75.100(d). The association recommended language stating: "Air conditioning and refrigeration equipment that has had its refrigerant or other primary process fluid removed still requires licensed persons to install, repair or maintain it." The Department declined to make the association's suggested change since it conflicts with the proposed language reflecting the advisory board's recommendation.

The proposal amends §75.100(e), Standards. The proposal amends §75.100(e)(1), regarding municipalities that have adopted a code by ordinance. The proposal changes the lan-

guage to reference codes that are "consistent with the standards established under the Act and these rules." This wording reflects the language in the statute regarding municipal standards. The proposal also amends §75.100(e)(2), regarding municipalities that have not adopted a code by ordinance. This paragraph has been clarified and broken down into separate parts to address the applicable codes based on whether the building is a single family home or townhouse or whether the building is commercial or a multiple family dwelling.

The proposal adds new §75.100(f), System Testing and Balancing. The proposal addresses system testing and system balancing in response to recommendations from the advisory board. The new rule provides that system testing does not require a contractor license under Texas Occupations Code, Chapter 1302 and that system balancing does require a contractor license under Texas Occupations Code, Chapter 1302. New definitions for "system balancing" and "system testing" were added under §75.10.

§75.110

The proposal adds new §75.110 that would identify and adopt applicable codes for the air conditioning and refrigeration program similar to what is done in the electrician program and other code-based programs. The air conditioning and refrigeration statute and rules often reference the "applicable codes" or "current codes," but no specific codes have been identified or adopted. This new rule would identify such codes, and the proposed editions for adoption are the 2009 Uniform Mechanical Code and the 2009 International Mechanical Code, the International Residential Code and other applicable and related codes. The proposed effective date for use of these codes is September 1, 2011, based on the recommendation of the advisory board.

Other Changes

References to "shall" have been changed to "must" and references to "shall not" have been changed to "may not" as part of the Department's plain talk initiative. The proposal also makes a technical correction by changing references to "Department", "Commission", and "Executive Director" to lower case to match the statute.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed rules are in effect there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the proposed rules.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, the public benefit will be more clarity in the requirements for contractors, technicians, and persons holding certificates of registration to purchase refrigerant. The Department has tried to simplify the rules by making them more user-friendly where possible and has tried to eliminate any rules that conflict with the statute or create confusion.

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

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

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

The rules are proposed under Texas Occupations Code, Chapters 51 and 1302, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1302. No other statutes, articles, or codes are affected by the proposal.

§75.10. Definitions.

The following words and terms have the following meanings as used in this chapter:

(1) Act--Texas Occupations Code, Chapter 1302, Air Conditioning and Refrigeration Contractors.

(2) Advertising or Advertisement--Any commercial message which promotes the services of an air conditioning and refrigeration contractor.

(3) Air conditioning and refrigeration subcontractor--A person or firm who contracts with a licensed air conditioning contractor for a portion of work requiring a license under the Act. The subcontractor contracts to perform a task according to his own methods, and is subject to the contractor's control only as to the end product or final result of his work.

(4) Air conditioning or heating unit--A stand-alone system with its own controls that conditions the air for a specific space and does not require a connection to other equipment, piping, or ductwork in order to function.

(5) Assumed name--As defined in the Business and Commerce Code, Title 5 [4], Chapter 71 [~~36, Subchapter A, §36.02~~].

(6) Biomedical Remediation--The treatment of ducts, plenums, or other portions of air conditioning or heating systems by applying disinfectants, anti-fungal substances, or products designed to reduce or eliminate the presence of molds, mildews, fungi, bacteria, or other disease-causing organisms.

(7) Biomedical Testing--The inspection and sampling of ducts, plenums, or other portions of air conditioning or heating systems to test for the presence of molds, mildews, fungi, bacteria, or other disease-causing organisms. The term does not include performing any type of treatment or remediation.

(8) [~~(7)~~] Boiler--As defined in Chapter 755 of the Health and Safety Code.

(9) [~~(8)~~] Business affiliation--The business organization to which a licensee elects to assign his license.

(10) [~~(9)~~] Cheating--Attempting to obtain, obtaining, providing, or using answers to examination questions by deceit, fraud, dishonesty, or deception.

[~~(10) Contracting--Agreeing, either orally or in writing, to perform work or performing work, either personally or through an employee or subcontractor.~~]

(11) Cryogenics--Refrigeration [~~refrigeration~~] that deals with producing temperatures ranging from:

(A) -250 degrees F to Absolute Zero (-459.69 degrees F);

(B) -156.6 degrees C to -273.16 degrees C;

(C) 116.5 degrees K to 0 degrees K; or

(D) 209.69 degrees R to 0 degrees R.

(12) Department--The Texas Department of Licensing and Regulation.

(13) Design of a system--Making decisions on the necessary size of equipment, number of grilles, placement and size of supply and return air ducts, and any other requirements affecting the ability of the system to perform the function for which it was designed.

(14) Direct supervision--Directing and verifying the design, installation, construction, maintenance, service, repair, alteration, or modification of an environmental air conditioning, refrigeration, process cooling, or process heating product or equipment to assure mechanical integrity. Verification may include, but is not limited to:

(A) personal inspection of a job;

[(B) contacting the customer by mail, e-mail, or telephone to determine if the customer is satisfied with the installation and service provided;]

(B) [(C)] reviewing a checklist or report completed by a person who performed some or all of the work on a job; or [and]

(C) [(D)] reviewing an inspection report of the job made by a municipal mechanical inspector.

(15) Employee--An individual who performs tasks assigned by an employer, and who is subject to the employer's control in all aspects of job performance, except that a licensed air conditioning and refrigeration contractor remains responsible for all air conditioning work he or she performs. An employee's wages are subject to deduction of federal income taxes and social security payments. An employee may be full time, part time, or seasonal. Simultaneous employment with a temporary employment agency, a staff leasing agency, or other employer does not affect an employee's status for the purpose of this chapter [rule].

(16) Executive Director--The executive director [Executive Director] of the department [Department].

(17) Full time employee--An employee who is present on the job either 40 hours a week, or at least 80% of the time the company is offering air conditioning and refrigeration contracting services to the public, whichever is less.

(18) Licensee--An individual holding a contractor's license of the class and endorsement appropriate to the work performed under the Act and this chapter [these rules].

(19) Offering to perform--Making a written or oral proposal, contracting in writing or orally to perform air conditioning and refrigeration work, or advertising in any form through any medium that a person or business entity is an air conditioning and refrigeration contractor, or that implies in any way that a person or business entity is available to contract for or perform air conditioning and refrigeration work.

(20) Permanent office--Any location, which must be identified by a street address, or other data identifying a rural location, from which a person or business entity conducts the business of an air conditioning and refrigeration contracting company. A location not open to the public, or not located within the state, may serve as a permanent office so long as the department and consumers have access to the licensee required by §1302.252 of the Act to be employed in each permanent office.

(21) Primary process medium--A refrigerant or other primary process fluid that is classified in the current ANSI/ASHRAE Standard 34 as Safety Group A1, A2, B1, or B2. Safety Groups A3 and B3 refrigerants are specifically excluded.

(22) Proper installation, and service--Installing, servicing, repairing, and maintaining air conditioning and refrigeration equipment in accordance with:

(A) applicable municipal ordinances and codes adopted by a municipality where the installation occurs;

(B) the applicable edition of the [current] Uniform Mechanical Code as adopted under §75.110; or the applicable edition of the [current] International Mechanical Code as adopted under §75.110 and International Fuel Gas Code, in areas where no code has been adopted; or the International Residential Code, as applicable;

(C) the manufacturer's specifications and instructions; and

(D) all requirements for safety and the proper performance of the function for which the equipment or product was designed.

(23) Registrant--A person who is registered with the department as a technician under the Act and this chapter.

(24) [(23)] Repair work--Diagnosing and repairing problems with air conditioning, commercial refrigeration, or process cooling or heating equipment, and remedying or attempting to remedy the problem. Repair work does not mean simultaneous replacement of the condensing unit, furnace, and evaporator coil.

(25) System balancing--A process of adjusting, regulating or proportioning air distribution equipment or any activity beyond system testing.

(26) System testing--Assessing or measuring the performance of the air distribution equipment or air conditioning and refrigeration duct system through equipment that can be attached externally to the system. Testing does not include opening, adjusting or balancing equipment or ducts or any activity beyond assessing the system through the use of external equipment. Testing does not include testing fire and smoke dampers,

(27) [(24)] Total replacement of a system--Simultaneous replacement of the condensing unit, the evaporator coil, the furnace, if applicable, and the air handling unit, or replacement of a package system.

§75.20. Contractor Licensing Requirements--Application and Experience Requirements.

(a) To obtain a contractor license, an applicant must:

(1) submit a completed application on a department-approved form;

(2) have at least 36 months of practical experience with the tools of the trade in the preceding five years;

(3) pass the examination;

(4) submit the required fees; and

(5) complete all requirements, including passing the exam, within one year of the date the application is filed.

[(a) An applicant shall submit a complete application and appropriate fees. An applicant must complete all requirements, including passing the exam, within one year of the date the application is filed.]

(b) An applicant who uses credit for air conditioning and refrigeration courses to fulfill up to two years of the required 36 months of practical experience with the tools of the trade must furnish a copy of[:]

[(1)] a transcript or diploma showing a degree in air conditioning engineering, refrigeration engineering, or mechanical engineering from an institution of higher education whose program is approved by the Texas Board of Professional Engineers for the purpose of licensing engineers.[;]

[(2) a transcript, certificate or diploma in a course emphasizing hands-on training with the tools of the trade; or]

[(3) transcript of courses taken without earning a certificate or diploma emphasizing hands-on training with the tools of the trade. Transcripts must be from schools authorized or approved by the Texas Workforce Commission, the U.S. Department of Labor, the Texas Higher Education Coordinating Board, or other organizations recognized by the Department. Credit will be allowed at the rate of one month credit for every two months of completed training. Thirty semester hours are equivalent to six months credit of experience. For schools issuing certificates based on classroom hours, fifteen lecture hours are equivalent to one semester hour and 30 lab hours are equivalent to one semester hour.]

§75.21. Contractor Licensing Requirements--Examinations.

(a) A passing grade is 70%.

(b) A person taking an examination must comply with the department's examination requirements under 16 Texas Administrative Code, Chapter 60, Subchapter E.

[(b) An applicant who does not show up for a scheduled examination will forfeit the examination fee.]

(c) Cheating on an examination is grounds for denial, suspension, or revocation of a license and/or an administrative penalty.

[(d) An applicant who has passed an exam for a particular class and endorsement and is licensed or is eligible for licensure in that class and endorsement, may not retake that examination.]

§75.22. Contractor Licensing Requirements--General.

(a) The term of an air conditioning and refrigeration contractor's license is one year.

(b) A license is not transferable.

(1) License numbers will [shall] have the following form: Title/Class/Number/Endorsement code-TACL/A/000000/C.

(2) Endorsement codes are as follows:

(A) Environmental Air Conditioning-E;

(B) Commercial Refrigeration and [&] Process Cooling or [and] Heating-R;

(C) Combined Endorsements-C.

(c) A holder of a Class B license with the proper endorsement may perform air conditioning and refrigeration work in a building or a complex of buildings having more than one air conditioning or heating unit. The combined cooling capacity of the units may exceed 25 tons and heating capacity may exceed 1.5 million Btu/h, as long as each complete individual unit does not exceed the capacities stated above.

(d) Any contractor who has a Class B license with one or combined endorsements may upgrade an endorsement(s) by passing the Class A examination for that endorsement.

(e) A contractor who has endorsements of different classes will be issued a separate license number for each endorsement. The licenses will have concurrent expiration dates and will be printed on a single document.

(f) A contractor may have only one endorsement per license when he has two licenses. Both licenses must have the same business affiliation and permanent and business addresses.

(g) The insurance requirement for separate licenses can be met with a single policy with limits at least as high as those required for a Class A license. A waiver of insurance for one license automatically applies to both licenses.

(h) Any violation of the law or the rules and regulations resulting in disciplinary action for one license may result in disciplinary action for the other license.

§75.23. Contractor Licensing Requirements--Temporary Licenses.

(a) A company owner or officer, whose only license holder is no longer available due to death or[,] disability [or dissolution of a partnership or corporation], may request a temporary license. [A temporary license is not available to:]

[(1) a new unlicensed owner of a company who was not an owner or officer of the company before it was dissolved; or]

[(2) an employee of a sole proprietorship if the licensed owner closes or sells the business.]

(b) The temporary license request shall be made by an owner or partner who was affiliated with the firm at the time the license holder became unavailable. The person who will hold the temporary license shall be an owner, partner, or employee already associated with the firm[, and must meet all eligibility requirements to take an examination for a license].

(c) The request for a temporary license must:

(1) be made within fifteen (15) calendar [thirty] days from the date the license holder became unavailable;

(2) be in writing;

(3) state the reason for the request including the circumstances [and legal organization of the company] involved;

(4) include a completed application with all applicable fees; and

(5) include a new certificate of insurance covering the company and the temporary license holder.

(d) A non-renewable temporary license shall be valid for a period of 30 calendar days from date of issuance.

(e) A temporary license number assigned by the department [Department] must be shown on company vehicles, and must appear on invoices and proposals. The number may be taped to vehicles or applied by any other temporary methods. The temporary license shall be numbered by the department [Department] as follows: Title/Class/Number/Endorsement code/Temporary Designation.

§75.24. Contractor Licensing [and Registration] Requirements--Renewal.

To renew a contractor's license, a person must:

[(a) A renewal application must contain:]

(1) submit a completed renewal application on a department-approved form;

[(1) the licensee's or registrant's name, license number, permanent address and telephone number;]

[(2) the name, physical address and telephone number of the business with which the licensee is affiliated, if any;]

(2) [(3)] submit all appropriate fees; and

(3) complete eight (8) hours of continuing education as required under §75.25.

[(4) evidence of compliance with the applicable insurance requirement on a form acceptable to the Department or a request for a waiver of insurance, if applicable.]

[(b) A licensee or registrant shall not perform work requiring a license or registration under the Act with an expired license or registration or a license or registration that has been denied renewal, except as allowed by the Administrative Procedure Act.]

§75.25. Continuing Education.

(a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.

(b) To renew a license as an air conditioning and refrigeration contractor under Texas Occupations Code, Chapter 1302, Subchapter F, a licensee must complete eight hours of continuing education in courses approved by the department, including two hours of instruction in Texas state law and rules that regulate the conduct of licensees.

(c) The continuing education hours must have been completed within the term of the current license, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the one year period immediately prior to the date of renewal.

(d) A licensee may not receive continuing education credit for attending the same course more than once.

(e) A licensee must [shall] retain a copy of the certificate of completion for a course for one year after the date of completion. In conducting any inspection or investigation of the licensee, the department may examine the licensee's records to determine compliance with this subsection.

(f) To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:

(1) Texas Occupations Code, Chapter 1302, Air Conditioning and Refrigeration Contractors;

(2) Title 16, Texas Administrative Code, Chapter 75, Air Conditioning and Refrigeration Administrative Rules;

(3) the International Mechanical Code, the Uniform Mechanical Code, or other applicable codes;

(4) ethics;

(5) business practices; or

(6) technical requirements.

[(g) This section shall apply to providers and courses for air conditioning and refrigeration contractors upon the effective date of this section.]

[(h) This section shall apply to air conditioning and refrigeration contractor licenses issued under Texas Occupations Code, Chapter 1302, Subchapter F that expire on or after January 1, 2006.]

§75.26. Sale and Use of Refrigerants--Certificate of Registration.

(a) Persons exempt under Texas Occupations Code, Chapter 1302, Subchapter B, §1302.054 and §1302.056 who purchase refrigerants and equipment containing refrigerants must:

(1) submit a completed application for a Certificate of Registration on a department-approved form; and

(2) submit the required fee.

[(a) Persons exempt under Texas Occupations Code, Chapter 1302, Subchapter B, §1302.054 and §1302.056 who purchase refrigerants and equipment containing refrigerants shall first request a Certificate of Registration on an application form provided by the Department. The Certificate of Registration application fee shall accompany the application.]

(b) A Certificate of Registration is not transferable from one person to another person.

(c) [(b)] A person described under subsection (a) [Registrants] who purchase refrigerants or equipment containing refrigerants must [shall], at the time of purchasing such items, provide to the seller a picture identification along with the Certificate of Registration.

[(c) The Certificate of Registration remains valid if the exempt person changes employment and continues to perform work that is exempt under the same section of the Act. Changes in employment and leaving or re-entering the exempt work category must be reported by the certificate holder to the Department within 30 days of the change.]

[(d) Certificate of Registration is invalid if the exempt person ceases to be employed pursuant to §1302.054 and §1302.056 of the Act.]

(d) [(e)] A Certificate of Registration does not:

(1) replace any other requirement for purchasing refrigerant products under the Federal Clean Air Act amendments of 1990 and federal administrative rules adopted under that section; nor

(2) authorize the certificate holder to perform air conditioning and refrigeration work that is not covered by the appropriate exemption from licensing in the Act.

[(f) A flammable refrigerant or refrigerant substitute that contains a liquid petroleum-based product that has been listed as acceptable by the Environmental Protection Agency, may be sold and used in accordance with rules issued by the Environmental Protection Agency.]

[(g) Equipment that is classified as a small appliance under 40 C.F.R. §82.152 as amended containing a half-ounce or less of refrigerant may be purchased without a license or a Certificate of Registration.]

§75.27. [Air Conditioning and Refrigeration] Technician Registration Requirements--Initial Application.

(a) To obtain a technician registration, an applicant must:

(1) submit a completed application on a department-approved form; and

(2) submit the required fee.

[(a) An applicant shall submit a complete application and appropriate fees.]

(b) The term of an air conditioning and refrigeration technician's registration is one year.

(c) A registration is not transferable.

(d) An applicant for registration as an air conditioning and refrigeration technician will be issued a temporary registration that is valid for 21 days if the applicant:

(1) has not been convicted of a criminal offense, or been placed on deferred adjudication; and

(2) pays the required fee.

§75.28. [Air Conditioning and Refrigeration] Technician Registration Requirements--Certified Technician Designation [Certification].

(a) A registered technician is not required to be certified by the department [Department], and a registrant may perform the same tasks as those performed by a certified technician.

(b) A registered technician may use the designation "certified technician" after obtaining department [Department] certification.

(c) To obtain a certified technician designation [certification], an applicant must:

(1) submit a completed [complete an] application on a department-approved form [for certification];

(2) provide proof of having passed a certification examination administered by;

(A) a nationally recognized certification organization; or

(B) other organizations approved by the department [Department]; and

(3) pay the required fee.

§75.29. Technician Registration Requirements--Renewal.

To renew a technician registration, with or without the certified technician designation, a person must:

(1) submit a completed renewal application on a department-approved form; and

(2) submit the required fees.

§75.30. Exemptions.

The Act and this chapter do not apply to those persons exempt under Occupations Code, Chapter 1302, Subchapter B, with the following clarifications:

[(a) Licensure requirements under the Act and these Rules do not apply to:]

(1) persons who conduct air conditioning and refrigeration contracting, who are employed by a regulated electric or gas [public] utility facility and perform those services in connection with the utility business in which the person is employed;

(2) a person who engages in air conditioning and refrigeration contracting in a building owned solely by the person as the person's home and who [an individual who performs air conditioning and refrigeration maintenance work on equipment and property owned by him if he] does not engage in the occupation of air conditioning and refrigeration contracting for the general public. This exemption applies only to the homeowner [property owner] and not to others who may attempt to assist the homeowner [owner];

(3) those who hold a valid Certificate of Authorization issued by the American Society of Mechanical Engineers or The National Board of Boiler and Pressure Vessel Inspectors that are:

(A) appropriate for the scope of work to be performed, and

(B) performed solely on boilers as defined in Chapter 755 of the Health and Safety Code; and

[(4) persons who perform air conditioning contracting on ducted or unducted environment air conditioning equipment of three tons or less on non-commercial boats; and]

(4) [(5)] persons who install, repair, or remove a vent hood of the type commonly used in residential and commercial kitchens, as long as the person does not install, repair or remove any other part of the exhaust system.

[(b) Unlicensed general contractors may bid or contract for a job that includes air conditioning or refrigeration if the job does not consist solely of work requiring a license under the Act.]

§75.40. Contractor Insurance Requirements.

(a) Class A licensees must [shall] maintain commercial general liability insurance at all times during a license period:

(1) of at least $300,000 per occurrence (combined for property damage and bodily injury);

(2) of at least $600,000 aggregate (total amount the policy will pay for property damage and bodily injury coverage); and

(3) of at least $300,000 aggregate for products and completed operations.

(b) Class B licensees must [shall] maintain commercial liability insurance at all times during a license period:

(1) of at least $100,000 per occurrence (combined for property damage and bodily injury);

(2) of at least $200,000 aggregate (total amount the policy will pay for property damage and bodily injury coverage); and

(3) of at least $100,000 aggregate for products and completed operations.

(c) Insurance must be obtained from an insurance provider authorized to sell liability insurance in Texas pursuant to the Texas Insurance Code.

(d) A license applicant or licensee must [shall] file with the department [Department] a completed certificate of insurance or other evidence satisfactory to the department [Department] when applying for an initial license, changing a business name or affiliation, and upon request of the department [Department].

(e) Requests to waive the insurance requirements because the license holder does not contract with the public must [shall]:

(1) be submitted in writing to the department; and [Department;]

(2) contain a detailed explanation of the conditions under which the waiver is requested.[; and]

[(3) be accompanied by a confirmation of employment by the current employer when working under the license of another contractor as an employee.]

(f) A licensee who has received a waiver of insurance cannot [shall not] perform or offer to perform air conditioning and refrigeration contracting under his license with the general public.

(g) A licensee or an air conditioning and refrigeration contracting company must [shall] furnish the name of the insurance carrier, policy number, name, address, and telephone number of the insurance agent with whom the licensee or company is insured to any customer who requests it.

§75.65. Advisory Board.

(a) The purpose of the Air Conditioning and Refrigeration Contractors Advisory Board is to advise the commission [Commis-

~~sion~~] on adopting rules, enforcing and administering the Act, and setting fees.

(b) Expense reimbursements to board members:

(1) are limited to authorized expenses incurred while traveling to and from board meetings; and

(2) must [~~shall~~] be limited to those allowed by the State of Texas Travel Allowance Guide, the Texas Department of Licensing and Regulation policies governing employee travel allowances, and the General Appropriations Act.

(c) Expenses can be reimbursed to board members only when the legislature has specifically appropriated money for that purpose, and only to the extent of the appropriation.

§75.70. Responsibilities of the Contractor/Licensee [~~Licensee~~].

(a) The licensee must [~~shall~~]:

(1) if affiliated with an air conditioning and refrigeration contracting company, assign his license to one company or one permanent office of the company that will use the license;

(2) if affiliated with an air conditioning and refrigeration contracting company, be an employee or owner of the air conditioning and refrigeration contracting company and must work full time at the company or permanent office of the company;

(3) use his license for one business affiliation and one permanent office at any one given time;

(4) furnish the department [~~Department~~] with his permanent mailing address and the name, physical address, and telephone number of the air conditioning and refrigeration contracting company through which the licensee provides services;

(5) verify that all work for which he has supervisory responsibility is performed so that mechanical integrity of installed products, system or equipment is maintained, and that all maintenance, service, and repair work has been done properly; [~~and~~]

(6) if affiliated with an air conditioning and refrigeration contracting company, furnish to municipalities a list of authorized agents that may pull permits under the license, and, if subcontracting jobs to other licensed air conditioning and refrigeration contracting companies, furnish a list of agents of those licensed companies that may pull permits under his license;[~~.~~]

(7) provide proper installation and service, and assure the mechanical integrity of work and installations performed or supervised by the licensee;

(8) not misrepresent the need for services, services to be provided, or services that have been provided;

(9) not make a fraudulent promise or false statement to influence, persuade, or induce an individual or a company to contract for services; [~~and~~]

(10) not knowingly provide air conditioning and refrigeration work for or on behalf of an unlicensed air conditioning and refrigeration contracting company, or a contracting company that does not have an affiliation with a licensed individual who supervises all air conditioning and refrigeration work as provided by Occupations Code, Chapter 1302, and this chapter; and [~~these rules.~~]

(11) only use licensed contractors or registered technicians to perform maintenance work.

(b) A licensee may subcontract portions of work requiring a license under the Act to unlicensed persons, firms, or corporations as long as:

(1) the licensee actively provides work or service which requires a license, either in person or with the licensee's employees;

(2) the work or service provided in person or with the licensee's employees consists of more than accepting a contract or request for service, scheduling the work, and providing supervision of the work; and

(3) the licensee is ultimately responsible to the customer for all work performed by the subcontractor.

(c) The design of a system may not be subcontracted to an unlicensed person, firm or corporation.

(d) A licensee who subcontracts to perform work requiring a license under the Act for an air conditioning and refrigeration contracting company is responsible to the company and the department for the mechanical integrity of all work performed by the subcontractor.

(e) The licensee is responsible for all work performed under his supervision, regardless of whether the owners, officers, or managers of the air conditioning and refrigeration contracting company allow the licensee the authority to supervise, train, or otherwise control compliance with the Act.

(f) A licensee may not [~~shall not~~] allow another individual to use his license for any purpose.

(g) A licensee may not [~~shall not~~] allow any air conditioning and refrigeration contracting company with which he has no business affiliation to use his license for any purpose, except as otherwise allowed by this chapter [~~these rules~~].

(h) A licensee must [~~shall~~]:

(1) notify the department [~~Department~~], in writing, within thirty (30) calendar days of any change in permanent mailing address, company location, company telephone number or change in assignment of license; and

(2) provide a revised insurance certificate to the department [~~Department~~] within thirty (30) calendar days of a change in the name of the company to which the license is assigned.

(i) Failure to maintain insurance or failure to provide a certificate of insurance when requested is grounds for imposition of administrative penalties and/or sanctions.

(j) Altering a license in any way is prohibited and is grounds for imposition of administrative penalties and/or sanctions.

§75.71. Responsibilities of the [~~Air Conditioning and Refrigeration~~] Contracting Company.

(a) An Air Conditioning and Refrigeration Contracting Company must [~~shall~~]:

(1) notify the department [~~Department~~] of all licensees who have assigned their licenses to the company and must [~~shall~~] notify the department [~~Department~~] within thirty (30) calendar [~~business~~] days when any licensee whose license is assigned to the company has left its employ;

(2) furnish to the department [~~Department~~] copies of applicable assumed name registrations from the Office of the Secretary of State and/or County Clerks' office;

(3) maintain records on its license holder showing payroll taxes deducted and reported to the Texas Workforce Commission, and either, hours worked each day or documentation showing that the licensee is on salary and works full time for the contracting company;

(4) furnish a copy of the company's records, specified in paragraph (3) of this subsection, at the request of the department [~~Department~~];

(5) furnish to municipalities a list of authorized agents that may pull permits under the license of its license holder, and, if subcontracting jobs to other licensed air conditioning and refrigeration contracting companies, furnish a list of agents of those licensed companies that may pull permits under the license of its license holder; and

(6) make available to the department [~~Department~~] in Austin, Texas, or other location designated by the department [~~Department~~], the records relating to the business of the air conditioning and refrigeration contracting company conducted through a permanent office for a period of at least three years after completion of a job.

(b) A person or an air conditioning and refrigeration contracting company that performs air conditioning and refrigeration contracting must [~~shall~~]:

(1) provide proper installation and service, and assure the mechanical integrity of all work and installations;

(2) not misrepresent the need for services, services to be provided, or services that have been provided; and

(3) not make a fraudulent promise or false statement to influence, persuade, or induce an individual or a company to contract for services.

(c) A contracting company may subcontract portions of work requiring a license to unlicensed persons, firms, or corporations as long as:

(1) the contracting company's employees, working under the supervision of the contracting company's assigned licensee actively provides work or service;

(2) the work or service provided by the employees consists of more than accepting a contract or request for service, scheduling the work, and providing supervision of the work; and

(3) the assigned licensee is ultimately responsible to the customer for all work performed by the subcontractor.

(d) The design of a system may not [~~shall not~~] be subcontracted to an unlicensed person, firm or corporation.

(e) Each air conditioning and refrigeration contracting company must [~~shall~~] have a licensee employed full time for each permanent office. All work requiring a license must [~~shall~~] be under the direct supervision of the licensee for that office.

(f) If an air conditioning and refrigeration contracting company uses locations other than a permanent office, those locations must [~~shall~~] be used only for air conditioning and refrigeration workers to receive instructions from the permanent office on scheduling of work, to store parts and supplies, and/or to park vehicles. These locations may not be used to contract air conditioning sales or service.

(g) Each air conditioning and refrigeration contracting company must [~~shall~~] display the license number of its affiliated licensee and company name in letters not less than two inches high on both sides of all vehicles used in conjunction with air conditioning and refrigeration contracting. When an unlicensed subcontractor is at a job site not identified by a marked vehicle, the site must [~~shall~~] be identified either by a temporary sign on the subcontractor's vehicle or on a sign visible and readable from the nearest public street containing the contractor's affiliated license number and company name.

(h) All advertising by air conditioning and refrigeration contracting companies designed to solicit air conditioning or refrigeration business must [~~shall~~] include the affiliated licensee's license number. The following advertising does not require the license number:

(1) nationally placed television advertising, in which a statement indicating that license numbers are available upon request is used in lieu of the licensee's license number;

(2) telephone book listings that contain only the name, address, and telephone number;

(3) manufacturers' and distributor's telephone book trade ads endorsing an air conditioning and refrigeration contractor;

(4) telephone solicitations, provided the solicitor states that the company complies with licensing requirements of the state. The affiliated licensee's number must be provided upon request;

(5) promotional items of nominal value such as ball caps, tee shirts, and other gifts;

(6) letterheads and printed forms for office use; and

(7) signs located on the contractor's permanent business location.

(i) An invoice must [~~shall~~] be provided to the consumer for all air conditioning and refrigeration work performed. The company name, address, and phone number must [~~shall~~] appear on all proposals and invoices. The affiliated licensee's number must [~~shall~~] appear on all proposals and invoices for air conditioning and refrigeration work. The following information: "Regulated by The Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599, www.license.state.tx.us" must [~~shall~~] be listed on:

(1) proposals and invoices;

(2) written contracts; and

(3) a sign prominently displayed in the place of business if the consumer or service recipient may visit the place of business for service.

(j) An air conditioning and refrigeration contracting company may not [~~shall not~~] use a license that is not assigned to that company.

(k) An air conditioning and refrigeration contracting company may only use licensed contractors or registered technicians to perform maintenance work.

(l) The inclusion of the department website information as required under subsection (i) is effective September 1, 2011.

§75.73. Responsibilities of the Technician/Registrant [~~Air Conditioning and Refrigeration Technician--Responsibilities~~].

(a) A registrant must [~~shall~~]:

(1) provide proper installation and service, and assure the mechanical integrity of work and installations performed by the registrant;

(2) not misrepresent the need for services, services to be provided, or services that have been provided;

(3) not knowingly perform any non-exempt air conditioning and refrigeration maintenance work without being under the supervision of a licensed air conditioning and refrigeration contractor;

(4) not knowingly provide non-exempt air conditioning and refrigeration work for or on behalf of an air conditioning and refrigeration contracting company that does not have an affiliation with a licensed individual who supervises all air conditioning and refrigeration work as provided by Occupations Code, Chapter 1302, and this chapter [~~these rules~~]; and

(5) not use the designation "certified technician" unless he has been certified by the department [~~Department~~] pursuant to §75.28, or has been certified by examination given by a nationally recognized certification organization, and the individual lists the organization.

(b) A registrant may not [~~shall not~~] allow another individual to use his registration for any purpose.

(c) A registrant may not [~~shall not~~] allow any air conditioning and refrigeration contracting company[~~,~~] or any air conditioning and refrigeration contractor with which he is not employed to use his registration for any purpose, except as otherwise allowed by this chapter [~~these rules~~].

(d) A registrant must [~~shall~~] notify the department [~~Department~~], in writing, within thirty (30) calendar days of any change in permanent mailing address, and telephone number.

(e) Altering a registration in any way is prohibited and is grounds for imposition of administrative penalties and/or sanctions.

§75.80. Fees.

(a) All application fees are non-refundable.

(b) Air Conditioning and Refrigeration Contractors.

(1) Contractor license application fee is $115.

~~[(2) Contractor examination fee is $90 for each examination requested.]~~

(2) [~~(3)~~] Contractor license renewal application fee is $65.

(3) [~~(4)~~] Revised or duplicate contractor license application fee is $25.

(4) [~~(5)~~] The application fee for adding an endorsement to an existing contractor license is $25.

(c) Certificate of Registration for the Sale and Use of Refrigerants.

(1) Certificate of Registration [~~registration~~] application fee is $25.

(2) Revised or duplicate certificate of registration application fee is $25.

(d) Air Conditioning and Refrigeration Technicians.

(1) Technician registration application fee is $20.

~~[(2) Technician registration renewal application fee is $20.]~~

(2) [~~(3)~~] Certified technician designation [~~Technician certification~~] application fee is $15. This fee is in addition to the technician registration application fee.

(3) Technician registration renewal application fee (with or without the certified technician designation) is $20.

(4) Revised or duplicate technician registration application fee (with or without the certified technician designation) is $15.

~~[(5) Revised or duplicate technician certification application fee is $15.]~~

(e) Late renewal fees for licenses and registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

§75.90. ~~[Sanctions--]~~Administrative Penalties and Sanctions ~~[Sanctions/Penalties]~~.

If a person or entity violates any provision of Texas Occupations Code, Chapter 1302, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 1302; Texas Occupations Code, Chapter 51; and any associated rules. [~~A person or entity that violates Texas Occupations Code Chapter 1302, or a rule, or order of the Executive Director or Commission relating to the Act, shall be subject to the imposition of administrative sanctions and/or administrative penalties in accordance with the Act or the Texas Occupations Code, Chapter 51.~~]

§75.91. Enforcement Authority.

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 1302 and any associated rules may be used to enforce Texas Occupations Code, Chapter 1302 and this chapter.

§75.100. Technical Requirements.

(a) Electrical Connections.

(1) On new construction of environmental air conditioning, commercial refrigeration, and process cooling or heating systems, licensees may connect the appliance to the electrical line or disconnect that is provided for that purpose.

(2) Licensees may replace and reconnect environmental air conditioning, commercial refrigeration, process cooling or heating systems, or component parts of the same or lesser amperage. On replacement environmental air conditioning, commercial refrigeration, process cooling or heating systems where the electrical disconnect has not been installed and is required by the applicable National Electrical Code, the licensee may install a disconnect and reconnect the system.

(3) Control wiring of 50 volts or less may be installed and serviced by a licensee. Control wiring for commercial refrigeration equipment of any voltage may be installed by a licensee with the commercial refrigeration endorsement as long as the control wiring is on the equipment side of the disconnect installed for that purpose.

(4) All electrical work shall be performed in accordance with standards at least as strict as that established by the applicable National Electrical Code and the International Residential Code, where applicable.

(b) Piping.

(1) Fuel gas piping for new or replaced environmental air conditioning, commercial refrigeration, or process cooling or heating systems may be installed by a licensee. Fuel gas piping by a licensee is limited to the portion of piping between the appliance and the existing piping system, connected at an existing shut-off valve for such use. Existing piping systems, stops, or shut-off valves shall not be altered by a licensee.

(2) Drain piping associated with environmental air conditioning, commercial refrigeration, or process cooling or heating systems shall be installed by a licensee if it terminates outside the building. If the piping terminates inside the building, a licensee may make the connection if the connection is on the inlet side of a properly installed trap. Such drain piping shall be installed in accordance with applicable plumbing and building codes.

(3) Other [~~Mechanical~~] piping, fittings, valves and controls associated with environmental air conditioning, commercial refrigeration, or process cooling or heating systems shall be installed by a licensee.

(c) Duct cleaning.

(1) Duct cleaning and air quality testing, including biomedical testing, may be performed by a [~~an unlicensed~~] person or entity that does not hold a contractor license under Texas Occupations Code Chapter 1302 [~~company~~] if:

(A) the task is limited to the air distribution system, from the supply plenum to the supply grilles of the unit and from the return air grill to the air handler intake of the unit;

(B) no cuts are made to ducts or plenums;

(C) no changes are made to electrical connections; and

(D) the only disassembly of any part of the system is opening or removal of return and supply air grilles, or registers that are removable without cutting or removing any other part of the system.

(2) Biomedical testing may be performed by a [~~an unlicensed~~] person or entity that does not hold a contractor license under Texas Occupations Code, Chapter 1302 [~~company~~].

(3) Biomedical remediation requires a contractor license under Texas Occupations Code, Chapter 1302.

(d) Process Cooling and Heating.

(1) Process cooling and heating work does not include cryogenic work.

(2) Process cooling and heating work is limited to work performed on piping and equipment in the primary closed loop portions of processing systems containing a primary process medium. Once a primary closed loop process system has been deactivated and rendered inert by a licensee, a [~~non-licensed~~] person or entity that does not hold a contractor license under Texas Occupations Code, Chapter 1302 may perform maintenance, service and repairs on the secondary open loop components including piping, heat exchangers, vessels, cooling towers, sump pumps, motors, and fans [~~repairs on piping, heat exchangers, and vessels~~].

(e) Standards

(1) The standard for the practice of air conditioning and refrigeration in a municipality is the code the municipality adopted by ordinance that is consistent with the standards established under the Act and this chapter[~~, provided that the ordinance does not make the code less strict than the current edition of the code adopted~~].

(2) [~~The Department has determined that, for the purpose of Subchapter C, §1302.101 of the Act, the provisions of the International Mechanical Code and the Uniform Mechanical Code, taken in their entirety, are equally strict.~~] The standard for the practice of air conditioning and refrigeration in an area where no code has been adopted is: [~~shall be either the most current edition of the International Mechanical Code and the International Fuel Gas Code or the Uniform Mechanical Code, to be chosen by the contractor performing the work.~~]

(A) The applicable edition of the International Residential Code for one- and two-family dwellings, and multiple single family dwellings (townhouses) not more than three stories in height with separate means of egress, together with the applicable editions of the International Fuel Gas Code and the International Energy Conservation Code;

(B) For commercial work and any multiple family residential work that exceeds the limitations of subparagraph (A), the contractor performing the work may choose between:

(i) the applicable edition of the Uniform Mechanical Code; or

(ii) the applicable editions of the International Mechanical Code, International Fuel Gas Code and International Energy Conservation Code.

(f) System Testing and Balancing

(1) System testing may be performed by a person or entity that does not hold a contractor license under Texas Occupations Code, Chapter 1302.

(2) System balancing requires a contractor license under Texas Occupations Code, Chapter 1302.

§75.110. Applicable Codes.

(a) The commission adopts the following as the applicable codes as referenced in the Act and this chapter:

(1) 2009 edition of the Uniform Mechanical Code; and

(2) 2009 editions of the International Mechanical Code, the International Residential Code, and other applicable codes.

(b) Use of these codes will be effective September 1, 2011.

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

Filed with the Office of the Secretary of State on November 15, 2010.

TRD-201006532
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: December 26, 2010
For further information, please call: (512) 463-7348

♦ ♦ ♦

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES
SUBCHAPTER B. DETERMINATION OF RESIDENT STATUS AND WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §§21.22 - 21.25

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§21.22 - 21.25, concerning the Determination of Resident Status and Waiver Programs for Certain Nonresident Persons.

Section 21.22 (relating to Definitions) is amended to include a definition for "clear and convincing evidence" (§21.22(2)) to provide institutions additional guidance in assessing documentation to support a student's claim of domicile. As a result of adding this definition, subsequent definitions §§21.22(2) - 21.22(28) are renumbered. The definitions for "Established domicile in Texas" in §21.22(8) and "Temporary absence" in §21.22(27) are amended to provide more precision to the terms. The revised definition of "Gainful employment" in §21.22(11) removes reference to employment as a homemaker and adds a minimum quantitative measure for a person's employment to be considered a basis of domicile. The definition of "General Academic Teaching Institution" in §21.22(12) is revised to reference statute rather than list institutions. This will allow the definition to remain updated if/when the statutory list changes. The definition of "Maintain domicile" (previously "Maintain a residence")

in §21.22(15) is changed to add precision to the term, reflect statutory language, and to update its cross-reference.

Section 21.23 (Effective Date of this Subchapter) is amended to indicate that changes to these rules adopted by the Board in January 2011 are effective beginning with residency decisions made for the 2011 fall semester.

Section 21.24(a)(2)(B) and (3)(B) are amended to more precisely reflect statutory language, indicating the person or the dependent's parent must maintain domicile in Texas for the 12 consecutive months preceding the census date of the term of enrollment - not simply maintain residence in the state for that period of time. Residence reflects physical presence whereas domicile also includes an intent to make a place one's permanent home. New §21.24(b) is added to clarify that students are responsible for providing sufficient proof to their institutions to support claims of domicile or residence, as appropriate, in Texas. Former §21.24(b) is re-lettered as §21.24(c) and subsequent subsections are re-lettered accordingly. Section 21.24(c)(2), previously §21.24(b)(2), is amended to update its cross-reference to the definition of "Eligible for Permanent Resident Status," §21.22(7). Section 21.24(c)(3), previously §21.24(b)(3), is changed to indicate Chart I (Eligible Nonimmigrants - Persons with Visas that Allow them to Domicile in the United States). Figure: 19 TAC §21.24(b)(3) is removed from the subchapter and will be posted on the Board's website. The removal of the list from the residency rules will make it easier to keep the list updated as visas are issued and/or changed by the United States Citizenship and Immigration Services. Subsequent charts are renumbered accordingly. Former §21.24(d) is deleted and new §21.24(e) provides a more precise description of the factors used to substantiate a student's claim to domicile in Texas. Former §21.24(e) is deleted, and that text is now included in the definition of "Temporary absence", new §21.22(27). New §21.24(f) and (g) indicate a person moving to Texas to attend an institution of higher education as a full-time student is presumed to be in the state for a temporary purpose, but that with proper evidence this presumption can be overcome. Former §21.24(f) is deleted. The wording of this subsection was inconsistent with the requirements for establishing domicile in Texas as reflected in other sections of the rules.

Section 21.25(a)(1)(B) is amended to delete language relating to the Core Residency Questions that was redundant with §21.25(a)(1)(A) and to clearly state that students who are not U.S. Citizens or Permanent Residents and who are applying for residency through the provisions of §21.24(a)(1) must provide their institutions a signed affidavit indicating an intent to apply for Permanent Resident status as soon as they are eligible to do so. Wording for §21.25(b) is amended to indicate an institution may require a person to provide documentation to clarify his or her responses to the Core Residency Questions. The amended language also indicates that the list of documents included in Revised Chart II (previously Revised Chart III) is not exhaustive, and that institutions may request documents to support student statements in the open comment section of the Core Questions, Section H. Former §21.25(c) is deleted and its provisions are now included in §21.25(a)(1)(B). Section 21.25(d) is re-lettered as §21.25(c). Chart I is deleted from the rules and will now be posted on the Coordinating Board's web site. Chart II (Affidavit) is renumbered as Chart I. Section 4 of Chart I is amended to clarify the person must have resided in Texas the 12 months immediately preceding the census date of the semester in which he or she enrolls. Section 5 of Chart I is changed to clarify the person is affirming he or she will apply to become a permanent resident of the United States as soon as eligible to do so. Revised Chart III is repealed and replaced with a new Revised Chart II that more precisely reflects the new provisions of the residency rules. Information in Revised Chart II, Part A is organized by the means by which the person or if dependent, the person's parent, would establish a claim to domicile in Texas. Revised Chart II, Part B, lists documents that can be used to substantiate a person's claim to having resided in Texas for the 12 months immediately preceding the census date of enrollment. Revised Chart II, Part C, suggests additional documents that a person might provide to lend support to a claim of domicile or residence, as appropriate.

Ms. Lois Hollis, Special Assistant to the Deputy Commissioner for Business and Finance/Chief Operating Officer, has estimated that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be increased consistency in the identification of persons eligible to claim residency. Some individual students may be adversely affected if they are unable to meet the new, clarified requirements. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@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 Education Code, §54.075, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, §§54.0501 - 54.075.

The amendments affect Texas Education Code, §§54.052 - 54.057.

§21.22. Definitions.

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

(1) Census date--The date in an academic term for which an institution is required to certify a person's enrollment in the institution for the purposes of determining formula funding for the institution.

(2) Clear and Convincing Evidence--That degree of proof that will produce a firm conviction or a firm belief as to the facts sought to be established. The evidence must justify the claim both clearly and convincingly.

(3) [~~(2)~~] Coordinating Board or Board--The Texas Higher Education Coordinating Board.

(4) [~~(3)~~] Core Residency Questions--The questions promulgated by the Board to be completed by a person and used by an institution to determine if the person is a Texas resident. For enrollments prior to the 2008-2009 academic year, institutions may use the core questions developed and distributed by the Board in 1999 or later, including the core questions included in the Texas Common Application, or the core questions set forth in current Board rules or posted on the Texas Higher Education Coordinating Board web site. The core questions to be used for enrollments on or after the

2008-2009 academic year shall be the core questions in the Texas Common Application or core questions posted on the Board web site.

(5) [~~(4)~~] Dependent--A person who:

(A) is less than 18 years of age and has not been emancipated by marriage or court order; or

(B) is eligible to be claimed as a dependent of a parent of the person for purposes of determining the parent's income tax liability under the Internal Revenue Code of 1986.

(6) [~~(5)~~] Domicile--A person's principal, permanent residence to which the person intends to return after any temporary absence.

(7) [~~(6)~~] Eligible for Permanent Resident Status--A person who has filed an I-485 application for permanent residency and has been issued a fee/filing receipt or notice of action by the United States Citizenship and Immigration Services (USCIS) showing that his or her I-485 has been reviewed and has not been rejected.

(8) [~~(7)~~] Established [~~a~~] domicile in Texas--Physically residing in Texas with the intent to maintain domicile in Texas for at least the 12 consecutive months immediately preceding the census date of the term of enrollment, allowing for documented temporary absences. [~~A person has established a domicile in Texas if he or she has met the conditions shown in §21.24(d) of this title (relating to Determination of Resident Status)~~].

(9) [~~(8)~~] Eligible Nonimmigrant--A person who has been issued a type of nonimmigrant visa by the USCIS that permits the person to establish and maintain [~~a~~] domicile in the United States.

(10) [~~(9)~~] Financial need--An economic situation that exists for a student when the cost of attendance at an institution of higher education is greater than the resources the family has available for paying for college. In determining a student's financial need an institution must compare the financial resources available to the student to the institution's cost of attendance.

(11) [~~(10)~~] Gainful employment--Employment [~~Activities~~] intended to provide an income to a person or allow a person to avoid the expense of paying another person to perform the tasks (as in child care that is sufficient to provide at least one-half of the individual's tuition and living expenses or that represents an average of at least twenty hours of employment per week [~~or the maintenance of a home~~]). A person who is self-employed[~~, employed as a homemaker,~~] or who is living off his/her earnings may be considered gainfully employed for purposes of establishing residency, as may a person whose primary support is public assistance. Employment conditioned on student status, such as work study, the receipt of stipends, fellowships, or research or teaching assistantships does not constitute gainful employment.

(12) [~~(11)~~] General Academic Teaching Institution--As the term is defined in [~~The University of Texas at Austin; The University of Texas at El Paso; The University of Texas of the Permian Basin; The University of Texas at Dallas; The University of Texas at San Antonio; Texas A&M University, Main University; The University of Texas at Arlington; Tarleton State University; Prairie View A&M University; Texas Maritime Academy (now Texas A&M University - Galveston); Texas Tech University; University of North Texas; Lamar University; Lamar State College--Orange; Lamar State College--Port Arthur; Texas A&M University--Kingsville; Texas A&M University--Corpus Christi; Texas Woman's University; Texas Southern University; Midwestern State University; University of Houston; University of Texas--Pan American; The University of Texas at Brownsville; Texas A&M University--Commerce; Sam Houston State University; Texas State University--San Marcos; West Texas A&M University; Stephen F. Austin State University; Sul Ross State University; Angelo State University; and The University of Texas at Tyler, and as defined in~~] Texas Education Code, §61.003 [~~§61.003(3)~~].

(13) [~~(12)~~] Institution or institution of higher education--Any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003(8).

(14) [~~(13)~~] Legal guardian--A person who is appointed guardian under the Texas Probate Code, Chapter 693, or a temporary or successor guardian.

(15) [~~(14)~~] Maintain domicile [~~a residence~~]--To physically reside in Texas such that the person intends to always return to the state after a temporary absence [~~a location~~]. The maintenance of domicile[~~a residence~~] is not interrupted by a temporary absence from the state, as provided in paragraph (27) [~~§21.24(e)~~] of this section [~~title (relating to Determination of Resident Status)~~].

(16) [~~(15)~~] Managing conservator--A parent, a competent adult, an authorized agency, or a licensed child-placing agency appointed by court order issued under the Texas Family Code, Title 5.

(17) [~~(16)~~] Nonresident tuition--The amount of tuition paid by a person who does not qualify as a Texas resident under this subchapter unless such person qualifies for a waiver program under §21.29 of this title, (relating to Waiver Programs for Certain Nonresident Persons).

(18) [~~(17)~~] Nontraditional secondary education--A course of study at the secondary school level in a nonaccredited private school setting, including a home school.

(19) [~~(18)~~] Parent--A natural or adoptive parent, managing or possessory conservator, or legal guardian of a person. The term would [~~does~~] not otherwise include a step-parent.

(20) [~~(19)~~] Possessory conservator--A natural or adoptive parent appointed by court order issued under the Texas Family Code, Title 5.

(21) [~~(20)~~] Private high school--A private or parochial school in Texas.

(22) [~~(21)~~] Public technical institute or college--The Lamar Institute of Technology or any campus of the Texas State Technical College System.

(23) [~~(22)~~] Regular semester--A fall or spring semester, typically consisting of 16 weeks.

(24) [~~(23)~~] Residence--A person's home or other dwelling place.

(25) [~~(24)~~] Residence Determination Official--The primary individual at each institution who is responsible for the accurate application of state statutes and rules to individual student cases.

(26) [~~(25)~~] Resident tuition--The amount of tuition paid by a person who qualifies as a Texas resident under this subchapter.

(27) [~~(26)~~] Temporary absence--Absence from the State of Texas with the intention to return, generally for a period of less than five years. For example, the temporary absence of a person or a dependent's parent from the state for the purpose of service in the U.S. Armed Forces, U.S. Public Health Service, U.S. Department of Defense, U.S. Department of State, as a result of an employment assignment, or for educational purposes, shall not affect a person's ability to continue to claim that Texas is his or her domicile.

(28) [~~(27)~~] United States Citizenship and Immigration Services (USCIS)--The bureau of the U.S. Department of Homeland Security that is responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities.

§21.23. Effective Date of this Subchapter.

Each institution shall apply these rules beginning with enrollments for the Fall Semester, 2006. Changes to these rules adopted in January 2011 are effective with residency decisions made for the Fall Semester, 2011.

§21.24. Determination of Resident Status.

(a) The following persons shall be classified as Texas residents and entitled to pay resident tuition at all institutions of higher education:

(1) (No change.)

(2) a person who:

(A) established [~~a~~] domicile in this state not less than 12 months before the census date of the academic semester in which the person enrolls in an institution; and

(B) maintained domicile [~~a residence~~] continuously in the state for the 12 months immediately preceding the census date of the academic semester in which the person enrolls in an institution.

(3) a dependent whose parent:

(A) established [~~a~~] domicile in this state not less than 12 months before the census date of the academic semester in which the person enrolls in an institution; and

(B) maintained domicile [~~a residence~~] continuously in the state for the 12 months immediately preceding the census date of the academic semester in which the person enrolls in an institution.

(b) The student has the burden of proof to show by clear and convincing evidence that residence or domicile, as appropriate, has been established and maintained in accordance with subsection (a) of this section.

(c) [~~(b)~~] The following non-U.S. citizens are eligible to [~~may~~] establish and maintain [~~a~~] domicile in this state for the purposes of subsection (a)(2) or (3) of this section:

(1) a Permanent Resident;

(2) a person who is eligible for permanent resident status, as defined in §21.22(7) [~~§21.22(6)~~] of this title (relating to Definitions);

(3) an eligible nonimmigrant who [~~that~~] holds one of the types of visas posted on the Coordinating Board's web site [~~listed in Chart I and incorporated into this subchapter for all purposes~~]; [~~Figure: 19 TAC §21.24(b)(3)~~]

(4) a person classified by the USCIS as a Refugee, Asylee, Parolee, Conditional Permanent Resident, or Temporary Resident;

(5) a person holding Temporary Protected Status, and Spouses and Children with approved petitions under the Violence Against Women Act (VAWA), an applicant with an approved USCIS I-360, Special Agricultural Worker, and a person granted deferred action status by USCIS;

(6) a person who has filed an application for Cancellation of Removal and Adjustment of Status under Immigration Nationality Act 240A(b) or a Cancellation of Removal and Adjustment of Status under the Nicaraguan and Central American Relief Act (NACARA), Haitian Refugee Immigrant Fairness Act (HRIFA), or the Cuban Adjustment Act, and who has been issued a fee/filing receipt or Notice of Action by USCIS; and

(7) a person who has filed for adjustment of status to that of a person admitted as a Permanent Resident under 8 United States Code 1255, or under the "registry" program (8 United States Code 1259), or the Special Immigrant Juvenile Program (8 USC 1101(a)(27)(J)) and has been issued a fee/filing receipt or Notice of Action by USCIS.

(d) [~~(c)~~] The domicile of a dependent's parent is presumed to be the domicile of the dependent unless the dependent establishes eligibility for resident tuition under subsection (a)(1) of this section.

(e) Although not conclusive or exhaustive, the following factors occurring throughout at least 12 consecutive months immediately preceding the census date of the semester in which a person seeks to enroll may lend support to a claim regarding his/her intent to establish and maintain domicile in Texas:

(1) sole or joint marital ownership of residential real property in Texas by the person seeking to enroll or the dependent's parent, having established and maintained domicile at that residence;

(2) ownership and customary management of a business, by the person seeking to enroll or the dependent's parent, in Texas which is regularly operated without the intention of liquidation for the foreseeable future;

(3) gainful employment in Texas by the person seeking to enroll or the dependent's parent;

(4) marriage, by the person seeking to enroll or the dependent's parent, to a person who has established and maintained domicile in Texas.

(f) An individual whose initial purpose for moving to Texas is to attend an institution of higher education as a full-time student will be presumed not to have the required intent to make Texas his or her domicile; however, the presumption may be overruled by clear and convincing evidence.

(g) An individual shall not ordinarily be able to establish domicile by performing acts which are directly related to fulfilling educational objectives or which are required or routinely performed by temporary residents of the State.

[~~(d) A domicile in Texas is presumed if, at least 12 months prior to the census date of the semester in which he or she is to enroll, the person owns real property in Texas, owns a business in Texas, or is married to a person who has established a domicile in Texas. Gainful employment other than work-study and other such student employment can also be a basis for establishing a domicile.~~]

[~~(e) The temporary absence of a person or a dependent's parent from the state for the purpose of service in the U.S. Armed Forces, Public Health Service, Department of Defense, U.S. Department of State, as a result of an employment assignment, or for educational purposes, shall not affect a person's ability to continue to claim that he or she is a domiciliary of this state. The person or the dependent's parent shall provide documentation of the reason for the temporary absence.~~]

[~~(f) The temporary presence of a person or a dependent's parent in Texas for the purpose of service in the U.S. Armed Forces, Public Health Service, Department of Defense or service with the U.S. Department of State, or as a result of any other type of employment assignment does not preclude the person or parent from establishing a domicile in Texas.~~]

§21.25. Information Required to Initially Establish Resident Status.

(a) To initially establish resident status under §21.24 of this title (relating to Determination of Resident Status):

(1) a person who qualifies for residency under §21.24(a)(1) of this title shall provide the institution with:

(A) a completed set of Core Residency Questions; and [~~or~~]

(B) if the person is not a Citizen of the United States or a Permanent Resident of the U.S., the person shall, in addition to the other requirements of this section, provide the institution with a signed affidavit (in the form provided in Chart I, which is incorporated into this subchapter for all purposes), stating that the person will apply to become a Permanent Resident of the U.S. as soon as the person becomes eligible to apply. [~~a copy of supporting documentation along with a statement of the dates and length of time the person has resided in this state, as relevant to establish resident status under this subchapter and a statement by the person that the person's presence in this state for that period was for the purpose of establishing and maintaining a domicile in Texas.~~]

Figure: 19 TAC §21.25(a)(1)(B)

(2) a person who qualifies for residency under §21.24(a)(2) or (3) of this title shall provide the institution with a completed set of Core Residency Questions.

(b) An institution may request that a person provide documentation to support or clarify the answers to the Core Residency Questions. Appropriate [~~A list of appropriate~~] documents are not limited to those listed [~~is included~~] in [~~Revised~~] Chart II [~~III~~], which is incorporated into this subchapter for all purposes. In addition, the institution may request documents that support the information the student may provide in the Core Residency Questions [~~core questions~~], Section H.

Figure: 19 TAC §21.25(b)

[~~Figure: 19 TAC §21.25(b)~~]

~~[(c) If a person who establishes resident status under §21.24(a)(1) of this title is not a Citizen of the United States or a Permanent Resident, the person shall, in addition to the other requirements of this section, provide the institution with a signed affidavit, stating that the person will apply to become a Permanent Resident as soon as the person becomes eligible to apply. The affidavit shall be required only when the person applies for resident status and shall be in the form provided in Chart II and incorporated into this subchapter for all purposes.]~~

~~[Figure: 19 TAC §21.25(c)]~~

(c) [~~(d)~~] An institution shall not impose any requirements in addition to the requirements established in this section for a person to establish resident status.

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

Filed with the Office of the Secretary of State on November 15, 2010.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 27, 2011
For further information, please call: (512) 427-6114

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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER T. EXEMPTION FOR FIREFIGHTERS ENROLLED IN FIRE SCIENCE COURSES

19 TAC §§22.518 - 22.520

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§22.518 - 22.520, concerning the Exemption for Firefighters Enrolled in Fire Science Courses. Two bills amending Texas Education Code §54.208 were passed by the 81st Texas Legislature, Regular Session, in 2009. House Bill (H.B.) 2013 opened the pre-existing exemption for employed firefighters to include certain volunteer firefighters, and added academic progress and other provisions to the firefighter exemption program. H.B. 2013 became effective June 19, 2009. The Coordinating Board adopted rules in July 2009 to implement H.B. 2013, beginning with exemptions awarded for the 2009 fall semester. House Bill 2347 amended §54.208 of the Texas Education Code to include peace officers enrolled in criminal justice and law enforcement courses. H.B. 2347 is effective January 1, 2011, and begins with tuition and laboratory fees paid for fall 2011. Due to House Bill 2347's later passage by the Legislature and later effective date, as of January 1, 2011, the provisions of House Bill 2347 supersede those of House Bill 2013. The amendments proposed herein reflect the provisions of House Bill 2347.

Amendments to §22.518 reflect the new title of Texas Education Code, §54.208, after the passage of House Bill 2347, and delete wording that indicates volunteer firefighters are eligible for the firefighter exemption program.

Amendments to §22.519 clarify the definition of "Fire Science Courses," update the definition of "Firefighter," and add the definition of "Governing Board." The amendment to the definition of "tuition" in §22.519(8) clarifies that the governing board of the institution is the entity that authorizes tuition charges, not the Coordinating Board. Definitions in §22.519 are re-sorted in alphabetical order and renumbered accordingly.

Amendments to §22.520 clarify that eligible persons are firefighters and, as defined in §22.519, refer to courses as "fire science courses" rather than "fire science curriculum."

Ms. Lois Hollis, Special Assistant to the Deputy Commissioner for Business and Finance/Chief Operating Officer, has determined that for each year of the first five years the amendments are in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of administering the sections will be compliance with the current statute governing the firefighter exemption program. There is no effect on small businesses. As a result of the statutory change to TEC §54.208 through House Bill 2347, volunteer firefighters previously able to qualify for the firefighter exemption program will lose their eligibility. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposed rules in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §54.208, which provides the Coordinating Board with the authority to adopt rules governing the granting or denial of an exemption under Texas Education Code §54.208.

The amendments affect Texas Education Code, §54.208.

§22.518. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, §54.208, Firefighters and Peace Officers Enrolled in Certain [~~Fire Science~~] Courses. This subchapter establishes [~~These rules establish~~] procedures to administer this exemption program.

(b) Purpose. The purpose of this program is to provide an exemption from tuition and laboratory fees for fire science courses to [~~eligible~~] persons employed as firefighters by a political subdivision of the state [~~or who are active members of an organized volunteer fire department in this state~~].

§22.519. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

[~~(2) Firefighter--An individual employed as a firefighter by a political subdivision of the state of Texas or who is an active member of an organized volunteer fire department in Texas.~~]

(2) [~~(3)~~] Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) [~~(4)~~] Fire Science Courses--Courses that fall within a designated fire science curriculum other than courses that make up the general education core curriculum required for all degrees, as well as courses that are primarily related to fire service, emergency medicine, emergency management, or public administration.

(4) Firefighter--An individual employed as a firefighter by a political subdivision of the state of Texas.

(5) Governing Board--As defined in Texas Education Code, §61.003.

(6) [~~(5)~~] Institution of Higher Education or Institution--Any public institution [~~technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency~~] of higher education as defined in Texas Education Code, §61.003.

(7) [~~(6)~~] Laboratory fees--Fees authorized through Texas Education Code, §54.501.

(8) [~~(7)~~] Program--The Exemption Program for Firefighters Enrolled in Fire Science Courses.

(9) [~~(8)~~] Tuition--Includes statutory tuition, designated tuition and governing board-authorized [~~Board-authorized~~] tuition.

§22.520. Tuition and Laboratory Fee Exemption.

Each institution of higher education shall exempt all Firefighters [~~eligible persons~~] from the payment of tuition and laboratory fees for fire science courses [~~offered as part of a fire science curriculum~~].

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

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TRD-201006525
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 27, 2011
For further information, please call: (512) 427-6114

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19 TAC §§22.521 - 22.523

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

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§22.521 - 22.523, concerning the Exemption for Firefighters Enrolled in Fire Science Courses. Specifically, §22.521 is proposed for repeal to delete references to volunteer firefighters and eliminate academic progress requirements that were added through House Bill 2013, but then reversed by the passage of House Bill 2347. Section 22.522 is proposed for repeal to remove program restrictions for students with excess hours that were added through House Bill 2013, but then reversed by the passage of House Bill 2347. To allow for the renumbering of the sections, the repeal of §22.523 is also proposed.

Ms. Lois Hollis, Special Assistant to the Deputy Commissioner for Business and Finance/Chief Operating Officer, has determined that for each year of the first five years the repeal is in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of administering the sections will be compliance with the current statute governing the firefighter exemption. There is no effect on small businesses. Volunteer firefighters previously able to qualify for the exemption will lose their eligibility. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The repeal is proposed under the Texas Education Code, §54.208, which provides the Coordinating Board with the authority to adopt any rules necessary to administer the section.

The repeal affects Texas Education Code, §54.208.

§22.521. Eligible Firefighters.

§22.522. Excess Hours.

§22.523. Degree and Certificate Programs and Courses Eligible for the Exemption.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 27, 2011
For further information, please call: (512) 427-6114

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19 TAC §22.521, §22.522

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §22.521 and §22.522, concerning the Exemption for Firefighters Enrolled in Fire Science Courses. Specifically, the repeal of current §22.521 and §22.522 requires the proposal of new §22.521, "Degree and Certificate Programs and Courses Eligible for the Exemption." New §22.521(b)(3) is added to reflect provisions in the Texas Education Code, §54.545, that indicate exemptions do not apply to courses for which an institution does not receive formula funding. New §22.522 is added to reflect the institutional reporting requirement established through the passage of House Bill 2347.

Ms. Lois Hollis, Special Assistant to the Deputy Commissioner for Business and Finance/Chief Operating Officer, has determined that for each year of the first five years the new sections are in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of administering the sections will be compliance with the current statute governing the firefighter exemption. There is no effect on small businesses. Volunteer firefighters previously able to qualify for the exemption will lose their eligibility. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@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, §54.208, which provides the Coordinating Board with the authority to adopt any rules necessary to administer the section.

The new sections affect Texas Education Code, §54.208.

§22.521. Degree and Certificate Programs and Courses Eligible for the Exemption.

(a) Degree and certificate programs eligible for the exemption described in this subchapter shall be identified by the institutions and compiled into a list by the Coordinating Board. A uniform listing of approved degree and certificate programs shall be posted on the Coordinating Board web site.

(b) Courses eligible for the exemption will be identified by the institution.

(1) The exemption described in this subchapter only applies to courses that are specifically related to a degree or certificate program included in the list posted by the Coordinating Board.

(2) The exemption does not apply to courses that make up the general education core curriculum required for all degrees. The exemption does not apply to courses unrelated to fire science that are included in the degree or certificate program in which an individual is enrolled.

(3) Pursuant to Texas Education Code, §54.545, the exemption does not apply to courses that do not receive Texas Education Code §61.059 formula funding.

§22.522. Report to Legislature.

If the Legislature does not specifically appropriate funds to an institution of higher education in an amount sufficient to pay the institution's costs in complying with this subchapter for a semester, the governing board of the institution shall report to the Senate Finance Committee and the House Appropriations Committee the cost to the institution of complying with this section for that semester.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER U. EXEMPTION FOR PEACE OFFICERS ENROLLED IN LAW ENFORCEMENT OR CRIMINAL JUSTICE COURSES

19 TAC §§22.530 - 22.537

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§22.530 - 22.537, concerning the Exemption for Peace Officers Enrolled in Law Enforcement or Criminal Justice Courses. Specifically, House Bill 2347, 81st Texas Legislature, amended Texas Education Code §54.208 and mandated that the Coordinating Board adopt rules to govern the granting or denial of exemptions under this section, beginning with exemptions awarded for the 2011 fall semester. The new sections establish definitions, identify eligible peace officers, indicate requirements for receiving awards, note restrictions for students who have accumulated excess credit hours, and direct institutions to the Coordinating Board's web site for a list of eligible programs of study.

Ms. Lois Hollis, Special Assistant to the Deputy Commissioner for Business and Finance/Chief Operating Officer, has determined that for each year of the first five years the new sections are in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of administering the sections will be an opportunity for eligible peace officers to acquire more education. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposed rules in the *Texas Register.*

The new sections are proposed under the Texas Education Code, §54.208, which provides the Coordinating Board with the authority to adopt rules governing the granting or denial of an exemption under Texas Education Code §54.208.

The new sections affect the Texas Education Code, §54.208.

§22.530. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, §54.208, Firefighters and Peace Officers Enrolled in Certain Courses. This subchapter establishes procedures to administer this exemption program.

(b) Purpose. The purpose of this program is to provide an exemption from tuition and laboratory fees for criminal justice or law enforcement course or courses to eligible persons employed as peace officers by this state or a political subdivision of the state.

§22.531. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Criminal Justice Courses--Courses determined by an institution to be a part of a criminal justice degree or certificate program.

(4) Governing Board--As defined in Texas Education Code, §61.003.

(5) Institution of Higher Education or Institution--Any public institution of higher education as defined in Texas Education Code, §61.003.

(6) Laboratory Fees--Fees authorized through Texas Education Code, §54.501.

(7) Law Enforcement Courses--Courses determined by an institution to be a part of a law enforcement-related degree or certificate program.

(8) Peace Officer--An individual employed as a peace officer by this state or a political subdivision of the state.

(9) Program--The Exemption Program for Peace Officers Enrolled in Law Enforcement or Criminal Justice Courses.

(10) Tuition--Includes statutory tuition, designated tuition and governing board-authorized tuition.

§22.532. Tuition and Laboratory Fees Exemption.

Each institution of higher education shall exempt Eligible Peace Officers, as determined under this subchapter, from the payment of tuition and laboratory fees for courses offered as part of a law enforcement-related or criminal justice degree or certificate program.

§22.533. Eligible Peace Officers.

To qualify, a Peace Officer must:

(1) be enrolled in an eligible criminal justice or law enforcement-related degree or certificate program at the institution pursuant to this subchapter;

(2) apply for the exemption at least one week before the last day of the institution's regular registration period for that semester; and

(3) be in compliance with the institution's financial aid satisfactory academic progress requirements.

§22.534. Eligible Courses.

(a) Only undergraduate courses pertaining to the major requirements of law enforcement-related and criminal justice degree or certificate programs are eligible for the tuition and laboratory fees exemption.

(b) No more than 20 percent of the maximum student enrollment designated by the institution for a given law enforcement or criminal justice course may receive an exemption under this Program.

(c) Pursuant to Texas Education Code, §54.545, the exemption does not apply to courses that do not receive Texas Education Code §61.059 formula funding.

§22.535. Excess Hours.

A person who has reached the limit of undergraduate hours for which the state will provide formula funding as specified in the Texas Education Code, §61.0595(a) (relating to Funding for Certain Excess Undergraduate Credit Hours), is not eligible for the exemption described in this subchapter.

§22.536. Degree and Certificate Programs and Courses Eligible for the Exemption.

(a) Degree and certificate programs eligible for the exemption described in this subchapter shall be identified by the institutions and compiled into a list by the Coordinating Board. A uniform listing of approved degree and certificate programs shall be posted on the Coordinating Board web site.

(b) Courses eligible for the exemption will be identified by the institution.

(1) The exemption described in this subchapter only applies to courses that are specifically related to a degree or certificate program included in the list posted by the Coordinating Board.

(2) The exemption does not apply to courses that make up the general education core curriculum required for all degrees. The exemption does not apply to courses that are not law enforcement or criminal justice courses even if they are included in the law enforcement-related or criminal justice degree or certificate program in which an individual is enrolled.

§22.537. Report to Legislature.

If the Legislature does not specifically appropriate funds to an institution of higher education in an amount sufficient to pay the institution's costs in complying with this subchapter for a semester, the governing board of the institution shall report to the Senate Finance Committee and the House Appropriations Committee the cost to the institution of complying with this section for that semester.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 71. APPLICATIONS AND APPLICANTS

22 TAC §71.3

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §71.3, concerning Qualifications of Applicants, to remove sections of the rule that have been made obsolete by changes in the admissions requirements for chiropractic colleges accredited by the Council on Chiropractic Education (CCE), United States. The CCE is the agency authorized by the federal government to accredit colleges of chiropractic in the United States. The proposed amendment replaces specific undergraduate course requirements with the requirement that all applicants be graduates of chiropractic colleges accredited by a member of the Councils on Chiropractic Education International. The proposed amendment preserves the statutory requirement that all applicants who began chiropractic college on or after September 1, 2005, have at least 90 hours of undergraduate credits in order to meet licensing requirements.

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

Mr. Parker has also determined that, for each year of the first five years that this amendment will be in effect, the public benefit of this amendment will be the streamlining of the application process for people to apply to become a licensed chiropractor in the state of Texas.

Finally, Mr. Parker has also determined that there will be no adverse economic effect to individuals and small or micro businesses during the first five years that this amendment will be in effect.

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

The amendment is proposed under Texas Occupations Code §201.152, relating to rules; §201.302, relating to licensing applicant requirements; and §201.303, relating to educational requirements for applicants. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.302 states that an applicant must be either a graduate or a final semester student of a bona fide reputable doctor of chiropractic degree program. Section 201.303 sets forth parameters for determining what qualifies as a bona fide reputable doctor of chiropractic degree program.

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

§71.3. Qualifications of Applicants.

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

(c) For each student admitted a Chiropractic College must document and retain evidence in the student's file regarding the basis upon which the student was judged to be qualified for admission, and clearly inform the student at the time of admission that limitations of practice venue and licensure might occur. Students must demonstrate that qualifications for student acceptance and resultant enrollment are appropriate to the program objectives, goals and educational mission of the program or institution. Each student admitted to begin the study of chiropractic on the basis of academic credentials from institutions within the United States must meet the following requirements:

(1) All applicants [~~matriculants~~] must furnish proof of having earned a minimum of 90 semester hour credits of [~~appropriate pre-professional education~~] courses at an institution or institutions accredited by a nationally recognized agency not including courses included in a doctor of chiropractic degree program. [~~Included in these credits must be a minimum of 48 semester hour credits in the course areas noted in paragraph (2) of this subsection. In addition, all matriculants must have earned a cumulative grade point average of at least 2.50 on a scale of 4.0 for the courses listed in paragraph (2) of this subsection and for the required 90 semester hours. Quarter hour credits may be converted to equivalent semester hour credits. In situations in which one or more courses have been repeated with equivalent courses, the most recent grade(s) may be used for grade point average computation and the earlier grade(s) may be disregarded.~~]

(2) All applicants [~~Matriculants~~] must present proof of graduation from a bona fide chiropractic college that is accredited by chiropractic educational accrediting body that is a member of the Councils on Chiropractic Education International. [~~a minimum of 48 semester hours' credit (or the quarter-hour credit equivalents), distributed as follows:~~]

[~~(A) English Language Skills: 6 semester hours;~~]

[~~(B) Psychology: 3 semester hours;~~]

[~~(C) Social Sciences or Humanities: 15 semester hours;~~]

[~~(D) Biological Sciences: 6 semester hours. The Biological Sciences requirements must include pertinent laboratory experiences that cover the range of material presented in the didactic portions of the course(s); and~~]

[~~(E) Chemistry: 12 semester hours. The Chemistry requirement may be met with at least 3 semester hours of general or inorganic chemistry and at least 6 hours of organic chemistry and/or biochemistry coursed with unduplicated content. At least 6 semester hours of the chemistry courses must include pertinent laboratory experiences, which cover the range of material presented in the didactic portions of the courses.~~]

[~~(F) Physics and related studies: 6 semester hours. The physics requirement may be met with either one or more physics courses with unduplicated content (of which one must include a pertinent related laboratory that covers the range of material in the didactic portions of the course), or three (3) semester hours in physics (with laboratory) and three (3) semester hours in either biomechanics, kinesiology, statistics, or exercise physiology.~~]

[(3) In each of the six distribution areas, if more than one course is taken to fulfill the requirement, the course content must be unduplicated. In the event an institution's transcript does not combine laboratory and lecture grades for a single course grade, the admitting institution may calculate a weighted average of those grades to establish the grade in that science course.]

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

Filed with the Office of the Secretary of State on November 12, 2010.

TRD-201006512
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: December 26, 2010
For further information, please call: (512) 305-6716

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER QQ. HEALTH INFORMATION TECHNOLOGY

28 TAC §§21.5101 - 21.5103

The Texas Department of Insurance (Department) proposes new Subchapter QQ, §§21.5101 - 21.5103, concerning waiver of a health benefit plan issuer's requirement to use information technology to provide physicians and patients with real-time health insurance information electronically. The Department proposes §§21.5101 - 21.5103 to: (i) implement the Insurance Code §1661.008 as added by House Bill (HB) 1342, enacted by the 81st Legislature, Regular Session, effective May 30, 2009; (ii) identify circumstances that justify a waiver of the requirement for a health benefit plan issuer under Chapter 1661 to use information technology; and (iii) specify and facilitate a waiver application process.

House Bill 1342 adds new Insurance Code Chapter 1661 to require a health benefit plan issuer to use information technology that provides a participating health care provider and a plan enrollee with real-time information relating to the enrollee's cost and coverage by September 1, 2013. Under §1661.008(a), a health benefit plan issuer may apply to the Commissioner for a waiver of the requirements under Chapter 1661 to use information technology. Under §1661.008(b), the Commissioner is required by rule to identify circumstances that justify a waiver, including: (1) undue hardship, including a financial or operational hardship; (2) the geographical area in which the health benefit plan issuer operates; (3) the number of enrollees covered by a health benefit plan issuer; and (4) other special circumstances.

The HB 1342 bill analysis (Texas House Insurance Committee, Bill Analysis (Committee Substitute), HB 1342, 81st Legislature, Regular Session) states that the purpose of Chapter 1661 is to provide physicians and patients with information, at the point of care, about copayment, coinsurance, and deductibles; what benefits and services the health plan covers; and an estimate of what the health plan's and patient's financial responsibilities are. Further, the bill analysis states that the chapter will provide transparency to health insurance and better inform patients about their health insurance coverage, allowing them to be better consumers of health care, and streamline and simplify the overly complex and administratively burdensome systems that exist today, which should provide cost savings throughout the entire system.

A waiver application is optional on the part of a health benefit plan issuer. However, an approved waiver under these rules expires no later than September 1, 2013, pursuant to the Insurance Code §1661.008(e). Therefore, all health benefit plan issuers, even those who have a waiver application approved under these proposed rules, will have to comply with the real-time information technology requirements of the Insurance Code Chapter 1661 by September 1, 2013.

The Department posted an informal draft of this proposal on its website August 18, 2010, and invited further public comment by September 1, 2010.

The Department notes that it has previously received requests for waivers from a number of carriers and is holding those requests as pending until this rule becomes final. At that time, the carriers will be expected to renew their requests and submit any additional information required by this rule.

The following provides an overview of and explains additional reasoned justification for the proposed new rules.

Proposed §21.5101 states the purpose of the proposed new subchapter.

Proposed §21.5102 identifies the health benefit plans issuers to which the new subchapter applies in accordance with the Insurance Code §1661.001 and §1661.003.

Proposed §21.5103 provides the specifications for the format for the waiver applications, where the requests should be sent, and the circumstances identified by the Commissioner that justify a waiver. In addition to the circumstances that a waiver application may include as provided by statute, the Department has further included four additional specific special circumstances: (i) the actions by the health benefit plan issuer to progress toward compliance; (ii) the estimated date compliance will be achieved if prior to September 1, 2013; (iii) the estimated cost of compliance with Insurance Code §1661.002 by the date proposed in the request for waiver and a description of any increase in cost if earlier compliance is required; and (iv) whether the issuer is a small business or micro business as defined by the Government Code §2006.001. The proposed section also provides additional guidance about the 60-day time frame for approval or denial of the waiver application. A waiver is deemed received when the Commissioner has received sufficient information to approve or deny the waiver application, including any additional relevant information requested from the health benefit plan issuer. Additionally, the proposed section describes how a waiver application will be reviewed upon submission. The Commissioner will weigh the facts demonstrated by the applicant against the purposes of Chapter 1661, including the objective to provide better information to physicians and enrollees regarding what is covered by insurance policies and what portion of the cost is to be borne by the patient, as well as streamlining and simplifying complex and administrative processes of the health insurance systems, thus providing cost savings throughout the health care system.

Finally, the effective date of the proposed rules is 40 days from the date of publication of the adoption in the *Texas Register,* so that health benefit plan issuers have adequate time to decide whether to request and draft a waiver application.

FISCAL NOTE. Doug Danzeiser, Deputy Commissioner, Life, Health and Licensing Program, has determined that for each year of the first five years the proposed new sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of enforcing or administering the proposal.

PUBLIC BENEFIT/COST NOTE.

Anticipated Public Benefit.

Mr. Danzeiser also has determined that for each year of the first five years the proposed new sections are in effect, there are public benefits anticipated as a result of the enforcement and administration of the rule, and there will also be potential costs for persons required to comply with the proposal. The Department, however, drafted the proposed rules to maximize public benefits consistent with the intent of Chapter 1661 of the Insurance Code while mitigating costs. The anticipated public benefits will be to: (i) implement requirements to provide instant or real-time coverage information; and (ii) allow health benefit plan issuers to request an exemption that expires no later than September 1, 2013, under circumstances established by the Commissioner. Specifically, the Insurance Code §1661.008 requires the Department to identify circumstances that may justify a waiver. This proposal will facilitate the Department's provision of such information to health benefit plan issuers so that they may request a waiver of the information technology requirements in Chapter 1661.

Potential Costs for Persons Required to Comply with the Proposal.

Overview of proposed requirements resulting in potential costs. The potential costs to persons required to comply with the proposed new sections results from: (i) any administrative personnel costs associated with preparation and submission requirements in proposed §21.5102 and §21.5103; and (ii) printing and delivery costs associated with submitting a waiver application pursuant to §21.5102 and §21.5103. The opportunity to submit a waiver application pursuant to the Insurance Code §1661.008 is entirely at the option of a health benefit plan issuer. Some issuers may determine that a waiver is not necessary, and are ready to comply with the Insurance Code Chapter 1661. All of the analyses in this cost note are equally applicable to and do not vary for small or micro businesses.

Persons required to comply with the proposal. The persons required to comply with the proposal are health benefit plan issuers, as defined in §1661.001, who choose to apply for a waiver pursuant to the Insurance Code §1661.008. A health benefit plan issuer includes: (i) an insurance company operating under the Insurance Code; (ii) a group hospital service corporation operating under the Insurance Code Chapter 842; (iii) a fraternal benefit society operating under the Insurance Code Chapter 885; (iv) a stipulated premium insurance company operating under the Insurance Code Chapter 884; (v) a Lloyd's plan operating under the Insurance Code Chapter 941; (vi) an exchange operating under the Insurance Code Chapter 942; (vii) a health maintenance organization operating under the Insurance Code Chapter 843; (viii) a multiple employer welfare arrangement that holds a certificate of authority under the Insurance Code Chapter 846; (ix) an approved nonprofit health corporation that holds a certificate of authority under the Insurance Code Chapter 844; and (x) an entity not authorized under the Insurance Code or another insurance law of this state that contracts directly for health care services on a risk-sharing basis, including a capitation basis. The chapter does not apply to: (i) a health benefit plan issuer offering a health benefit plan that provides coverage only: (a) for a specified disease or diseases as defined in §3.3077 of this title (relating to Minimum Standards for Specified Disease and Specified Accident Coverage); or under a limited benefit policy; (b) for accidental death or dismemberment; (c) as a supplement to a liability insurance policy; or (d) for dental or vision care; (ii) disability income protection coverage, as defined in §3.3075 of this title (relating to Minimum Standards for Disability Income Protection Coverage); (iii) credit accident and health insurance, as defined in the Insurance Code §1153.003; (iv) hospital confinement indemnity insurance; as defined in §3.3073 of this title (relating to Minimum Standards for Hospital Confinement Indemnity Coverage); (v) Medicare supplement benefit plans, as defined in the Insurance Code Chapter 1652; (vi) workers' compensation insurance; (vii) medical payment insurance coverage under a motor vehicle insurance policy; (viii) long-term care insurance, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefits so comprehensive that the policy is a health benefit plan and should not be subject to the exemption provided under this section; (ix) the child health plan program under the Health and Safety Code Chapter 62, or the health benefits plan for children under the Health and Safety Code Chapter 63; or (x) a Medicaid managed care program operated under the Government Code Chapter 533, or a Medicaid program operated under the Human Resources Code Chapter 32. Medicare Advantage plans are not specifically included in the definition of "health benefit plan" in Insurance Code §1661.001, and generally federally regulated Medicare and Medicaid programs are excepted from the chapter.

Potential costs resulting from certain proposed requirements. The Insurance Code §1661.008 provides that each health benefit plan issuer may submit to the Department an application to receive a waiver to the information technology requirements established by Chapter 1661. The waiver will expire no later than January 1, 2013. To implement this requirement, proposed §21.5103 allows each health benefit plan issuer identified in proposed §21.5101 to submit a waiver request application.

Cost components. The probable cost to health benefit plan issuers required to comply with this proposal will result from the following cost components: (i) the cost of any administrative personnel costs associated with preparation and submission requirements in proposed §21.5102 and §21.5103; and (ii) printing and delivery costs associated with submitting a waiver application pursuant to §21.5102 and §21.5103.

(i) Administrative costs associated with completing and submitting a waiver application. The Department anticipates that most health benefit plan issuers will incur costs associated with completing and submitting a waiver request to the Department. Health benefit plan issuers may have to perform some statistical analysis of their data in order to report some circumstances. The primary costs associated with the proposed sections is expected to be the personnel costs required to draft the waiver application, including the time required to analyze and specifically identify circumstances that justify a waiver for a health benefit plan issuer. The justifications specified by the Commissioner in

this proposal include: (i) undue hardship, including a financial or operational hardship; (ii) the geographical area in which the health benefit plan issuer operates; (iii) the number of enrollees covered by a health benefit plan issuer; (iv) the actions by the health benefit plan issuer to progress toward compliance; (v) the estimated date compliance will be achieved if prior to September 1, 2013; (vi) the estimated cost of compliance with the Insurance Code §1661.002 by the date proposed in the request for waiver and a description of any increase in cost if earlier compliance were required; and (vii) whether the issuer is a small-business or micro-business as defined by Government Code §2006.001. According to wage data obtained from the Department of Labor website, the average salary of an operations manager working in Texas is $53.32 per hour; the average salary of a supervisor in administrative and office support occupations is $24.06 per hour; and the average salary of a general office clerk is $12.94. The actual number, types, and cost of personnel will be determined by the health benefit plan issuer's specific circumstances applicable to the waiver application. Issuers desiring to elaborate at length or in greater detail in their application will incur correspondingly greater personnel costs. The actual number, types, and cost of personnel will be determined by the health benefit plan issuer's existing staffing and the extent to which the specific circumstances apply to the issuer. The Department anticipates that these personnel costs will typically range from approximately $25 to $550. This estimate is based upon a member of a health benefit plan issuer's administrative staff preparing the necessary application in two to ten hours.

(ii) Printing and delivery costs associated with the submissions of a wavier application. The Department anticipates that most health benefit plan issuers completing and submitting a waiver request will incur printing and delivery costs. The cost of printing the proposed waiver applications depends on the number of pages being printed. The Department estimates that the cost of printing a single 8.5 x 11 inch page should be approximately $.08 and the cost of printing a double-sided page should be approximately $.10. The Department estimates that the length of the proposed waiver application may be from two to six pages. The estimated costs for printing the proposed waiver application are approximately $.12 - $.42 per document. The cost of submission is based on postage rates for first-class mail. First-class postage costs are $.44 for three pages and $.61 for six to 11 pages in a standard envelope. The overall cost of submitting the waiver application will vary for each health benefit plan issuer.

The Department requested cost information by public comment during the posting of the informal draft of this proposal. The Department received feedback from one commenter suggesting that the cost estimate for the waiver offered by the Department is reasonable and that plans would be able to apply for the waiver within the cost parameters specified. The costs to comply with this proposal for some health benefit plan issuers may be zero. A health benefit plan issuer who has already implemented the necessary information technologies to be compliant with Chapter 1661 is not required to submit a waiver application.

All of the cost components in this cost note are equally applicable to small or micro businesses.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. The Government Code §2006.002(c) requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. The Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than $6 million in annual gross receipts. The Government Code §2006.001(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees. The Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in the Government Code §2006.002(b) - (d) for small businesses.

As required by the Government Code §2006.002(c), the Department has determined that the proposal may have an adverse economic effect on approximately 62 to 98 small or micro businesses that are required to comply with the proposed new sections. The Department does not have precise information regarding the number of small or micro life, accident and health insurers doing business in Texas. However, for the purpose of this estimate, the Department assumes that between 10 to 15 percent of the 652 accident, and health insurers and health maintenance organizations (600 accident and health insurers and 52 health maintenance organizations) licensed in Texas as of August 31, 2010, are small or micro businesses. The cost of compliance with the proposal will not vary between large businesses and small or micro businesses, and the Department's cost analysis and resulting estimated costs for health benefit plan issuers in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro businesses. As discussed, a small or micro business insurer or HMO potentially would incur costs under the Public Benefit/Cost Note part of this proposal for group health benefit plan issuers that are: (i) administrative personnel costs associated with preparation and submission requirements in proposed §21.5101 and §21.5103; and (ii) printing and delivery costs associated with submitting a waiver application pursuant to §21.5101 and §21.5103.

The proposed new sections incorporate proposed regulatory provisions designed to reduce potential economic impact for all group health benefit plan issuers, including small and micro businesses. The waiver application requirements allow a health benefit plan issuer to provide specific facts and circumstances that justify a waiver of Insurance Code Chapter 1661. As required by statute, proposed §21.5103 requires an issuer seeking a waiver to justify that waiver, in part, based on undue hardship, including financial or operational hardship. This provision in the proposed rules gives the Department the ability to grant a waiver for small and micro businesses that demonstrate undue hardship.

In developing the list of specific facts and circumstances required to be included in a waiver application in proposed §21.5103, the Department considered granting an automatic waiver for any small or micro businesses. However, the Department anticipates that the cost for small and micro businesses for completing a waiver application will not be substantial, and the Department does not believe that an automatic waiver should be granted to those small or micro businesses that are already compliant with the requirements of Chapter 1661. While self-identifying as a small or micro business in the waiver application does not automatically trigger a waiver, such a declaration will be considered pursuant to the statutory intent of the Insurance Code §1661.008. Accordingly, proposed §21.5103 includes specific

criteria that the Department will consider with respect to the small or micro business status of a waiver applicant. The Department anticipates that the consideration of these special circumstances may reduce the economic impact of this proposal for small and micro businesses.

The Government Code §2006.002(c)(2) requires a state agency, before adopting a rule that may have an adverse economic effect on small businesses, to prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. The Government Code §2006.002(c-1) requires that the regulatory analysis "consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses."

In accordance with the Government Code §2006.002(c-1), the Department has considered other regulatory methods to accomplish the objectives of proposed new §§21.5101 - 21.5103 waiver requirements that will also minimize any adverse economic impact on the estimated 62 - 98 insurers or HMOs that qualify as small or micro businesses under the Government Code §2006.001(1) and (2) and are required to comply with these proposed new requirements. The Insurance Code §1661.008, which the proposed new sections are implementing, allows for discretion on the part of the Commissioner to create criteria that would allow a health benefit plan issuer, if desired, to apply for a waiver from the real-time information technology requirements of the chapter. As an alternative method, the Department considered granting an automatic waiver for any small or micro business that applied for the waiver. Under such alternative method, any health benefit plan issuer would be deemed to have a waiver pursuant to §1661.008 so long as that health benefit plan issuer qualified as a small or micro business under the Government Code §2006.001(1) and (2).

As part of its regulatory flexibility analysis, the Department considered several factors. First, the Department determined that the costs for submitting a waiver application would be small enough that small and micro business could bear the expense. The waiver process is designed to allow small and micro businesses the opportunity to seek a delay in implementing the real-time information technologies as required by Chapter 1661. The Department anticipates that small and micro businesses will be able to succinctly justify a waiver. Further, some small and micro businesses may already or prior to September 1, 2013, be able to provide the required real-time information. These small and micro businesses may have valid business reasons, such as marketing of operational practices pertaining to the provision of the real time information or other competitive advantage, for not wanting a waiver pursuant to these proposed new sections. An automatic or blanket waiver would also reduce the intended transparency benefits of the chapter and could create confusion if a carrier with a waiver nevertheless provided real-time information but in a manner that did not comply with the requirements of Chapter 1661. According to the bill analysis for HB 1342 (Texas Senate State Affairs Committee, Bill analysis (Senate Committee Report), 81st Legislature, Regular Session), the lack of instant or real-time coverage information creates confusion and frustration for both patients and physicians. To the extent that an automatic waiver would reduce the information provided to physicians and patients, at the point of care, about (i) copayment, coinsurance, and deductibles; (ii) what benefits and services the health plan covers; and (iii) an estimate of what the health plan's and patient's financial responsibilities are, patients and physicians are frustrated in their ability to make fully informed decisions.

Additionally, health benefit plan issuers will be required to begin implementing some information technologies pursuant to federal health reform provisions contained in the Patient Protection and Affordable Care Act of 2010 (PPACA), Sec. 1104. In PPACA, no specific provision is made for the exclusion of small and micro businesses. While the PPACA information technology requirements are not the same as contained in the Insurance Code Chapter 1661, the Department of Health and Human Services (DHHS) is charged with establishing business rules and guidelines for the electronic exchange of information related to administration and financial transactions no later than July 1, 2012, to be effective no earlier than July 1, 2014.

For these reasons, the Department has determined, in accordance with the Government Code §2006.002(c-1), that there are no regulatory alternatives to the proposed requirements in §§21.5101 - 21.5103 that will sufficiently protect the health, safety, environmental, and economic welfare of the state in a manner consistent with the objective and intent of Chapter 1661 of the Insurance Code as enacted by HB 1342 and the proposed rule and that the proposed rule minimizes the impact on small and micro businesses to the extent possible in a manner consistent with the intent of the bill.

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

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 27, 2010, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Doug Danzeiser, Deputy Commissioner, Life/Health Division, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The new sections are proposed under HB 1342, as enacted by the 81st Legislature, Regular Session, effective May 30, 2009, and the Insurance Code §§1661.008, 1661.009, and 36.001. Section 1661.008, established by HB 1342, requires that the Commissioner establish circumstances that justify a waiver so that a health benefit plan issuer may apply for a waiver of the requirement under the Insurance Code §1661.002 to provide real-time information at the point of care. Section 1661.001 defines *health benefit plan issuer* as an entity authorized to issue a health benefit plan in this state. *Health benefit plan* is defined in §1661.001 as a plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage. Section 1661.009 permits the Commissioner to adopt rules as necessary to implement Insurance Code Chapter 1661. Section 36.001 authorizes

the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code Chapter 1661

§21.5101. Purpose.

In accordance with the Insurance Code §1661.008, this subchapter specifies the waiver application requirements for health benefit plan issuers regarding the use of certain required real-time information technology pursuant to the Insurance Code Chapter 1661.

§21.5102. Applicability.

(a) Pursuant to the Insurance Code §1661.001, this subchapter applies to an entity authorized to issue a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(1) an insurance company operating under the Insurance Code;

(2) a group hospital service corporation operating under the Insurance Code Chapter 842;

(3) a fraternal benefit society operating under the Insurance Code Chapter 885;

(4) a stipulated premium insurance company operating under the Insurance Code Chapter 884;

(5) a Lloyd's plan operating under the Insurance Code Chapter 941;

(6) an exchange operating under the Insurance Code Chapter 942;

(7) a health maintenance organization operating under the Insurance Code Chapter 843;

(8) a multiple employer welfare arrangement that holds a certificate of authority under the Insurance Code Chapter 846;

(9) an approved nonprofit health corporation that holds a certificate of authority under the Insurance Code Chapter 844; and

(10) an entity not authorized under the Insurance Code or another insurance law of this state that contracts directly for health care services on a risk-sharing basis, including a capitation basis.

(b) Pursuant to the Insurance Code §1661.003, this subchapter does not apply to:

(1) a health benefit plan issuer offering a health benefit plan that provides coverage only:

(A) for a specified disease or diseases as defined in §3.3077 of this title (relating to Minimum Standards for Specified Disease and Specified Accident Coverage); or under a limited benefit policy;

(B) for accidental death of dismemberment;

(C) as a supplement to a liability insurance policy; or

(D) for dental or vision care;

(2) disability income protection coverage, as defined in §3.3075 of this title (relating to Minimum Standards for Disability Income Protection Coverage);

(A) credit accident and health insurance, as defined in the Insurance Code §1153.003;

(B) hospital confinement indemnity insurance; as defined in §3.3073 of this title (relating to Minimum Standards for Hospital Confinement Indemnity Coverage);

(C) Medicare supplement benefit plans, as defined in the Insurance Code Chapter 1652;

(D) workers' compensation insurance;

(E) medical payment insurance coverage under a motor vehicle insurance policy;

(F) long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefits so comprehensive that the policy is a health benefit plan and should not be subject to the exemption provided under this section;

(G) the child health plan program under the Health and Safety Code Chapter 62, or the health benefits plan for children under the Health and Safety Code Chapter 63; or

(H) a Medicaid managed care program operated under the Government Code Chapter 533, or a Medicaid program operated under the Human Resources Code Chapter 32.

§21.5103. Waiver.

(a) A health benefit plan issuer may apply to the commissioner for a waiver of the information technology requirements of the Insurance Code Chapter 1661.

(b) Waiver applications are required to:

(1) be submitted on 8 1/2 by 11 inch paper;

(2) be legible;

(3) be in typewritten, computer generated, or printer's proof format;

(4) be signed by an officer of the health benefit plan issuer; and

(5) provide specific facts and circumstances in support of the request for a waiver, which must include at a minimum:

(A) evidence of undue hardship, including financial or operational hardship;

(B) the geographical area in which the insurer operates;

(C) the total number of enrollees covered by the insurer and the number of enrollees impacted by the waiver;

(D) the past and planned actions by the health benefit plan issuer to progress toward compliance;

(E) the estimated date compliance will be achieved if prior to September 1, 2013; and

(F) the estimated cost of compliance with Insurance Code §1661.002 and an estimate of the increased cost for compliance at an earlier date.

(c) Waiver applications shall be mailed to Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas, 78701.

(d) The waiver application is received when the commissioner has received a waiver application containing all specific facts and cir-

cumstances as listed in subsection (b), including any addendums provided by the health benefit plan issuer.

(e) The commissioner may grant a waiver under this subchapter considering the facts demonstrated by the applicant weighed against the purposes of Chapter 1661, including the objective to provide better information to physicians and enrollees regarding what is covered by insurance policies and what portion of the cost is to be borne by the patient, as well as streamlining and simplifying complex and administrative processes of the health insurance systems, thus providing cost savings throughout the health care system.

(f) This subchapter becomes effective 40 days after the date on which the adoption is published in the *Texas Register.*

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

Filed with the Office of the Secretary of State on November 15, 2010.

TRD-201006514
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 26, 2010
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 13. LAND RESOURCES

The General Land Office (GLO) proposes an amendment to Chapter 13 (relating to Land Resources), Subchapter A (relating to Rules, Practice, and Procedure for Land Leases and Trades), §13.1 (relating to Leases). The GLO also proposes new §13.21 (relating to State-Owned Riverbeds and Beds of Navigable Streams) under Subchapter B (relating to Rights-of-Way Over Public Lands) of Chapter 13.

BACKGROUND AND ANALYSIS OF PROPOSED AMENDMENT AND RULE

§13.1 Leases

The amendment to §13.1 is proposed in order to correctly identify and reference §13.18 of the TAC, which sets forth the fees and terms for surface leases of public lands, and to correct a typographical error which misstates the name of the General Land Office.

§13.21 State-Owned Riverbeds and Beds of Navigable Streams

This new section is proposed in order to create agency guidelines for issuing easements or leases for commercial and non-commercial improvements constructed on, across, through or under non-tidally influenced state-owned riverbeds and beds of navigable streams in the public domain, in accordance with the statutory scheme set forth in Chapter 51, Subchapter G of the Texas Natural Resources Code. These guidelines also seek to provide the public with more certainty and clarity related to this process and to establish consistency with current agency practices and procedures.

As proposed, §13.21 provides that certain private, non-commercial improvements and structures constructed prior to September 1, 1993 upon state-owned riverbeds or beds of navigable streams (such as dams, low water crossings, docks, piers, groins, bulkheads, guy and tie-down cables, boat houses, or similar structures) will be considered properly permitted without further action or payment of fee by the owner. However, any modification of such a structure made after that date and which results in expanding its footprint upon state land will automatically void the permit granted by this section and require the owner to obtain an easement, lease, permit or other authorization from the GLO in accordance with statutory requirements. Failure to do so may subject the structure to the provisions of Texas Natural Resources Code §51.302 and §51.3021, related to penalties for and the removal of unauthorized structures on state lands.

As proposed, §13.21 also refers to §13.17 (relating to Fees for Right-of-Way Easements) and §13.18 (relating to Fees for Surface Leases for Certain Facilities) for determining the appropriate fees for instruments issued under this section.

As proposed, §13.21 also states that nothing contained therein shall be construed so as to limit the authority of the Commissioner of the GLO as contained in Texas Natural Resources Code Chapter 33 (relating to the Management of Coastal Public Land) or Chapter 51 (relating to Land, Timber and Surface Resources).

FISCAL AND EMPLOYMENT IMPACTS

Mr. Rene Truan, Deputy Commissioner for the GLO's Professional Services Program Area, has determined that, for each year of the first five years the amended and new sections as proposed are in effect, there will be no significant additional cost to state government as a result of enforcing or administering the amended or added sections.

Mr. Truan has determined that for each year of the first five years the amended and new sections as proposed are in effect there will be no fiscal implications for local governments as a result of enforcing or administering the amended and new sections because the changes do not apply to permits issued to public entities.

Mr. Truan has determined that for each year of the first five years the proposed amended and new rules are in effect, there will be no direct adverse economic effect on small businesses for compliance. The rules primarily provide guidance to agency staff in administering the statutory provisions which govern the issuance of easements and leases upon non-tidally influenced state-owned riverbeds and beds of navigable streams; they do not expand the commissioner's authority in this area nor do they create additional burdens for businesses or other affected entities.

Mr. Truan has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Mr. Truan has determined that the public will benefit from the proposed amendments and new rule, which provide the public with more certainty and clarity in the process of issuing leases and easements upon state-owned lands. Moreover, owners of certain types of private, non-commercial improvements and structures built prior to September 1, 1993 upon state-owned riverbeds or beds of navigable streams in the public domain

will be additionally served by the proposed amendment and rule, which considers those structures automatically permitted without further action or payment of fee by the owner, inasmuch as the cost of pursuing enforcement against those structures would outweigh the revenue generated.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks 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 the state or a sector of the state. The proposed amendments and new rule to Chapter 13 are not anticipated to 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 the state or a sector of the state.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Therefore, a detailed takings assessment is not required.

CONSISTENCY WITH CMP

The proposed rulemaking is not subject to the CMP, 31 TAC §505.11(a)(1)(E) - (I) and §505.11(c), relating to the Actions and Rules Subject to the CMP, as the rulemaking applies only to non-tidally influenced state-owned riverbeds and beds of navigable streams in the public domain, which lie outside the coastal zone as described in 31 TAC 503.1 (relating to the Coastal Management Program Boundary.)

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P. O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

SUBCHAPTER A. RULES, PRACTICE, AND PROCEDURE FOR LAND LEASES AND TRADES

31 TAC §13.1

STATUTORY AUTHORITY

The amendments to §13.1 are proposed under Texas Natural Resources Code §51.291, which authorizes the Commissioner to execute grants of easements or other interests in property for rights-of-way or access across, through, and under state-owned riverbeds and beds of navigable streams in the public domain for certain purposes and for any purpose the commissioner considers to be in the best interest of the state; §51.292, which authorizes the Commissioner to execute grants of easements or leases for certain purposes and for any other purpose the commissioner determines to be in the best interest of the state, to be located on state land other than land owned by the University of Texas System; and §51.014, which authorizes the Commissioner to adopt rules necessary to carry out the provisions of that chapter and to alter or amend rules to protect the public interest.

Texas Natural Resources Code §51.291 and §51.292 are affected and implemented by the proposed rulemaking.

§13.1. Leases.

(a) Lease fee. The appropriate filing fee will be determined by §13.18 [~~§1.3~~] of this title (relating to Fees for Surface Leases for Certain Facilities), except for commercial leases. The General Land Office will charge commercial lease applicants a fee to offset the costs of evaluating the lease proposals. The fee shall be 1.5% of the fair market value of the property being leased, determined at the time the lease is executed. The commissioner may waive all or a part of this fee.

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

(e) Fine for unlawful use. If a person without authority or right cuts or removes any mineral, guayule, or lechuguilla from land that belongs to the permanent school fund, a fine will be imposed against the person by the General Land Office [~~general office~~] in an amount that is equal to the value of the substance that was cut or removed and will subject the lease to forfeiture at the option of the lessor.

(f) (No change.)

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

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Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
General Land Office
Earliest possible date of adoption: December 26, 2010
For further information, please call: (512) 475-1859

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SUBCHAPTER B. RIGHTS-OF-WAY OVER PUBLIC LANDS

31 TAC §13.21

STATUTORY AUTHORITY

The new §13.21 is proposed under Texas Natural Resources Code §51.291, which authorizes the Commissioner to execute grants of easements or other interests in property for rights-of-way or access across, through, and under state-owned riverbeds and beds of navigable streams in the public domain for certain purposes and for any purpose the commissioner considers to be in the best interest of the state; §51.292, which authorizes the Commissioner to execute grants of easements or leases for certain purposes and for any other purpose the commissioner determines to be in the best interest of the state, to be located

on state land other than land owned by the University of Texas System; and §51.014, which authorizes the Commissioner to adopt rules necessary to carry out the provisions of that chapter and to alter or amend rules to protect the public interest.

Texas Natural Resources Code §51.291 and §51.292 are affected and implemented by the proposed rulemaking.

§13.21. State-Owned Riverbeds and Beds of Navigable Streams.

(a) The commissioner may grant easements or leases for commercial and non-commercial improvements constructed on, across, through or under non-tidally influenced state-owned riverbeds and beds of navigable streams in the public domain, for bridges and those structures and purposes specifically enumerated in Texas Natural Resources Code §51.291 and §51.292.

(b) The fees for such instruments shall be determined in accordance with §13.17 of this title (relating to Fees for Right-of-Way Easement) and §13.18 of this title (relating to Fees for Surface Leases for Certain Facilities).

(c) Certain private, non-commercial improvements and structures which were constructed prior to September 1, 1993, and which are located upon state-owned riverbeds or beds of navigable streams, such as dams, low water crossings, docks, piers, groins, bulkheads, guy and tie-down cables, boat houses or similar structures, are considered properly permitted in accordance with the provisions of Texas Natural Resources Code §51.302(a) without further action on the part of the owner or payment of fee set forth in this chapter.

(d) Any modification of the improvements contemplated in subsection (c) of this section made after September 1, 1993 which results in an expansion of the footprint occupied by those improvements upon state land shall automatically void the permit granted by that subsection, requiring the owner or possessor of such facility or structure to obtain from the commissioner an easement, lease, permit or other instrument in accordance with Texas Natural Resources Code Chapters 33 or 51, and may subject the facility or structure to the provisions of Texas Natural Resources Code §51.302 and §51.3021, related to penalties for and the removal of unauthorized structures on state lands.

(e) In an action under Texas Natural Resources Code §51.302 or §51.3021, the person who constructs or maintains the structure or facility has the burden of demonstrating that it was constructed prior to September 1, 1993.

(f) Nothing contained in this section shall be construed so as to limit the authority of the commissioner contained in Texas Natural Resources Code Chapters 33 or 51.

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

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Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
General Land Office
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CHAPTER 15. COASTAL AREA PLANNING

SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.32

The General Land Office (GLO) proposes amendments to §15.32 relating to Certification Status of Cameron County Dune Protection and Beach Access Plan. The amendment to §15.32 adds a new subsection (c) to certify as consistent with state law the amendments to the Cameron County Dune Protection and Beach Access Plan (Plan) that were adopted by the Cameron County Commissioners Court by order Number 201008049 on August 26, 2010.

Copies of the local government dune protection and beach access plan and any amendments to the Plan are available from Cameron County Parks and Recreation Department, 33174 State Park Road 100, South Padre Island, Texas 78597, phone number (956) 761-3700, and from the GLO's Archives Division, Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, phone number (512) 463-5277.

BACKGROUND

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC §§15.1 - 15.21), a local government with jurisdiction over gulf beaches must submit its beach management plan and amendments to the plan to the GLO for certification, including a plan to impose or increase public beach access, parking, or use fees. The Cameron County Commissioners Court amended the County's Plan by order adopted on August 26, 2010. The GLO is required to review such plans and certify by rule those plans that are consistent with the Open Beaches Act, the Dune Protection Act, and the Beach/Dune Rules. The certification by rule reflects the state's approval of the plan, but the text of the plan is not adopted by the GLO 31 TAC §15.3(o)(4).

Cameron County is a coastal county consisting of areas bordering Willacy County to the north, Hidalgo County to the west, the Gulf of Mexico to the east and the Mexican State of Tamaulipas to the south. The areas governed by the Plan include those beaches and adjacent areas bordering the Gulf of Mexico located in unincorporated areas within the County.

THE 2010 CAMERON COUNTY PLAN AMENDMENTS

On August 26, 2010, the Cameron County Commissioners Court adopted amendments to the 1994 Plan and submitted those amendments to the GLO with a request for certification. Cameron County has requested an approval of an increase in the beach user fee imposed in accordance with 31 TAC §15.8 and Texas Natural Resources Code §61.022(c). Cameron County is seeking to amend its dune protection and beach access plan. As provided in 31 TAC §15.8, local governments may request an increase in beach user fees provided that the local government demonstrates that there are additional costs to the local government for providing public services and facilities directly related to the public beach. On August 26, 2010 the Cameron County Commissioners Court passed a Resolution, which amended its dune protection and beach access plan to increase the beach user fee imposed by County pursuant to 31 TAC §15.8 from $4 per day to $12 per day for passenger cars, $2 per day to $12 per day for motorcycles, $10/15 per day to $25 per day for passenger buses, $38 to $100 for annual park passes, and deletes the 90-day pass and bulk rate pass and implements a $25 30-day pass. Based on the information

provided by Cameron County, the GLO has determined that the fee increase requested by this jurisdiction is reasonable in that it does not exceed the necessary and actual cost of providing reasonable beach-related facilities and services, does not unfairly limit public use of and access to and from public beaches in any manner, and is consistent with §15.8 of the Beach/Dune Rules and the Open Beaches Act. Therefore, the GLO finds that the approved changes to the Plan are consistent with state law.

FISCAL AND EMPLOYMENT IMPACTS

Mrs. Helen S. Young, Deputy Commissioner for the GLO's Coastal Resources Program Area, has determined that for each year of the first five years the amended section, as proposed, is in effect, there will be no fiscal implications for the state government as a result of enforcing or administering the amended section. However, Mrs. Helen S. Young has determined that there will be a fiscal impact on the local government as a result of enforcing or administering the amended section. Cameron County will experience an increase in net revenue estimated at approximately $2,327,785 for each year of the first five years the amended section as proposed is in effect as a result of the increased beach user fees to be collected.

The GLO has determined that the proposed rule changes will not have an affect on the costs of compliance for small businesses or large businesses as the proposed changes relate to permits for parking on the beach. Individuals required to comply with each jurisdiction's amended plan to increase the beach user fee to be collected in fee areas for parking on the beach will experience increased costs for parking of up to $9 per day for passenger vehicles, $10 per day for buses, $62 for an annual pass, and $25 for a 30-day pass. The plan also identifies no-fee areas as required by 31 TAC §15.8(h), which serves to mitigate the impact of the beach user fee increase.

The GLO has determined a local employment impact statement on these proposed regulations is not required, because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect.

PUBLIC BENEFIT

Mrs. Young has determined the public will benefit from the increase in the beach user fees imposed because the increased fees are necessary for Cameron County to continue to fund and provide adequate and improved beach-related services to the public including: funding for ensuring safe use of and access to and from the public beach, including vehicular controls, management, and parking regulations; acquisition and maintenance of off-beach parking areas and access ways; construction of accessible (ADA) dune walkovers; sanitation and litter control, including providing and servicing trash receptacles and conducting a trash abatement program; beach maintenance, including removal of debris and raking of seaweed; law enforcement; beach/dune system education; beach/dune protection and restoration projects; providing public facilities such as portable and fixed restroom facilities, showers, and picnic areas; and permitting of recreational and refreshment vendors.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.

As required by the Government Code §2006.002(c) and (f), the GLO has determined that the proposed amendments to §15.32 will not have an adverse economic effect on entities that meet the definition of a small or micro business under the Government Code §2006.001(1) or §2006.001(2) and, therefore, an economic impact statement and regulatory flexibility analysis for small and micro businesses is not required.

CONSISTENCY WITH CMP

The proposal to amend §15.32 relating to Certification Status of Cameron County Dune Protection and Beach Access Plan is subject to the Coastal Management Program (CMP) as provided in Texas Natural Resources Code §33.2053(a)(10) and 31 TAC §505.11(a)(1)(J), relating to the Actions and Rules Subject to the CMP, and must be consistent with the applicable CMP goals and policies under §501.26, relating to Policies and Construction in the Beach/Dune System. The GLO has reviewed the proposed rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The proposed action is consistent with the GLO Beach/Dune regulations that the Council has determined to be consistent with the CMP. Consequently, the Land Office has determined that the proposed action is consistent with the applicable CMP goals and policies. The proposed amendment will be distributed to Council members in order to provide them an opportunity to provide comment on the consistency of the proposed rulemaking during the comment period.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed amendment to determine whether Texas Government Code Chapter 2007, is applicable and a detailed takings impact assessment required. The GLO has determined the proposed amendment does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the GLO has determined the proposed amendment would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the amendment being proposed.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks 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 the state or a sector of the state. The proposed amendments are not anticipated to 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 the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code §§61.011, 61.015(b), and 61.022(e), which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas and to certify that plans to impose or increase public beach access, parking, or use fees are consistent with state law.

The amendment is proposed under the Texas Natural Resources Code §§61.011, 61.015(b), and 61.022(e) which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas and to certify that plans to impose or increase

public beach access, parking, or use fees are consistent with state law.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711, facsimile number (512) 475-1859 or email to Walter.Talley@glo.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendment is proposed under the Texas Natural Resources Code §§61.011, 61.015(b), 61.022 (b), (c), and 61.070, which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas and to certify that plans to impose or increase public beach access, parking, or use fees are consistent with state law.

Texas Natural Resources Code §§61.011, 61.015, 61.022, and 61.070 are affected by the proposed amendments.

§15.32. Certification Status of Cameron County Dune Protection and Beach Access Plan.

(a) Cameron County has submitted to the General Land Office a dune protection and beach access plan which is certified as consistent with state law. The county's plan was adopted on September 20, 1994.

(b) The General Land Office certifies as consistent with state law the amendment to the Cameron County plan that was adopted by the Cameron County Commissioners' Court on August 29, 2006, Order No. 2006O8004. The order amended the plan to eliminate the 440-foot building line and to increase the beach user fees imposed for access to County beach parks and parking on the beach.

(c) The General Land Office certifies as consistent with state law the amendment to the Cameron County plan that was adopted by the Cameron County Commissioners' Court on August 26, 2010 to increase the beach user fees imposed for access to County beach parks and parking on the beach.

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

Filed with the Office of the Secretary of State on November 12, 2010.

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Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
General Land Office
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PART 21. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION

CHAPTER 675. PRELIMINARY RULES

SUBCHAPTER B. EXPORTATION AND IMPORTATION OF WASTE

31 TAC §§675.21 - 675.24

The Texas Low Level Radioactive Waste Disposal Compact Commission ("Commission") proposes new Subchapter B, to be captioned "Exportation and Importation of Waste" (including §675.21 to be captioned "Exportation of Waste to a Non-Party State for Disposal," §675.22 to be captioned "Exportation of Waste to a Non-Party State for Management or Processing and Return to the Party States for Management or for Disposal in the Compact Facility," §675.23 to be captioned "Importation of Waste from a Non-Compact Generator for Management or Disposal," and §675.24 to be captioned "Importation of Waste from a Non-Compact Generator for Management") to be contained in Texas Administrative Code, Title 31, Part 21, Chapter 675, governing export and import of low-level radioactive waste and fees associated with those activities.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Entry into the Texas Low Level Radioactive Waste Disposal Compact (the "Compact") was ratified by an Act of the Texas Legislature and signed into law by Governor Ann Richards in 1993. The initial party states were Texas, Maine and Vermont. Texas is the "Host State" in that it is the state that will host the disposal facility to accept low-level radioactive waste for management and disposal in accordance with the terms of the Compact. With the passage of Public Law 105-236, "Texas Low-Level Radioactive Waste Disposal Compact Consent Act," and signing into law by President Clinton in 1998, the United States federal government allowed the Commission to come into existence. Subsequent to U.S. ratification, Maine withdrew from the Compact.

As an instrumentality of the party states, the purpose of the Compact is to provide a framework for a cooperative effort to limit the number of facilities needed to effectively, efficiently, and economically manage low-level radioactive waste and to encourage the reduction of the generation thereof. A further purpose is to encourage cooperation among the party states in the protection of the health, safety, and welfare of their citizens, and to distribute the costs, benefits, and obligations among the party states; all in accordance with the terms of the Compact. In November 2008, Texas Governor Rick Perry named the six Texas members of the Commission. The State of Vermont also named two Commissioners with the last Commissioner being named in March 2009. Subsequently, one Commissioner from Vermont was replaced in November 2009. An alternate Commissioner for Vermont was also appointed. The Commission held an inaugural organizational meeting on February 13, 2009.

Under the terms of §3.03 of the Compact, the Commission is a legal entity, separate and distinct from the party states. In enforcing that position, the Compact stipulates, "the liabilities of the commission shall not be deemed liabilities of the party states." Functionally, the Commission has been established as an instrumentality of the party states, and is authorized by the U.S. Congress in P.L. 105-236 to manage and restrict interstate commerce in low-level radioactive waste management and disposal within the party states, as an exception to the "Dormant" Commerce Clause doctrine of the U.S. Constitution.

A new Subchapter B, "Exportation and Importation of Waste," is proposed to set out the procedures and criteria by which such

petitions for export and import may be considered and granted or denied by the Commission and by which export permits and import agreements may be granted. The sections set and assess fees associated with evaluating and processing export petitions and proposed import agreements. The sections establish export permit fees and import agreement fees.

SECTION BY SECTION DISCUSSION

§675.21. Exportation of Waste by a Compact Generator to a Non-Party State for Disposal.

Proposed new §675.21(a) prohibits exportation of low-level radioactive waste from the Compact unless a person proposing to export has filed a written export petition with the Commission and the Commission has approved the export petition and issued an export permit in accordance with these sections.

Proposed new §675.21(b) requires that a generator or group of generators proposing to export low-level radioactive waste to a low-level radioactive waste disposal facility outside the party states petition the Commission for an export permit.

Proposed new §675.21(c) states that the form of the petition shall be on a form promulgated by the Commission and made available to the generators and the public.

Proposed new §675.21(d)(1) establishes and sets a non-refundable Petition Application Fee of $500 that must accompany the petition form before any action will be taken by the Commission.

Proposed new §675.21(d)(2) establishes an Export Petition Evaluation Fee that will be set out in a fee schedule created by the Commission. The section sets forth the factors that will be considered in creation of the fee schedule. It provides an appeals process for the fee amount that may be assessed.

Proposed new §675.21(e) requires a petitioner to file an export petition by certified mail with the Commission prior to the date of export of waste. It requires that the proposed export petition shall be accompanied by a certification by the disposal facility receiving the waste that the waste acceptance criteria have been met for the proposed waste to be exported. Likewise, the Compact Facility operator is required to submit any comments on the export petition to the Compact Commission no later than 30 days after the Commission receives the petition. It requires the Commission, upon receipt, to post the export petition to the Commission's web site and to the *Texas Register.* The Commission shall distribute the export petition and comments received on the petition to the Commissioners, the petitioner and the Compact Facility operator.

Proposed new §675.21(f) requires the Commission to meet promptly, but no sooner than 60 days nor later than 120 days after the petition was filed to consider the export petition. The factors to be utilized in consideration of the petition are also provided.

Proposed new §675.21(g) lists the actions the Commission may take on an export petition and provides for the imposition of any terms or conditions on the export permit.

Proposed new §675.21(h) states that the Commission may impose any terms or conditions on the export permit as determined by the Commission.

Proposed new §675.21(i) requires an export permit to be issued for a term certain, and further provides for amendment, revocation, or renewal of the permit. This subsection also requires the permit holder to file with the Commission an export report describing the disposal of waste occurring during the preceding calendar year.

Proposed new §675.21(j) establishes that nothing in these sections shall limit the authority of the Commission, nor shall these sections prohibit the storage or management of low-level radioactive waste by a generator.

Proposed new §675.21(k) states the export petition shall be on a form promulgated by the Commission and made available to the public.

Proposed new §675.21(l) provides that the Commission will receive, but not begin to process, export petitions until the Commission determines by affirmative vote that it has adequate resources to examine the permit applications and enforce the terms and conditions of any permit issued. The new subsection authorizes the Commission to continue to approve export permit applications pursuant to its December 11, 2009 resolution until the Commission determines by vote that it has adequate resources to consider the export petitions under the criteria set out in this rule.

Proposed new §675.21(m) states that the definitions in this section shall have the same meaning ascribed to them in the Compact.

§675.22. Exportation of Waste to a Non-Party State for Management or Processing and Return to the Party States for Management or for Disposal in the Compact Facility.

Proposed new §675.22(a) provides that party state generators are not required to obtain an export permit to export waste for the purpose of managing or processing if the waste will be returned to the party states for disposal in the Compact Facility.

Proposed new §675.22(b) requires party state generators to notify the Commission by report not later than 10 days after the shipment of waste under §675.22(a). New §675.22(b) authorizes generators to submit U.S. Nuclear Regulatory Commission Forms 540 and 541 to satisfy the reporting requirement, along with the information set out in new subsection (b)(2). In the alternative, the new subsection specifies what information must be in the report submitted to the Commission, including waste characteristics and the location and name of waste processing facility(ies) receiving and processing the waste, the type of waste management employed at the waste management facility, whether the exported waste is mixed or blended with waste from other generators, and whether the exported waste is treated to encapsulate the waste.

Proposed new §675.22(c) requires the generator, upon return of the waste to the generator, to file a report informing the Commission of the volume, physical form and activity of the waste returned. The new subsection requires the generator and processor to certify that the waste has not been downblended or blended, mixed or commingled with low-level radioactive waste that was not generated in the party states, except for waste incidental to processing, not to exceed 1 percent of the total activity.

§675.23. Importation of Waste for Disposal by a Non-Compact Generator.

Proposed new §675.23(a) states that it is the policy of the Commission that any savings generated by importation accrue to the benefit of the party states. It also provides that it is the policy of the Commission that it will not accept the importation of waste of international origin.

Proposed new §675.23(b) states that disposal capacity is reserved for Texas and Vermont calculated by total, as-disposed volume and total activity, and provides that neither shall be reduced by non-Compact waste. Such disposal capacity shall be established at least every 5 years by a report of the Commission. The Commission's report shall be informed by the annual host State status report, which includes projections of the facility's anticipated future capacity.

Proposed new §675.23(c) prohibits the granting of an agreement to import unless the Compact Facility operator has provided to the Commission a recommended total annual volume to be imported for disposal to the Compact Facility and certified that the disposal of imported waste will not reduce capacity for Party State-generated waste based on the currently licensed volume and activity. It states that the recommendation shall become final after Commission approval and that the approval shall be based on timely renewal of the Compact Facility License by the licensee, assigns, or successors.

Proposed new §675.23(d) prohibits any person from importing any low-level radioactive waste for disposal that was generated in a non-party state unless the Commission has entered into an agreement for the importation of that waste pursuant to these sections; provides that violation of new subsection (d) may result in the Commission prohibiting the violator from disposing of waste in the Compact Facility or imposition of penalty surcharges on the shipments to the facility.

Proposed new §675.23(e) states that the form of the agreement shall be on a form promulgated by the Commission and made available to the generators and the public.

Proposed new §675.23(f) assesses and sets a non-refundable Import Agreement Application fee that must accompany the proposed agreement form before any action will be taken by the Commission. New subsection (f)(3) establishes the Import Agreement Evaluation Fee that will be assessed in a fee schedule adopted by the Commission. The new subsection sets out the factors that will be considered by the Commission in creating the new fee schedule. Once assessed, the fee is due whether or not the Commission grants the import agreement.

Proposed new §675.23(g) requires a person to file a proposed import agreement with the Commission and receive approval by the Commission prior to the proposed importation date. It specifies that the proposed import agreement shall be accompanied by a certification by the Compact Facility that the waste acceptance criteria have been met for the proposed waste importation. The new subsection (g)(2) - (7) sets out processes by which the Commission will receive; process; provide notice; and receive comments upon proposed import agreements.

Proposed new §675.23(h) requires the Commission to meet promptly, but no sooner than 60 days nor later than 365 days, subject to the financial resources of the Commission, after the date the proposed import agreement was filed to act upon the proposed import agreement. The new subsection sets out the factors to be utilized in consideration of the proposed import agreement.

Proposed new §675.23(i) lists the actions the Commission may take on an import petition and provides for the imposition of any terms or conditions on the import permit.

Proposed new §675.23(j) states that the Commission may impose any terms or conditions on the import agreement reasonably related to furthering the policy and purpose of the Compact.

Proposed new §675.23(k) requires an import agreement to be issued for a term certain, and further provides for amendment, revocation, or cancellation of the agreement.

Proposed new §675.23(l) requires the Compact Facility operator to file quarterly reports with the Commission and describes the form and content of each report.

Proposed new §675.23(m) establishes that nothing in these sections shall limit the authority of the Commission, nor shall these sections prohibit the storage or management of low-level radioactive waste by a generator.

Proposed new §675.23(n) states the import agreement shall be on a form promulgated by the Commission and made available to the public

Proposed new §675.23(o) provides that the Commission will receive, but not begin to process, applications for import agreements until the Commission determines by affirmative vote that it has adequate resources to examine the applications and enforce the terms and conditions of any agreements entered.

Proposed new §675.23(p) states that the definitions in this section shall have the same meaning ascribed to them in the Compact.

§675.24. Importation of Waste from a Non-Compact Generator for Management.

Proposed new §675.24(a) states it is the policy of the Commission that it will not accept, for the purpose of management, the importation of low-level radioactive waste of international origin.

Proposed new §675.24(b) states no person shall import any low-level radioactive waste for management that was generated in a non-party state unless the Commission has entered into an agreement for the importation of that waste.

Proposed new §675.24(c) states that a violation of §675.24(b) may result in prohibiting the violator from importing for any purpose low-level radioactive waste into a Compact State or in the imposition of penalty surcharges on shipments to the facility, as determined by the Commission.

Proposed new §675.24(d) states the form of the agreement shall be promulgated by the Commission and posted on the Commission's web site, or otherwise made readily accessible to generators and to the public.

Proposed new §675.24(e)(1) states a non-refundable, application fee of $100 shall accompany the proposed agreement, and payments shall be made by check or money order made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

Proposed new §675.24(e)(2) states no action shall be taken on any proposed agreement until the application fees are paid.

Proposed new §675.24(e)(3) states that prior to any action on the proposed agreement by the Commission, an additional, non-refundable fee, based on a fee schedule as adopted by the Commission, may be assessed based on the estimated time and expenses to be incurred in evaluating and acting on the proposed agreement, if the expense exceeds the application fee. This fee shall be by check, money order, or electronic transfer and made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

Proposed new §675.24(e)(4) states the fee schedule will be based on the estimated cost of evaluating the proposed agreement and may include, but not be limited to certain factors.

Proposed new §675.24(e)(5) states the importation for management agreement evaluation fee will be due regardless of whether or not an agreement is issued and shall be made by check or money order made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

Proposed new §675.24(f) requires a person to file a proposed importation for management agreement with the Commission and receive approval by the Commission prior to the proposed importation date.

Proposed new §675.24(f)(1) requires the proposed importation for management agreement to be accompanied by a certification by the Compact Disposal Facility that the waste acceptance criteria have been met for the proposed waste importation.

Proposed new §675.24(f)(2) states the applicant shall deliver to the Compact Facility operator by electronic mail and certified U.S. mail a copy of the proposed importation for management agreement at the time of filing with the Commission.

Proposed new §675.24(f)(3) states the proposed importation for management agreement received by the Commission during any calendar month may be processed in aggregate at the beginning of the following calendar month, establishes the date of receipt of proposed agreements, and requires the Commission to post the importation for management agreement to the Commission's web site and to transmit it to the *Texas Register* within 15 days of the date of receipt.

Proposed new §675.24(f)(4) provides that comments on the proposed importation for management agreement may be submitted by any person, other than the Compact Facility operator, during the 60-day period following the date of posting to the Commission's website.

Proposed new §675.24(f)(5) requires the Commission to distribute the proposed importation for management agreement and comments received to interested parties for information and comment and to post the importation for management agreement and comments received, and other pertinent information, on the Commission's web site.

Proposed new §675.24(g) establishes the time frame in which the Commission must act upon receipt of the proposed importation for management agreement and any comments thereon.

Proposed new §675.24(g)(1) - (8) sets out the factors to be considered by the Commission in acting upon the proposed agreement.

Proposed new §675.24(h) defines the actions that the Commission may take on the proposed agreement.

Proposed new §675.24(i) states the Commission may impose any terms or conditions on the importation for management agreement reasonably related to furthering the policy and purpose of the Compact.

Proposed new §675.24(j)(1) states an importation for management agreement shall be issued for the term specified in the agreement and shall remain in effect for that term unless amended, revoked, or canceled by the Commission.

Proposed new §675.24(j)(2) defines the conditions under which the Commission may add or delete requirements or limitations to the agreement and provides a reasonable time for the applicant to make changes to the agreement to satisfy the requirements of the Commission.

Proposed new §675.24(j)(3) states an importation for management agreement is not assignable or transferable to any other person.

Proposed new §675.24(j)(4) provides the Commission may provide for the assessment of fees for an importation for management agreement upon conclusion of a policy analysis of the fees based volume and activity of the imported waste.

Proposed new §675.24(k) states that the form of the importation for management agreement must be promulgated by the Commission, posted on the Commission's website, and must contain at a minimum the criteria contained in subsection (g).

Proposed new §675.24(l) provides that the definitions used in this subchapter shall have the meaning ascribed to them in the Compact and that where time requirements are specified in "days," that shall be in calendar days.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The Commission does not find that this is a major environmental rule as defined in §2001.0225(g) of the Texas Administrative Procedure Act ("APA"). The primary objective of the new rules is to create economically viable options for waste disposal for Compact generators. The Texas Commission on Environmental Quality (TCEQ) has the sole authority to license the facility for disposal of radioactive substances. Tex. Health & Safety Code §401.011. The TCEQ currently licenses the quantity, quality, and sources of materials that may be disposed of at the Compact Facility. While protection of the environment and human health are concerns for the Commission, the Commission is charged with determining whether waste may be lawfully imported or exported from the state, not whether such waste may be lawfully disposed of at the site. The proposed new rules require the Commission to consider whether the Compact Facility will be licensed to dispose of the waste prior to granting an import agreement for the waste. The rules proposed to be adopted in new Chapter 675, Subchapter B, set out the procedural requirements for obtaining permits and do not themselves authorize either the exportation or importation of waste.

The Commission is not required to conduct a regulatory analysis under §2001.0225(a) because §2001.0225(a)(1) - (4) does not apply. The Commission is acting pursuant to the express authority of both the state and federal governments, which have both adopted the Compact, to create processes to enter into import agreements and grant export petitions. Tex. Health & Safety Code ch. 403, §3.05(6) - (7), PL 105-236. Such authority is specifically granted under state and federal law. The proposed rules implement, and do not exceed, federal and state laws. Further, the Commission will not adopt the rules solely under the Commission's general powers. The Commission proposes these rules under the specific authority of Compact §3.05(4), (6) and (7), which respectively grant the Commission the authority to adopt rules necessary to carry out its powers and duties under the Compact; approve agreements for importation of waste; and, upon petition, allow generators to export waste out of the Compact. Thus, §2001.0225, by its own terms, is inapplicable to the Commission's exercise of rulemaking authority in the Texas Administrative Code, Title 31, Part 21, Chapter 675, Subchapter B, "Exportation and Importation of Waste."

TAKINGS IMPACT ASSESSMENT

These rules are proposed to create a process for obtaining authorization to export or import low-level radioactive waste from or into the Compact. The rules do not affect the ownership of private real property. The Commission has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043, Texas Government Code. Currently, there is no right under existing law to export or import radioactive waste from the party states without a permit or authorization granted by the Commission, as currently stated in §§3.05(6), (7), 6.01, 6.02 of the Compact. Texas Health and Safety Code Chapter 403, §§3.05(6) - (7), 6.01-.02; PL 105-236. These rules simply create a mechanism for obtaining the authorization currently required by law.

IMPACT STATEMENT: IMPACT TO STATE OF TEXAS; PUBLIC BENEFIT

Michael Ford, Chairman of the Commission, has determined that for each year of the first five years that the proposed rules are in effect the fees generated by wastes imported into Texas and disposed in the Compact Facility will have a positive effect on the State of Texas General Revenue Fund. As required by statute, the Compact Facility will transfer to the State of Texas General Revenue Fund five percent of the gross receipts per quarter. At the time the Compact Facility becomes operational, there will be no additional cost to the State for administering the rules because the costs will be included in the disposal fee pursuant to §4.04(4) of the Compact. Tex. Health & Safety Code §4.04(4).

Mr. Ford has determined for each year of the first five years that the rules are in effect that permits issued for export of wastes may have a negative effect on the State of Texas General Revenue Fund because gross receipts may decrease if disposal at the Compact Disposal Facility is ultimately reduced or is not offset by importation. The dollar amount of gross receipts cannot be estimated at this time because disposal fees have not been established in rule.

Mr. Ford has further determined that the State will benefit from additional regulatory controls on the flow of waste to and from the State of Texas for both management and disposal.

Mr. Ford has determined that for each year of the first five years that the rule is in effect the public benefit anticipated from the adoption of the proposed sections will be compliance with state and federal law, clear and concise guidance for affected entities, and protection of the public health and environment by ensuring proper disposal of low-level radioactive waste at properly licensed facilities.

IMPACT STATEMENT: LOCAL EMPLOYMENT IMPACT STATEMENT

In general, local employment could be negatively impacted due to export of waste that could be sent to and accepted by the Compact Facility for disposal. While certain types of waste may be classified as "low-level radioactive waste," those wastes may not meet the waste acceptance criteria of the facility. Additionally, there may be certain types of waste that may not be economically disposed at the facility due to the current Compact Facility license conditions. Currently, the facility operator employs 150 positions. Exports may reduce the number of positions the facility employs as business volumes decline or make the disposal facility uneconomical to operate and result in discontinuance of operation. Local employment could be positively impacted if import agreements are issued to allow disposal of low-level radioactive waste at the Compact Facility to replace exported volumes and/or to provide sufficient operational volumes to create affordable rates for Compact generators. Currently, the facility operator employs 150 positions and will add 75 positions when the site opens for disposal. Additionally, indirect employment may result from the additional direct employment impact. Also, the Compact provisions require the Compact Facility license holder to transfer each quarter to the Commissioners Court of the host county five percent of the gross receipts from compact waste received at the Compact Facility. The Commissioners Court of the host county may spend the money for public projects in the host county or disburse the money to other local entities or to public nonprofit corporations to be spent for local public projects. The dollar amount of gross receipts cannot be estimated at this time because disposal fees have not been established. However, it is anticipated that the increase in local government revenue resulting from disposal of imported waste would result in additional local employment.

SMALL AND MICRO BUSINESS COST ANALYSIS

Michael Ford, Chairman of the Compact Commission, has determined that there are approximately 2,500 licensed generators of low-level radioactive waste in Texas and Vermont. Of these, approximately 100 are estimated to be small or micro-businesses that would be subject to the provisions of these rules. The Compact Commission estimates the economic impact of the cost of compliance with these rules to these businesses will be associated with accessing their existing inventory records in order to supply information about the radioactive waste for which they are requesting export approval. This information on radioactive materials should be readily available to them for compliance with other radiation control regulations. Submission costs should be minimal for data preparation and submission of a petition. The Commission acknowledges that it is possible that there could be a greater cost associated with disposal in the Compact Facility; however, that impact cannot be determined at this time because the rates for disposal at the Compact Facility have not been set. The Commission does not control the disposal rate set for the facility. The Commission does not have sufficient information to address this issue at this time.

Mr. Ford has determined that, in addition to the application fees identified in the rules, the probable economic costs for persons required to comply with this proposed rule will be a total of approximately 8 hours or fewer labor time to compile and provide the information required by the Commission. It is anticipated, based on the information required by the Commission that an engineering professional (or similar) would likely be required to compile the required information (shown in §675.21(e) and (h)) and submit it to the Commission. Based on estimated labor costs of $50 to $100 per hour, depending on the organization and the relationship of the engineering professional to the waste generator (i.e., employee or consultant), the overall cost to persons required to comply with this rule could range from an estimated low of $450 for small volume waste generators to an estimated high of $1300 for large volume generators. Additional costs incurred by persons due to delays encountered in waiting for determinations by the Commission are not included in this cost estimate since the proposed rule does not change the requirement for persons seeking export from or import into the Compact to have an Agreement with the Commission prior to any such action taking place. Finally, persons may choose to engage legal counsel or professionally certified personnel in the preparation of information required by the Commission. Such legal or professional endorsements are not required by the proposed rules.

The Commission has designated a reduced fee of $50 for generators submitting export petitions for 100 or fewer cubic feet of waste to lessen the impact on these generators. Additionally, small generators are unlikely to need to export low-level radioactive waste once the disposal site in the host state of Texas begins operations, estimated to happen in early 2011. Therefore, this fee impact may have limited duration.

The Commission developed the proposed sections according to the provisions of state and federal statutes. Variance from the state and federal requirements would be inconsistent with the compact provisions. Consequently, any variance from such requirements would not be consistent with the state and federal statutes and therefore, no alternative regulatory methods have been considered.

SUBMISSION OF COMMENTS

Written comments may be submitted by mail to TLLRWDCC at 3616 Far West Blvd., Suite 117, #294, Austin, TX 78731, or by electronic mail to rule.comments@tllrwdcc.org. To be considered, written comments must be received within 30 days of publication of the proposed rule in the *Texas Register.* A public hearing will be held by the Commission during the 30-day comment period and posted as appropriate.

STATUTORY AUTHORITY

New §675.21 is proposed to be adopted under P.L. 105-236 and Texas Health and Safety Code, Chapter 403 (Compact Act §3.05(4)), which grants the Compact Commission rulemaking authority to carry out the terms of the Compact. The proposed rule also would be adopted pursuant to §§3.05(7), 6.01 and 6.03 of the Compact, which authorize the Commission to regulate the exportation of low-level radioactive waste and prohibit unauthorized exportation of waste.

New §675.22 is proposed to be adopted under P.L. 105-236 and Texas Health and Safety Code, Chapter 403 (Compact Act §3.05(4)), which grants the Commission rulemaking authority to carry out the terms of the Compact. This proposed rule also would be adopted pursuant to §3.05(8) of the Compact, which authorizes the Commission to monitor the exportation of waste for the sole purpose of management or processing.

Proposed new §675.23 is proposed to be adopted under P.L. 105-236 and Texas Health and Safety Code, Chapter 403 (Compact Act §3.05(4)), which grants the Compact Commission rulemaking authority to carry out the terms of the Compact. This proposed rule also would be adopted pursuant to §§3.05(6), 6.02, and 6.03 of the Compact, which authorize the Compact Commission to enter into an agreement for the importation of low-level radioactive waste into the compact for disposal and prohibit unauthorized importation of waste.

Proposed new §675.24 is proposed to be adopted under P.L. 105-236 and Texas Health and Safety Code, Chapter 403 (Compact Act §3.05(4)), which grants the Compact Commission rulemaking authority to carry out the terms of the Compact. This proposed rule also would be adopted pursuant to §§3.05(6), 6.02, and 6.03 of the Compact, which authorize the Compact Commission to enter into an agreement for the importation of low-level radioactive waste into the compact for management and prohibit unauthorized importation of waste.

§675.21. Exportation of Waste to a Non-Party State for Disposal.

(a) Permit Required--No person shall export any low-level radioactive waste generated within a party state for disposal in a non-party state unless the Commission has issued an export permit allowing the exportation of that waste pursuant to this rule.

(b) Petition Required--A generator or group of generators proposing to export low-level radioactive waste to a low-level radioactive waste disposal facility outside the party states shall submit to the Commission a petition for an export permit.

(c) Form of Petition--The petition shall be in writing and on a form promulgated by the Commission and posted on the Commission's web page, or otherwise made readily accessible to generators and to the public.

(d) Petition Fees--

(1) Export Petition Application Fee--A non-refundable, application fee of $500 shall accompany the petition, except that for petitioners seeking to export 100 cubic feet or less shall pay an application fee of $50. Payments shall be made by check, money order or electronic transfer, made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission. No action shall be taken on any petition until the application fee is paid in full.

(2) Export Petition Evaluation Fee. In accordance with a fee schedule adopted by the Commission, an export petition evaluation fee may be assessed based on the estimated time and expenses to be incurred in evaluating and acting on the petition, if the expense exceeds the export petition application fee. This estimated fee will be communicated to the applicant prior to any action by the Commission.

(A) The fee schedule will be based on the estimated cost of evaluating the petition and may include, but not be limited to, these factors:

(i) staff expenses;

(ii) supplies;

(iii) direct and indirect expenses;

(iv) purchased services of consultants such as engineers, attorneys or consultants; and

(v) other expenses reasonably related to the evaluation.

(B) This fee will be due and payable within 30 days of issuance of fee bill.

(C) A petitioner may appeal the assessment of the fee by requesting a public hearing before the Commission within 30 days of the assessment. Such hearing shall be held as soon as practicable after the request, but no longer than 45 days after the request is received by the Commission. The Commission's order shall be issued within 30 days after the hearing. If required by Commission order, payments are due within 30 days of the final order.

(e) Notice and Timing of Petition--A petitioner shall file an export petition with the Commission and receive approval by the Commission prior to export. The proposed export petition shall be accompanied by a certification by the disposal facility receiving the waste that the waste acceptance criteria have been met for the proposed waste importation. By electronic mail, the petitioner shall deliver to the Compact Facility operator a copy of the export petition (and any supplements or amendments thereto) at the time of filing with the Commission, and a copy shall also be delivered by Certified mail. Upon receipt, the Commission shall post the export petition to the Commission's web site and to the *Texas Register.* Any comments by the Compact Facility operator on the export petition shall be filed in writing with the Commission no later than 30 days after the date the petition was received by the Commission. By electronic mail, the Compact Facility operator

shall deliver to the petitioner a copy of all comments (and any supplements or amendments thereto) submitted to the Commission at the time of filing with the Commission, and a copy shall also be delivered by Certified mail. The Commission shall distribute the export petition and comments received from the Compact Facility operator, petitioner, and public to other interested parties by mail or email for information and comment and shall post the export petition, comments received and other pertinent information on the Commission's web site. The Commission shall distribute the export petition and any comments received from the Compact Facility operator, or others, to the members of the Commission, and distribute comments from others to the Compact Facility operator and the petitioner.

(f) Review of Petition--After receiving the export petition and any comments that have been made thereon, the Commission at a meeting held no sooner than 60 days or later than 120 days after the date the export petition was filed with the Commission, shall act on the export petition utilizing the following factors:

(1) The volume of waste proposed for exportation, the type of waste proposed for exportation, the approximate radioactivity of the waste, the specific radionuclides contained therein, the time period of the proposed exportation, and the location and name of the facility which will receive the waste for treatment and ultimate disposal;

(2) The policy and purpose of the Compact;

(3) The availability of the Compact Facility for the disposal of the waste involved;

(4) The economic impact on the Host County, the Host State, and the Compact Facility operator of granting the export permit;

(5) The economic impact on the petitioner;

(6) Whether the proposed disposal facility has authorization to import the waste into the region in which the disposal is to take place;

(7) The existence of unresolved violations pending against the petitioner with any other regulatory agency with jurisdiction to regulate radioactive material, and any comments by the regulatory agency with which the petitioner has unresolved violations;

(8) Any unresolved violation, complaint, unpaid fee, or passed due report that the petitioner has with the Commission;

(9) Any relevant comments received from the Compact Facility, the petitioner, the Host County, the Host State, or the public; and

(10) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact.

(g) Decision by the Commission--The Commission may take one of the following actions on the export petition, in whole or in part: approve the export petition; deny the export petition; or approve the export petition subject to terms and conditions as determined by the Commission and as ultimately documented in the export permit.

(h) Terms and Conditions--The Commission may impose any terms or conditions on the export permit as is determined by the Commission.

(i) Permit Duration, Amendment, Revocation, Reporting, and Assignment.

(1) An export permit shall be issued for the term specified in the permit and shall remain in effect for that term unless amended, revoked, or canceled by the Commission.

(2) The Commission may, on its own motion or in response to a petition for amendment from the permit holder of an export permit for which prior written notice has been given to the permit holder and the Compact Facility operator, add or delete requirements or limitations to the permit. The Commission may provide a reasonable time to allow the existing permit holder to make any changes necessary to comply with the additional requirements or limitations imposed by the Commission.

(3) Not later than October 31 of each calendar year, a person who holds an export permit shall file with the Commission a report describing the amount and type of waste exported in the period from September 1 to August 31. The form of the report shall be prescribed by the Commission and shall be available on the Commission's web site, or may be obtained at a location that will be posted on the Commission's website. Failure to timely file this report may result in denial of future export petitions.

(4) An Export Permit is not assignable or transferable to any other person.

(j) Agreements to Export--Nothing in this subchapter shall limit the authority of the Commission to enter into agreements with the United States, other regional compact commissions, or individual states for the exportation or management of low-level radioactive waste. Nothing in this subchapter shall be construed to prohibit the storage or management of low-level radioactive waste by a generator, or its disposal pursuant to 10 CFR §20.302 (now 10 CFR §20.2002).

(k) Form of Export Permit--The Export Permit shall be on a form promulgated by the Commission and posted on the Commission's website. The form may be amended by the Commission from time to time.

(l) Notwithstanding any other provision of this section, the Commission shall receive but will not begin to process applications for exportation of waste under this section by a compact generator to a non-party state for disposal until such time as the Commission determines by vote taken pursuant to §3.02 of the Compact as compiled at §403.006, Texas Health and Safety Code that it has adequate resources to properly examine applications prior to issuing permits and thereafter to enforce the terms and conditions of such permits as are issued. During the period between the adoption of this rule and the required determination pursuant to §3.02 of the Compact, permits granted pursuant to the resolution adopted by the Commission on December 11, 2009 will continue to be in effect. If, in the judgment of the Commission, circumstances warrant, new permits may be granted under the terms of that same resolution until such time as the Commission makes the required determination under §3.02 of the Compact.

(m) Definitions--Terms used in this subchapter shall have the meaning ascribed to them in the Compact.

§675.22. Exportation of Waste to a Non-Party State for Management or Processing and Return to the Party States for Management or for Disposal in the Compact Facility.

(a) Where the sole purpose of the exportation is to manage or process the waste for recycling or waste reduction and return it to the party states for disposal in the Compact Facility, party state generators are not required to obtain an export permit; however,

(b) The generator shall be required to file a report with the Commission no later than 10 days after the shipment of the waste under Sec. 675.22(a). Reports may be filed by facsimile or e-mail. A generator may satisfy the reporting requirement by timely filing with the Commission Forms 540 and 541 promulgated by the U.S. Nuclear Regulatory Commission, as applicable, with supplemental data indicating the types of waste management employed at the waste management

facility. Alternatively, generator reports shall include the following information:

(1) The volume of waste proposed for exportation, the type, physical and chemical form of waste proposed for exportation, the approximate radioactivity of the waste, the specific radionuclides contained therein, and the location and name of the facility that will receive the waste for treatment;

(2) The location and name of waste processing facility(ies) receiving and processing the waste, the type of waste management employed at the waste management facility, whether the exported waste is mixed or blended with waste from other generators;

(c) Upon return of the waste to the generator:

(1) The generator shall file a report informing the Commission of the volume, physical form and activity of the waste returned to the party state generator; and

(2) The generator and the processor shall certify that the waste has not been downblended or blended, mixed or commingled with low-level radioactive waste that was not generated in the party states, except for waste incidental to processing, and that does not exceed 1 percent of the total activity.

§675.23. Importation of Waste from a Non-Compact Generator for Disposal.

(a) It is the policy of the Commission that any savings generated by importation accrue to the benefit of the party states. It is also the policy of the Commission that it will not accept the importation of low-level radioactive waste of international origin.

(b) Disposal capacity is reserved for Texas and Vermont calculated by total estimated, as-disposed volume and total activity, and neither shall be reduced by non-Compact waste. Such disposal capacity shall be established at least every 5 years by a report of the Commission. The Commission's report shall be informed by the annual report by the host State on the status of the facility, including projections of the facility's anticipated future capacity.

(c) No petition for an agreement to import low-level radioactive waste for disposal shall be granted by the Commission unless the Compact Facility operator has provided to the Commission a recommended total annual volume to be imported for disposal to the Compact Facility and certify that the disposal of imported waste will not reduce capacity for Party State-generated waste, based on the currently licensed volume and activity. The recommendation shall become final after Commission approval. The approval shall be based on timely renewal of the Compact Facility License by the licensee, assigns, or successors.

(d) Agreement Required--No person shall import any low-level radioactive waste for disposal that was generated in a non-Party State unless the Commission has entered into an agreement for the importation of that waste pursuant to this rule. Violations of this subsection may result in prohibiting the violator from disposing of low-level radioactive waste in the Compact Facility, or in the imposition of penalty surcharges on shipments to the facility, as determined by the Commission.

(e) Form of Agreement--The form of the Agreement shall be promulgated by the Commission and posted on the Commission's web site, or otherwise made readily accessible to generators and to the public.

(f) Fee for Proposed Importation Agreements.

(1) Import Agreement Application Fee--A non-refundable, application fee of $500 shall accompany the proposed agreement. Payments shall be made by check or money order made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

(2) No action shall be taken on any proposed agreement until the application fees are paid.

(3) Import Agreement Evaluation Fee--Prior to any action on the proposed agreement by the Commission, an additional, non-refundable fee may be assessed based on the estimated time and expenses to be incurred in evaluating and acting on the proposed agreement, if the expense exceeds the application fee. The estimated fee shall be based on a fee schedule as adopted by the Commission. This fee shall be paid by check, money order, or electronic transfer and made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

(4) The fee schedule will be based on the estimated cost of evaluating the proposed agreement and may include, but not be limited to these factors:

(A) the complexity of the proposed agreement (e.g., the number of generators, isotopes, waste streams, waste classifications/activities, waste forms, etc.);

(B) staff expenses;

(C) supplies;

(D) direct and indirect expenses;

(E) purchased services of consultants such as engineers, attorneys or consultants; and

(F) other expenses reasonably related to the evaluation.

(5) This import agreement evaluation fee will be due regardless of whether or not an import agreement is issued and shall be made by check or money order made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

(g) Notice and Timing of Agreement--A person shall file a proposed import agreement with the Commission and receive approval by the Commission prior to the proposed importation date.

(1) The proposed import agreement shall be accompanied by a certification by the Compact Facility that the waste acceptance criteria have been met for the proposed waste importation.

(2) By electronic mail, the petitioner shall deliver to the Compact Facility operator a copy of the import agreement (and any supplements or amendments thereto) at the time of filing with the Commission, and a copy shall also be delivered by Certified mail.

(3) Proposed import agreements received by the Commission during any calendar month may be processed in aggregate at the beginning of the following calendar month. The date of receipt of proposed import agreements shall be deemed the first business day of the following calendar month. Within 15 days of the date of receipt, the Commission shall post the import agreement to the Commission's web site and transmit it to the *Texas Register.*

(4) Any comments by the Compact Facility operator on the import agreement shall be filed in writing with the Commission not later than 30 days after the deemed date of receipt of the proposed import agreement. By electronic mail, the Compact Facility operator shall deliver to the petitioner a copy of all comments (and any supplements or amendments thereto) submitted to the Commission at the time of filing with the Commission, and a copy shall also be delivered by Certified mail.

(5) Within 15 days of the date of receipt of the Compact Facility operator comments, the Commission shall post the import agreement to the Commission's web site.

(6) Comments on the proposed import application may be submitted by any person, other than the Compact Facility operator, during the 60-day period following the date of posting to the Commission's website.

(7) The Commission shall distribute the import agreement and comments received from the Compact Facility operator, petitioner, and public to other interested parties by mail or email for information and comment and shall post the import agreement, comments received and other pertinent information on the Commission's web site. The Commission shall distribute the proposed import agreement and any comments received from the Compact Facility or others to the members of the Commission, and distribute comments from others to the Compact Facility operator, the petitioner, and the public.

(h) Review of Proposed Import Agreement--After receiving the proposed import agreement and any comments that have been made thereon, the Commission at a meeting held promptly, but no sooner than 60 days nor later than 365 days, subject to the financial resources of the Commission, after the date the proposed import agreement was filed with the Commission, shall act upon the import agreement utilizing the following factors:

(1) The volume, type, physical form and activity of waste proposed for importation;

(2) The policy and purpose of the Compact;

(3) The availability of the Compact Facility for the disposal of the waste proposed to be imported;

(4) The economic impact, including both potential benefits and liabilities, on the Host County, the Host State, and the Compact Facility operator of entering into the import agreement;

(5) Whether the Compact Facility operator has or will obtain, prior to importation, authorization from TCEQ to dispose of the proposed waste;

(6) The effect on the Compact Facility's total annual volume recommended for importation;

(7) The existence of unresolved violations pending against the petitioner with any other regulatory agency with jurisdiction to regulate radioactive material, and any comments by the regulatory agency with which the petitioner has unresolved violations;

(8) Any unresolved violation, complaint, unpaid fee, or past due report that the petitioner has with the Commission;

(9) Any relevant comments received from the Compact Facility operator, compact generators, the person proposing to export the waste, the Host County, the Host State, interested state or federal regulatory agencies, or the public;

(10) The authorization of a person to export (if applicable);

(11) The impacts, if any, on the availability of disposal capacity on the Compact Facility to meet the current and future needs of Compact generators; and

(12) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact.

(i) Decision by the Commission--The Commission may take one of the following actions on the proposed importation agreement, in whole or in part: approve the proposed agreement; deny the proposed agreement; approve the proposed agreement subject to terms and conditions as determined by the Commission; or request additional information needed for a decision.

(j) Terms and Conditions--The Commission may impose any terms or conditions on the import agreement reasonably related to furthering the policy and purpose of the Compact.

(k) Importation Agreement Duration, Amendment, Revocation, Reporting, Assignment and Fees.

(1) An importation agreement shall be issued for the term specified in the agreement and shall remain in effect for that term unless amended, revoked, or canceled by the Commission.

(2) The Commission may, on its own motion or in response to a petition by the agreement holder for amendment of an importation agreement for which prior written notice has been given to the agreement holder and the Compact Facility operator, add or delete requirements or limitations to the agreement. The Commission may provide a reasonable time to allow the agreement holder and the Compact Facility operator to make the changes necessary to comply with any additional requirements imposed by the Commission.

(3) An import agreement is not assignable or transferable to any other person.

(4) The Commission continues to consider the policy issues related to assessment of fees for the importation of low-level radioactive waste based on volume or activity of the waste. Upon conclusion of consideration of this issue, the Commission may provide for such fees in this section.

(l) The Compact Facility operator shall file with the Commission a Quarterly Import Report, no later than 30 days after the end of each calendar quarter, describing the imported waste that was disposed and stored under the import agreement during the quarter by the Compact Facility, including the physical, radiological and chemical properties of the waste consistent with the identification required by the Compact Waste Facility license. Each Quarterly Import Report will provide the identity of the generator, the manifested volume and activity of each imported class of waste (A, B, and C, or in the case of waste imported for management, Greater Than Class C), the state or other place of origin, and the date(s) of waste disposal, if applicable. The Quarterly Report shall provide this information for the imported waste disposed of during the most recent quarter, as well as the cumulative information for imported waste disposed of in prior quarters under this Agreement. The forms of the Quarterly Import Report shall be prescribed by the Commission and shall be posted on the Commission's website, or may be obtained at a location that will be posted on the Commission's website.

(m) Agreements to Import--Nothing in this subchapter shall be construed to prohibit the storage or management of low-level radioactive waste by a generator, nor its disposal pursuant to 10 CFR §20.2002.

(n) Form of Import Agreement--The import agreement shall be on a form promulgated by the Commission, posted on the Commission's website, and shall contain at a minimum the criteria contained in subsection (h) of this section. The form may be amended by the Commission from time to time.

(o) Notwithstanding any other provision of this section, the Commission shall receive but will not begin to process applications for agreements to import waste from a non-compact generator for disposal under this section until such time as the Commission determines by vote taken pursuant to §3.02 of the Compact as compiled at §403.006, Texas Health and Safety Code that it has adequate resources to properly examine applications to enter into agreements prior to entering into such agreements and thereafter to enforce the terms and conditions of such agreements as are entered into.

(p) Definitions--Terms used in this subchapter shall have the meaning ascribed to them in the Compact. Where time requirements are specified in "days," that shall be in calendar days.

§675.24. Importation of Waste from a Non-Compact Generator for Management.

(a) It is the policy of the Commission that it will not accept for the purpose of management the importation of low-level radioactive waste of international origin.

(b) Agreement Required--No person shall import into a party state any low-level radioactive waste for management that was generated in a non-party state unless the Commission has entered into an importation for management agreement for that waste pursuant to this rule.

(c) Violations of subsection (b) of this section may result in prohibiting the violator from importing for any purpose low-level radioactive waste into a party state or in the imposition of penalty surcharges on shipments to the facility, as determined by the Commission.

(d) Form of the Importation for Management Agreement--The form of the agreement shall be promulgated by the Commission and posted on the Commission's web site, or otherwise made readily accessible to generators and to the public.

(e) Fee for Proposed Importation for Management Agreements.

(1) Importation for Management Agreement Application Fee--A non-refundable, application fee of $100 shall accompany the proposed agreement. Payments shall be made by check or money order made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

(2) No action shall be taken on any proposed agreement until the application fees are paid.

(3) Importation for Management Agreement Evaluation Fee--Prior to any action on the proposed agreement by the Commission, an additional, non-refundable fee may be assessed based on the estimated time and expenses to be incurred in evaluating and acting on the proposed agreement, if the expense exceeds the application fee. The estimated fee shall be based on the Importation for Management Agreement Evaluation Fee Schedule as adopted by the Commission. This fee shall be paid by check, money order, or electronic transfer and made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

(4) The Importation for Management Agreement Evaluation fee schedule will be based on the estimated cost of evaluating the proposed agreement and may include, but not be limited to these factors:

(A) the complexity of the proposed agreement (e.g., the number of generators, isotopes, waste streams, waste classifications/activities, waste forms, etc.);

(B) staff expenses;

(C) supplies;

(D) direct and indirect expenses;

(E) purchased services of consultants such as engineers, attorneys or consultants; and

(F) other expenses reasonably related to the evaluation.

(5) The Importation for Management Agreement Evaluation fee will be due regardless of whether an importation for management agreement is issued and shall be made by check or money order made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

(f) Notice and Timing of Agreement--A person shall file a proposed importation for management agreement with the Commission and receive approval by the Commission prior to the proposed importation date.

(1) The proposed importation for management agreement shall be accompanied by a certification by the Compact Facility that the waste acceptance criteria have been met for the proposed waste importation.

(2) By both electronic mail and certified U.S. mail, the applicant shall deliver to the Compact Facility operator a copy of the proposed importation for management agreement (and any supplements or amendments thereto) at the time of filing with the Commission.

(3) Proposed importation for management agreements received by the Commission during any calendar month may be processed in aggregate at the beginning of the following calendar month. The date of receipt of the proposed agreement shall be deemed the first business day of the following calendar month. Within 15 days of the date of receipt, the Commission shall post the proposed importation for management agreement to the Commission's web site and transmit it to the *Texas Register.*

(4) Comments on the proposed importation for management agreement may be submitted by any person, other than the Compact Facility operator, during the 60-day period following the date of posting to the Commission's website.

(5) The Commission shall distribute the proposed importation for management agreement and comments received from the Compact Facility operator, applicant, and public to other interested parties by mail or email for information and comment and shall post the proposed importation for management agreement, comments received and other pertinent information on the Commission's web site. The Commission shall distribute the proposed importation for management agreement and any comments received from the Compact Facility or others to the members of the Commission, and distribute comments from others to the Compact Facility operator, the applicant, and the public.

(g) Review of Proposed Importation for Management Agreement--After receiving the proposed importation for management agreement and any comments that have been made thereon, the Commission at a meeting held promptly, but no sooner than 60 days, nor later than 365 days, subject to the financial resources of the Commission, after the date the proposed importation for management agreement was filed with the Commission, shall act upon the proposed importation for management agreement utilizing the following factors:

(1) The volume, type, physical form and activity of waste proposed for importation;

(2) The policy and purpose of the Compact;

(3) Whether the receiving person in one of the party states has or will obtain, prior to importation, authorization from party state authorities to manage the waste;

(4) The existence of unresolved violations pending against the applicant with any other regulatory agency with jurisdiction to regulate radioactive material, and any comments by the regulatory agency with which the applicant has unresolved violations;

(5) Any unresolved violation, complaint, unpaid fee, or past due report that the applicant has with the Commission;

(6) Any relevant comments received from the Compact Facility operator, Compact generators, the person proposing to export the waste, the Host County, the Host State, interested state or federal regulatory agencies, or the public;

(7) The authorization of a person to export (if applicable); and

(8) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact.

(h) Decision by the Commission--The Commission may take one of the following actions on the proposed importation for management agreement, in whole or in part: approve the proposed agreement; deny the proposed agreement; or approve the proposed agreement subject to terms and conditions as determined by the Commission.

(i) Terms and Conditions--The Commission may impose any terms or conditions on the importation for management agreement reasonably related to furthering the policy and purpose of the Compact.

(j) Management Importation Agreement Duration, Amendment, Revocation, Reporting, Assignment and Fees.

(1) An importation for management agreement shall be issued for the term specified in the agreement and shall remain in effect for that term unless amended, revoked, or canceled by the Commission.

(2) The Commission may, on its own motion or in response to a petition by the agreement holder, add or delete requirements or limitations to the agreement. The Commission may provide a reasonable time to allow the existing importer and the managing person to make the changes necessary to comply with any additional requirements imposed by the Commission.

(3) An importation for management agreement is not assignable or transferable to any other person.

(4) The Commission continues to consider the policy issues related to assessment of fees for the importation of low-level radioactive waste based on volume or activity of the waste. Upon conclusion of consideration of this issue, the Commission may provide for such fees in this section.

(k) Form of Importation for Management Agreement--The agreement shall be on a form promulgated by the Commission, posted on the Commission's website, and shall contain at a minimum the criteria contained in subsection (g) of this section. The form may be amended by the Commission from time to time.

(l) Definitions--Terms used in this subchapter shall have the meaning ascribed to them in the Compact. Where time requirements are specified in "days," that shall be in calendar days.

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

Filed with the Office of the Secretary of State on November 15, 2010.

TRD-201006533
Michael S. Ford
Commission Chair
Texas Low Level Radioactive Waste Disposal Compact Commission
Earliest possible date of adoption: December 26, 2010
For further information, please call: (512) 820-2930

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 427. TRAINING FACILITY CERTIFICATION

SUBCHAPTER C. TRAINING PROGRAMS FOR ON-SITE AND DISTANCE TRAINING PROVIDERS

37 TAC §427.305

The Texas Commission on Fire Protection (the Commission) proposes amendments to Chapter 427, Training Facility Certification, Subchapter C, Training Programs for On-Site and Distance Training Providers, §427.305, Procedures for Testing Conducted by On-Site and Distance Training Providers. The proposed amendment will allow a student to achieve an average score of 70% on all required periodic tests and a comprehensive final test with a passing score of 70%. The proposed amendment also requires that if a Fire Investigator course is taught in phases then a comprehensive final test be administered and a passing score of 70% must be achieved.

Jake Soteriou, Director of Standards and Certification Division, has determined that for the first five-year period these proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section as amended.

Mr. Soteriou has also determined that for the first five years these proposed amendments are in effect, there will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regulator flexibility analysis is required. The public will benefit from the passage of this section because it will allow a student to average his or her periodic test scores to achieve 70% but requires the student to achieve a passing score of 70% on the final comprehensive test.

Written comments on this proposal may be submitted to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, 1701 N. Congress, Suite 1-105, Austin, Texas 78701. Written comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register.*

These amendments are proposed under Texas Government Code, Title 4, Subtitle B, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code §419.022 and §419.028.

§427.305. Procedures for Testing Conducted by On-Site and Distance Training Providers.

(a) The requirements and provisions in this section apply to procedures for periodic and final testing conducted by training providers. For procedures regarding state examinations for certification Commission examinations that occur after a training program is completed, see Chapter 439 of this title.

(b) Periodic and comprehensive final tests shall be given by the training provider in addition to the Commission examination required in Chapter 439 of this title.

(c) Periodic [~~written~~] tests shall be administered at the ratio of one test per 50 hours of recommended training, or portion thereof. An average [~~In addition to periodic tests, a comprehensive final written test must be administered. A passing~~] score of 70% must be achieved on all required periodic [~~written~~] tests. [~~If a course is taught in phases, one comprehensive final written test shall be administered at the completion of all phases and a passing score of 70% must be achieved.~~]

(d) In addition to periodic tests, a comprehensive final test must be administered. A passing score of 70% must be achieved.

(e) If the Fire Investigator course is taught in phases, one comprehensive final test shall be administered upon completion of the final phase and a passing score of 70% must be achieved.

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

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006448
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 26, 2010
For further information, please call: (512) 936-3813

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CHAPTER 431. FIRE INVESTIGATION
SUBCHAPTER A. MINIMUM STANDARDS FOR ARSON INVESTIGATOR CERTIFICATION

37 TAC §§431.1, 431.3, 431.13

The Texas Commission on Fire Protection (the Commission) proposes amendments to Chapter 431, Fire Investigation, Subchapter A, Minimum Standards for Arson Investigator Certification, §431.1, Minimum Standards for Arson Investigation Personnel, §431.3, Minimum Standards for Basic Arson Investigator Certification, and §431.13, International Fire Service Accreditation Congress (IFSAC) Seal. The purpose of these amendments is to require fire protection personnel who are appointed arson investigation duties to possess a current peace officer license from the Texas Commission on Law Enforcement Officer Standards and Education agency or be able to document that he or she is a federal law enforcement officer. Also, these amendments clarify that in order for an individual to be certified as a Basic Arson Investigator they must hold a current license as a peace officer and they must notify the Commission of the law enforcement agency who is currently holding their peace officer license. These proposed amendments would also allow individuals that hold a current Arson Investigator certification prior to March 10, 2003 to obtain an IFSAC seal as a Fire Investigator by making application and paying applicable fees to the Commission.

Jake Soteriou, Director of Standards and Certification Division, has determined that for the first five-year period these proposed amendments are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering these sections as amended.

Mr. Soteriou has also determined that for the first five years these proposed amendments are in effect, there will be no effect on micro businesses, small businesses or persons required to comply with the amended sections as proposed; therefore, no regulator flexibility analysis is required. The public will benefit from the passage of these amendments because anyone appointed to arson investigation duties will have been trained to the minimum requirements and the Commission will be able to verify who carries the individual's peace officer license.

Written comments on this proposal may be submitted to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, 1701 N. Congress, Suite 1-105, Austin, Texas 78701. Written comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register.*

These amendments are proposed under Texas Government Code, Title 4, Subtitle B, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.022 and §419.032.

§431.1. Minimum Standards for Arson Investigation Personnel.

(a) Fire protection personnel who are appointed arson investigation duties must be certified, as a minimum, as a basic arson investigator as specified in §431.3 of this title (relating to Minimum Standards for Basic Arson Investigator Certification) within one year from the date of initial appointment to such position.

(b) Prior to being appointed to arson investigation duties, fire protection personnel must complete a commission approved basic fire investigator training program, [~~and~~] successfully pass the commission examination pertaining to that curriculum, and possess a current peace officer license from the Texas Commission on Law Enforcement Officer Standards and Education or document that the individual is a federal law enforcement officer.

(c) Personnel holding any level of arson investigation certification shall be required to comply with the continuing education requirements in §441.15 of this title (relating to Continuing Education [~~Requirements~~] for Arson Investigator or Fire Investigator).

§431.3. Minimum Standards for Basic Arson Investigator Certification.

In order to be certified by the Commission as a Basic Arson Investigator an individual must:

(1) possess a current basic peace officer's license from the Texas Commission on Law Enforcement Officer Standards and Education or documentation that the individual is a federal law enforcement officer;

(2) hold a current license [~~Commission~~] as a peace officer and notify the Commission on the prescribed form regarding the law enforcement agency currently holding the individual's peace officer license [~~with the employing entity for which the arson investigations will be done~~]; and

(3) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as a Fire Investigator; or

(4) complete a Commission-approved basic fire investigation training program and successfully pass the Commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved fire investigation training program shall consist of one of the following:

(A) completion of the Commission-approved Fire Investigator Curriculum, as specified in Chapter 5 of the Commission's Certification Curriculum Manual;

(B) successful completion of an out-of-state, NFA, or military training program which has been submitted to the Commission for evaluation and found to meet the minimum requirements as listed in the Commission-approved Fire Investigator Curriculum as specified in Chapter 5 of the Commission's Certification Curriculum Manual; or

(C) successful completion of the following college courses: Arson Investigator, 3 semester hours; Hazardous Materials, 3 semester hours; Building Construction, 3 semester hours; Fire Protection Systems, 3 semester hours. Total semester hours, 12. The three semester hour course "Building Codes and Construction" may be substituted for Building Construction. Arson Investigator I or II may be used to satisfy the requirements of Arson Investigation. Hazardous Materials I or II may be used to satisfy the requirements of Hazardous Materials.

§431.13. International Fire Service Accreditation Congress (IFSAC) Seal.

(a) Individuals holding a current commission Arson Investigator certification received prior to March 10, 2003 may be granted an International Fire Service Accreditation Congress (IFSAC) seal as a Fire Investigator by making application to the commission for the IFSAC seal and paying applicable fees.

(b) Individuals completing a commission-approved basic fire investigator program and passing the applicable state examination may be granted an IFSAC seal as a Fire Investigator by making application to the commission for the IFSAC seal and paying applicable fees.

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

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006449
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 26, 2010
For further information, please call: (512) 936-3813

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SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INVESTIGATOR CERTIFICATION

37 TAC §431.201, §431.211

The Texas Commission on Fire Protection (the Commission) proposes amendments to Chapter 431, Fire Investigation, Subchapter B, Minimum Standards for Fire Investigator Certification, §431.201, Minimum Standards for Fire Investigation Personnel, and §431.211, International Fire Service Accreditation Congress (IFSAC) Seal--Fire Investigator. These proposed amendments require fire protection personnel who receive temporary or probationary appointment to fire investigation duties be certified as a fire investigator within one year of appointment to these duties and that they possess a current structure fire protection personnel certification. These proposed amendments would also allow individuals holding a current commission Fire Investigator certification prior to March 10, 2003 to obtain an IFSAC seal as a Fire Investigator by making application and paying applicable fees to the Commission.

Jake Soteriou, Director of Standards and Certification Division, has determined that for the first five-year period these proposed amendments are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering these sections as amended.

Mr. Soteriou has also determined that for the first five years these proposed amendments are in effect, there will be no effect on micro businesses, small businesses or persons required to comply with the amended sections as proposed; therefore, no regulator flexibility analysis is required. The public will benefit from the passage of these amendments because individuals appointed to fire investigation duties will meet the minimum requirements to be certified as structure fire protection personnel.

Written comments on this proposal may be submitted to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, 1701 N. Congress, Suite 1-105, Austin, Texas 78701. Written comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register.*

These amendments are proposed under Texas Government Code, Title 4, Subtitle B, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.022 and §419.032.

§431.201. Minimum Standards for Fire Investigation Personnel.

(a) Fire protection personnel who receive temporary or probationary appointment to [~~are appointed~~] fire investigation duties must be[~~, as a minimum,~~] certified as a [~~structure fire protection personnel or~~] fire investigator by the Commission within one year of appointment to such duties [~~commission~~].

(b) Prior to being appointed to fire investigation duties, personnel [~~who are not certified as structure fire protection personnel~~] must:

(1) complete a commission approved basic fire investigator training program and successfully pass the commission examination pertaining to that curriculum; or [~~.~~]

(2) hold current certification as structure fire protection personnel.

(c) Individuals holding a Fire Investigator certification shall be required to comply with the continuing education requirements in §441.15 of this title (relating to Continuing Education [~~Requirements~~] for Arson Investigator or Fire Investigator).

(d) Individuals certified under this subchapter shall limit their investigation to determining fire cause and origin. If evidence of a crime is discovered, custody and control of the investigation shall be immediately transferred to a certified arson investigator or licensed peace officer.

(e) Individuals who previously held arson investigator certification, who no longer hold a current commission as a peace officer, will qualify for certification as a fire investigator of similar level upon notice to the commission. To obtain a printed certificate the individual will be required to make application to the commission.

§431.211. International Fire Service Accreditation Congress (IFSAC) Seal--Fire Investigator.

(a) Individuals holding a current commission Fire Investigator certification received prior to March 10, 2003 may be granted an Inter-

national Fire Service Accreditation Congress (IFSAC) seal as a Fire Investigator by making application to the commission for the IFSAC seal and paying applicable fees.

(b) Individuals completing a commission-approved basic fire investigator program and passing the applicable state examination may be granted an IFSAC seal as a Fire Investigator by making application to the commission for the IFSAC seal and paying applicable fees.

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

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Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
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For further information, please call: (512) 936-3813

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CHAPTER 435. FIRE FIGHTER SAFETY

37 TAC §435.25

The Texas Commission on Fire Protection (the Commission) proposes new Chapter 435, Fire Fighter Safety, §435.25, Courage to be Safe So Everyone Goes Home Program. The proposed new section requires all certified fire protection personnel in the State of Texas to complete the National Fallen Firefighters Foundation's "Courage to be Safe So Everyone Goes Home" program before December 1, 2015. It also requires all regulated entities report the completion of the training to the Commission through its web based reporting system.

Jake Soteriou, Director of Standards and Certification Division, has determined that for the first five-year period this section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section as proposed.

Mr. Soteriou has also determined that for the first five years this section is in effect, there will be no effect on micro businesses, small businesses or persons required to comply with the section as proposed; therefore, no regular flexibility analysis is required. The public will benefit from the passage of this section because it will improve the safety of all certified fire fighters across the State of Texas.

Written comments on this proposal may be submitted to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, 1701 N. Congress, Suite 1-105, Austin, Texas 78701. Written comments must be received no later than 30 days from the date of publication of the proposed section in the *Texas Register.*

This new section is proposed under Texas Government Code, Title 4, Subtitle B, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.022 and §419.032.

§435.25. Courage to be Safe So Everyone Goes Home Program.

(a) In an effort to improve firefighter safety in the State of Texas, all regulated entities will ensure that the National Fallen Firefighters Foundation's "Courage to be Safe So Everyone Goes Home" program be completed as part of the continuing education required for certified fire protection personnel by December 1, 2015. Individuals will be credited with four hours of continuing education credit for completing this program.

(b) All regulated fire protection personnel must complete the National Fallen Firefighters Foundation's "Courage to be Safe So Everyone Goes Home" program prior to December 1, 2015.

(c) All fire protection personnel appointed after December 1, 2015 will be required to complete the National Fallen Firefighters Foundation's "Courage to be Safe So Everyone Goes Home" program training within one year of appointment to a fire department.

(d) Departments will report the completion of training through the Commission web based reporting system.

(e) Failure to complete the National Fallen Firefighters Foundation's "Courage to be Safe So Everyone Goes Home" program before the required deadlines will be considered a violation of continuing education rules found in Chapter 441 of the Commission's Standards Manual.

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

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Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
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For further information, please call: (512) 936-3813

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CHAPTER 437. FEES

37 TAC §§437.1, 437.5, 437.7

The Texas Commission on Fire Protection (the Commission) proposes amendments to Chapter 437, Fees, §437.1, Purpose and Scope, §437.5, Renewal Fees and §437.7, Standards Manual and Certification Curriculum Manual Fees. The proposed amendments remove obsolete language requiring the payment of fees for commission manuals. The Commission no longer provides copies of the manuals. The Commission provides this information free via its web site. It also removes language regarding certification renewal statements for individuals being mailed at a separate time from those of employing entities. The Commission is proposing that certification renewal statements for employing entities and individuals holding certification be mailed at the same time each year.

Jake Soteriou, Director of Standards and Certification Division, has determined that for the first five-year period these proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering these sections as amended.

Mr. Soteriou has also determined that for the first five years these proposed amendments are in effect, there will be no effect on micro businesses, small businesses or persons required

to comply with the amended section as proposed; therefore, no regular flexibility analysis is required. The public will benefit from the passage of these amendments because it will provide a better understanding for individuals holding certification who are responsible for paying their own certification renewal fees.

Written comments on this proposal may be submitted to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, 1701 N. Congress, Suite 1-105, Austin, Texas 78701. Written comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register.*

These amendments are proposed under Texas Government Code, Title 4, Subtitle B, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.034 and §419.0341.

§437.1. Purpose and Scope.

(a) The purpose of this chapter [~~these sections~~] is to set forth requirements governing the fees charged for the issuance of certificates to fire protection personnel, to establish the procedures for the collection of annual renewal fees[~~, fees for commission manuals,~~] and copying fees as prescribed by the Government Code, §419.025 and §419.026, and commission rule.

(b) This chapter [~~These sections~~] shall govern all proceedings before and dealing with the commission concerning certification fees, renewal fees, [~~fees for commission manuals,~~] and copying fees. Hearings and appellate proceedings regarding these fees shall be governed by this chapter [~~these sections~~] where applicable and by the rules of the practice and procedure of the commission and the Administrative Procedure Act and Texas Register Act, Chapter 2001, of the Texas Government Code.

(c) If a fee submitted in the form of a check is returned for insufficient funds the certification, seal or test for which the fee was collected will be invalidated.

§437.5. Renewal Fees.

(a) A $35.00 non-refundable annual renewal fee shall be assessed for each certified individual and certified training facility. If an individual or certified training facility holds more than one certificate, the Commission may collect only one $35.00 renewal fee, which will renew all certificates held by the individual or certified training facility.

(b) A regulated employing entity shall pay the renewal fee for all certificates which a person must possess as a condition of employment.

(c) If a person re-enters the fire service whose certificate(s) has been expired for less than one year, the regulated entity must pay all applicable renewal fee(s) and any applicable additional fee(s). Upon payment of the required fees, the certificates previously held by the individual, for which he or she continues to qualify, will be renewed.

(d) If a person reapplies for a certificate(s) which has been expired less than one year and the individual is not employed by a regulated employing entity as defined in subsection (b) of this section, the individual must pay all applicable renewal fee(s) and any applicable additional fee(s). Upon payment of the required fee(s), the certificate(s) previously held by the individual, for whom he or she continues to qualify, will be renewed.

(e) Nothing in this section shall prohibit an individual from paying a renewal fee for any certificate which he or she is qualified to hold providing the certificate is not required as a condition of employment.

(f) Certification renewal statements will be mailed to all regulated employing entities and individuals holding certification at least 60 days prior to October 31 of each calendar year. Certification renewal statements will be mailed to certified training facilities at least 60 days prior to February 1 of each calendar year. [~~Certification renewal statements will be mailed to individuals holding certification at least 60 days prior to April 30 of each calendar year.~~]

(g) All certification renewal fees must be returned with the renewal statement to the Commission.

(h) All certification renewal fees must be paid on or before the renewal date posted on the certification renewal statement to avoid additional fee(s).

(i) The certification period shall be a period not to exceed one year. The certification period for employees of regulated employing entities, and individuals holding certification is November 1 to October 31. The certification period of certified training facilities is February 1 to January 31. [~~The certification period of individual certificate holders is May 1 to April 30.~~]

[~~(j) Individual certificate holders that possess a certification that expires on October 31 will receive a renewal statement during the regulated entity's renewal cycle for a six month renewal period to align that individual to the individual holding certification renewal cycle as defined in subsection (i) of this section.~~]

[~~(k) A regulated entity that hires an individual holding certification that is current and has a renewal expiration date of April 30 will receive a renewal statement during the individual holding certification renewal cycle to align the renewal period as defined in subsection (i) of this section.~~]

(j) [~~(l)~~] All certification renewal fees received from one to 30 days after the renewal date posted on the renewal notice will cause the individual or entity responsible for payment to be assessed a non-refundable $17.50 late fee in addition to the renewal fee for each individual for which a renewal fee was due.

(k) [~~(m)~~] All certification renewal fees received more than 30 days after the renewal date posted on the renewal notice will cause the individual or entity responsible for payment to be assessed a non-refundable $35.00 late fee in addition to the renewal fee for each individual for which a renewal fee was due.

(l) [~~(n)~~] In addition to any non-refundable late fee(s) assessed for certification renewal, the Commission may hold an informal conference to determine if any further action(s) is to be taken.

(m) [~~(o)~~] An individual or entity may petition the Commission for a waiver of the late fees required by this section if the person's certificate expired because of the individual or regulated employing entity's good faith clerical error, or expired as a result of termination of the person's employment where the person has been restored to employment through a disciplinary procedure or a court action. All required renewal fees including applicable late fees and all required continuing education must be submitted before the waiver request may be considered.

(1) Applicants claiming good faith clerical error must submit a sworn statement together with any supporting documentation that evidences the applicant's good faith efforts to comply with Commission renewal requirements and that failure to comply was due to circumstances beyond the control of the applicant.

(2) Applicants claiming restoration to employment as a result of a disciplinary or court action must submit a certified copy of the order restoring the applicant to employment.

(n) [~~(p)~~] An individual, upon returning from activation to military service, whose certification has expired, must notify the Commission in writing. The individual will have any normally associated late fees waived and will be required to pay a $35.00 renewal fee.

§437.7. Standards Manual and Certification Curriculum Manual [~~Fees~~].

(a) A current version of the Commission's Standards Manual for Fire Protection Personnel and the Curriculum Manual are available for free on the web site at www.tcfp.state.tx.us.

[~~(a) A fee of $12 will be charged for the compact disk containing the Commission's Standards Manual for Fire Protection Personnel and the Certification Curriculum Manual.~~]

[~~(b) A $12 annual compact disk subscription fee will be charged to receive revisions. The compact disk subscription will contain an entire revision of both manuals.~~]

(b) [~~(c)~~] The Commission does not provide printed copies of the manuals. A printed copy of the Commission's standards may be obtained from Thomson West, 610 Opperman Drive, Eagan, MN 55123, (800) 328-9352, by requesting "Title 37, Public Safety and Corrections" of the Texas Administrative Code. The web address for Thomson West is www.thomsonwest.com.

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

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006452
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 26, 2010
For further information, please call: (512) 936-3813

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (Commission) proposes amendments to the following sections of Chapter 800, relating to General Administration:

Subchapter A. General Provisions, §§800.2, 800.3, 800.6, and 800.7

Subchapter B. Allocations, §§800.53, 800.58, 800.65, 800.66, 800.71, 800.73 - 800.75, and 800.77

Subchapter K. Contract Negotiation, Mediation, and Other Assisted Negotiation or Mediation Processes, §§800.451, 800.454, 800.462, 800.471, and 800.492

The Commission proposes the repeal of the following section of Chapter 800, relating to General Administration:

Subchapter B. Allocations, §800.67

The Commission proposes the repeal of the following subchapters of Chapter 800, relating to General Administration, in their entirety:

Subchapter C. Performance and Contract Management, §800.81 and §800.83

Subchapter D. Incentive Award Rules, §§800.101 - 800.108

Subchapter E. Sanctions, §§800.151, 800.152, 800.161, 800.171, 800.172, 800.174 - 800.176, 800.181, and 800.191 - 800.200

Subchapter H. Agency Monitoring Activities, §§800.301 - 800.309

Subchapter I. Subrecipient and Contract Service Provider Monitoring Activities, §§800.351 - 800.355 and 800.357 - 800.360

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Texas Government Code §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. The Commission has conducted a rule review of Chapter 800, General Administration, and proposes the following amendments:

--Repeal of rules related to the integrity of the Texas workforce system. Certain provisions of the repealed rules will be consolidated into proposed new Chapter 802, which focuses solely on the integrity of the workforce system. Proposal of new Chapter 802 will run concurrently with this rulemaking. The aggregation of these rules in a separate chapter allows Chapter 800 to address only the general administration of the workforce system, resulting in better clarity and consistency.

--Amendment of Subchapter K, rules for negotiation, mediation, and other assisted negotiations of a contract claim, to provide consistency with Texas Government Code, Chapter 2260, which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of a claim.

--Necessary technical changes to simplify and clarify rule language; update terminology and definitions; and remove obsolete provisions.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§800.2. Definitions

Section 800.2(3) adds that "Boards are subrecipients as defined in OMB Circular A-133" to clarify the financial relationship of the Boards to the Agency.

Section 800.2(13) renames the definition of "performance standard" as "performance target" to provide more precise terminology. The paragraph also specifies that "Achievement between

95 and 105 percent of the established target is considered meeting the target."

Section 800.2(14)(G), which specifies the program year for Veterans' Employment and Training, is removed. Texas Labor Code §302.014 transferred the requirement to operate veterans' employment programs from the Commission to the Texas Veterans Commission.

Section 800.2(18) replaces the term "Texas Workforce Center" with "Workforce Solutions Offices," as defined in §801.23(4) of this title, concurrently proposed for amendment.

Section 800.2(19), which defines the Texas Workforce Investment Council (TWIC), removes the reference to the Texas Council on Workforce and Economic Competitiveness (TCWEC). Texas Government Code §2308.002 renamed TCWEC as TWIC.

Section 800.2(21), which defines Veterans' Employment and Training, is removed. Texas Labor Code §302.014 transferred the requirement to operate veterans' employment programs from the Commission to the Texas Veterans Commission.

Section 800.2(22), formerly §800.2(20), replaces the term "Texas Workforce Center" with "Workforce Solutions Offices," as defined in new §801.23(4) of this title, concurrently proposed for amendment.

Certain paragraphs and subparagraphs in this section have been renumbered and relettered to reflect additions or deletions.

§800.3. Historically Underutilized Businesses

Section 800.3(a) replaces the reference to 1 Texas Administrative Code (TAC) Chapter 111 (relating to Executive Administration Division) with 34 TAC Part 1, Chapter 20, Subchapter B (relating to Historically Underutilized Business Program).

§800.6. Charges for Copies of Public Records

Section 800.6(a), General Procedure, adds the phrase "for public information requests under Texas Government Code, Chapter 552." The change clarifies that the Agency will use the Office of the Attorney General's (OAG) guidelines in 1 TAC, Part 3, Chapter 70 to assess charges for providing public information under the Public Information Act (Texas Government Code, Chapter 552). In contrast, charges for unemployment compensation information, which is not public information, are determined based on provisions set out in 40 TAC §815.168.

Section 800.6(b) sets forth the two methods of submitting written requests for public information to the Agency. Under Texas Government Code §552.301(c), the Agency can designate electronic mail addresses and fax numbers to which requests for public information can be directed. The rule informs the public that an e-mail address and fax number for the officer of public information are available on the Agency's Web site.

Section 800.6(c), Standard Fees, removes the reference to the method of calculation being the "average cost" of handling certain repetitive requests. The method of calculating standard fees is consistent with OAG's charge rules and based on generally accepted accounting principles that may include, but are not limited to, "average cost." The subsection also replaces the phrase "certain types of repetitive requests" with "common categories of requests that the Commission frequently receives" to better describe the types of requests for which the Commission may establish a standard fee.

Section 800.6(e), Program-Related Requests, is renamed as "Unemployment Insurance-Related Requests" to clarify that the subsection applies only to requests regarding unemployment insurance (UI). Additionally, the subsection clarifies that UI-related requests:

--are exempt from Texas Government Code, Chapter 552; and

--for purposes other than the administration of the Texas Unemployment Compensation Act shall be assessed a fee.

Section 800.6(f), De Minimis Requests, removes language that may result in confusion when read together with OAG's language relating to charges for copies of public information.

New §800.6(f), formerly §800.6(g), replaces the reference to 20 Code of Federal Regulations (C.F.R.) §603 with 20 C.F.R. §603.1 as the more accurate citation. The previous reference to 20 C.F.R. §603 was limited to unemployment compensation information. The added language also makes the subsection applicable to any information that may be the subject of a governmental request rather than public information requested under the Public Information Act.

New §800.6(g), Certified Records, formerly §800.6(h), changes the rate for certification for certified records from $5.00 to $15.00 to better reflect the cost of creating certified records.

Certain subsections in this section have been relettered to reflect additions or deletions.

§800.7. Agency Vehicles

Section 800.7(a), Purpose and Intent, replaces the references to:

--Texas Building and Procurement Commission with Texas Comptroller of Public Accounts. Texas Government Code §2151.004(d) transferred certain duties and powers of the Texas Building and Procurement Commission, including the State Vehicle Fleet Management Plan, to the Comptroller of Public Accounts; and

--Texas Building and Procurement Commission's Web site with Comptroller's Web site.

Section 800.7(b)(3) replaces the reference to Texas Building and Procurement Commission with Comptroller of Public Accounts.

SUBCHAPTER B. ALLOCATIONS

The Commission proposes the following amendments to Subchapter B:

§800.53. Choices

Section 800.53(b)(1) adds the term "unduplicated" to the total number of families with Choices work requirements to avoid double-counting certain individuals and to more accurately describe the allocation procedure.

§800.58. Child Care

Section 800.58(e), relating to Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) child care, is removed. In 2005, SNAP E&T child care was integrated into the subsidized child care program, which uses Child Care and Development Fund funds for SNAP E&T participants.

Certain subsections in this section have been relettered to reflect additions or deletions.

§800.65. Project Reintegration of Offenders

Section 800.65 replaces the title, "Project Reintegration of Offenders (RIO)" with "Project Reintegration of Offenders."

Section 800.65(b)(1) adds the term "unduplicated" to the total number of parolees residing within the local workforce development area (workforce area) to avoid double-counting certain individuals and to more accurately describe the allocation procedure.

§800.66. Trade Act Services

Section 800.66(a) sets forth how the Commission shall distribute available Trade Act services funds to workforce areas to more accurately reflect where Trade-certified workers are located and may be in need of training based on recent data. The Trade and Globalization Adjustment Assistance Act of 2009 greatly expanded the potential number of trade-affected workers by allowing service workers to be certified. Previously, only manufacturing workers could be certified as trade-affected. This change, among others, increased the number of trade-affected workers in Texas and affected their location in the state.

Section 800.66(b) is removed.

New §800.66(b) adds that the Commission shall approve an initial distribution for each workforce area annually, and the factors to be considered for distribution of additional funds. The subsection specifies that the factors to be considered may include:

--number of individuals in Trade Adjustment Assistance (TAA)-approved training;

--number of Trade-certified layoffs in the workforce area;

--number of employees from Trade-certified companies;

--layoffs identified through the Worker Adjustment and Retraining Notification Act process in the workforce area;

--demonstrated need;

--the cost of training; and

--other factors as determined by the Commission.

New §800.66(c) adds that the Agency will periodically review the expenditure of training and administrative funds relative to workforce areas' distributions. The Agency will make distributions of additional funds to workforce areas based on the periodic reviews and Board requests, consistent with the factors approved by the Commission.

New §800.66(d) adds that if TAA funds are not sufficient to meet funding needs for the remainder of a year, short-term needs will be estimated for workforce areas; recommendations for deobligation and redistribution will be made to the Commission; and requests for additional funds from the U.S. Department of Labor (DOL) will be made if appropriate.

New §800.66(e), formerly §800.66(c), replaces the phrase "an amount not to exceed 10%" with "no more than 15 percent" to clarify the percent of the funds expended for Trade Act training, services, and other program activities that shall be used for administrative costs under the Trade Adjustment Assistance Reform Act of 2002, P.L. 107-210, §235A. The section also adds that the Commission shall establish policy limitations for the expenditure of administrative funds at the state and Board levels. On April 2, 2010, DOL adopted new rules regarding the use of TAA administrative funds for merit staffing for the provision of certain TAA services and the allocation methodology to the states. The new merit staff regulatory requirement states that any TAA-funded case management services must be provided by state merit staff as of December 15, 2010.

Certain subsections have been relettered to accommodate deletions.

§800.67. Veterans' Employment and Training

Section 800.67 is repealed. Texas Labor Code §302.014 transferred the requirement to operate veterans' employment programs from the Commission to the Texas Veterans Commission.

§800.71. General Deobligation and Reallocation Provisions

Section 800.71(b)(6) adds the parenthetical statement "except as set forth in subsection (c) of this section" to clarify that Trade Act services funds may be subject to deobligation or reallocation provisions based on subsection (c) of this section.

Section 800.71(b)(6) is removed. Funds for Trade Act services are distributed to workforce areas as set forth in §800.66 of this chapter.

Section 800.71(b)(7) is removed. Workforce Investment Act (WIA) formula funds are no longer subject to deobligation because DOL did not renew the waiver.

§800.73. Child Care Match Requirements and Deobligation

New §800.73(a)(3) states that the Commission, after the end of the twelfth month, can withhold incomplete federal matching amounts associated with local match. Boards that fail to produce local match on the Commission-approved schedule pose a risk because they expend federal funds.

§800.74. Midyear Deobligation of Funds

Section 800.74(a) and §800.74(a)(3) delete the reference to subsection (c) of this section because subsection (c) has been removed.

Section 800.74(c) is removed. WIA formula funds are no longer subject to midyear deobligations because DOL did not renew the waiver.

Certain subsections in this section have been relettered to accommodate additions or deletions.

§800.75. Second-Year WIA Deobligation of Funds

Section 800.75(a) replaces the term "unexpended" with "unobligated balance of" to more precisely reflect government accounting terminology.

Section 800.75(b) replaces the term "unexpended" with "unobligated" to provide more precise terminology.

§800.77. Reallocation of Funds

Section 800.77(a)(6) is removed. Funds for Trade Act services are distributed to workforce areas as set forth in §800.66 of this chapter.

Section 800.77(a)(7) is removed. WIA formula funds are no longer subject to midyear deobligations because DOL did not renew the waiver.

Certain paragraphs have been renumbered to accommodate deletions.

SUBCHAPTER C. PERFORMANCE AND CONTRACT MANAGEMENT

The Commission proposes the repeal of Subchapter C in its entirety:

§800.81. Performance

§800.83. Performance Review and Assistance

These sections have been incorporated into new Chapter 802, a separate, but concurrent, rulemaking proposal that groups together common rules that address the integrity of the workforce system.

SUBCHAPTER D. INCENTIVE AWARD RULES

The Commission proposes the repeal of Subchapter D in its entirety:

§800.101. Scope and Purpose

§800.102. Definitions

§800.103. Types of Awards

§800.104. Data Collection

§800.105. Board Classification

§800.106. Performance Awards

§800.107. Workforce Investment Act Local Incentive Awards

§800.108. Job Placement Incentive Awards

The contents of Subchapter D are incorporated in new Chapter 802, a separate, but concurrent, rulemaking proposal that groups together common rules that address the integrity of the workforce system.

SUBCHAPTER E. SANCTIONS

The Commission proposes the repeal of Subchapter E in its entirety:

§800.151. Scope and Purpose

§800.152. Definitions

§800.161. Intent to Sanction

§800.171. Sanctionable Acts

§800.172. Sanction Status

§800.174. Corrective Actions and Penalties

§800.175. Corrective Actions and Penalties Under the Workforce Investment Act (WIA)

§800.176. Informal Conferences and Informal Dispositions

§800.181. Sanction Determination

§800.191. Appeal

§800.192. Hearing Procedures

§800.193. Postponements, Continuances, and Withdrawals

§800.194. Evidence

§800.195. Hearing Officer Independence and Impartiality

§800.196. Ex Parte Communications

§800.197. Hearing Decision

§800.198. Motion for Reopening

§800.199. Motion for Rehearing

§800.200. Finality of Decision

The contents of Subchapter E are incorporated in new Chapter 802, a separate, but concurrent, rulemaking proposal that groups together common rules that address the integrity of the workforce system.

SUBCHAPTER H. AGENCY MONITORING ACTIVITIES

The Commission proposes the repeal of Subchapter H in its entirety:

§800.301. Purpose

§800.302. Definitions

§800.303. Program and Fiscal Monitoring

§800.304. Program Monitoring Activities

§800.305. Fiscal Monitoring Activities

§800.306. Agency Monitoring Reports

§800.307. Resolution

§800.308. Agency Access to Records

§800.309. Commission Evaluation of Board Oversight Capacity

The contents of Subchapter H are incorporated in new Chapter 802, a separate, but concurrent, rulemaking proposal that groups together common rules that address the integrity of the workforce system.

SUBCHAPTER I. SUBRECIPIENT AND CONTRACT SERVICE PROVIDER MONITORING ACTIVITIES

The Commission proposes the repeal of Subchapter I in its entirety:

§800.351. Scope and Purpose

§800.352. Definitions

§800.353. Subrecipient and Contract Service Provider Monitoring

§800.354. Risk Assessment

§800.355. Monitoring Plan

§800.357. Controls Over Monitoring

§800.358. Reporting and Resolution Requirements

§800.359. Independent Audit Requirements

§800.360. Access to Records

The contents of Subchapter I are incorporated in new Chapter 802, a separate, but concurrent, rulemaking proposal that groups together common rules that address the integrity of the workforce system.

SUBCHAPTER K. CONTRACT NEGOTIATION, MEDIATION, AND OTHER ASSISTED NEGOTIATION OR MEDIATION PROCESSES

The Commission proposes the following amendments to Subchapter K:

§800.451. Purpose and Applicability

Section 800.451(a), Purpose, removes the sentence "The Commission recognizes that the model rules of the Office of the Attorney General are voluntary guidelines that are not binding on the Commission" because the model rules apply only where a unit of state government either lacks rulemaking authority or chooses to voluntarily adopt OAG rules. Texas Government Code §2260.052(c) requires each unit of state government to

adopt rules to govern the negotiation and mediation of a claim, which this rule accomplishes for the Agency.

Section 800.451(b)(3)(H) is removed. Contracts funded solely by federal grant monies are excluded from the negotiations, mediation, and other assisted negotiation or mediation processes regarding a claim of breach of contract asserted by a contractor against the Agency under Texas Government Code, Chapter 2260.

§800.454. Agency Counterclaim

Section 800.454(c) amends the number of days in which the notice of counterclaim must be delivered to the contractor from 90 to 60, after the Agency's receipt of the contractor's notice of claim, to align with the requirements of Texas Government Code §2260.051(d).

§800.462. Negotiation Timetable

Section 800.462(b)(1) - (3) currently requires negotiations to commence 60 days following the later of:

(1) the date of termination of the contract;

(2) the completion date, or substantial completion date in the case of construction projects, in the original contract; or

(3) the date the Agency receives the contractor's notice of claim.

Paragraphs (1) - (3) are removed because they are inconsistent with Texas Government Code §2260.052, which requires that negotiations "must begin not later than the 120th day after the date the claim is received."

Section 800.462(b) aligns with Texas Government Code §2260.052 and requires that negotiations begin no later than the 120th day after the date the claim is received.

Section 800.462(c)(1) - (2) currently states that the Agency may delay negotiations until after the 180th day after the event resulting in the breach of contract claim by:

(1) delivering written notice to the contractor of the delay of negotiations; and

(2) delivering written notice to the contractor of when the negotiations will begin.

Paragraphs (1) and (2) are removed because they are inconsistent with Texas Government Code §2260.051(b).

Section 800.462(c) allows the Agency to delay negotiations, with written agreement of the parties, until after the 120th day after the date of the event giving rise to the claim of breach of contract. This change aligns with Texas Government Code §2260.051(b).

Section 800.462(d) removes the references to §800.462(b) and (c) and states that parties can conduct negotiations on an agreed-upon schedule as long as the negotiations adhere to the time frame set forth in §800.462(b).

§800.471. Mediation

Section 800.471(a), Option to Mediate, modifies the amount of time in which parties may agree to mediate a dispute from the 270th day to the 120th day or before the agreed written extension of both parties to align with Texas Government Code §2260.056(a).

§800.492. Request for Contested Case Hearing

Section 800.492(c) replaces thirty days with 10 business days as the period in which the Agency, after receipt of the contractor's request for a contested case hearing, must forward the request to the State Office of Administrative Hearings. This change aligns with Texas Government Code §2260.102, Request for Hearing.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses.

The reasoning for these conclusions is as follows:

--Updates of definitions and statutory references in Subchapters A, D, and K are not substantive.

--Proposed changes to §800.6, Charges for Copies of Public Records, are not anticipated by the Agency to result in increased costs that would be significant, and if any such increase would occur, it would occur as a result of Agency costs having risen, because the objective is for the Agency only to recover its costs.

--The allocation factor amendments in Subchapter B are not substantive. The elimination of midyear deobligation provisions for WIA formula funds and the amendment of second-year deobligation terms from amounts expended to amounts obligated is consistent with the loss of the former waiver from DOL's Employment and Training Administration, and also somewhat relaxes the performance standard for Boards. According to Agency staff, the method of distributing Trade Act services funds as set forth in these proposed rules is a result of the broadening of the scope and targets of the program in federal legislation enacted last year, and is intended to be determined as a function of where Trade-certified workers are located and may be in need of training. This method of distribution will not create a negative fiscal impact on Boards.

Rich Froeschle, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Laurence M. Jones, Director, Workforce Development Division, has 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 proposed rules will be simplified and clarified rule language; updated terminology and definitions; and the removal of obsolete provisions.

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

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas's 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on April 27, 2010. The Commission also conducted a conference call with Board executive directors and Board staff on April 30, 2010, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§800.2, 800.3, 800.6, 800.7

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.2. Definitions.

The following words and terms, when used in this part, relating to the Texas Workforce Commission, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--The unit of state government established under Texas Labor Code Chapter 301 that is presided over by the Commission and administered by the Executive Director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of "Agency" shall apply to all uses of the term in rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

(2) Allocation--The amount approved by the Commission for expenditures to a local workforce development area during a specified program year, according to specific state and federal requirements.

(3) Board--A Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the Governor pursuant to Texas Government Code §2308.261. This includes such a Board when functioning as the Local Workforce Investment Board as described in the Workforce Investment Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth Council, as provided for under the Workforce Investment Act §117(i). The definition of "Board" shall apply to all uses of the term in the rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001. Boards are subrecipients as defined in OMB Circular A-133.

(4) Child Care--Child care services funded through the Commission, which may include services funded under the Child Care and Development Fund, WIA, and other funds available to the Commission or a Board to provide quality child care to assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or participating in educational or training activities in accordance with state and federal statutes and regulations.

(5) Choices--The employment and training activities created under §31.0126 of the Texas Human Resources Code and funded under TANF (42 U.S.C.A. 601 *et seq.)* to assist persons who are receiving temporary cash assistance, transitioning off, or at risk of becoming dependent on temporary cash assistance or other public assistance in obtaining and retaining employment.

(6) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the Governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers and one representative of the public. The definition of "Commission" shall apply to all uses of the term in rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

(7) Formal Measures--Workforce development services performance measures adopted by the Governor and developed and recommended through the Texas Workforce Investment Council (TWIC).

(8) Employment Service--A program to match qualified job seekers with employers through a statewide network of one-stop career centers. (The Wagner-Peyser Act of 1933 (Title 29 U.S.C., Chapter 4B) as amended by the Workforce Investment Act of 1998 (P.L. 105-220))

(9) Executive Director--The individual appointed by the Commission to administer the daily operations of the Agency, which may include a person delegated by the Executive Director to perform a specific function on behalf of the Executive Director.

(10) Local Workforce Development Area (workforce area)--Workforce areas designated by the Governor pursuant to Texas Government Code §2308.252 and functioning as a Local Workforce Investment Area, as provided for under the Workforce Investment Act §116 and §189(i)(2) (29 U.S.C.A., §2831 and §2939).

(11) One-Stop Service Delivery Network--A one-stop-based network under which entities responsible for administering separate workforce investment, educational and other human resources programs and funding streams collaborate to create a seamless network of service delivery that shall enhance the availability of services through the use of all available access and coordination methods, including telephonic and electronic methods. Also referred to as the Texas Workforce Network.

(12) Performance Measure--An expected performance outcome or result.

(13) Performance Target [~~Standard~~]--A contracted numerical value setting the acceptable and expected performance outcome or result to be achieved for a performance measure, including Core Outcome Formal Measures. Achievement between 95 and 105 percent of the established target is considered meeting the target.

(14) Program Year--The twelve-month period applicable to the following as specified:

(A) Child Care: October 1 - September 30;

(B) Choices: October 1 - September 30;

(C) Employment Service: October 1 - September 30;

(D) Supplemental Nutrition Assistance Program Employment and Training: October 1 - September 30;

(E) Project RIO: October 1 - September 30;

(F) Trade Act services [~~Services~~]: October 1 - September 30;

[~~(G) Veterans' Employment and Training: October 1 - September 30;~~]

(G) [~~(H)~~] Workforce Investment Act (WIA) Adult, Dislocated Worker, and Youth formula funds: July 1 - June 30;

(H) [~~(I)~~] WIA Alternative Funding for Statewide Activities: October 1 - September 30; and

(I) [~~(J)~~] WIA Alternative Funding for One-Stop Enhancements: October 1 - September 30.

(15) Project Reintegration of Offenders (RIO)--A program that prepares and transitions ex-offenders released from Texas Department of Criminal Justice or Texas Youth Commission incarceration into gainful employment as soon as possible after release, consistent with provisions of the Texas Labor Code, Chapter 306, Texas Government Code §2308.312, and the Memorandum of Understanding with the Texas Department of Criminal Justice and the Texas Youth Commission.

(16) Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T)--A program to assist SNAP recipients to become self-supporting through participation in activities that include employment, job readiness, education, and training, activities authorized and engaged in as specified by federal statutes and regulations (7 U.S.C.A. §2011), and Chapter 813 of this title relating to Supplemental Nutrition Assistance Program Employment and Training.

(17) TANF--Temporary Assistance for Needy Families, which may include temporary cash assistance and other temporary assistance for eligible individuals, as defined in the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, as amended (7 U.S.C.A. §201.1 *et seq.)* and the Temporary Assistance for Needy Families statutes and regulations (42 U.S.C.A. §601 *et seq.*, 45 Code of Federal Regulations (C.F.R.) [~~C.F.R.~~] Parts 260 - 265). TANF may also include the TANF State Program (TANF SP), relating to two-parent families, which is codified in Texas Human Resources Code, Chapter 34.

(18) Trade Act Services--Programs authorized by the Trade Act of 1974, as amended (and 20 C.F.R. Part 617) providing services to dislocated workers eligible for Trade benefits through Workforce Solutions Offices [~~Texas Workforce Centers~~].

(19) TWIC--Texas Workforce Investment Council appointed by the Governor pursuant to Texas Government Code §2308.052 and functioning as the State Workforce Investment Board (SWIB), as provided for under the Workforce Investment Act §111(e) (29 U.S.C.A. §2821(e)). In addition, pursuant to the Workforce Investment Act §194(a)(5) (29 U.S.C.A. §2944(a)(5)), TWIC maintains the duties, responsibilities, powers, and limitations as provided in Texas Government Code §§2308.101 - 2308.105. [~~Formerly known as the Texas Council on Workforce and Economic Competitiveness (TCWEC), any references to TCWEC when used in this part are now considered references to TWIC.~~]

[~~(20) Texas Workforce Center Partner--An entity that carries out a workforce investment, educational, or other human resources program or activity, and that participates in the operation of the One-Stop Service Delivery Network in a workforce area consistent with the terms of a memorandum of understanding entered into between the entity and the Board.~~]

[~~(21) Veterans' Employment and Training--Services established under the Jobs for Veterans Act of 2002 (P.L. 107-288, 38 U.S.C.A. §§4100, 4201, and 4301) the Disabled Veterans Outreach Program (DVOP) and the Local Veterans Employment Representative (LVER) program to provide employment services to disabled veterans, veterans of the Vietnam era, and other eligible veterans and family members.~~]

(20) [~~(22)~~] WIA--Workforce Investment Act (P.L. 105-220, 29 U.S.C.A. §2801 *et seq.).* References to WIA include references to WIA formula-allocated [~~formula allocated~~] funds unless specifically stated otherwise.

(21) [~~(23)~~] WIA Formula-Allocated [~~Formula Allocated~~] Funds--Funds allocated by formula to workforce areas for each of the following separate categories of services: WIA Adult, Dislocated Worker and Youth (excluding the Secretary's and Governor's reserve funds and rapid response funds).

(22) Workforce Solutions Offices Partner--An entity that carries out a workforce investment, educational, or other human resources program or activity, and that participates in the operation of the One-Stop Service Delivery Network in a workforce area consistent with the terms of a memorandum of understanding entered into between the entity and the Board.

§800.3. Historically Underutilized Businesses.

(a) The Commission is committed to assisting Historically Underutilized Businesses (HUBs) as defined in Texas Government Code §2161.001(2) [~~§2161.001, Definitions,~~] in their efforts to participate in contracts to be awarded by the Commission. This includes assisting HUBs to meet or exceed the procurement utilization goals set forth in 34 Texas Administrative Code (TAC), Part 1, Chapter 20, Subchapter B (relating to the Historically Underutilized Business Program). [~~the Texas Administrative Code at 1 TAC Chapter 111 (relating to Executive Administration Division) incorporated herein by reference. Chapter 111 was promulgated by the Texas Building and Procurement Commission and sets out the State's Historically Underutilized Business Certification Program.~~]

(b) The Commission shall take positive steps to inform HUBs of opportunities to provide identified state services that it determines may best [~~better~~] be provided through a competitive process.

§800.6. Charges for Copies of Public Records.

(a) General Procedure. Except as otherwise specified in this chapter, for public information requests under Texas Government Code, Chapter 552, the Commission hereby adopts by reference the definitions, methods, procedures, and charges for copies of public records required under the Office of the Attorney General rules (1 TAC, Part 3, Chapter 70), as may be amended.

(b) Written requests may be submitted:

(1) in person or by mail addressed to: Officer for Public Information, Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778-0001; or

(2) by e-mail or facsimile to designated e-mail addresses and facsimile numbers on the Agency's Web page.

[~~(b) Methods of Making Requests. Requests may be submitted in writing to the following mailing address: Officer for Public Information, Texas Workforce Commission, 101 East 15th Street, Austin,~~

Texas 78778-0001. Requests also may be submitted e-mail or facsimile to designated e-mail and facsimile locations.]

(c) Standard Fees. The Commission may establish a standard fee for the handling of common categories of requests that the Commission frequently receives [certain types of repetitive requests] when the costs of responding to such requests are substantially similar in most cases. [The standard fee will be the average costs of handling that type of request. The average cost is calculated using the personnel, resource, and overhead charges set forth in the Office of the Attorney General rules (1 TAC, Chapter 70) governing charges for copies of public records and will be based upon a survey of a representative sample of requests.]

(d) Adjustments for Actual Cost. In the event that the actual costs of responding to a given request are significantly lower or higher than the standard fee charged for that type of request, actual costs will be charged in lieu of the standard fee.

(e) Unemployment Insurance-Related [Program-Related] Requests.

(1) Unemployment insurance (UI)-related records are exempt from Texas Government Code, Chapter 552.

(2) No charge will be assessed to an individual or an employing unit for copies of records pertaining to that individual or employing unit when the provision of records is deemed by the Commission to be reasonably required for the proper administration of the Texas Unemployment Compensation Act (Texas Labor Code, Title 4, Subtitle A)[, found at the Texas Labor Code, Title 4, Subtitle A].

(3) UI-related requests for purposes other than the administration of the Texas Unemployment Compensation Act shall be assessed a fee.

[(f) De Minimis Requests. No charge will be assessed to any individual or entity for providing copies of records in response to a request for public information under Texas Government Code, Chapter 552 when the total records provided in response to all requests made by that same individual or entity in any given 30-day period consist of fewer than 50 pages of readily available, standard-size pages maintained as paper documents, except that charges for materials, labor, and overhead may be assessed if the records are located in two or more separate buildings that are not physically connected to each other or are in a remote storage facility.]

(f) [(g)] Requests by Other Governmental Entities. Notwithstanding any other provision in this section, provision of information to other governmental agencies for purposes other than the administration of the Texas Unemployment Compensation Act will be made only on a cost reimbursable basis, with all costs being calculated in accordance with OMB Circular A-87, consistent with generally accepted accounting principles or applicable regulations including, but not limited to, 20 C.F.R. §603.1 [as required by federal law at 20 Code of Federal Regulations §603] *et seq.* Charges to other governmental entities can [only] be waived only when the request is of an isolated or infrequent nature and when the costs of responding to a particular request are negligible.

(g) [(h)] Certified Records. In addition to the fees the Commission may charge for providing copies of records, the Commission shall charge a fee of $15.00 [$5.00] for preparation of a certification instrument, which may be attached to one or more pages of records covered by the certification instrument.

§800.7. Agency Vehicles.

(a) Purpose and Intent. The purpose of this rule is to implement the provisions of Texas Government Code §2171.1045. The intent of the Commission is to ensure that the use and management of vehicles by the Agency is consistent with the State Vehicle Fleet Management Plan (Plan) as adopted by the Texas Comptroller of Public Accounts, Office of Vehicle Fleet Management [of the Texas Building and Procurement Commission]. The Plan is available on the Comptroller's Web site [may be viewed on the Internet at http://www.tbpe.state.tx.us/fleet], or can [a copy may] be requested from the Agency.

(b) The Commission adopts by reference and shall implement the provisions contained in the Plan as referenced in subsection (a) of this section including the following general provisions on use of vehicles by the Agency.

(1) Vehicles, with the exception of vehicles assigned to field employees, are assigned to the Agency motor pool and may be available for checkout.

(2) The Agency may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if there is a documented finding that the assignment is critical to the needs and mission of the Agency.

(3) The Agency will work with the Texas Comptroller of Public Accounts [Texas Building and Procurement Commission] to identify, apply for, and if possible, use [utilize] any waiver or exemption provisions where the recognition of conditions specific to the Agency would further the general purpose of fiscal efficiency and good business practices.

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

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SUBCHAPTER B. ALLOCATIONS

40 TAC §§800.53, 800.58, 800.65, 800.66, 800.71, 800.73 - 800.75, 800.77

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.53. Choices.

(a) Funds available to the Commission to provide Choices services will be allocated to the workforce areas using a need-based formula, in order to meet state and federal requirements, as set forth in subsection (b) of this section.

(b) At least 80 percent [%] of the Choices funds[,] will be allocated to the workforce areas on the basis of:

(1) the relative proportion of the total unduplicated number of all families with Choices work requirements residing within the

workforce area during the most recent calendar year to the statewide total unduplicated number of all families with Choices work requirements;

(2) an equal base amount; and

(3) the application of a hold harmless/stop gain procedure.

(c) No more than 10 percent [%] of Choices funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by the appropriate federal regulations and Commission policy.

§800.58. Child Care.

(a) Funds available to the Commission for child care services will be allocated to the workforce areas using need-based formulas, as set forth in this section.

(b) Child Care and Development Fund (CCDF) Mandatory Funds authorized under the Social Security Act §418(a)(1), as amended, together with state general revenue Maintenance of Effort (MOE) Funds, Social Services Block Grant funds, TANF funds, and other funds designated by the Commission for child care (excluding any amounts withheld for state-level responsibilities) will be allocated on the following basis:

(1) 50 percent [%] will be based on the relative proportion of the total number of children under the age of five years old residing within the workforce area to the statewide total number of children under the age of five years old, and

(2) 50 percent [%] will be based on the relative proportion of the total number of people residing within the workforce area whose income does not exceed 100 percent [%] of the poverty level to the statewide total number of people whose income does not exceed 100 percent [%] of the poverty level.

(c) CCDF Matching Funds authorized under the Social Security Act §418(a)(2), as amended, together with state general revenue matching funds and estimated appropriated receipts of donated funds, will be allocated according to the relative proportion of children under the age of 13 years old residing within the workforce area to the statewide total number of children under the age of 13 years old.

(d) CCDF Discretionary Funds authorized under the Child Care and Development Block Grant Act of 1990 §658B, as amended, will be allocated according to the relative proportion of the total number of children under the age of 13 years old in families whose income does not exceed 150 percent [%] of the poverty level residing within the workforce area to the statewide total number of children under the age of 13 years old in families whose income does not exceed 150 percent [%] of the poverty level.

~~[(e) If SNAP E&T child care funding is determined to be available, then funds will be allocated among workforce areas on the basis of the relative proportion of the total number of children ages 6 - 12 years in households of mandatory SNAP work registrants residing within the workforce area to the statewide total number of children ages 6 - 12 years in households of mandatory SNAP work registrants.]~~

(e) [~~(f)~~] The following provisions apply to the funds allocated in subsections (b) - (d) [~~subsections (b) - (e)~~] of this section:

(1) Sufficient funds must be used for direct child care services to ensure Commission-approved performance targets are met.

(2) Children eligible for Transitional and Choices child care shall be served on a priority basis to enable parents to participate in work, education, or training activities.

(3) No more than 5 percent [%] of the total expenditure of funds may be used for administrative expenditures as defined in federal regulations contained in 45 C.F.R. §98.52 [~~45 Code of Federal Regulations §98.52~~], as may be amended unless the total expenditures for a workforce area are less than $5,000,000. If a workforce area has total expenditures of less than $5,000,000, then no more than $250,000 may be used for administrative expenditures.

(4) Each Board shall set the amount of the total expenditure of funds to be used for quality activities consistent with federal and state statutes and regulations.

(5) The Board shall comply with any additional requirements adopted by the Commission or contained in the Board contract.

(6) Allocations of child care funds will include applications of hold harmless/stop gain procedures.

§800.65. Project Reintegration of Offenders [~~(RIO)~~].

(a) Funds available to the Commission to provide Project Reintegration of Offenders (Project RIO) [~~RIO~~] services shall be allocated to workforce areas using a need-based formula, as set forth in subsection (b) of this section.

(b) At least 80 percent [%] of the Project RIO funds will be allocated to workforce areas on the basis of:

(1) the relative proportion of the total unduplicated number of parolees residing within the workforce area during the most recent calendar year to the statewide total unduplicated number of parolees;

(2) an equal base amount; and

(3) the application of a hold harmless/stop gain procedure.

(c) No more than 10 percent [%] of the funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.

§800.66. Trade Act Services.

(a) Funds available to the Commission to provide Trade Act services [~~Services~~] shall be provided to workforce areas as set forth in this section [~~allocated to workforce areas using a need-based formula, as set forth in subsection (b) below~~].

(b) Amounts for training and services for trade-affected workers, consistent with statute and regulations, will be made available to workforce areas as follows. The Commission shall approve:

(1) an initial Trade Adjustment Assistance (TAA) funding amount for each workforce area, on an annual basis; and

(2) the factors to be considered for distribution of additional funds, which may include:

(A) number of individuals in TAA-approved training;

(B) number of Trade-certified layoffs in the workforce area;

(C) number of employees from Trade-certified companies;

(D) layoffs identified through the Worker Adjustment and Retraining Notification Act process in the workforce area;

(E) demonstrated need;

(F) the cost of training; and

(G) other factors as determined by the Commission.

~~[(b) At least 80% of available Trade Act Services funds will be allocated to workforce areas on the basis of:]~~

[(1) the relative proportion of equally weighted proportions of the average number of workers residing in those workforce areas included on trade petitions for the two most recent calendar years to the statewide total number of workers included on trade petitions, and the average number of trade-affected workers residing in those workforce areas who are approved for training for the two most recent calendar years to the statewide total number of trade-affected workers approved for training; an equal base amount; and]

[(2) an equal base amount; and]

[(3) the application of a hold harmless/stop gain procedure.]

(c) Evaluations will be made periodically as to the sufficiency and reasonableness of amounts made available to each workforce area, expenditures for training, and amounts reported for administration. The Agency shall make additional distributions, based on the evaluations and upon requests by Boards, using the factors approved by the Commission.

(d) In the event that a determination is made that Trade Act funding available to the Commission may be insufficient to meet all qualified needs for the remainder of the year at any time during the program year, the Agency will:

(1) rely on the evaluations referenced in subsection (c) of this section to estimate short-term needs;

(2) make recommendations for deobligation and redistribution between workforce areas; and

(3) make requests for additional TAA funding from the U.S. Department of Labor as appropriate.

(e) [(c)] No more than 15 percent [An amount not to exceed 10%] of the funds expended for Trade Act training, services, and other allowable program activities shall be used for administrative costs, as defined by federal regulations [and Commission policy]. The Commission shall establish policy limitations for the expenditure of administrative funds at the state and Board levels.

§800.71. General Deobligation and Reallocation Provisions.

(a) Purpose. The purpose of this rule is to promote effective service delivery, financial planning, and management to ensure full utilization of funding, and to reallocate funds to populations in need.

(b) Scope. Sections 800.71 - 800.77 of this subchapter shall apply to funds provided to workforce areas under a contract between the Board and the Commission for the following categories of funding:

(1) Child Care

(2) Choices

(3) Employment Service

(4) SNAP E&T

(5) Project RIO

[(6) Trade Act Services]

[(7) WIA Formula Allocated Funds]

(6) [(8)] WIA Alternative Funding for Statewide Activities

(7) [(9)] WIA Alternative Funding for One-Stop Enhancements

§800.73. Child Care Match Requirements and Deobligation.

(a) A Board shall meet the following requirements for unmatched federal child care [Child Care] funds that are contingent upon a Board securing local funds.

(1) By the end of the fourth month following the beginning of the program year, a Board shall secure donations, transfers, and certifications totaling at least 100 percent [%] of the amount it needs to secure in order to access the unmatched federal child care [Child Care] funds available to the workforce area at the beginning of the program year.

(2) Throughout the program year and by the end of the twelfth month, a Board shall ensure completion of all donations, transfers, and certifications consistent with the contribution schedules and payment plans specified in the local agreements.

(3) The Commission may withhold the federal matching amounts associated with local match that are not completed after the end of the twelfth month, as set forth in paragraph (2) of this subsection.

(b) The Commission may deobligate, at any time following the fourth month of the program year, all or part of the difference between a Board's actual level of secured and completed match and the level of performance that is required, as set forth in subsection (a) of this section [§800.73(a)].

§800.74. Midyear Deobligation of Funds.

(a) The Commission may deobligate funds from a workforce area during the program year if a workforce area is not meeting the expenditure thresholds set forth in subsection (b) [subsections (b) and (c)] of this section.

(1) Workforce areas that fail to meet the expenditure thresholds set forth in subsection (b) of this section at the end of months five, six, seven, or eight of the program year (i.e., midyear) will be reviewed to determine the causes for the underexpenditure of funds, except as set forth in subsection (d) [(c)] of this section.

(2) The Commission shall not deobligate more than the difference between a workforce area's actual expenditures and the amount corresponding to the relative proportion of the program year.

(3) The Commission shall not deobligate funds from a workforce area that failed to meet the expenditure thresholds set forth in subsection (b) [subsections (b) and (c)] of this section, if within 60 days prior to the potential deobligation period the Commission executes a contract amendment for a supplemental allocation or reallocation of funds in the same program funding category.

(b) The Commission may deobligate the following funds midyear, as set forth in subsection (a) of this section, if a workforce area fails to achieve the expenditure of an amount corresponding to 90 percent [%] or more of the relative proportion of the program year:

(1) Child care (with the exception of unmatched federal child care funds that are contingent upon a workforce area securing local funds, as set forth in §800.73 of this subchapter)

(2) Choices

(3) Employment Service

(4) SNAP E&T

(5) Project RIO

[(6) Trade Act Services]

(6) [(7)] WIA Alternative Funding for Statewide Activities

(7) [(8)] WIA Alternative Funding for One-Stop Enhancements

[(c) The Commission may deobligate WIA formula funds midyear, as set forth in subsection (a) of this section, if a workforce area fails to achieve the expenditure of an amount corresponding to

~~80% or more of the relative proportion of the program year for each category of WIA formula funds.]~~

(c) [~~(d)~~] A workforce area subject to deobligation for failure to meet the requirements set forth in this section shall, upon request by the Commission, submit a written justification with a copy to the Board Chair. The written justification shall provide sufficient detail regarding the actions a workforce area will take to address its deficiencies, including:

(1) expansion of services proportionate to the available resources;

(2) projected service levels and related performance;

(3) reporting outstanding obligations; and

(4) any other factors a workforce area would like the Commission to consider.

(d) [~~(e)~~] To the extent this section is found not to comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect, as applicable.

§800.75. Second-Year WIA Deobligation of Funds.

(a) In each month of the second year in which the WIA formula funds are available, the Commission may deobligate funds if a workforce area's unobligated balance of WIA formula funds exceeds 20 percent [~~unexpended WIA formula funds exceed 20%~~] of the allocation for each category of WIA formula funds for the program year.

(b) The Commission shall not deobligate more than the difference between a workforce area's actual expenditures and the amount of unobligated [~~unexpended~~] funds that exceed 20 percent [%] of the allocation for each category of WIA formula funds for the program year.

(c) The Commission shall not deobligate funds from a workforce area that failed to meet the expenditure thresholds set forth in subsection (a) of this section if within 60 days prior to the potential deobligation period, the Commission executes a contract amendment for a supplemental allocation or reallocation of funds in the same program funding category.

§800.77. Reallocation of Funds.

(a) Reallocation. A workforce area may be eligible for reallocation of the following funds allocated by the Commission:

(1) Child care (including unmatched federal child care funds that are contingent upon a workforce area securing local funds)

(2) Choices

(3) Employment Service

(4) SNAP E&T

(5) Project RIO

~~[(6) Trade Act Services]~~

~~[(7) WIA Formula Funds]~~

(6) [~~(8)~~] WIA Alternative Funding for Statewide Activities

(7) [~~(9)~~] WIA Alternative Funding for One-Stop Enhancements

(b) Eligibility.

(1) For a workforce area to be eligible for a reallocation of child care funds (excluding unmatched federal funds that are contingent upon a workforce area securing local funds), and the funds set forth in subsection (a)(2) - (7) [~~(9)~~] of this section, the Commission may consider whether a workforce area:

(A) has met targeted expenditure levels as required by §800.74(a) of this subchapter, as applicable, for that period;

(B) has not expended or obligated more than 100 percent [~~%~~] of the workforce area's allocation for the category of funding;

(C) has demonstrated that expenditures conform to cost category limits for funding;

(D) has demonstrated the need for and ability to use additional funds;

(E) has an established plan for working with at least one of the Governor's industry clusters, as specified in the local Board plan;

(F) is current on expenditure reporting;

(G) is current with all single audit requirements; and

(H) is not under sanction.

(2) For a workforce area to be eligible for a reallocation of unmatched federal child care funds that are contingent upon a workforce area securing local funds, the Commission may consider:

(A) whether a workforce area has met the level for securing and completing local match requirements set out in §800.73(a) of this subchapter; and

(B) the applicable factors listed in paragraph (1) of this subsection, including factors in paragraph (1)(B) - (H) of this subsection.

(c) The Commission may reallocate funds to an eligible workforce area based on the applicable method of allocation, as set forth in this subchapter, and may modify the amount to be reallocated by considering the following:

(1) the amount specified in a workforce area's written request for additional funds;

(2) the amount available for reallocation versus the total dollar amount of requests;

(3) the demonstrated ability of a workforce area to effectively expend funds to address the need for services in the workforce area;

(4) the extent to which the project supports activities related to the Governor's industry clusters;

(5) the workforce area's performance during the current and prior program year; and

(6) related factors, as necessary, to ensure that funds are fully used.

(d) To the extent this section is found not to comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect, as applicable.

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

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40 TAC §800.67

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

The rule is repealed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.67. Veterans' Employment and Training.

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

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SUBCHAPTER C. PERFORMANCE AND CONTRACT MANAGEMENT

40 TAC §800.81, §800.83

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

The rules are repealed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeals affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.81. Performance.

§800.83. Performance Review and Assistance.

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

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SUBCHAPTER D. INCENTIVE AWARD RULES

40 TAC §§800.101 - 800.108

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

The rules are repealed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeals affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.101. Scope and Purpose.

§800.102. Definitions.

§800.103. Types of Awards.

§800.104. Data Collection.

§800.105. Board Classification.

§800.106. Performance Awards.

§800.107. Workforce Investment Act Local Incentive Awards.

§800.108. Job Placement Incentive Awards.

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

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SUBCHAPTER E. SANCTIONS

40 TAC §§800.151, 800.152, 800.161, 800.171, 800.172, 800.174 - 800.176, 800.181, 800.191 - 800.200

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of

the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The rules are repealed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeals affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.151. Scope and Purpose.

§800.152. Definitions.

§800.161. Intent to Sanction.

§800.171. Sanctionable Acts.

§800.172. Sanction Status.

§800.174. Corrective Actions and Penalties.

§800.175. Corrective Actions and Penalties Under the Workforce Investment Act (WIA).

§800.176. Informal Conferences and Informal Dispositions.

§800.181. Sanction Determination.

§800.191. Appeal.

§800.192. Hearing Procedures.

§800.193. Postponements, Continuances, and Withdrawals.

§800.194. Evidence.

§800.195. Hearing Officer Independence and Impartiality.

§800.196. Ex Parte Communications.

§800.197. Hearing Decision.

§800.198. Motion for Reopening.

§800.199. Motion for Rehearing.

§800.200. Finality of Decision.

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

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SUBCHAPTER H. AGENCY MONITORING ACTIVITIES

40 TAC §§800.301 - 800.309

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

The rules are repealed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeals affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.301. Purpose.

§800.302. Definitions.

§800.303. Program and Fiscal Monitoring.

§800.304. Program Monitoring Activities.

§800.305. Fiscal Monitoring Activities.

§800.306. Agency Monitoring Reports.

§800.307. Resolution.

§800.308. Agency Access to Records.

§800.309. Commission Evaluation of Board Oversight Capacity.

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

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SUBCHAPTER I. SUBRECIPIENT AND CONTRACT SERVICE PROVIDER MONITORING ACTIVITIES

40 TAC §§800.351 - 800.355, 800.357 - 800.360

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

The rules are repealed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeals affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.351. Scope and Purpose.

§800.352. Definitions.

§800.353. Subrecipient and Contract Service Provider Monitoring.

§800.354. Risk Assessment.

§800.355. Monitoring Plan.

§800.357. Controls Over Monitoring.

§800.358. Reporting and Resolution Requirements.

§800.359. Independent Audit Requirements.

§800.360. Access to Records.

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SUBCHAPTER K. CONTRACT NEGOTIATION, MEDIATION, AND OTHER ASSISTED NEGOTIATION OR MEDIATION PROCESSES

40 TAC §§800.451, 800.454, 800.462, 800.471, 800.492

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.451. Purpose and Applicability.

(a) Purpose. The Commission intends these rules to govern negotiation, mediation, and other assisted negotiation or mediation processes regarding a claim of breach of contract asserted by a contractor against the Agency under Texas Government Code, Chapter 2260. [~~The Commission recognizes that the model rules of the Office of the Attorney General are voluntary guidelines that are not binding on the Commission.~~] The Commission [~~also~~] recognizes that the rules contained in this subchapter are not intended to replace procedures relating to breach of contract claims that are mandated by state or federal law. The parties to a contract are encouraged to resolve any disagreement concerning the contract in the ordinary course of contract administration under less formal procedures specified in the parties' contract.

(b) Applicability.

(1) This chapter does not apply to an action of the Agency for which a contractor is entitled to a specific remedy pursuant to state or federal constitution or statute.

(2) This chapter does not apply to a contract action proposed or taken by the Agency for which a contractor receiving Medicaid funds under that contract is entitled by state statute or rule to a hearing conducted in accordance with Texas Government Code, Chapter 2001.

(3) This chapter does not apply to contracts:

(A) between the Agency and the federal government or its agencies, another state or nation;

(B) between the Agency and one or more other units of state government;

(C) between the Agency and a local governmental body, or a political subdivision of another state;

(D) between a subcontractor and a contractor;

(E) subject to §201.112 of the Transportation Code;

(F) within the exclusive jurisdiction of state or local regulatory bodies; or

(G) within the exclusive jurisdiction of federal courts or regulatory bodies.[~~; or~~]

[~~(H) that are solely and entirely funded by federal grant monies other than for a project defined in §800.452(10) of this Chapter.~~]

(c) Remedies. The procedures contained in this subchapter are exclusive and required prerequisites to suit under the Civil Practice and Remedies Code [~~Civil Practice & Remedies Code~~], Chapter 107, and the Texas Government Code, Chapter 2260. This subchapter does not waive the Commission's or Agency's sovereign immunity to suit or liability.

§800.454. Agency Counterclaim.

(a) The Agency, when asserting a counterclaim under [~~the~~] Texas Government Code, Chapter 2260, shall file notice of the counterclaim as provided by this section that shall:

(1) be in writing;

(2) be delivered by hand, certified mail return receipt requested, or other verifiable delivery service to the contractor or representative of the contractor who signed the notice of claim of breach of contract; and

(3) state in detail:

(A) the nature of the counterclaim;

(B) a description of damages or offsets sought, including the amount and method used to calculate those damages or offsets; and

(C) the legal theory supporting the counterclaim.

(b) In addition to the mandatory contents of the notice of counterclaim required by subsection (a) of this section, the Agency may submit supporting documentation or other tangible evidence to facilitate the contractor's evaluation of the unit's counterclaim.

(c) The notice of counterclaim shall be delivered to the contractor no later than 60 [~~90~~] days after the Agency's receipt of the contractor's notice of claim.

(d) Nothing herein precludes the Agency from initiating a lawsuit for damages against the contractor in a court of competent jurisdiction.

§800.462. Negotiation Timetable.

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

(b) Subject to subsection (c) of this section, the parties shall begin negotiations within a reasonable period of time, not to exceed the 120th day after the date the claim is received. [~~60 days following the later of:~~]

[~~(1) the date of termination of the contract;~~]

[(2) the completion date, or substantial completion date in the case of construction projects, in the original contract; or]

[(3) the date the Agency receives the contractor's notice of claim.]

(c) The Agency may delay negotiations, with written agreement of the parties, until after the 120th [180th] day after the date of the event giving rise to the claim of breach of contract. [by:]

[(1) delivering written notice to the contractor that the commencement of negotiations will be delayed; and]

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

(d) The parties may conduct negotiations according to an agreed schedule as long as they begin negotiations no later than the 120th day after the claim is received [deadlines set forth in subsections (b) or (c) of this section, whichever is applicable].

(e) Subject to subsection (f) of this section, the parties shall complete the negotiations that are required by this subchapter as a prerequisite to a contractor's request for contested case hearing no later than 270 days after the Agency receives the contractor's notice of claim.

(f) The parties may agree in writing to extend the time for negotiations on or before the 270th day after the Agency receives the contractor's notice of claim. The agreement shall be signed by representatives of the parties with authority to bind each respective party and shall provide for the extension of the statutory negotiation period until a date certain. The parties may enter into a series of written extension agreements that comply with the requirements of this section.

(g) The contractor may request a contested case hearing before the State Office of Administrative Hearings (SOAH) pursuant to §800.492 of this subchapter (relating to Request for Contested Case Hearing) after the 270th day after the Agency receives the contractor's notice of claim, or the expiration of any extension agreed to under subsection (f) of this section.

(h) The parties may agree to mediate the dispute at any time before the 270th day after the Agency receives the contractor's notice of claim or before the expiration of any extension agreed to by the parties pursuant to subsection (f) of this section. The mediation shall be governed by §§800.471 - 800.473 of this subchapter.

(i) Nothing in this section is intended to prevent the parties from agreeing to commence negotiations earlier than the deadlines established in subsections (b) and (c) of this section, or from continuing or resuming negotiations after the contractor requests a contested case hearing before SOAH.

§800.471. Mediation.

(a) Option to Mediate [mediate]. The parties may agree to mediate the dispute at any time before the 120th [270th] day after the Agency receives the contractor's notice of claim or before the expiration of any extension agreed to by the parties pursuant to §800.462(f) of this subchapter. The mediation shall be governed by rules contained in this subchapter.

(b) Timetable. A contractor and Agency may mediate the dispute even after the case has been referred to SOAH for a contested case. SOAH may also refer a contested case for mediation pursuant to its own rules and guidelines, whether or not the parties have previously attempted mediation.

(c) Request for Referral. If mediation does not resolve all issues raised by the claim, the contractor may request that the claim be referred to SOAH by the Agency. Nothing in these rules prohibits the contractor and the Agency from mediating their dispute after the case has been referred for contested case hearing, subject to the rules of SOAH.

(d) Conduct of Mediation.

(1) A mediator may not impose his or her own judgment on the issues for that of the parties. The mediator must be acceptable to both parties.

(2) The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2009. For purposes of this subchapter, "mediation" is assigned the meaning set forth in the Civil Practice and Remedies Code, §154.023.

(3) To facilitate a meaningful opportunity for settlement, the parties shall, to the extent possible, select representatives who are knowledgeable about the dispute, who are in a position to reach agreement, or who can credibly recommend approval of an agreement.

§800.492. Request for Contested Case Hearing.

(a) If a claim for breach of contract is not resolved in its entirety through negotiation, mediation, or other assisted negotiation or mediation process, in accordance with this subchapter on or before the 270th day after the Agency receives the notice of claim, or after the expiration of any extension agreed to by the parties pursuant to this subchapter, the contractor may file a request with the Agency for a contested case hearing before SOAH.

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

(c) The Agency shall forward the contractor's request for contested case hearing to SOAH within a reasonable period of time, not to exceed 10 business [thirty] days, after receipt of the request.

(d) The parties may agree to submit the case to SOAH before the 270th day after the notice of claim is received by the Agency if they have achieved a partial resolution of the claim or if an impasse has been reached in the negotiations and proceeding to a contested case hearing would serve the interests of justice.

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

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CHAPTER 801. LOCAL WORKFORCE DEVELOPMENT BOARDS

The Texas Workforce Commission (Commission) proposes the following new sections to Chapter 801, relating to Local Workforce Development Boards:

Subchapter B. One-Stop Service Delivery Network, §§801.24, 801.25, and 801.31

The Commission proposes amendments to the following sections of Chapter 801, relating to Local Workforce Development Boards:

Subchapter A. General Provisions, §801.1 and §801.16

Subchapter B. One-Stop Service Delivery Network, §§801.21 - 801.23, 801.27, and 801.28

The Commission proposes the repeal of the following sections of Chapter 801, relating to Local Workforce Development Boards:

Subchapter A. General Provisions, §801.2 and §801.13

Subchapter B. One-Stop Service Delivery Network, §§801.24, 801.25, and 801.31

The Commission proposes the repeal of the following subchapter of Chapter 801, relating to Local Workforce Development Boards, in its entirety:

Subchapter C. The Integrity of the Texas Workforce System, §§801.51 - 801.56

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Texas Government Code §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. The Commission has conducted a rule review of Chapter 801, Local Workforce Development Boards (Boards), and proposes the following:

--Repeal of rules related to the integrity of the Texas workforce system. Certain provisions of the repealed rules will be consolidated into proposed new Chapter 802, which focuses solely on the integrity of the workforce system. Proposal of new Chapter 802 will run concurrently with this rulemaking. The aggregation of these rules in a separate chapter allows Chapter 801 to address only Boards, resulting in better clarity and consistency.

--Amendment of Subchapter B, relating to the One-Stop Service Delivery Network, by:

--defining Texas Workforce Centers and Workforce Solutions Centers;

--classifying all workforce offices as Workforce Solutions Offices;

--establishing only one certification level for all Workforce Solutions Offices providing workforce services; and

--transferring responsibility for certifying Workforce Solutions Offices from the Commission to the Boards.

--Necessary technical changes to simplify and clarify rule language, update terminology and definitions, and remove obsolete provisions.

Currently, Commission rules outline policy relating to requirements for Texas Workforce Center certification/standards, which establish the following center certification levels:

--Basic Texas Workforce Center

--Certified Texas Workforce Center

--Full-Service Texas Workforce Center

--Certified Full-Service Texas Workforce Center

At a minimum, Texas Workforce Centers must meet the basic standards. If Texas Workforce Centers exceed the basic standards and meet additional Commission-established standards, they are considered full-service. Further, if a Board requests that the Commission conduct a certification review of a particular Texas Workforce Center, the center is deemed a Certified Texas Workforce Center. All local workforce development areas (workforce areas) must have at least one Certified Full-Service Texas Workforce Center.

These certification standards were developed in 1996, pursuant to Texas Labor Code §301.001, which created the Texas Workforce Commission. The statute established the requirement for Texas Workforce Centers, and established the required and optional workforce partners. Subsequently, Congress authorized the Workforce Investment Act (WIA), which contained several grandfather provisions allowing Texas to continue using its previously adopted workforce structure.

As the Commission implemented House Bill 1863 in 1996, it elected to take on the responsibility of ensuring that newly formed Boards complied with the provisions of the statute, including the provisions now contained in Texas Government Code §2308.312 regarding the establishment of Texas Workforce Centers. To ensure that uniform minimum standards were met statewide in this nascent system, the Commission established in rule that it was the entity responsible for certifying Boards' compliance with the rules regarding services available at Texas Workforce Centers.

With the maturation of the Texas workforce system, Boards now have a clear understanding of the necessary standards for Texas Workforce Centers, and Boards use a variety of methods to deliver a wide range of services. Thus, the requirement for Commission review and certification is no longer necessary and, in fact, may inadvertently impede Boards' development of innovative and streamlined service delivery methods. The Commission believes that transferring these responsibilities to the Boards will allow Boards to develop innovative and streamlined service delivery methods.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§801.1. Requirements for Formation of Local Workforce Development Boards.

Section 801.1(b), State Law, replaces the reference to the "Workforce and Economic Competitiveness Act" with "Workforce Investment Act" to align with Texas Government Code, Chapter 2308. Senate Bill 281, 78th Texas Legislature, Regular Session (2003), amended Chapter 2308, and replaced all references to the Workforce and Economic Competiveness Act with Workforce Investment Act.

Section 801.1(e), Time of Application, replaces the reference to "Workforce Economic Competitiveness Act" with "Workforce In-

vestment Act" to align with the Texas Government Code, Chapter 2308.

Section 801.1(g)(2)(A)(ii)(II) replaces the term "Texas Workforce Center" with "Workforce Solutions Office," as defined in §801.23(4).

§801.2. Waivers.

Section 801.2 is repealed. The information in this section has been incorporated into new Chapter 802, a separate, but concurrent, rulemaking proposal that groups together common rules that address the integrity of the workforce system.

§801.13. Board Member Conflicts of Interest.

Section 801.13 is repealed. The information in this section has been incorporated into new Chapter 802, a separate, but concurrent, rulemaking proposal that groups together common rules that address the integrity of the workforce system.

§801.16. Partnership Agreement.

Section 801.16 replaces the title "Agreement for Local Procedures" with "Partnership Agreement" to align with terminology in Texas Government Code §2308.253(g).

Section 801.16(a) - (c) replaces the reference to "Agreement for Local Procedures" with "Partnership Agreement" to align with terminology in Texas Government Code §2308.253(g).

Section 801.16(d)(1) - (2) replaces the reference to "Agreement for Local Procedures" with "Partnership Agreement" to align with terminology in Texas Government Code §2308.253(g).

Section 801.16(e) replaces the reference to "Agreement for Local Procedures" with "Partnership Agreement" to align with terminology in Texas Government Code §2308.253(g).

SUBCHAPTER B. ONE-STOP SERVICE DELIVERY NETWORK

The Commission proposes the following amendments to Subchapter B:

§801.21. Scope and Purpose.

Section 801.21(b) replaces the references to §801.2 and §801.54. Both sections are repealed and incorporated into new Chapter 802, a separate, but concurrent, rulemaking proposal that groups together common rules that address the integrity of the workforce system. References to new §802.21 (relating to Board Contracting Guidelines) and §802.44 (relating to Service Delivery Waiver Requests), respectively, are added.

Section 801.21(b) also corrects the reference to Texas Government Code, Chapter 2803, with Texas Government Code, Chapter 2308.

§801.22. Requirement to Maintain a One-Stop Service Delivery Network.

Section 801.22 replaces the term "Certified Full-Service Texas Workforce Center" with "Workforce Solutions Office," as defined in §801.23(4) of this chapter, to reflect the removal of §801.23(1), the definition of "Certified Full-Service Texas Workforce Center." All workforce offices are classified as Workforce Solutions Offices under new §801.24(a), and new §801.24(b) establishes only one certification level for Workforce Solutions Offices.

§801.23. Definitions.

Section 801.23(1), the definition of Certified Full-Service Texas Workforce Center, is removed. New §801.24(a) classifies all workforce offices as Workforce Solutions Offices, and new §801.25 establishes only one certification level for Workforce Solutions Offices; therefore, this definition is obsolete.

Section 801.23(2), the definition of Certified Texas Workforce Center, is removed. New §801.24(a) classifies all workforce offices as Workforce Solutions Offices, and new §801.24(b) establishes only one certification level for Workforce Solutions Offices; therefore, this definition is obsolete.

Section 801.23(3), the definition of competent, is removed. Texas Labor Code §302.151 defines veterans for the purposes of receiving job training and employment priority, and competency is not a criterion.

New §801.23(4) defines Workforce Solutions Office as a local Workforce Solutions Office that provides one or more services, as set out in §801.25 of this subchapter, to aid employers and job seekers.

Certain paragraphs in this section have been renumbered to accommodate additions or deletions.

§801.24. Texas Workforce Center Certification Levels.

Section 801.24 is repealed and proposed as new.

§801.24. Workforce Solutions Office Certification.

New §801.24 addresses the certification process for Workforce Solutions Offices. Since 1996, the Commission has reviewed and certified Workforce Solutions Offices. In that time, the Texas workforce system has matured and Boards clearly understand the certification standards. The Commission will maintain its oversight responsibility for the certification of Workforce Solutions Offices.

New §801.24(a) classifies all workforce offices that provide workforce services as Workforce Solutions Offices.

New §801.24(b) requires that Boards ensure that at least one Workforce Solutions Office in the workforce area provides on-site access to all services set forth in §801.25.

New §801.24(c), Certified Workforce Solutions Offices, requires Boards, as directed by the Commission, to provide certification to the Commission for every Workforce Solutions Office that provides on-site access to all services set forth in §801.25.

New §801.24(d), Other Workforce Solutions Offices, requires Boards, as directed by the Commission, to notify the Commission of all on-site services available at any Workforce Solutions Office that does not provide on-site access to all services set forth in §801.25.

New §801.24(e) requires Boards to notify the Commission, when a change occurs, of the requirements set forth in subsections (c) and (d) of this section.

New §801.24(f) states that the Commission shall verify compliance with subsections (b) - (d) of this section through:

(1) issuance of Agency guidance;

(2) assurances set forth in Agency-Board agreements;

(3) annual monitoring reviews; and

(4) other means as identified by the Agency.

§801.25. Texas Workforce Center Standards.

Section 801.25 is repealed and proposed as new.

§801.25. Minimum Standards for Certified Workforce Solutions Offices.

New §801.25 delineates the standards that Boards shall ensure Workforce Solutions Offices meet.

New §801.25(a) requires Boards to ensure that each Workforce Solutions Office:

(1) provides basic labor exchange services;

(2) provides services set forth in §801.28(a);

(3) provides access to information and services available in the workforce area; and

(4) addresses the individual needs of employers and job seekers.

New §801.25(b) requires Boards to ensure that the services provided by each Workforce Solutions Office, as set forth in Texas Government Code, Chapter 2308, include:

(1) labor market information, including available job openings and education and training opportunities;

(2) uniform eligibility requirements and application procedures for all workforce training and services;

(3) unemployment insurance (UI) assistance;

(4) independent assessment of individual needs and the development of an employment plan;

(5) centralized and continuous case management and counseling;

(6) individual referral for services, including basic education, classroom skills training, on-the-job training, and customized training;

(7) support services, including child care assistance, student loans, and other forms of financial assistance required to participate in and complete training; and

(8) job training and employment assistance for persons formerly sentenced to the Texas Department of Criminal Justice's institutional division or state jail division, provided in cooperation with Project Reintegration of Offenders.

New §801.25(c) requires Boards to ensure that each Workforce Solutions Office complies with the following Commission-established standards:

(1) provides customer access to WorkInTexas.com; résumé preparation tools, including software; and Internet access;

(2) ensures eligible foster youth are given access to workforce services to help meet their employment, education, and training needs to transition to independent living, as set forth in Texas Family Code §264.121;

(3) provides each customer with information on local high-growth, high-demand occupations and industries, projected wage level upon completion of training programs, and performance of training providers when requested;

(4) ensures that Workforce Solutions Offices' staff is trained and knowledgeable in order to provide services to employers and job seekers;

(5) demonstrates on-site management of all personnel, a plan for cross-training staff in all services, minimal programmatic specialization of staff, removal of redundancies within program activities, and maximum flexibility to optimize use of resources;

(6) designs a customer-friendly waiting area and implements written procedures that define the steps taken to minimize customer wait time in the reception area and in other areas of Workforce Solutions Offices; and

(7) provides consumer information on the quality of education and training providers and includes a mechanism for customer feedback on personal experience with such providers.

New §801.25(d) requires Boards to ensure that Workforce Solutions Offices that do not provide all on-site services and programs specified in subsections (b) and (c) of this section, provide electronic access to such services and programs.

New §801.25(e) requires Boards to ensure that only Workforce Solutions Office partners provide developmental services.

§801.27. Workforce Solutions Office Partners.

Section 801.27 replaces the title "Texas Workforce Center Partners" with "Workforce Solutions Office Partners," as defined in §800.2(22) of this title, concurrently proposed for amendment.

Section 801.27(b):

--replaces the term "Texas Workforce Center" with "Workforce Solutions Offices," as defined in §801.23(4) of this chapter; and

--removes the following from the list of required partners because they are not considered partners: WIA adults, dislocated workers, and youth; FSE&T TANF Choices; subsidized child care; Wagner-Peyser ES; TAA, Project RIO; and UI.

§801.28. Services Available through the One-Stop Service Delivery Network.

Section 801.28(a) replaces the term "Certified Texas Workforce Centers" with "Workforce Solutions Offices." All workforce offices are classified as Workforce Solutions Offices under new §801.24(a), and new §801.25 establishes only one certification level for Workforce Solutions Offices.

Section 801.28(a)(11) changes the term "FSE&T" to "SNAP E&T" to align with federal and state name changes.

Section 801.28(b)(2) replaces the term "Individual Employment Plan" with "employment plan" to create a general term that applies to all Commission-administered employment and training programs.

Section 801.28(b)(6) replaces the term "prevocational" with "work readiness," a more current and descriptive term.

§801.31. Priority for Workforce Services.

Section 801.31 is repealed and proposed as new.

§801.31. Priority for Workforce Services.

New §801.31 sets forth priority of workforce services for eligible veterans and eligible foster youth, and outlines the order in which workforce services are to be applied. In particular, this section specifies that while Boards must identify eligible veterans at initial point of entry, it is not required for foster youth. Services for foster youth must be prioritized and targeted to meet the needs of eligible foster youth.

New §801.31(a)(1) - (3) requires Boards to ensure that eligible veterans, as defined in §801.23(2), are identified at the initial point of entry into the workforce system and informed of the following:

(1) Their right to priority of service;

(2) The full array of employment, training, and placement services available under priority of service; and

(3) Any applicable eligibility requirements for those programs and services.

New §801.31(b) requires Boards to ensure that eligible foster youth, as defined in §801.23(1) of this subchapter; are informed of:

(1) their right to priority of service;

(2) the full array of employment, training, and placement services available under priority of service; and

(3) any applicable eligibility requirements for those programs and services.

New §801.31(c)(1) - (3) sets forth the priority order that Boards must apply:

(1) Eligible veterans receive priority over all other equally qualified individuals in the receipt of services funded in whole or in part by the U.S. Department of Labor (DOL), in accordance with 38 U.S.C. §4215--except state qualified spouses who meet the criterion in §801.23(2)(C)(ii) of this subchapter.

(2) Eligible veterans receive priority over all other equally qualified individuals in the receipt of services funded in whole or in part by state funds in accordance with Texas Labor Code §302.152.

(3) Eligible foster youth receive priority over all other equally qualified individuals--except eligible veterans as defined in this subchapter--in the receipt of federal or state-funded services in accordance with Texas Family Code §264.121(3).

SUBCHAPTER C. THE INTEGRITY OF THE TEXAS WORKFORCE SYSTEM

The Commission proposes the repeal of Subchapter C in its entirety:

§801.51. Purpose and General Provisions.

§801.52. Definitions.

§801.53. Prohibition against Directly Delivering Services.

§801.54. Board Contracting Guidelines.

§801.55. Employment of Former Board Employees by Workforce Service Contractors.

§801.56. Enforcement.

These sections have been incorporated into new Chapter 802, a separate, but concurrent, rulemaking proposal that groups together common rules that address the integrity of the workforce system.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules because small or microbusinesses are not regulated or otherwise affected by the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses.

The reasoning for these conclusions is as follows:

--Updates of definitions and statutory references in Subchapters A and B are not substantive.

--These rules are proposing that the Agency's responsibility for review and certification of Board satisfaction of minimum standards and compliance regarding services available at Workforce Solutions Offices be transferred to Boards. Agency staff reports that associated Agency activities would evolve from the Workforce Network Support Department to the Subrecipient Monitoring Department, and that no significant change in cost would result, and also that Boards already are actively engaged in similar activities, and that it is not likely that Board levels of activity in this function would stand to significantly increase as a result.

--The impact of repeal of parts of Subchapters A and B of Chapter 801, and all of Subchapter C, with the intention of including the substance of these sections in a new Chapter 802 will be assessed and evaluated in the review of the new Chapter 802.

Rich Froeschle, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Laurence M. Jones, Director, Workforce Development Division, has 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 proposed rules will be simplified and clarified rule language; updated terminology and definitions; and the removal of obsolete provisions.

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

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas's 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on April 27, 2010. The Commission also conducted a conference call with Board executive directors and Board staff on April 30, 2010, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPol-

icyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §801.1, §801.16

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§801.1. Requirements for Formation of Local Workforce Development Boards.

(a) Purpose of Rule.

(1) Upon application by the chief elected officials (CEOs) and approval of the Commission, the Commission shall forward an application to form a Local Workforce Development Board (Board) to the Governor.

(2) Before an application may be submitted to the Governor, all requirements of this section shall be met.

(b) State Law. The formation of Boards is governed by the Workforce Investment Act [~~Workforce and Economic Competitiveness Act~~], Texas Government Code, Chapter 2308.

(c) Chief Elected Official Agreement. Creation of a Board requires agreement by at least three-fourths of the CEOs in the local workforce development area (workforce area) who represent units of general local government, including all of the CEOs who represent units of general local government having populations of at least 200,000. The elected officials agreeing to the creation of the Board shall represent at least 75 percent [~~%~~] of the population of the workforce area.

(d) Chief Elected Officials. The CEOs may, and are encouraged to, consult with local officials other than the ones delineated below. The following officials are designated as the CEOs for the purpose of establishing agreements to form Boards:

(1) Mayors.

(A) The mayor of each city with a population of at least 100,000;

(B) or, if there is no city with a population of greater than 100,000, the mayor of each city with a population greater than 50,000;

(C) or, if there are no cities with a population of greater than 50,000, the mayor of the largest city in the workforce area.

(D) For purposes of this section, municipal population will be determined by the figure last reported by the Texas State Data Center at the time of submission of the application to the Commission.

(2) All county judges included in a workforce area as designated by the Governor.

(e) Time of Application. CEOs in a workforce area may not establish a Board until the Governor has designated that area as a workforce area as provided in the Workforce Investment Act [~~Workforce and Economic Competitiveness Act~~], Texas Government Code, Chapter 2308.

(f) Applications shall meet all Governor-approved criteria for the establishment of Boards.

(g) Procedures for Formation of a Board. The CEOs shall comply with the following procedures to form a Board.

(1) Public process procedure. If three-fourths of the CEOs, as defined in subsection (d) of this section, agree to initiate procedures to establish a Board, they shall conduct a public process, including at least one public meeting, to consider the views of all affected organizations before making a final decision to form a Board. This public process may include, but is not limited to, notices published in various media and surveys for public comment.

(2) Application procedure.

(A) The CEOs shall submit an application to the Commission. This application shall include evidence of the actions required by paragraph (1) of this subsection. As a part of the application, each CEO [~~of the CEOs,~~] who is in agreement regarding the formation of a Board, shall execute the following documents:

(i) An interlocal agreement delineating:

(I) The purpose of the agreement;

(II) The process that will be used to select the CEO who will act on behalf of the other CEOs and the name of such CEO if the person has been selected;

(III) The procedure that will be followed to keep those CEOs informed regarding Board activities;

(IV) The initial size of the Board;

(V) How resources allocated to the workforce area will be shared among the parties to the agreement;

(VI) The process to be used to appoint the Board members, which shall be consistent with applicable federal and state laws; and

(VII) The terms of office of the members of the Board.

(ii) An acknowledgment in the following form: We, the chief elected officials of the _____ Workforce Development Area, acknowledge that the following are responsibilities and requirements pursuant to the formation of the Board:

(I) The Board will assume the responsibilities for the following committees and councils that will be replaced by the Board unless otherwise provided in Texas Government Code, Chapter 2308: private industry council, quality workforce planning committee, job service employer committee, and local general vocational program advisory committee;

(II) At least one Workforce Solutions Office [~~Texas Workforce Center~~] shall be established within 180 days of Board certification;

(III) The Board shall have its own independent staff and not be a provider of workforce services, unless the Board secures a waiver of these provisions;

(IV) The CEOs shall enter into a partnership agreement with the Board to designate a grant recipient to receive, be accountable for, and be liable for any misuse of block grant funds;

(V) The partnership agreement shall also specify the entity that will administer the programs, which may be separate from the entity that receives the funds from the state;

(VI) The partnership agreement shall define the process through which the Boards and CEOs will develop the strategic and operational plans, including the training plan required under the Workforce Investment Act (WIA); and

(VII) The strategic plan shall be reviewed by both the Commission and the Texas Workforce Investment Council (TWIC), and approved by the Governor before block grants will be available to the workforce area.

(B) The application shall include evidence that any affected existing Board has been notified and agrees that its functions and responsibilities will be assumed by the proposed Board upon the proposed Board's final certification by the Governor.

(C) The application shall include the names and affiliations of individuals recommended for Board membership, with documentation that CEOs followed the nomination process specified in applicable state and federal law, including Texas Government Code §2308.255 and §2308.256.

(i) Private sector members shall be owners of business concerns, chief executives, chief operating officers of nongovernmental employers, or other private sector executives who have substantial management or policy responsibility. To be eligible to represent the private sector, at least 51 percent [%] of an individual's annual income shall be from private sector sources.

(ii) Private sector membership should represent the composition of the local pool of employers. The private sector membership should include representatives of the region's larger employers and emerging growth industries. Primary consideration should be given to private sector employers who do not directly provide employment and workforce training services to the general public. CEOs shall develop a profile of the workforce area's major industries using locally obtained information and state-published data. The Agency shall provide relevant labor market information, including data that identifies employment trends, emerging high-growth, high-demand industries, the size of local employers, and other data needed to assist CEOs in developing the employer profile. Documentation submitted with the application shall show how the regional employer profile is reflected in the Board membership.

(iii) Board membership shall include representatives of local organized labor organizations, community-based organizations, educational agencies, vocational rehabilitation agencies, public assistance agencies, economic development agencies, the public employment service, local literacy councils, and adult basic and continuing education organizations as required by law.

(iv) Representatives of local organized labor organizations shall be nominated by local labor federations unless no employees in the workforce area are represented by such organizations, in which case nominations may be made by other representatives of employees. A labor federation is defined as an alliance of two or more organized labor unions for the purpose of mutual support and action.

(v) Board nominees shall be actively engaged in the organization, enterprise, or field that they are nominated to represent. Board nominees shall have an existing relationship with the workforce area through residence or employment within the workforce area.

(vi) At least one of the members of a Board appointed under Texas Government Code §2308.256(a) shall, in addition to the qualifications required for the members under that subsection, have expertise in child care or early childhood education.

(vii) At least one of the members of a Board appointed under Texas Government Code §2308.256(a) shall, in addition to the qualifications required for the members under that subsection:

(I) be a veteran as defined in Texas Government Code §2308.251(2); and

(II) have an understanding of the needs of the local veterans' population and willingness to represent the interests and concerns of veterans.

(D) No individual member shall be a representative of more than one sector or category described in this section, except as statutorily permitted for one or more members having:

(i) expertise in child care or early childhood education; or

(ii) the qualifications set forth in subparagraph [~~subsection (g)(2)~~](C)(vii) of this paragraph [~~section~~].

(E) The application shall include documentary evidence substantiating compliance with the application procedure, including but not limited to, written agreements, minutes of public meetings, copies of correspondence, and such other documentation as may be appropriate.

§801.16. Partnership Agreement [~~Agreement for Local Procedures~~].

(a) The CEOs in a workforce area shall enter into a Partnership Agreement [~~an Agreement for Local Procedures~~] with the Board as required by Texas Government Code §2308.253(g) and by §801.1(g)(2)(A)(i)(I) - (VII)[~~(VI)~~] of this subchapter.

(b) The Partnership Agreement [~~Agreement for Local Procedures~~] shall be signed by the current CEOs and the Board Chair.

(c) Any amendment to a Partnership Agreement [~~an Agreement for Local Procedures~~], change to a Board's organizational plan or bylaws, or notice of an election of a new CEO or Board Chair shall be submitted to the Agency within 15 calendar days of the adoption of such amendment, change, or election.

(d) If a CEO or Board Chair is newly elected during the then-current, two-year program planning cycle, such newly elected individual shall submit to the Agency a written statement acknowledging that he or she:

(1) has read, understands, and will comply with the current Partnership Agreement [~~Agreement for Local Procedures~~]; and

(2) reserves the option to request negotiations to amend the Partnership Agreement [~~Agreement for Local Procedures~~] at any time during the official's tenure as CEO or Board Chair.

(e) All Partnership Agreements [~~Agreements for Local Procedures~~] and Board organizational plans or bylaws shall state that Board members will not be permitted to delegate any Board duties to proxies or alternates.

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

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006465

Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Earliest possible date of adoption: December 26, 2010
For further information, please call: (512) 475-0829

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40 TAC §801.2, §801.13

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

The rules are repealed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeals affect Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§801.2. Waivers.
§801.13. Board Member Conflicts of Interest.

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

Filed with the Office of the Secretary of State on November 9, 2010.

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Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Earliest possible date of adoption: December 26, 2010
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SUBCHAPTER B. ONE-STOP SERVICE DELIVERY NETWORK

40 TAC §§801.21 - 801.25, 801.27, 801.28, 801.31

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§801.21. Scope and Purpose.

(a) The purpose of this subchapter is to set forth the rules relating to the One-Stop Service Delivery Network as set forth in Texas Government Code, Chapter 2308; Texas Labor Code, Chapters 301 and 302; and WIA §121 (29 U.S.C.A. §2841). It is the intent of the Commission, in partnership with Boards, to facilitate the development and maintenance of the One-Stop Service Delivery Network such that information and services responsive to individual needs are available to all customers. The One-Stop Service Delivery Network shall be evaluated against established levels of certification as well as any additional standards developed by the Commission to ensure the continuous improvement of the system.

(b) The rules contained in this subchapter shall apply, except that to the extent of any conflict, the provisions of Texas Government Code, Chapter 2308, and §802.21 of this title (relating to Board Contracting Guidelines) and §802.44 of this title (relating to Service Delivery Waiver Requests), shall govern [~~Chapter 2803 and §801.2 and §801.54 of this chapter shall govern~~].

§801.22. Requirement to Maintain a One-Stop Service Delivery Network.

Each Board shall maintain a One-Stop Service Delivery Network, consistent with WIA, state law, and this subchapter. The One-Stop Service Delivery Network shall include at least one Workforce Solutions Office [~~Certified Full-Service Texas Workforce Center~~] providing the core services set forth in §801.28(a) of this subchapter.

§801.23. Definitions.

In addition to the definitions contained in §800.2 of this title, the following words or terms shall have the following meanings, unless the context clearly indicates otherwise.

[~~(1) Certified Full-Service Texas Workforce Center--A local full-service workforce center that has integrated service functions to aid employers and job seekers in all aspects of employment and training in a seamless, nonprogram-specific manner, and has been found to meet the requirements of a Full-Service Texas Workforce Center set out in §801.25(b) of this subchapter.~~]

[~~(2) Certified Texas Workforce Center--A local workforce center that provides integrated services to aid employers and job seekers in all aspects of employment and training in a seamless nonprogram-specific manner, and has been found to meet the requirements of a Certified Texas Workforce Center set out in §801.25(a) of this subchapter.~~]

[~~(3) Competent--A federal or state qualified veteran who meets the eligibility requirements of the program from which he or she is seeking services, and is determined eligible for a specific employment and training service funded by that program.~~]

(1) [~~(4)~~] Eligible Foster Youth--An eligible foster youth is a:

(A) Current Foster Youth--A youth, age 14 or older, who is receiving substitute care services under the managing conservatorship of the Texas Department of Family and Protective Services (DFPS). This includes youth residing in private foster homes, group homes, residential treatment centers, juvenile correctional institutions, and relative care; or

(B) Former Foster Youth--A youth up to 23 years of age, who formerly was under the managing conservatorship of DFPS, until:

(i) the conservatorship was transferred by a court;

(ii) the youth was legally emancipated (i.e., the youth's minority status was removed by a court); or

(iii) the youth attained 18 years of age.

(2) [~~(5)~~] Eligible Veteran--An eligible veteran is one of the following:

(A) Federal/state qualified veteran--an individual who served in the active military, naval, or air service, and who was discharged or released from such service under conditions other than dishonorable as specified at 38 U.S.C. §101(2). Active service includes

full-time duty in the National Guard or a Reserve component, other than full time for training purposes.

(B) Federal qualified spouse--the spouse of one of the following:

(i) Any veteran who died of a service-connected disability.

(ii) Any member of the Armed Forces serving on active duty who, at the time of application for assistance under this section, is listed, pursuant to 37 U.S.C. §556 and regulations issued thereunder, by the Secretary concerned in one or more of the following categories and has been so listed for a total of more than 90 days:

(I) Missing in action;

(II) Captured in line of duty by a hostile force; or

(III) Forcibly detained or interned in line of duty by a foreign government or power.

(iii) Any veteran who has a total disability resulting from a service-connected disability as evaluated by the Department of Veterans Affairs.

(iv) Any veteran who died while a disability, as defined in clause (iii) of this subparagraph, was in existence.

(C) State qualified spouse:

(i) A spouse who meets the definition of federal qualified spouse; or

(ii) A spouse of any member of the armed forces who died while serving on active military, naval, or air service.

(3) [~~(6)~~] National Emergency--A condition declared by the President by virtue of powers previously vested in that office to authorize certain emergency actions to be undertaken in the national interest pursuant to 50 U.S.C. §1621.

(4) Workforce Solutions Office--A local Workforce Solutions Office that provides one or more services, as set out in §801.25 of this subchapter, to aid employers and job seekers.

§801.24. Workforce Solutions Office Certification.

(a) All offices providing workforce services will be classified as Workforce Solutions Offices.

(b) Boards shall ensure that at least one Workforce Solutions Office in the workforce area provides on-site access to all services set forth in §801.25 of this subchapter.

(c) Certified Workforce Solutions Offices. As directed by the Commission, Boards shall provide certification to the Commission for every Workforce Solutions Office that provides on-site access to all services set forth in §801.25 of this subchapter.

(d) Other Workforce Solutions Offices. As directed by the Commission, Boards shall notify the Commission of all on-site services available at any Workforce Solutions Office that does not provide on-site access to all services set forth in §801.25 of this subchapter.

(e) Boards shall notify the Commission, when a change occurs, of the requirements set forth in subsections (c) and (d) of this section.

(f) The Commission shall verify compliance with the requirements set forth in subsections (b) - (d) of this section through:

(1) issuance of Agency guidance;

(2) assurances set forth in Agency-Board agreements;

(3) annual monitoring reviews; and

(4) other means as identified by the Agency.

§801.25. Minimum Standards for Certified Workforce Solutions Offices.

(a) Boards shall ensure that each Workforce Solutions Office:

(1) provides basic labor exchange services, including access to job orders for applicants, access to applicants for employers, and screening and referral methods for matching qualified applicants and job orders;

(2) provides services, as set forth in §801.28(a) of this subchapter, of the following programs: WIA adults, dislocated workers, and youth; Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T); Temporary Assistance for Needy Families (TANF) Choices; access to subsidized child care services; Wagner-Peyser Employment Service (ES); Trade Adjustment Assistance (TAA); and Project Reintegration of Offenders (Project RIO). Boards shall ensure that Workforce Solutions Offices' staff is available to provide these services during all Workforce Solutions Offices' operating hours;

(3) provides access to information and services available in the workforce area; and

(4) addresses the individual needs of employers and job seekers.

(b) Boards shall ensure that the services provided by each Workforce Solutions Office, as set forth in Texas Government Code, Chapter 2308, include:

(1) labor market information, including:

(A) available job openings; and

(B) education and training opportunities;

(2) uniform eligibility requirements and application procedures for all workforce training and services;

(3) assistance to unemployment insurance (UI) claimants;

(4) independent assessment of individual needs and the development of an employment plan;

(5) centralized and continuous case management and counseling;

(6) individual referral for services, including basic education, classroom skills training, on-the-job training, and customized training;

(7) support services, including child care assistance, student loans, and other forms of financial assistance required to participate in and complete training; and

(8) job training and employment assistance for persons formerly sentenced to the Texas Department of Criminal Justice's institutional division or state jail division, provided in cooperation with Project RIO.

(c) Boards shall ensure that each Workforce Solutions Office complies with the following Commission-established standards:

(1) Provides customer access to WorkInTexas.com; résumé preparation tools, including software; and Internet access;

(2) Ensures eligible foster youth are given access to workforce services to help meet their employment, education, and training needs to transition to independent living, as set forth in Texas Family Code §264.121;

(3) Provides each customer with information on local high-growth, high-demand occupations and industries, projected wage level upon completion of training programs, and performance of training providers when requested;

(4) Ensures that Workforce Solutions Offices' staff is trained and knowledgeable in order to provide services to employers and job seekers;

(5) Demonstrates on-site management of all personnel, a plan for cross-training staff in all services, minimal programmatic specialization of staff, removal of redundancies within program activities, and maximum flexibility to optimize use of resources;

(6) Designs a customer-friendly waiting area and implements written procedures that define the steps taken to minimize customer wait time in the reception area and in other areas of Workforce Solutions Offices; and

(7) Provides consumer information on the quality of education and training providers and includes a mechanism for customer feedback on personal experience with such providers.

(d) Boards must ensure that, if a Workforce Solutions Office does not provide all services and programs on-site as specified in subsections (b) and (c) of this section, electronic access to such services is provided, for example, by making access available through computer applications or by telephone conferencing.

(e) Boards must ensure that only Workforce Solutions Office partners provide developmental services, such as General Educational Development, English as a Second Language, or basic education skills.

§801.27. Workforce Solutions Office [~~Texas Workforce Center~~] Partners.

(a) Each Board shall maintain one or more memorandum of understanding that sets out the obligations of the Board and each partner in the operation of the One-Stop Service Delivery Network in the workforce area. Each Board shall obtain a general authorization from the CEOs for actions taken under this subsection.

(b) Subject to the limitations referenced in §801.29 of this subchapter, relating to Limitations on Delivery of Services, the required Workforce Solutions Office [~~Texas Workforce Center~~] Partners are the entities that administer the following services in the workforce areas:

[~~(1) WIA Adults, Dislocated Workers, and Youth;~~]

[~~(2) FSE&T~~]

[~~(3) TANF Choices;~~]

[~~(4) subsidized child care;~~]

[~~(5) Wagner-Peyser ES;~~]

[~~(6) TAA;~~]

(1) [~~(7)~~] veterans' employment and training;

(2) [~~(8)~~] Adult Basic Education;

(3) [~~(9)~~] National Literacy Act;

(4) [~~(10)~~] noncertificate, postsecondary career and technology training;

(5) [~~(11)~~] Senior Community Service Employment Program;

(6) [~~(12)~~] Apprenticeship Training Program; and

(7) [~~(13)~~] National and Community Service Act.[~~;~~]

[~~(14) Project RIO; and~~]

[~~(15) Unemployment Insurance.~~]

(c) Other entities that provide services of benefit to workforce development, including federal, state, and local programs as well as programs in the private sector, may be voluntary partners in the One-Stop Service Delivery Network if the Board and CEOs agree on each entity's participation. The entities include, but are not limited to, those that provide:

(1) vocational rehabilitation services (for example, the Texas Department of Assistive and Rehabilitative Services);

(2) Migrant and Seasonal Farmworker employment services;

(3) secondary and postsecondary vocational education and training activities;

(4) community services block grant programs;

(5) employment and training services provided through grantees of the U.S. Department of Housing and Urban Development;

(6) Job Corps services for youth; and

(7) Native American programs.

§801.28. Services Available through [~~Through~~] the One-Stop Service Delivery Network.

(a) Core Services. All Workforce Solutions Offices [~~Certified Texas Workforce Centers~~] shall provide access to core services, as defined in WIA §134(d)(2) (29 U.S.C.A. §2864 (d)(2)) and Texas Government Code, Chapter 2308, including:

(1) outreach;

(2) intake, which may include reemployment services, and orientation to the information and services available through the One-Stop Service Delivery Network;

(3) determinations of individuals' eligibility for programs funded through the Commission that are available through the One-Stop Service Delivery Network;

(4) initial assessment of skill levels, aptitudes, abilities, and support service needs;

(5) job search and placement assistance and, where appropriate, career counseling;

(6) provision of performance information and program cost information on eligible providers of training services as described in §§841.31 - 841.47 of this title (relating to Training Provider Certification), provided by program, and eligible providers of youth activities described in WIA §123 (29 U.S.C.A. §2843), providers of adult education described in Title II of WIA, providers of postsecondary vocational education activities and vocational education activities available to school dropouts under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C.A. §2301 *et seq.),* and providers of vocational rehabilitation program activities described in Title I of the Rehabilitation Act of 1973 (29 U.S.C.A. §720 *et seq.);*

(7) provision of information regarding how the workforce area is performing on the local performance measures and any additional performance information with respect to the One-Stop Service Delivery Network in the workforce area;

(8) provision of information regarding filing claims for UI [~~Unemployment Insurance~~];

(9) provision of employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including job vacancy listings in such la-

bor market areas, information on job skills necessary to obtain the jobs listed, and information related to local high-growth, high-demand jobs and the earnings and skill requirements for such jobs;

(10) provision of accurate information relating to the availability of support services, including child care and transportation, available in the workforce area, and referral to such services, as appropriate;

(11) assistance in establishing eligibility for Choices, SNAP E&T [~~FSE&T~~], and programs of financial aid assistance for training and education that are available in the workforce area; and

(12) follow-up services, including counseling regarding the workplace, for youth participants in WIA activities authorized under Chapter 841 of this title, relating to WIA, who are placed in unsubsidized employment, for not less than 12 months after the first day of the employment, as appropriate.

(b) Intensive Services. A One-Stop Service Delivery Network shall provide access to services as described in the Texas Government Code, Chapter 2308, and intensive services as described in WIA §134(d)(3) (29 U.S.C.A. §2864(d)(3)), which may include the following:

(1) comprehensive and specialized assessments of the skill levels and service needs of job seekers, such as diagnostic testing and use of other assessment tools, in-depth interviewing, and evaluation to identify employment barriers and employment goals;

(2) development of an employment plan [~~Individual Employment Plan~~] and service strategy to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve employment goals and objectives;

(3) group counseling;

(4) individual counseling and career planning;

(5) centralized and continuous case management; and

(6) short-term, work readiness [~~prevocational~~] services, including learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct to prepare individuals for unsubsidized employment or training.

(c) Training Services. A One-Stop Service Delivery Network shall provide access to training services as described in WIA §134(d)(4) (29 U.S.C.A. §2864(d)(4)) and Texas Government Code, Chapter 2308. Training services may include the following:

(1) high-growth, high-demand industry skills training, including training for nontraditional employment;

(2) on-the-job training;

(3) programs that combine workplace training with related instruction;

(4) training programs operated by the private sector;

(5) skills upgrading and retraining;

(6) entrepreneurial training;

(7) job readiness training;

(8) referrals to Adult Basic Education and literacy activities in combination with services with activities described in paragraphs (1) - (7) of this subsection; and

(9) customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of training.

(d) Other Services and Activities. A One-Stop Service Delivery Network shall offer access to all other permissible local employment and training activities included in the local workforce development plan, which may include discretionary one-stop activities, support services, and needs-related payments as set forth in WIA §134(e) (29 U.S.C.A. §2864(e)).

§801.31. Priority for Workforce Services.

(a) Boards shall ensure that eligible veterans, as defined in §801.23(2) of this subchapter, are identified at the initial point of entry into the workforce system and informed of the following:

(1) Their right to priority of service;

(2) The full array of employment, training, and placement services available under priority of service; and

(3) Any applicable eligibility requirements for those programs and services.

(b) Boards shall ensure that eligible foster youth, as defined in §801.23(1) of this subchapter, are informed of the following:

(1) Their right to priority of service;

(2) The full array of employment, training, and placement services available under priority of service; and

(3) Any applicable eligibility requirements for those programs and services.

(c) Boards shall ensure the following order of priority for workforce services is applied:

(1) Eligible veterans receive priority over all other equally qualified individuals in the receipt of services funded in whole or in part by the U.S. Department of Labor, in accordance with 38 U.S.C. §4215--except state qualified spouses, who meet the criterion in §801.23(2)(C)(ii) of this subchapter.

(2) Eligible veterans receive priority over all other equally qualified individuals in the receipt of services funded in whole or in part by state funds in accordance with Texas Labor Code §302.152.

(3) Eligible foster youth receive priority over all other equally qualified individuals--except eligible veterans as defined in this subchapter--in the receipt of federal or state-funded services in accordance with Texas Family Code §264.121(3).

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

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006467
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Earliest possible date of adoption: December 26, 2010
For further information, please call: (512) 475-0829

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40 TAC §§801.24, 801.25, 801.31

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

The rules are repealed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeals affect Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§801.24. Texas Workforce Center Certification Levels.

§801.25. Texas Workforce Center Standards.

§801.31. Priority for Workforce Services.

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

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SUBCHAPTER C. THE INTEGRITY OF THE TEXAS WORKFORCE SYSTEM

40 TAC §§801.51 - 801.56

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

The rules are repealed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeals affect Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§801.51. Purpose and General Provisions.

§801.52. Definitions.

§801.53. Prohibition against Directly Delivering Services.

§801.54. Board Contracting Guidelines.

§801.55. Employment of Former Board Employees by Workforce Service Contractors.

§801.56. Enforcement.

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

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Texas Workforce Commission
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CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM

The Texas Workforce Commission (Commission) proposes new Chapter 802, relating to Integrity of the Texas Workforce System, comprising the following subchapters:

Subchapter A. Purpose and General Provisions, §802.1, §802.2

Subchapter B. Contracting, §802.21

Subchapter C. Local Workforce Development Board Restrictions, §§802.41 - 802.44

Subchapter D. Agency Monitoring Activities, §§802.61 - 802.67

Subchapter E. Board and Workforce Service Provider Monitoring Activities, §§802.81 - 802.87

Subchapter F. Performance and Accountability, §§802.101 - 802.104

Subchapter G. Corrective Actions, §§802.121 - 802.125

Subchapter H. Remedies, §§802.141 - 802.152

Subchapter I. Incentive Awards, §§802.161 - 802.168

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Texas Government Code §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. In its review of Chapter 800, General Administration, and Chapter 801, Local Workforce Development Boards, the Commission found that both chapters contained rules governing the integrity of the workforce system.

The Commission has determined the need for a new chapter specifically addressing the integrity of the workforce system. Therefore, the Commission proposes new Chapter 802, Integrity of the Texas Workforce System, which includes new rules and retains certain provisions from the Chapter 800 and Chapter 801 rules.

Additionally, to ensure a seamless transition of rules, the Chapter 800 and Chapter 801 amendments are proposed concurrently with this rulemaking.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. PURPOSE AND GENERAL PROVISIONS

The Commission proposes new Subchapter A, Purpose and General Provisions, as follows:

New Subchapter A contains the general provisions of the Integrity of the Texas Workforce System rules, specifically, purpose and general provisions, and definitions of terms used throughout Chapter 802.

§802.1. Purpose and General Provisions

New §802.1 sets forth the purpose and general provisions of Subchapter A. This new section retains without modification §801.51 of this title, concurrently proposed for repeal.

§802.2. Definitions

New §802.2(1) defines "Agency grantees" as grantees that receive funding from the Agency, such as Skills Development Fund, Wagner-Peyser 7(b), and Workforce Investment Act (WIA) statewide, to provide workforce services.

New §802.2(2), the definition of "appearance of a conflict of interest," retains the provisions of §801.52(1) of this title, concurrently proposed for repeal, with modifications to replace the term "workforce service contractor" with "workforce service provider," as defined in §802.2(15).

New §802.2(3), the definition of "Board decision-making position," retains without modification the provisions of §801.52(2) of this title, concurrently proposed for repeal.

New §802.2(4), the definition of "conflict of interest," retains the provisions of §801.52(3) of this title, concurrently proposed for repeal, with modifications to replace the term "workforce service contractor" with "workforce service provider," as defined in §802.2(15).

New §802.2(5), the definition of "corrective action plan," retains the provisions of §800.152(1) of this title, concurrently proposed for repeal, with modifications to replace the term "other entity" with "Agency grantee," as defined in §802.2(1) of this chapter.

New §802.2(6), the definition of "hearing," retains without modification the provisions of §800.152(2) of this title, concurrently proposed for repeal.

New §802.2(7), the definition of "hearing officer," retains without modification the provisions of §800.152(3) of this title, concurrently proposed for repeal.

New §802.2(8), the definition of "hearing representative," retains without modification the provisions of §800.152(4) of this title, concurrently proposed for repeal.

New §802.2(9), the definition of "level-one sanction," retains the provisions of §800.152(5) of this title, concurrently proposed for repeal, with modifications to:

--replace the term "other subrecipient of the Agency" with "Agency grantee," as defined in §802.2(1) of this chapter; and

--make minor, nonsubstantive, editorial changes.

New §802.2(10), the definition of "level-two sanction," retains the provisions of §800.152(6) of this title, concurrently proposed for repeal, with modifications to:

--replace the term "other subrecipient of the Agency" with "Agency grantee," as defined in §802.2(1) of this chapter; and

--make minor, nonsubstantive, editorial changes.

New §802.2(11), the definition of "level-three sanction," retains the provisions of §800.152(7) of this title, concurrently proposed for repeal, with modifications to:

--replace the term "other subrecipient of the Agency" with "Agency grantee," as defined in §802.2(1) of this chapter; and

--make minor, nonsubstantive, editorial changes.

New §802.2(12), the definition of "particular matter," retains the provisions of §801.52(4) of this title, concurrently proposed for repeal, with modifications to make minor, nonsubstantive, editorial changes.

New §802.2(13), the definition of "party," retains without modification the provisions of §800.152(8) of this title, concurrently proposed for repeal.

New §802.2(14), the definition of "substantial financial interest," retains the provisions of §801.52(5) of this title, concurrently proposed for repeal, with modifications to make minor, nonsubstantive, editorial changes.

New §802.2(15), the definition of "workforce service provider," consolidates into one term the definition of "contract service providers" located in §800.302(1) and §800.352(1) of this title, concurrently proposed for repeal, and the definition of "workforce service contractor," §801.52(6) of this title, concurrently proposed for repeal.

New §802.2(16), the definition of "workforce service provider employee in a decision-making position" retains the provisions of §801.52(7) of this title, concurrently proposed for repeal, with modifications to replace the term "workforce service contractor" with "workforce service provider," as defined in §802.2(15).

SUBCHAPTER B. CONTRACTING

The Commission proposes new Subchapter B, Contracting, as follows:

New Subchapter B contains the Board contracting guidelines of the Integrity of the Texas Workforce System rules.

§802.21. Board Contracting Guidelines

New §802.21, relating to fiscal integrity provisions; bonding, insurance, and other methods of securing funds to cover losses; standards of conduct; and disclosures, retains the provisions of §801.54 of this title, concurrently proposed for repeal, with modifications to replace the term "workforce service contractor" with "workforce service provider," as defined in §802.2(15).

SUBCHAPTER C. LOCAL WORKFORCE DEVELOPMENT BOARD RESTRICTIONS

The Commission proposes new Subchapter C, Local Workforce Development Board Restrictions, as follows:

New Subchapter C contains the Board restrictions provisions of the Integrity of the Texas Workforce System rules, specifically, Board member conflicts of interest; employment of former Board employees by workforce service providers; prohibition against directly delivering services; and service delivery waiver requests.

§802.41. Board Member Conflicts of Interest

New §802.41, relating to Board member conflicts of interest, retains the provisions of §801.13(e) of this title, concurrently proposed for repeal, with modifications to make minor, nonsubstantive, editorial changes.

§802.42. Employment of Former Board Employees by Workforce Service Providers

New §802.42, relating to post-employment restriction, exceptions, corrective actions, and particular matter, retains the provisions of §801.55 of this title, concurrently proposed for repeal, with modifications to replace the term "workforce service contractor" with "workforce service provider," as defined in §802.2(15).

§802.43. Prohibition against Directly Delivering Services

New §802.43(a), relating to prohibition against directly delivering services, retains the provisions of §801.53(c) of this title, concurrently proposed for repeal, with modifications to:

--replace the term "Texas Workforce Centers" with "Workforce Solutions Offices," as defined in §801.23(4) of this title, concurrently proposed for amendment; and

--replace the term "workforce service contractor" with "workforce service provider," as defined in §802.2(15).

§802.44. Service Delivery Waiver Requests

New §802.44, relating to the purpose of rule; provisions from which Boards can submit a waiver request; requesting a waiver; and duration of waiver, retains the provisions of §801.2 of this title, concurrently proposed for repeal, with modifications to replace the term "Texas Workforce Centers" with "Workforce Solutions Offices," as defined in §801.23(4) of this title, concurrently proposed for amendment.

SUBCHAPTER D. AGENCY MONITORING ACTIVITIES

The Commission proposes new Subchapter D, Agency Monitoring Activities, as follows:

New Subchapter D contains Agency monitoring activities provisions of the Integrity of the Texas Workforce System rules, specifically, purpose of the subchapter; program and fiscal monitoring; program monitoring activities; fiscal monitoring activities; Agency monitoring reports and resolution; access to records; and Commission evaluation of Board oversight capacity.

§802.61. Purpose

New §802.61, relating to the purpose of Subchapter D, retains the provisions of §800.301 of this title, concurrently proposed for repeal, with modifications to replace the terms "subrecipient" and "contract service provider" with "Board," "workforce service provider," and "Agency grantee" as defined in §800.2(3) of this title and §802.2(15) and §802.2(1) of this chapter, respectively.

§802.62. Program and Fiscal Monitoring

New §802.62, relating to the Agency's program and fiscal monitoring, retains the provisions of §800.303 of this title, concurrently proposed for repeal, with modifications to:

--replace the terms "subrecipient" and "contract service provider" with "Board," "workforce service provider," and "Agency grantee" as defined in §800.2(3) of this title and §802.2(15) and §802.2(1) of this chapter, respectively; and

--make minor, nonsubstantive, editorial changes.

§802.63. Program Monitoring Activities

New §802.63, relating to the Agency's program monitoring activities, retains the provisions of §800.304 of this title, concurrently proposed for repeal, with modifications to:

--replace the terms "subrecipient" and "contract service provider" with "Board," "workforce service provider," and "Agency grantee," as defined in §800.2(3) of this title and §802.2(15) and §802.2(1) of this chapter, respectively; and

--make minor, nonsubstantive, editorial changes.

§802.64. Fiscal Monitoring Activities

New §802.64(a), relating to the Agency's fiscal monitoring activities, retains the provisions of §800.305 of this title, concurrently proposed for repeal, with modifications to:

--replace the terms "subrecipient" and "contract service provider" with "Board," "workforce service provider," and "Agency grantee" as defined in §800.2(3) of this title and §802.2(15) and §802.2(1) of this chapter, respectively; and

--remove the phrase "for all WIA funds" because fiscal monitoring activities apply to all funds.

§802.65. Agency Monitoring Reports and Resolution

New §802.65, relating to Agency Monitoring Reports and Resolution, retains the provisions of §800.306 and §800.307 of this title, concurrently proposed for repeal, with modifications to:

--better reflect the process that the Agency's monitoring department uses following an on-site visit with a Board, workforce service provider, or Agency grantee;

--replace the terms "subrecipient" and "contract service provider" with "Board," "workforce service provider," and "Agency grantee" as defined in §800.2(3) of this title and §802.2(15) and §802.2(1) of this chapter, respectively; and

--remove the specific requirements for "WIA funded activities," because this section applies to all activities.

§802.66. Access to Records

New §802.66, relating to the right of access for the Agency, and for Boards and Agency grantees, retains the provisions of §800.308 of this title, concurrently proposed for repeal, with modifications to:

--replace the term "reasonable access" with "unrestricted access." The Commission's intent is to clearly communicate that the Agency has the right to access all public records maintained by Boards, workforce service providers, and Agency grantees; and that Agency grantees have the right to access to all public records maintained by workforce service providers;

--state that the Agency is the owner of all public records maintained by Boards, workforce service providers, and Agency grantees in order to clarify federal administrative standards in OMB Circulars A-102 and A-110 regarding retention of and access to records;

--replace the terms "subrecipient" and "contract service provider" with "Board," "workforce service provider," and "Agency grantee" as defined in §800.2(3) of this title and §802.2(15) and §802.2(1) of this chapter, respectively;

--add subsection (d), relating to the Board's responsibility for maintenance and retention of records as well as the Agency's right to access, when the Board's relationship with the workforce service provider ends;

--add subsection (e), relating to custody of records; and

--add subsection (f), regarding compliance with single audit requirements.

§802.67. Commission Evaluation of Board Oversight Capacity

New §802.67, relating to the process and criteria used by the Commission to evaluate Board capacity to oversee and manage local funds and the delivery of local workforce services, retains the provisions of §800.309 of this title, concurrently proposed for repeal, with modifications to:

--add "Commission rules contained in Part 20 of this title" and "the Agency's Financial Manual for Grants and Contracts, and other Agency guidance" to the list of items the Commission uses to evaluate Boards' compliance and performance;

--replace the term "contractors" with "workforce service providers," as defined in §802.2(15);

--replace the term "local career development centers" with "Workforce Solutions Offices," as defined in §801.23(4) of this title, concurrently proposed for amendment;

--clarify that a Board will be rated as above standards if it "meets its targets as defined in §800.2(13) of this title on 90 percent" of its measures and does not miss the target on any single measure by more the "10 percent of target";

--clarify that a Board will be rated as within standards if it "meets its targets as defined in §800.2(13) of this title on 80 percent" of its measures and does not miss the target on any single measure by more than "15 percent of target";

--add that a Board "under level-one, -two, or -three sanction as defined in §802.123 of this chapter will be rated as below standards."

--add that "the Commission may consider any extraordinary situation related to any of the factors identified in subsection (b) of this section"; and

--add that the Commission may exclude from consideration under this section performance on measures "for which the Commission finds good cause exists for failure to meet the target." The economic downturn has shown that there are factors outside of the Boards' control that can contribute to the failure to meet performance expectations. Allowing the Commission to assess good cause acknowledges that there are times when a Board's failure to meet targets is a result of external circumstances beyond the Board's control.

SUBCHAPTER E. BOARD AND WORKFORCE SERVICE PROVIDER MONITORING ACTIVITIES

The Commission proposes new Subchapter E, Board and Workforce Service Provider Monitoring Activities, as follows:

New Subchapter E contains the Board and workforce service provider monitoring activities provisions of the Integrity of the Texas Workforce System rules, specifically, scope and purpose; Board and workforce service provider monitoring; risk assessment; monitoring plan; controls over monitoring; reporting and resolution requirements; and independent audit requirements.

§802.81. Scope and Purpose

New §802.81, relating to the scope and purpose of Subchapter E, retains the provisions of §800.351 of this title, concurrently proposed for repeal, with modifications to replace the terms "subrecipients" and "contract service providers" with "Boards" and "workforce service providers" as defined in §800.2(3) of this title and §802.2(15) of this chapter, respectively.

§802.82. Board and Workforce Service Provider Monitoring

New §802.82, relating to Board and workforce service provider monitoring, retains the provisions of §800.353 of this title, concurrently proposed for repeal, with modifications to replace the terms "subrecipients," "contract service providers," and "entities" with "Board" and "workforce service providers," as defined in §800.2(3) of this title and §802.2(15) of this chapter, respectively.

§802.83. Risk Assessment

New §802.83, relating to risk assessment, retains the provisions of §800.354 of this title, concurrently proposed for repeal, with modifications to:

--replace the terms "subrecipient" and "contract service provider" with "Boards" and "workforce service providers," as defined in §800.2(3) of this title and §802.2(15) of this chapter, respectively; and

--make minor, nonsubstantive, editorial changes.

§802.84. Monitoring Plan

New §802.84, relating to monitoring plans, retains the provisions of §800.355 of this title, concurrently proposed for repeal, with modifications to:

--replace the terms "subrecipients" and "contract service providers" with "Boards" and "workforce service providers," as defined in §800.2(3) of this title and §802.2(15) of this chapter, respectively;

--remove the requirement for the monitoring plan to include the estimated time budgeted to perform each review. The Agency's Subrecipient Monitoring department has never required this of Boards; therefore, the provision is not included in this chapter; and

--make minor, nonsubstantive, editorial changes.

§802.85. Controls over Monitoring

New §802.85, relating to controls over monitoring, retains the provisions of §800.357 of this title, concurrently proposed for repeal, with modifications to replace the terms "subrecipients" and "contract service providers" with "Boards" and "workforce service providers," as defined in §800.2(3) of this title and §802.2(15) of this chapter, respectively.

§802.86. Reporting and Resolution Requirements

New §802.86, the reporting and resolution requirements for Boards and workforce service providers, retains the provisions of §800.358 of this title, concurrently proposed for repeal, with modifications to:

--replace the terms "subrecipient" and "contract service providers" with "Boards" and "workforce service providers," as defined in §800.2(3) of this title and §802.2(15) of this chapter, respectively;

--replace the term "governing Board" with "Board members" for better clarity;

--remove the requirement that a copy of monitoring reports be provided to the Agency upon request. This provision is no longer required under the Commission's new approval process for monitoring reports; and

--make minor, nonsubstantive, editorial changes.

§802.87. Independent Audit Requirements

New §802.87 requires that Boards, workforce service providers, and Agency grantees shall ensure that an annual audit or program-specific audit is obtained in accordance with the following:

(1) Single Audit Act Amendments of 1996 (Public Law 104-156);

(2) OMB Circular A-133 and Compliance Supplement;

(3) *Government Auditing Standards* (U.S. Government Accountability Office); and

(4) State of Texas Single Audit Circular within the Uniform Grant Management Standards Act (Texas Government Code, Chapter 783).

This new section aligns with current independent audit requirements, and does not retain the provisions of repealed §800.359.

SUBCHAPTER F. PERFORMANCE AND ACCOUNTABILITY

The Commission proposes new Subchapter F, Performance and Accountability, as follows:

New Subchapter F contains performance and accountability provisions of the Integrity of the Texas Workforce System rules, specifically, scope and purpose; performance requirements and expectations; performance review and assistance; and performance improvement actions.

§802.101. Scope and Purpose

New §802.101, relating to the scope and purpose of Subchapter F, retains the provisions of §800.151 of this title, concurrently proposed for repeal, with modifications to:

--replace the term "subrecipients of the Agency" with "workforce service providers," and "Agency grantees" as defined §802.2(15) and §802.2(1) of this chapter, respectively;

--replace the term performance "standards" with "targets" to align with §802.2(13) of this title, concurrently proposed for amendment;

--replace the term "Performance Improvement Plan" with "technical assistance plan." The Commission's intent is to clarify that a technical assistance plan is not punitive; rather it outlines strategies to assist a Board with improving compliance or performance. Thus, the Commission believes this new term better describes the plan; and

--make minor, nonsubstantive, editorial changes.

§802.102. Performance Requirements and Expectations

New §802.102, relating to the Commission's performance requirements and expectations, retains the provisions of §800.81 of this title, concurrently proposed for repeal, with modifications to:

--add the term "Agency grantee" as defined in §802.2(1) of this chapter;

--provide a more comprehensive list of items with which Boards and Agency grantees must comply;

--add that "the Commission may adopt additional performance incentives";

--add that a request for a performance target adjustment must be submitted "in the format prescribed by the Agency"; and

--make minor, nonsubstantive, editorial changes.

§802.103. Performance Review and Assistance

New §802.103, relating to the Commission's role in performance review and assistance, retains the provisions of §800.83(a), (c), and (d) of this title, concurrently proposed for repeal, with modifications to:

--replace the term "Performance Improvement Plan" with "technical assistance plan." The Commission's intent is to clarify that a technical assistance plan is not punitive; rather it outlines strategies to assist a Board with improving compliance or performance. Thus, the Commission believes this new term better describes the plan;

--replace the terms "subrecipients" and "contractors" with "workforce service providers" and "Agency grantees," as defined in §802.2(15) and §802.2(1) of this chapter, respectively; and

--make minor, nonsubstantive, editorial changes.

§802.104. Performance Improvement Actions

New §802.104, relating to performance improvement actions, retains the provisions of §800.83(e) of this title, concurrently proposed for repeal, with modifications to:

--replace the term "Performance Improvement Plan" with "technical assistance plan." The Commission's intent is to clarify that a technical assistance plan is not punitive; rather it outlines strategies to assist a Board with improving compliance or performance. Thus, the Commission believes this new term better describes the plan;

--replace the term "contractor service provider" with "workforce service provider" and "Agency grantee," as defined in §802.2(15) and §802.2(1) of this chapter, respectively; and

--make minor, nonsubstantive, editorial changes.

SUBCHAPTER G. CORRECTIVE ACTIONS

The Commission proposes new Subchapter G, Corrective Actions, as follows:

New Subchapter G contains the corrective actions provisions of the Integrity of the Texas Workforce System rules, specifically, imposition of corrective actions and corrective action plans; intent to sanction; sanctions; penalties for noncompliance with requirements; and sanction determination.

§802.121. Imposition of Corrective Actions and Corrective Action Plans

New §802.121(a), relating to the Agency's ability to impose corrective actions for failure by a Board or Agency grantee to ensure compliance with contracted performance measures; contract provisions; and items listed in §802.102(b) of this chapter, retains the provisions of §800.171(a) of this title, concurrently proposed for repeal, with modifications to:

--add the term "Agency grantee," as defined in §802.2(1) of this chapter; and

--make minor, nonsubstantive, editorial changes.

New §802.121(b) provides that the Agency may impose corrective actions for failure by a Board or Agency grantee to appropriately oversee of the delivery of services and ensure the effective and efficient use of funds. The Commission's intent is to convey a Board's responsibility to actively oversee the management of funds and the appropriate delivery of services to ensure that the needs of the workforce area's citizens are addressed within the resources allocated by the Commission.

New §802.121(c), relating to a Board or Agency grantee's failure to cooperate and comply with the Agency's performance improvement actions, including technical assistance plans, retains the provisions of §800.83(f) of this title, concurrently proposed for repeal, with modifications to replace "Performance Improvement Plan" with "technical assistance plan." The Commission's intent is to clarify that a technical assistance plan is not punitive; rather it outlines strategies to assist a Board with improving compliance or performance. Thus, the Commission believes this new term better describes the plan.

New §802.121(d), setting forth the four, nonsequential, corrective actions the Agency may impose, retains the provisions of §800.172(d) of this title, concurrently proposed for repeal, without modifications to make minor, nonsubstantive, editorial changes.

New §802.121(e), providing that the Agency may impose a higher level of sanction on a Board or Agency grantee, if a sanction is currently imposed when another sanctionable act occurs or is discovered, retains the provisions of §800.171(b) of this title, concurrently proposed for repeal, with modifications to:

--replace the term "subrecipient of the Agency" with "Agency grantee," as defined in §802.2(1) of this chapter; and

--make minor, nonsubstantive, editorial changes.

New §802.121(f), relating to a corrective action plan, retains the provisions of §800.174(b) of this title, concurrently proposed for repeal, with modifications to:

--replace the terms "Board's contractor" and "subrecipient of the Agency" with "Agency grantee," as defined in §802.2(1) of this chapter;

--replace the term "Texas Workforce Center" with "Workforce Solutions Office," as defined in §801.23(4) of this title, concurrently proposed for amendment; and

adds that the Agency may require a Board or Agency grantee be ineligible for additional discretionary or other funds "including incentive awards."

§802.122. Intent to Sanction

New §802.122, relating to the Agency's issuance of an intent to sanction, retains the provisions of §800.161 of this title, concurrently proposed for repeal, with modifications to:

--remove the provision of §800.161(b) that "an Intent to Sanction letter shall not be required prior to the Agency placing a Board in sanction status or assessing a penalty." In accordance with §802.121(d) corrective actions may be imposed in nonsequential order; and

--make minor, nonsubstantive, editorial changes.

§802.123. Sanctions

New §802.123, relating to sanctionable acts for which the Agency may impose a level-one, level-two, or level-three sanction on a Board or Agency grantee, retains the provisions of §800.172 of this title, concurrently proposed for repeal, with modifications to:

--replace the term "Performance Improvement Plan" with "technical assistance plan." The Commission's intent is to clarify that a technical assistance plan is not punitive; rather it outlines strategies to assist a Board with improving compliance or performance. Thus, the Commission believes this new term better describes the plan;

--replace the term "subrecipient of the Agency" with "Agency grantee," as defined in §802.2(1) of this chapter.

--add the phrase "rectifying health and safety may include investigating a complaint, taking appropriate corrective actions, or making referrals to appropriate authorities" to align with subsection (c)(4) of this section; and

--make minor, nonsubstantive, editorial changes.

§802.124. Penalties for Noncompliance with Requirements

New §802.124(a), setting forth that the Agency may impose penalties on a Board or Agency grantee based on the criteria as determined appropriate by the Agency given the totality of the circumstances surrounding the occurrence of the sanctionable act or acts, retains the provisions of §800.174(a) of this title, concurrently proposed for repeal, with modifications to:

--remove the term "corrective actions," which no longer applies to this subsection; and

--replace the term "subrecipient of the Agency" with "Agency grantee," as defined in §802.2(1) of this chapter.

New §802.124(b) provides that the Agency may impose penalties for sanctionable acts listed in this subchapter. Notwithstanding the list of sanctionable acts appearing after each specific level of sanction in §802.123 of this subchapter, the Agency may assign a higher or lower sanction level based on the severity or mitigating circumstances surrounding the sanctionable acts. This new subsection retains the provisions of §800.171(b) and §800.174(d) of this title, concurrently proposed for repeal, with modifications to make minor, nonsubstantive, editorial changes.

New §802.124(c), relating to penalties that the Commission may recommend to TWIC for imposition on Boards, retains the provisions of §800.174(c)(7) - (10) of this title, concurrently proposed for repeal, with modifications to make minor, nonsubstantive, editorial changes.

New §802.124(d), setting forth that more than one corrective action may be imposed in response to one occurrence of a sanctionable act, and that the corrective actions imposed for one or more occurrences may correlate with the sanction level imposed on a Board or Agency grantee, retains the provisions of §800.174(d) of this title, concurrently proposed for repeal, with modifications to replace the term "subrecipient of the Agency" with Agency grantee," as defined in §802.2(1) of this chapter.

New §802.124(e), setting forth that a Board's or Agency grantee's failure to complete the corrective actions described in this subchapter within the specified time limits may result in the Agency imposing penalties under this subchapter and withholding contract payments to the Board or Agency grantee, retains the provisions of §800.175(a)(2) of this title, concurrently proposed for repeal, with modifications to:

--add the term "Agency grantee," as defined in §802.2(1) of this chapter; and

--replace the term "WIA payments" with "contract payments" to clarify that this rule applies to all contract payments.

New §802.124(f), relating to penalties for second-year WIA nonperformance, retains the provisions of §800.175(b) of this title, concurrently proposed for repeal, with modifications to clarify how the Commission intends to measure these criteria.

New §802.124(g), relating to penalties for failures regarding the one-stop service delivery network, retains the provisions of

§800.175(d) of this title, concurrently proposed for repeal, with modifications to:

--remove the term "WIA" to clarify that this rule applies to all administrative expenses;

--add that a Board's "failure to properly certify Workforce Solutions Offices as defined in §801.24 of this title" may result in imposition of penalties and withholding of payment of administrative expenses; and

--make minor, nonsubstantive, editorial changes.

§802.125. Sanction Determination

New §802.125, relating to sanction determination process, retains the provisions of §800.18 of this title, concurrently proposed for repeal, with modifications to:

--add the term "Agency grantee," as defined in §802.2(1) of this chapter;

--replace the term "Texas Council on Workforce and Economic Competitiveness" with "TWIC," as defined in §800.2(19) of this title, concurrently proposed for amendment;

--add "Agency grantees' executive leadership" as a recipient of the sanction determination;

--replace the reference to "facsimile (fax) transmission" with "electronic transmission," a broader term that includes other methods, such as e-mail; and

--make minor, nonsubstantive, editorial changes.

SUBCHAPTER H. REMEDIES

The Commission proposes new Subchapter H, Remedies, as follows:

New Subchapter H contains the remedies provisions of the Integrity of the Texas Workforce System rules, specifically, informal conferences and informal dispositions; appeal; hearing procedures; postponements, continuances, and withdrawals; evidence; hearing officer independence and impartiality; ex parte communications; hearing decision; motion for reopening; motion for rehearing; finality of decision; and repayment.

§802.141. Informal Conferences and Informal Dispositions

New §802.141, defining an informal conference, retains the provisions of §800.176 of this title, concurrently proposed for repeal, with modifications to:

--replace the term "subrecipient of the Agency" with "Agency grantee," as defined in §802.2(1) of this chapter; and

--make minor, nonsubstantive, editorial changes.

§802.142. Appeal

New §802.142, setting forth the procedures under which a Board or Agency grantee may appeal a final determination or sanction determination, retains the provisions of §800.191 of this title, concurrently proposed for repeal, with modifications to:

--add the term "Agency grantee," as defined in §802.2(1) of this chapter;

--add the statement that "Failure by a Board, workforce service provider, or Agency grantee to timely request a hearing waives the right to a hearing"; and

--make minor, nonsubstantive, editorial changes.

§802.143. Hearing Procedures

New §802.143, setting forth the procedures for sanction determination hearings, retains without modification the provisions of §800.192 of this title, concurrently proposed for repeal.

§802.144. Postponements, Continuances, and Withdrawals

New §802.144, setting forth the circumstances under which a sanction determination hearing may be postponed, continued, or withdrawn, retains the provisions of §800.193 of this title, concurrently proposed for repeal, with modifications to add the term "Agency grantee," as defined in §802.2(1) of this chapter.

§802.145. Evidence

New §802.145, relating to evidence generally, exchange of exhibits, stipulations, experts and evaluations, and subpoenas, retains without modification the provisions of §800.194 of this title, concurrently proposed for repeal.

§802.146. Hearing Officer Independence and Impartiality

New §802.146, relating to the independence and impartiality of hearing officers, retains without modification the provisions of §800.195 of this title, concurrently proposed for repeal.

§802.147. Ex Parte Communications

New §802.147, relating to ex parte communications, retains without modification the provisions of §800.196 of this title, concurrently proposed for repeal.

§802.148. Hearing Decision

New §802.148, relating to the procedures for a hearing decision, retains without modification the provisions of §800.197 of this title, concurrently proposed for repeal.

§802.149. Motion for Reopening

New §802.149, relating to a motion for reopening, retains without modification the provisions of §800.198 of this title, concurrently proposed for repeal.

§802.150. Motion for Rehearing

New §802.150, relating to a motion for rehearing, retains the provisions of §800.199 of this title, concurrently proposed for repeal, with modifications to add the term "Agency grantee," as defined in §800.2(1) of this chapter.

§802.151. Finality of Decision

New §802.151, relating to finality of decision, retains without modification the provisions of §800.200 of this title, concurrently proposed for repeal.

§802.152. Repayment

New §802.152, relating to repayment to the Agency by a Board and chief elected officials, or an Agency grantee, retains the provisions of §800.175(e) of this title, concurrently proposed for repeal, with modifications to:

--remove the term "WIA" because this rule applies to repayment of all funds; and

--add that an Agency grantee shall be liable for repayment to the Agency from nonfederal funds for expenditures that are found by the Agency not to have been expended in accordance with §802.102; and

--make minor, nonsubstantive, editorial changes.

SUBCHAPTER I. INCENTIVE AWARDS

The Commission proposes new Subchapter I, Incentive Awards, as follows:

New Subchapter I contains the incentive awards provisions of the Integrity of the Texas Workforce System rules, specifically, scope and purpose; definitions; types of awards; data collection; Board classification; performance awards; WIA local incentive awards; and job placement incentive awards.

§802.161. Scope and Purpose

New §802.161, setting forth the scope and purpose of incentive awards, retains the provisions of §800.101 of this title, concurrently proposed for repeal, with modifications to make minor, nonsubstantive, editorial changes.

§802.162. Definitions

New §802.162, defining "allocation of funds," "classification," "extraordinary circumstances, "local coordination," "regional cooperation," and "workforce development programs," retains the provisions of §800.102 of this title, concurrently proposed for repeal, with modifications to make minor, nonsubstantive, editorial changes.

§802.163. Types of Awards

New §802.163, defining the two types of incentive awards--nonmonetary and monetary--retains the provisions of §800.103 of this title, concurrently proposed for repeal, with modifications to:

--remove the term "Best Overall" to align with §802.166, which refers only to "performance awards";

--make minor, nonsubstantive, editorial changes.

§802.164. Data Collection

New §802.164, relating to the collection of data, retains without modification the provisions of §800.104 of this title, concurrently proposed for repeal.

§802.165. Board Classification

New §802.165, relating to Board classification, retains the provisions of §800.105 of this title, concurrently proposed for repeal, with modifications to make minor, nonsubstantive, editorial changes.

§802.166. Performance Awards

New §802.166, governing the Commission's performance awards, retains the provisions of §800.106 of this title, concurrently proposed for repeal, with modifications to:

--remove the phrase "other than in the first year of the implementation of this rule" from subsection (d)(1) of this section. Under Chapter 800, this rule became effective September 29, 2003; therefore, this statement no longer applies;

--add "a listing of awards" as an additional item that may be included in the notice; and

--make minor, nonsubstantive, editorial changes.

§802.167. Workforce Investment Act Local Incentive Awards

New §802.167, relating to the WIA Local Incentive Awards, retains the provisions of §800.107 of this title, concurrently proposed for repeal, with modifications to:

--add that the "Commission may modify the assignment of awards based on factors that the Commission identifies as extraordinary circumstances"; and

--make minor, nonsubstantive, editorial changes.

§802.168. Job Placement Incentive Awards

New §802.168, relating to the job placement incentive awards, retains the provisions of §800.108 of this title, concurrently proposed for repeal, with modifications to:

--replace the term Choices "individual" with "eligible," as defined in §811.2 of this title;

--replace the term "contractors" with "workforce service providers," as defined in §802.2(15) of this chapter;

--add that the "Commission may modify the assignment of awards based on factors that the Commission identifies as extraordinary circumstances"; and

--make minor, nonsubstantive, editorial changes.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses.

The reasoning for these conclusions is as follows:

--In proposing a new Chapter 802, relating to integrity of the Texas workforce system, these proposed rules consist largely of Agency rules dealing with contracting, Board restrictions, Agency monitoring, Board and workforce service provider monitoring, performance and accountability, corrective actions, remedies, and incentive awards proposed to be moved from Chapters 800 and 801 and then consolidated in this new chapter, with appropriate language modification and updating, and accompanying the concurrent repeal of those provisions in their original locations.

--These proposed rules provide a more logical and orderly location; however, they do not include significant substantive changes.

Rich Froeschle, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Laurence M. Jones, Director, Workforce Development Division, has 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 proposed rules will be to provide a centralized location for Commission rules regarding the integrity of the Texas workforce system.

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

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas's 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on April 27, 2010. The Commission also conducted a conference call with Board executive directors and Board staff on April 30, 2010, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER A. PURPOSE AND GENERAL PROVISIONS

40 TAC §802.1, §802.2

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§802.1. Purpose and General Provisions.

(a) The purpose of the rules contained in this subchapter is to implement Texas Government Code, §2308.264 and §2308.267, including provisions relating to directly delivering services, Local Workforce Development Board (Board) contracting guidelines, and other conflict of interest provisions.

(b) It is the intent of the Commission that these rules strengthen the confidence of the public in the Texas workforce system.

(c) A Board may set local policies that are more restrictive than those set forth in this subchapter.

(d) A Board shall develop the policies and procedures required by this subchapter.

(e) A Board member with an existing contract for workforce services shall comply with this subchapter no later than the earliest of the following:

(1) the expiration of the contract;

(2) the contract renewal date; or

(3) the expiration of the Board member's term or the Board member's resignation.

(f) Pursuant to Texas Government Code, Chapter 551 (Open Meetings Act), a Board shall:

(1) post appropriate notice;

(2) ensure that all public business or public policy over which the Board has supervision or control is discussed, considered, or acted upon during a properly posted and convened open meeting; and

(3) prepare and retain minutes or tape recordings of each open meeting of the Board. The minutes shall:

(A) state the subject of each deliberation; and

(B) indicate each vote, order, decision, or other action taken.

§802.2. Definitions.

In addition to the definitions contained in §800.2 and §801.23 of this title, the following words or terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency grantees--Grantees that receive funding from the Agency, such as Skills Development Fund, Wagner-Peyser 7(b), and Workforce Investment Act (WIA) statewide, to provide workforce services.

(2) Appearance of a conflict of interest--A circumstance in which the action of a Board member, Board employee, workforce service provider, or workforce service provider employee in a decision-making position appears to be:

(A) influenced by considerations of one or more of the following: gain to the person, entity, or organization for which the person has an employment interest, substantial financial interest, or other interest, whether direct or indirect (other than those consistent with the terms of the contract); or

(B) motivated by design to gain improper influence over the Commission, the Agency, or the Board.

(3) Board decision-making position--A position with a Board that has final decision-making authority or final recommendation authority on matters that directly affect workforce service providers. A Board decision-making position is one that performs the function of a Board's executive director, deputy executive director, chief financial officer, lead contract manager, or lead contract monitor.

(4) Conflict of interest--A circumstance in which a Board member, Board employee, workforce service provider, or workforce service provider's employee is in a decision-making position and has a direct or indirect interest, particularly a substantial financial interest, that influences the individual's ability to perform job duties and fulfill responsibilities.

(5) Corrective Action Plan--A plan developed and imposed by the Agency that requires a Board or Agency grantee to take Agency-identified actions within a specified time frame designed to correct specific instances of noncompliance or other failures.

(6) Hearing--An informal, orderly, and readily available proceeding held before an impartial hearing officer at which a party or hearing representative may present evidence to show that the Agency's determination of sanctions shall be reversed, affirmed, or modified.

(7) Hearing officer--An Agency employee designated to conduct hearings and issue proposals for decision.

(8) Hearing representative--Any individual authorized by a party to assist the party in presenting the party's appeal. A hearing representative may be legal counsel or another individual. Each party may have a hearing representative to assist in presenting the party's appeal.

(9) Level-one sanction--A sanction imposed by the Agency on a Board or Agency grantee for significant inability or failure to perform as required by the Agency, including performing or failing to perform due to a sanctionable act as described in this subchapter. A level-one sanction may be associated with the imposition of one or more penalties as referenced in this chapter.

(10) Level-two sanction--A higher sanction than level one imposed by the Agency on a Board or Agency grantee for severe inability or failure to perform as required by the Agency, including performing or failing to perform due to a sanctionable act as described in this chapter. A level-two sanction may be associated with the imposition of more severe penalties than those imposed on a Board or Agency grantee under a level-one sanction.

(11) Level-three sanction--The highest sanction level imposed by the Agency on a Board or Agency grantee for extreme inability or failure to perform as required by the Agency, including performing or failing to perform due to a sanctionable act as described in this chapter. A level-three sanction may be associated with the imposition of the most severe penalties imposed on the Board or Agency grantee.

(12) Particular matter--A specific investigation, application, request for a ruling or determination, rulemaking proceeding, administrative proceeding, contract, claim, or judicial proceeding, or any other proceeding as defined in Texas Government Code §572.054(h)(2).

(13) Party--The person or entity with the right to participate in a hearing authorized by applicable statute or rule.

(14) Substantial financial interest--An interest in a business entity in which a person:

(A) owns 10 percent or more of the stock, shares, fair market value, or other interest in the business entity;

(B) owns more than $5,000 of the fair market value of the business entity;

(C) owns real property if the interest is an equitable or legal ownership with a fair market value of $2,500 or more used for the business entity;

(D) receives funds from the business entity that exceed 10 percent of the person's gross income for the previous year;

(E) is a compensated member of the board of directors or other governing board of the business entity;

(F) serves as an elected officer of the business entity; or

(G) is related to a person in the first degree by consanguinity or affinity, as determined under Texas Government Code, Chapter 573, who has a substantial financial interest in the business entity, as listed in subparagraphs (A) through (F) of this section. First degree of consanguinity or affinity means the person's parent, child, adopted child, or spouse.

(15) Workforce service provider--An entity or individual under contract with a Board to operate:

(A) one or more Workforce Solutions Offices; or

(B) one or more programs (e.g., child care) or components of one or more programs (e.g., issuing checks for youth participating in summer employment or performing child care billing).

(16) Workforce service provider employee in a decision-making position--A position with a workforce service provider that includes the ability to commit or bind the provider to a particular course of action with respect to carrying out the provider's duties and activities under the contract.

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

Filed with the Office of the Secretary of State on November 9, 2010.

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Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
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For further information, please call: (512) 475-0829

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SUBCHAPTER B. CONTRACTING

40 TAC §802.21

The new rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§802.21. Board Contracting Guidelines.

(a) Fiscal Integrity Provisions.

(1) A Board shall develop fiscal integrity evaluation indicators designed to appraise the fiscal integrity of its workforce service providers.

(2) A Board shall assess its workforce service providers to ensure the providers meet the requirements of the Board's fiscal integrity evaluation based on the following schedule:

(A) contracts under $100,000--the fiscal indicators must be verified prior to the award of the contract and at each renewal of the contract;

(B) contracts between $100,000 and $500,000--the fiscal indicators must be verified prior to the award of the contract, at each renewal of the contract, and not less than biennially; and

(C) contracts over $500,000--the fiscal indicators must be verified prior to the award of the contract, at each renewal of the contract, and not less than once annually.

(3) The fiscal integrity evaluation shall include the following provisions for ensuring that workforce service providers are meeting performance measures in compliance with requirements contained in:

(A) federal and state statutes and regulations and directives of the Commission or Agency;

(B) Office of Management and Budget (OMB) circulars applicable to the entity, such as OMB Circulars A-21, A-87, or A-122, and the Office of the Governor's Uniform Grant Management Standards; and

(C) any other safeguards a Board has identified that are designed to ensure the proper and effective use of funds placed under the control of its workforce service providers.

(4) The fiscal integrity evaluation shall also include the review and consideration of the prospective or renewing workforce service provider's prior three-year financial history before the Board awards or renews a workforce service contract. The review shall include any adverse judgments or findings, such as administrative audit findings; Commission, Agency, or Board monitor findings; or sanctions by a Board or court of law.

(5) The fiscal integrity evaluation may include provisions such as accounting for program income in accordance with federal regulations, resolving questioned costs and the repayment of disallowed costs in a timely manner, and safeguarding fixed assets, as well as those referenced in the Agency's Financial Manual for Grants and Contracts.

(b) Bonding, Insurance, and Other Methods of Securing Funds to Cover Losses.

(1) A Board shall ensure that at least 10 percent of the funds subject to the control of the workforce service providers is protected through bonds, insurance, escrow accounts, cash on deposit, or other methods to secure the funds consistent with this subchapter. A Board and its workforce service providers may, consistent with this section, use any method or combination of methods to meet this requirement. At the Board's discretion, the Board may pay for the bonding, insurance, or other protection methods or require its workforce service providers, to the extent allowable under state and federal law, to pay for such protection.

(2) In conducting the fiscal integrity evaluation required in this section, a Board may determine that more than 10 percent of the funds subject to the control of its workforce service providers shall be secured through bonds, insurance, escrow accounts, or other methods consistent with this subchapter.

(3) Escrow of funds may also be used to satisfy the requirements of this subsection provided that:

(A) the funds placed in escrow require the signature of persons other than the persons with signatory authority for the Board's workforce service providers;

(B) the funds do not lapse due to requirements for timely expenditure of funds; and

(C) this provision does not conflict with any provision in contract, rule, or statute for the timely expenditure of funds.

(4) If a bond is used, a Board shall ensure that the bond is executed by a corporate surety or sureties holding certificates of authority, authorized to do business in the state of Texas.

(5) A Board shall ensure, based on the schedule referenced in subsection (a)(2) of this section, that each of its workforce service providers is required to verify that:

(A) the insurance or bond policy is valid, premiums are paid to date, the company is authorized to provide the bonding or insurance, and the company is not in receivership, bankruptcy, or some other status that would jeopardize the ability to draw upon the policy;

(B) the escrow account balances are at an appropriate level;

(C) the method of securing the funds has not been withdrawn, drawn upon, obligated for another purpose, or is no longer valid for use as the method of security; and

(D) other such protections as are applicable and relied upon by the Board are verified as in force.

(6) A Board shall ensure that the workforce service providers are required to disclose any changes in and circumstances regarding the method of securing or protecting the funds under the workforce service providers' control.

(c) Standards of Conduct. A Board shall ensure that the workforce service providers:

(1) comply with federal and state statutes and regulations regarding standards of conduct and conflict of interest provisions including, but not limited to, the following:

(A) 29 C.F.R. §97.36(b)(3), which includes requirements from the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(B) professional licensing requirements, when applicable; and

(C) applicable OMB circular requirements and the Office of the Governor's Uniform Grant Management Standards.

(2) avoid any conflict of interest or any appearance of a conflict of interest; and

(3) refrain from using nonpublic information gained through a relationship with the Commission, an Agency employee, a Board, or a Board employee, to seek or obtain financial gains that would be a conflict of interest or the appearance of a conflict of interest.

(d) Disclosures. A Board shall require its workforce service providers to disclose the following:

(1) Matters Subject to Disclosure. A Board shall ensure that its workforce service providers promptly disclose in writing the following:

(A) A substantial financial interest that the workforce service provider, or any of its workforce service provider employees in decision-making positions, have in a business entity that is a party to any business transaction with a Board member or Board employee who is in a Board decision-making position;

(B) A gift greater than $50 in value given to a Board member or Board employee by a workforce service provider or its employees; and

(C) the existence of any conflict of interest and any appearance of a conflict of interest, or the lack thereof.

(2) Content of Disclosure. A Board shall ensure that its workforce service providers' written disclosures contain the following:

(A) information describing the conflict of interest; and

(B) information describing the appearance of a conflict of interest, and actions the workforce service provider and its employees will take in order to prevent any conflict of interest from occurring.

(3) Frequency of Disclosure. A Board shall ensure that its workforce service providers disclose:

(A) at least annually, and as frequently as necessary, any conflict of interest and any appearance of a conflict of interest;

(B) within 10 days of giving a gift greater than $50 in value as referenced in this section; and

(C) at least annually that no conflict of interest and no appearance of a conflict of interest exists.

(4) Matters Not Subject to Disclosure. This provision does not apply to:

(A) a financial transaction performed in the course of a contract with the Board; or

(B) a transaction or benefit that is made available to the general public under the same terms and conditions.

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

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SUBCHAPTER C. LOCAL WORKFORCE DEVELOPMENT BOARD RESTRICTIONS

40 TAC §§802.41 - 802.44

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§802.41. Board Member Conflicts of Interest.

(a) Pursuant to WIA §117(g) (29 U.S.C.A. §2832(g)), this section sets forth the state's Board conflict of interest requirements for disclosure and declaration of a conflict of interest by a Board member.

(b) A Board member may not vote on any matter that would provide direct financial benefit to the member or the member's immediate family, or on matters of the provision of services by the member or the entity the member represents. No Board member may participate in a decision in which the member has a direct or indirect interest, particularly a financial interest, which is in substantial conflict with the discharge of the duties of the Board.

(c) A Board member shall avoid even the appearance of a conflict of interest. Prior to taking office, Board members must provide to the Board Chair a written declaration of all substantial business interests or relationships they, or their immediate families, have with all businesses or organizations that have received, currently receive, or are likely to receive contracts or funding from the Board. Such declarations shall be updated within 30 days to reflect any changes in such business interests or relationships. The Board shall appoint an individual to timely review the disclosure information and advise the Board Chair and appropriate members of potential conflicts.

(d) Prior to a discussion, vote, or decision on any matter before a Board, if a member, or a person in the immediate family of such member, has a substantial interest in or relationship to a business entity, organization, or property that would be pecuniarily affected by any official Board action, that member shall disclose the nature and extent of the interest or relationship and shall abstain from voting on or in any other way participating in the decision on the matter. All such abstentions shall be recorded in the minutes of the Board meeting.

(e) Each Board must include in its organizational plan or bylaws, or in a separate code of conduct, provisions for penalties, sanctions, or other disciplinary actions for any direct violations of the Board conflict of interest policy. The following definitions must be incorporated into those provisions.

(1) Immediate family--Any person related within the first degree of affinity (marriage) or consanguinity (blood) to the person involved.

(2) Substantial interest--A person has a substantial interest:

(A) in a business entity if:

(i) the person owns 10 percent or more of the voting stock or shares of the business, owns 10 percent or more, or owns $5,000 or more, of the fair market value of a business; or

(ii) funds received by the person from the business exceed 10 percent of the person's gross income for the previous year;

(B) in real property if the interest is an equitable or legal ownership with a fair market value of $2,500 or more; or

(C) if the Board member is related to a person in the first degree of affinity or consanguinity who has a substantial interest as defined in subparagraph (A) or (B) of this paragraph.

§802.42. Employment of Former Board Employees by Workforce Service Providers.

(a) Post-Employment Restriction. In order to avoid a conflict of interest, a Board shall ensure that the Board's workforce service providers shall not employ or otherwise compensate a former Board employee who:

(1) was in a Board decision-making position as defined in §802.2 of this chapter; and

(2) was employed or compensated by the Board anytime during the previous 12 months.

(b) Exceptions. Where there is no actual conflict of interest, but there is an appearance of such a conflict, a Board in an open meeting may provide for an exception to the period described in subsection (a) of this section by a vote of two-thirds of the membership present. In making such a determination, the Board shall assess all relevant factors, including, but not limited to, whether there is a critical need for the skills involved, the relative cost and availability of alternatives, and the need to protect the integrity and stability of the Texas workforce system. In such an instance, the Board shall impose whatever terms and conditions it deems necessary to mitigate the appearance of a conflict of interest.

(c) Corrective Actions. A Board shall ensure that its contracts with workforce service providers require compliance with this section and provide effective enforcement mechanisms allowing it to impose corrective actions, up to and including contract termination, for violation of this section.

(d) Particular Matter. A Board shall ensure that its workforce service providers shall not employ or otherwise compensate a former Board employee to work on a particular matter that the employee worked on for the Board, as defined in §802.2 of this chapter. Nothing in this section shall prohibit a Board's workforce service provider from employing or otherwise compensating a former employee of the

Board who worked on a particular matter for the Board as long as the former Board employee never works on that same particular matter once employed or otherwise compensated by the Board's workforce service provider.

§802.43. Prohibition against Directly Delivering Services.

(a) A Board shall ensure, through the oversight and management of Board policies, that it does not directly deliver or determine eligibility for workforce services in its local workforce development area (workforce area) or contract with the following persons or entities to deliver or determine eligibility for workforce services:

(1) A Board member;

(2) A business, organization, or institution that a Board member represents on the Board;

(3) A Board member's business, organization, or institution in which a Board member has a substantial financial interest; or

(4) A Board employee.

(b) The prohibitions in this section do not apply to public education agencies, such as community colleges and independent school districts, that have Board members who fulfill the requirements set forth in Texas Government Code §2308.256(a)(3)(A).

(c) A Board may grant a one-year exception to the prohibitions described in subsection (a) of this section for a community-based organization that fulfills the requirements set forth in Texas Government Code §2308.256(a)(2). The exception can be granted only by a two-thirds vote of the members present in an open meeting and cannot be granted for contracts for the operation of Workforce Solutions Offices.

(d) A Board shall ensure that the Board, its members, or its employees do not directly control the daily activities of its workforce service providers. The Agency shall review a Board's compliance through an examination of the Board's exercise of direction and control over its workforce service providers. The Agency may use the factors for testing the employment status as set out in §821.5 of this title.

(e) Nothing in this section restricts a Board member or a Board member's organization from receiving Texas workforce system services and thereby being a customer of a Board's workforce service providers' services.

§802.44. Service Delivery Waiver Requests.

(a) Purpose of Rule. Texas Government Code §2308.264, §2308.267, and §2308.312 set forth prohibitions regarding service delivery, Board staffing, and developmental services. Only under circumstances that fit the criteria specified in those statutes will requests for waivers be granted.

(b) Boards may submit a waiver request of the following provisions:

(1) Independent Service Delivery. A Board is prohibited from directly providing workforce training and services, including operational functions normally associated with such services such as intake, eligibility determination, assessment, and referral, unless a waiver is obtained.

(2) Separate Staffing. Board staff shall be employed separately and independently of any person who provides workforce training and services, as described in paragraph (1) of this subsection, unless the Board arranges for independent evaluation of any other workforce services provided by the staffing organization and obtains a waiver.

(3) Developmental Services. A person who provides one-stop services at a Workforce Solutions Office shall not also provide developmental services unless a waiver is obtained.

(c) Requesting a Waiver.

(1) Waiver requests shall be submitted to the Commission and contain detailed justification as specified in the respective statutes. The Commission shall review and forward a recommendation to the Texas Workforce Investment Council (TWIC) for consideration. TWIC will forward its recommendation to the Governor for approval.

(2) In recommending action on such requests, the Commission shall apply only the criteria specified in the respective statutes.

(d) Duration of Waiver.

(1) A waiver may be granted for a period less than, but not to exceed, the effective term of an approved plan and budget.

(2) A waiver may be conditioned upon the Board's completion of steps taken to eliminate the need for a waiver.

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

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SUBCHAPTER D. AGENCY MONITORING ACTIVITIES

40 TAC §§802.61 - 802.67

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§802.61. Purpose.

(a) The purpose of this subchapter is to set forth the Agency's monitoring provisions and respective responsibilities of Boards, workforce service providers, and Agency grantees.

(b) The rules contained in this subchapter apply in addition to any program-specific rules to all programs administered by the Agency, except that to the extent of any conflict, the program-specific rules will govern.

§802.62. Program and Fiscal Monitoring.

(a) Boards, workforce service providers, and Agency grantees shall cooperate with the Agency's program and fiscal monitoring activities, site visits, reviews of documentation, and requests for information. The Agency is committed to ensuring the accountability of Boards, workforce service providers, and Agency grantees. Therefore, monitoring activities have been developed to:

(1) ensure programs achieve intended results;

(2) ensure resources are efficiently and effectively used for authorized purposes and are protected from waste, fraud, and abuse; and

(3) ensure reliable and timely information is captured and reported to serve as the basis to improve decision-making.

(b) The Agency shall conduct comprehensive monitoring activities to assess the following for Boards, workforce service providers, and Agency grantees:

(1) Progress in achieving program goals and maintaining fiscal accountability. Program and fiscal monitoring activities include site visits, desk reviews, and analyses of both financial and program outcomes to help identify potential weaknesses before such weaknesses result in substandard performance or questioned costs;

(2) Compliance with applicable laws, regulations, provisions of contracts and Board plans, and official directives and circulars including, but not limited to, U.S. Department of Labor (DOL) Training and Employment Guidance Letters, DOL Training and Employment Notices, U.S. Department of Health and Human Services guidance letters, Commission rules contained in Part 20 of this title (relating to the Texas Workforce Commission), Texas Workforce Commission Workforce Development (WD) Letters, the Agency's Financial Manual for Grants and Contracts, and other Agency guidance; and

(3) Compliance with the appropriate uniform administrative requirements for grants and agreements applicable to the type of entity receiving funds, as promulgated in the OMB circulars or rules. Monitoring activities shall encompass both financial and programmatic monitoring and shall be evaluated on a periodic basis. Monitoring reviews result in recommendations that provide practical solutions used to take immediate corrective action.

(c) Boards, workforce service providers, and Agency grantees are subject to audit and review by the Agency. The Agency may audit and review all relevant records or a sample of the records as needed to determine Board, workforce service provider, and Agency grantee performance.

(d) Failure to comply with this subchapter shall result in corrective action and possible sanctions pursuant to Subchapter G of this chapter (relating to Corrective Actions).

§802.63. Program Monitoring Activities.

The Agency shall conduct program monitoring activities to ensure that programs achieve intended results. Processes and procedures used to determine Board, workforce service provider, and Agency grantee performance may include review and evaluation of one or more of the following:

(1) Program results or outcomes

(2) Performance measures

(3) Reporting accuracy

(4) Record keeping and file maintenance

(5) Monitoring functions

(6) Self-monitoring activities

(7) Service delivery

(8) Automated systems and reporting

(9) Human resources

(10) Policies and procedures

§802.64. Fiscal Monitoring Activities.

(a) The Agency shall conduct fiscal monitoring activities to ensure that resources are efficiently and effectively used for authorized purposes and are protected from waste, fraud, and abuse. Processes and procedures used to determine Board, workforce service provider, and Agency grantee performance may include the review and evaluation of one or more of the following:

(1) Accounting and reporting systems

(2) Budget methodologies

(3) Cash management practices

(4) Cost allocation plans and processes

(5) Cash disbursement compliance and documentation

(6) Program income identification and reporting

(7) Insurance coverage and risk exposure

(8) Oversight and monitoring functions

(9) Payroll administration

(10) Purchasing and procurement processes and procedures

(11) Property accountability and safeguarding

(b) Processes and procedures used to determine Board, workforce service provider, and Agency grantee performance shall include a review, evaluation, and determination regarding compliance with the appropriate uniform administrative requirements for grants and agreements as well as the appropriate cost principles applicable for the type of entity receiving funds as listed in OMB circulars or rules.

(c) Processes and procedures used to determine Board, workforce service provider, and Agency grantee performance shall include a review, evaluation, and determination regarding compliance with the applicable requirements regarding cost categories and cost limitations.

§802.65. Agency Monitoring Reports and Resolution.

(a) Monitoring Reports. The Agency's monitoring department shall issue the following monitoring reports summarizing the results of monitoring activities. The reports may include the observations, findings, and recommendations of the monitoring team and Board, workforce service provider, or Agency grantee responses to the observations, findings, and recommendations.

(1) Management Letter. If there are no findings (i.e., administrative findings and/or questioned costs), a management letter is issued.

(2) Draft Monitoring Report. If there are findings, a draft monitoring report is issued, which sets forth a specified period in which to respond.

(3) Final Monitoring Report. A final monitoring report is issued, which may include responses to the findings and recommendations.

(b) Initial Resolution. Based on the final monitoring report, the Agency's audit resolution department shall issue an initial resolution, which notifies a Board, workforce service provider, or Agency grantee of administrative findings and questioned costs and a specific time period for response.

(1) Administrative Findings.

(A) If the administrative findings set forth in the initial resolution are resolved, a closure letter is issued.

(B) If the administrative findings set forth in the initial resolution are not resolved, the findings remain open until the following year's audit to ensure follow-up.

(2) Questioned Costs.

(A) If the questioned costs set forth in the initial resolution are resolved, a closure letter is issued.

(B) If the questioned costs set forth in the initial resolution are not resolved, an initial determination is issued.

(c) Initial Determination. The Agency's audit resolution department shall issue an initial determination notifying a Board, workforce service provider, or Agency grantee of the following:

(1) The unresolved questioned costs; and

(2) The 60-day period, from issuance of the initial determination, to submit a response, including providing evidence or documentation of the appropriate actions taken.

(d) Final Determination. If the questioned costs remain unresolved at the end of the 60-day period, the Agency's audit resolution department shall issue a final determination to notify a Board, workforce service provider, or Agency grantee of allowed or disallowed costs and to establish debts.

(e) If the administrative findings or questioned costs remain unresolved, the Agency's Regulatory Integrity Division may request a sanction, as set forth in §802.125 of this chapter (relating to Sanction Determination).

(f) Appeal Process

(1) Only final determinations regarding questioned costs issued by the Agency may be appealed, pursuant to §802.142 of this chapter (relating to Appeal).

(2) Failure by a Board, workforce service provider, or Agency grantee to timely request a hearing waives the right to a hearing. The final determination shall constitute final Agency action and is not subject to further review.

(3) If an appeal is requested and approved, a hearing officer is designated and the collection of debt is pending until final decision of the hearing.

§802.66. Access to Records.

(a) Right of Access

(1) Agency. All books, documents, papers, computer records, or other records prepared by Boards, workforce service providers, or Agency grantees that are pertinent to the use of any funds administered by the Agency are Agency property. Boards, workforce service providers, or Agency grantees in possession of such records shall be responsible for their secure and proper maintenance. The Agency or its authorized representatives have the right of timely and unrestricted access to any such records in order to conduct monitoring, audits, and examinations, and to make excerpts, transcripts, and photocopies of such documents.

(2) Board or Agency grantee. A Board or its authorized representatives, and an Agency grantee or its executive leadership, have the right of timely and unrestricted access to any books, documents, papers, computer records, or other records of workforce service providers that are pertinent to the use of any funds administered by the Agency, in order to conduct monitoring, audits, and examinations; and to make excerpts, transcripts, and photocopies of such documents.

(b) The right of access also includes timely and unrestricted access to Board, workforce service provider, and Agency grantee personnel for the purpose of interviews and discussions related to such documents.

(c) The right of access is not limited to any required record retention period but shall last as long as the records are retained.

(d) When a Board's relationship with the workforce service provider is terminated, the Board's responsibility for maintenance and retention of records as well as the Agency's right to access does not end.

(e) Custody of Records.

(1) The Agency or the Board may request custody of records if either determines that:

(A) the records possess long-term retention value; or

(B) the workforce service provider is unable or unwilling to physically retain them.

(2) The Agency may request custody of records from an Agency grantee if the Agency determines that:

(A) the records possess long-term retention value; or

(B) the Agency grantee is unable or unwilling to physically retain them.

(f) To comply with single audit requirements:

(1) the workforce service provider shall retain the right of access to records in the custody of the Agency or the Board; and

(2) the Agency grantee shall retain the right of access to records in the custody of the Agency.

§802.67. Commission Evaluation of Board Oversight Capacity.

(a) This section outlines the process and criteria used by the Commission to evaluate Board capacity to oversee and manage local funds and the delivery of local workforce services.

(b) The Commission shall use oversight methods outlined in this chapter and elsewhere in statute and rules to evaluate each Board's performance and compliance with applicable laws, regulations, provisions of contracts and Board plans, and official directives and circulars including, but not limited to, DOL Training and Employment Guidance Letters, DOL Training and Employment Notices, U.S. Department of Health and Human Services guidance letters, Commission rules contained in Part 20 of this title, Texas Workforce Commission WD Letters, the Agency's Financial Manual for Grants and Contracts, and other Agency guidance. In particular, the Commission shall evaluate and make findings as appropriate relating to Board fulfillment of responsibilities relating to:

(1) developing, maintaining, and upgrading comprehensive fiscal management and accountability systems;

(2) hiring, training, and retaining qualified staff to carry out the Board's oversight activities;

(3) selecting and overseeing workforce service providers to improve delivery of workforce services;

(4) overseeing and improving operation of Workforce Solutions Offices in the workforce area served by the Board;

(5) managing workforce service providers' performance across multiple Board programs and achieving required performance targets; and

(6) identifying and resolving long-standing oversight problems of the Board and performance problems of workforce service providers.

(c) The Commission shall rate each Board's capacity as "above standards," "within standards," or "below standards." The following criteria shall be used to set the rating.

(1) A Board will be rated as above standards if:

(A) the Board meets its targets as defined in §800.2(13) of this title on 90 percent of its measures; and

(B) the Board does not miss the target on any single measure by more than 10 percent of target;

(C) there are no disallowed costs since the prior evaluation; and

(D) there are no repeat findings.

(2) A Board will be rated as within standards if:

(A) the Board meets its targets as defined in §800.2(13) of this title on 80 percent of its measures; and

(B) the Board does not miss the target on any single measure by more than 15 percent of target;

(C) disallowed costs do not exceed 1 percent of allocation; and

(D) there are no repeat findings.

(3) A Board will be rated as below standards if the Board is:

(A) found to not be above or within standards or if there are significant findings; or

(B) under a level-one, -two, or -three sanction as defined in §802.123 of this chapter.

(4) For the purpose of calculating "disallowed costs" as used in this section, do not include such costs that meet the following three criteria: discovered, quantified, and self-reported to the Commission by a Board unless the Commission finds the disallowed costs were the result of gross mismanagement or other significant violation of Board responsibilities;

(5) Notwithstanding any other provision of this section:

(A) The Commission may consider any extraordinary situation related to any of the factors identified in subsection (b) of this section.

(B) The Commission may exclude from consideration under this section performance on measures:

(i) related to new Board responsibilities; or

(ii) for which the Commission finds good cause exists for failure to meet the target.

(d) At least annually, the Commission shall post the results of its evaluation of each Board and each Board's performance on its Web site with explanation of the rating, rating criteria, and performance measures in a format that is readily accessible to and understandable by a member of the public.

(1) The explanation shall include specifically how each of the criteria were applied for each Board and how that affected the overall rating.

(2) Evaluations shall be performed using information at the Commission's disposal at the time of the evaluation. If no updated information is available, the Commission is not obligated to schedule a review or visit to confirm or obtain new information.

(3) The Commission may update the Board ratings when new information becomes available but does not intend to update them more often than quarterly.

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

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SUBCHAPTER E. BOARD AND WORKFORCE SERVICE PROVIDER MONITORING ACTIVITIES

40 TAC §§802.81 - 802.87

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§802.81. Scope and Purpose.

(a) The purpose of this subchapter is to set forth the provisions governing the monitoring responsibilities of Boards and workforce service providers.

(b) The rules contained in this subchapter apply in addition to any program-specific rules to all programs administered by the Agency, except that to the extent of any conflict, the program-specific rule will govern.

§802.82. Board and Workforce Service Provider Monitoring.

(a) Boards and workforce service providers shall ensure that regular oversight of their own activities and regular monitoring of the activities of their workforce service providers that receive public funds administered by the Agency, are conducted and completed. Monitoring shall include monitoring of both the fiscal and program performance of the workforce service providers administering and delivering services. These monitoring activities shall be designed to ensure programs achieve intended results and resources are efficiently and effectively used for authorized purposes and are protected from waste, fraud, and abuse. Monitoring activities shall be planned to focus on areas of highest risk to help ensure the most effective use of monitoring resources.

(b) Monitoring activities shall assess a workforce service provider's compliance with applicable laws, regulations, provisions of contracts and Board plans, and official directives and circulars including, but not limited to, DOL Training and Employment Guidance Letters, DOL Training and Employment Notices, U.S. Department of Health and Human Services guidance letters, Commission rules contained in Part 20 of this title, Texas Workforce Commission WD Letters, the Agency's Financial Manual for Grants and Contracts, and

other Agency guidance. The Board shall assess the workforce service provider's compliance with the appropriate uniform administrative requirements for grants and agreements applicable to the type of entity receiving funds, as promulgated in OMB circulars or rules. These activities shall encompass both financial and programmatic monitoring and shall be evaluated on a periodic basis. Each Board and workforce service provider shall conduct regular oversight and monitoring of its workforce service providers in order to:

(1) determine that expenditures have been charged to the cost categories and within the cost limitations specified in the applicable laws and regulations;

(2) determine whether or not there is compliance with other provisions of applicable laws and regulations; and

(3) provide technical assistance as necessary and appropriate.

(c) The monitoring function shall include the development and implementation of:

(1) a risk assessment tool;

(2) a monitoring plan;

(3) a monitoring program, including established policies and procedures; and

(4) reporting and resolution processes.

(d) The Board and workforce service provider shall develop and implement written policies and procedures that describe and support the monitoring process.

§802.83. Risk Assessment.

(a) Boards and workforce service providers shall include the use of a risk assessment tool in their monitoring functions.

(b) The risk assessment tool shall identify high-risk workforce service providers and high areas of risk within an individual workforce service provider's operation. The entity responsible for including the risk assessment tool in their monitoring functions shall be responsible for determining what constitutes high risk or an area of high risk.

(c) Boards and workforce service providers shall establish monitoring schedules and monitoring programs that best use monitoring resources. Boards and workforce service providers shall quantify, as much as possible, and document areas of risk identified for assessment.

§802.84. Monitoring Plan.

(a) Boards and workforce service providers shall develop their own local-level monitoring plan based on the results of the risk assessment. This monitoring plan shall incorporate the following:

(1) a schedule or timetable for monitoring Agency-funded activities; and

(2) identification of the type of review planned, such as on-site review, comparative financial analysis, desk review, staff analysis, or other type of appropriate review.

(b) Boards and workforce service providers may perform monitoring reviews either formally or informally, but shall incorporate the risk assessment results in scheduling decisions.

§802.85. Controls over Monitoring.

To ensure comprehensive and effective monitoring, Boards and workforce service providers shall:

(1) require periodic reports from their workforce service providers outlining monitoring reviews, noncompliance issues, and the status of corrective actions;

(2) ensure that a briefing regarding monitoring activities and findings is provided to the Board or appropriate Board subcommittee at regularly scheduled meetings;

(3) require an annual evaluation of the monitoring function to determine its effectiveness, by a person or entity independent of the monitoring function; and

(4) develop a written monitoring procedure to be used in monitoring both program and fiscal operations.

§802.86. Reporting and Resolution Requirements.

(a) Boards and workforce service providers shall ensure that monitoring reports identify instances of noncompliance with federal and state laws and regulations and Agency policies, and provide recommendations for corrective action and program quality enhancements.

(b) Boards and workforce service providers shall ensure that timelines are established for the completion of corrective actions, based on the severity of the deficiency, and shall work with the workforce service providers to ensure implementation of corrective actions.

(c) Boards and workforce service providers shall ensure that a copy of monitoring reports is provided to Board members.

§802.87. Independent Audit Requirements.

Boards, workforce service providers, and Agency grantees are subject to the following and shall ensure that an annual audit or program-specific audit is obtained in accordance with the following:

(1) Single Audit Act Amendments of 1996 (Public Law 104-156);

(2) OMB Circular A-133 and Compliance Supplement;

(3) *Government Auditing Standards* (U.S. Government Accountability Office); and

(4) State of Texas Single Audit Circular within the Uniform Grant Management Standards Act (Texas Government Code, Chapter 783).

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

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SUBCHAPTER F. PERFORMANCE AND ACCOUNTABILITY

40 TAC §§802.101 - 802.104

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it

deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§802.101. Scope and Purpose.

(a) The purpose of this subchapter is to:

(1) ensure accountability of Boards, workforce service providers, and Agency grantees, in meeting the needs of Workforce Solutions customers;

(2) ensure performance targets are met or exceeded; and

(3) describe the Commission policies for noncompliance.

(b) The Agency may review financial, administrative, and performance data to evaluate a Board, workforce service provider, or Agency grantee to determine the need for sanctions.

(c) To accomplish the purposes of this subchapter, the Agency may require at any point during the year that a Board, workforce service provider, or Agency grantee cooperates with remedial actions, including, but not limited to, entering into a technical assistance plan and other performance review and assistance activities.

§802.102. Performance Requirements and Expectations.

(a) A Board shall meet or exceed expenditure and performance targets as set forth in its contracts. The Commission shall determine the Boards' performance targets based on federal and state performance standards and by using factors that may be necessary to achieve the mission of the Commission and reflect local conditions. The Commission approves individual Board performance targets annually, which may be adjusted based on local conditions including, but not limited to, specific economic conditions and demographic characteristics of the workforce area.

(b) An Agency grantee shall meet or exceed expenditure and performance targets as set forth in its contracts.

(c) A Board and Agency grantee shall comply with the following:

(1) applicable laws, regulations, provisions of contracts and Board plans, and official directives and circulars including, but not limited to, DOL Training and Employment Guidance Letters, DOL Training and Employment Notices, U.S. Department of Health and Human Services guidance letters, Commission rules contained in Part 20 of this title, Texas Workforce Commission Workforce WD Letters, the Agency's Financial Manual for Grants and Contracts, and other Agency guidance;

(2) appropriate uniform administrative requirements for grants and agreements applicable for the type of entity receiving funds as promulgated in OMB's Uniform Grant Management Standards circulars or rules; and

(3) Agency-Board agreements and applicable program contracts.

(d) A Board's achievement of high levels of performance may result in the Commission providing incentives for the Board as set forth in Subchapter I of this chapter (relating to Incentive Awards). In addition, the Commission may adopt additional performance incentives.

(e) The failure of Boards or Agency grantees to meet minimum levels of performance as referenced in their contracts may result in corrective actions, other performance review and assistance activities, or sanctions as specified in:

(1) Part 20 of this title, including this chapter;

(2) the contract with the Agency; or

(3) federal or state statute or rule.

(f) A Board may submit to the Commission a request for a performance target adjustment in the format prescribed by the Agency.

(g) The Commission may determine what constitutes a necessary adjustment to local performance targets and may consider specific economic conditions and demographic characteristics to be served in the workforce area and other factors the Commission deems appropriate including the anticipated impact of the adjustment on the state's performance.

§802.103. Performance Review and Assistance.

(a) The Commission's intent is to define the role of performance review and assistance provided by the Agency. The role of performance review and assistance is to work with Boards, workforce service providers, and Agency grantees to:

(1) ensure successful service delivery outcomes; and

(2) provide accountability through technical assistance and contract management.

(b) The Agency offers a sequence of interventions including the development of technical assistance plans, on-site reviews, staff training, and continued contract management and oversight.

(c) Boards, workforce service providers, and Agency grantees shall ensure cooperation and compliance with the Agency's performance review and assistance activities and services.

§802.104. Performance Improvement Actions.

(a) The Agency may assist Boards, workforce service providers, and Agency grantees with strategies for improving compliance or performance.

(b) A technical assistance plan, which may be jointly developed by the Agency with Boards or Agency grantees, may include, but is not limited to:

(1) identification of one or more specific performance improvement issues;

(2) assessment of specific technical assistance or training needs;

(3) selection of one or more specific technical assistance or training activities to be implemented;

(4) identification of the appropriate entities to provide the technical assistance or training, including the Board, the Agency, other Boards, or other entities;

(5) identification of a timeline for completion of the technical assistance or training; and

(6) specific dates for reassessment of technical assistance or training needs and completion of the specific technical assistance or training.

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SUBCHAPTER G. CORRECTIVE ACTIONS

40 TAC §§802.121 - 802.125

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§802.121. Imposition of Corrective Actions and Corrective Action Plans.

(a) At any time, the Agency may impose corrective actions for failure by a Board or Agency grantee to ensure compliance with the following:

(1) one or more contracted performance measures;

(2) one or more contract provisions; or

(3) one or more of the items listed in §802.102(c) of this chapter.

(b) The Agency may impose corrective actions for failure by a Board or Agency grantee to appropriately oversee of the delivery of services and ensure the effective and efficient use of funds.

(c) Failure to cooperate and comply with the Agency's performance improvement actions, including technical assistance plans, may subject a Board or Agency grantee to corrective actions.

(d) The Agency may impose, in nonsequential order, the following corrective actions on a Board or Agency grantee:

(1) Intent to Sanction

(2) Level-One Sanction

(3) Level-Two Sanction

(4) Level-Three Sanction

(e) The Agency may impose a higher level of sanction on a Board or Agency grantee, if a sanction is currently imposed when another sanctionable act occurs or is discovered.

(f) Corrective Action Plan. To assist in correcting any deficiencies, a Board or Agency grantee upon whom an intent to sanction or a sanction is imposed must enter into a corrective action plan. A corrective action plan is developed by the Agency and may include the elements of a technical assistance plan, as outlined in §802.104(b) of this chapter. In addition, the Agency may require:

(1) participation in technical and quality assurance activities;

(2) mandatory participation in training;

(3) on-site visits by the Agency to oversee and assist with daily operations of a Board or Agency grantee;

(4) submission of additional or more detailed financial or performance reports;

(5) modification of the Board's local plan;

(6) issuing a notice of intent to revoke all or part of the affected local plan;

(7) designation as a high-risk Board or an Agency grantee requiring additional monitoring visits;

(8) appearances by the Board's executive director, other administrative officer, or the Agency grantee's executive leadership, to report on activities and progress in Commission meetings until performance is satisfactory;

(9) meetings with the workforce area's chief elected officials, Board chair, Board members, Board executive director, or Agency grantee's executive leadership;

(10) formal Agency presentation to chief elected officials, Board members, or Agency grantee's executive leadership;

(11) Agency oversight and management of problem situations, such as the appointment of a steward;

(12) Agency approval of specified Board or Agency grantee actions (i.e., prohibition against entering into specific contracts or engaging in certain activities without explicit prior approval of the Agency);

(13) prohibition against a Board using designated workforce service providers, including state agencies and Workforce Solutions Office operators;

(14) payment by reimbursement only, with required supporting documentation;

(15) delay, suspension, or denial of contract payments;

(16) reduction or deobligation of funds;

(17) ineligibility for additional discretionary or other funds, including incentive awards;

(18) contract cancellation or termination; and

(19) other actions deemed appropriate by the Agency to assist the Board or subrecipient of the Agency in correcting deficiencies.

§802.122. Intent to Sanction.

(a) The Agency may issue an intent to sanction to set forth:

(1) a corrective action plan and performance review and assistance activities;

(2) a specific timeline for the implementation of the corrective action plan by a Board or Agency grantee; and

(3) an opportunity to cure the sanctionable acts.

(b) There shall be no appeal to an intent to sanction.

§802.123. Sanctions.

(a) Level-One Sanction. The Agency may impose a level-one sanction on a Board or Agency grantee for sanctionable acts. Sanctionable acts that occur during the program, grant, fiscal, contract, or calendar year include, but are not limited to, the following:

(1) failure to submit timely and accurate required financial or performance reports;

(2) failure to take corrective actions to resolve findings identified during monitoring, investigative, or program reviews, including failure to comply with a technical assistance plan developed by the Agency;

(3) failure to rectify or resolve all independent audit findings or questioned costs within required time frames;

(4) failure to submit required annual audits;

(5) breach of administrative and service contract requirements;

(6) failure to retain required service delivery and financial records; or

(7) failure to meet the target on any contracted performance measure by more than 10 percent of target.

(b) Level-Two Sanction. The Agency may impose a level-two sanction on a Board or Agency grantee for sanctionable acts. Sanctionable acts that occur during the program, grant, fiscal, contract, or calendar year include, but are not limited to, the following:

(1) failure to rectify a level-one sanction within six months of notice;

(2) committing a second sanctionable act;

(3) failure to rectify reported threats to health and safety of program participants within 30 days of notice. Rectifying health and safety may include investigating a complaint, taking appropriate corrective actions, or making referrals to appropriate authorities; or

(4) failure to meet the target on any contracted performance measure by more than 25 percent of target.

(c) Level-Three Sanction. The Agency may impose a level-three sanction on a Board or Agency grantee for sanctionable acts. Sanctionable acts that occur during the program, grant, fiscal, contract, or calendar year include, but are not limited to, the following:

(1) failure to rectify a level-one sanction within one year of notice;

(2) failure to rectify a level-two sanction within six months of notice;

(3) committing multiple sanctionable acts;

(4) failure to rectify reported threats to health and safety of program participants within 60 days of notice. Rectifying health and safety may include investigating a complaint, taking appropriate corrective action, or making referrals to appropriate authorities; or

(5) failure to meet the target on any contracted measure by more than 25 percent of target for two consecutive years.

§802.124. Penalties for Noncompliance with Requirements.

(a) The Agency may impose penalties on a Board or Agency grantee based on the following criteria as determined appropriate by the Agency given the totality of the circumstances surrounding the occurrence of the sanctionable act or acts:

(1) Severity, nature, duration, and extent;

(2) Previous occurrences of sanctionable acts; and

(3) Efforts by the Board, workforce service provider, or Agency grantee to prevent the occurrence of the sanctionable act, including efforts to:

(A) obtain technical assistance, training, or other assistance from the Agency;

(B) resolve monitoring findings; and

(C) prevent potential sanctionable acts.

(b) The Agency may impose penalties for sanctionable acts listed in this subchapter. Notwithstanding the list of sanctionable acts appearing after each specific level of sanction in §802.123 of this subchapter, the Agency may assign a higher or lower sanction level based on the severity or mitigating circumstances surrounding the sanctionable acts.

(c) The Commission may recommend to TWIC pursuant to Texas Government Code, Chapter 2308, that one or more of the following be imposed on Boards:

(1) A reorganization plan under Texas Government Code §2308.268 for the workforce area;

(2) A restructuring of the Board, including decertification of the current Board and appointment and certification of a new Board;

(3) A merger of the workforce area into one or more other workforce areas; or

(4) Any other penalty deemed appropriate by the Commission.

(d) More than one corrective action may be imposed in response to one occurrence of a sanctionable act. The corrective actions imposed for one or more occurrences of sanctionable acts may correlate with the sanction level imposed on a Board or Agency grantee.

(e) A Board's or Agency grantee's failure to complete the corrective actions described in this subchapter within the specified time limits may result in the Agency imposing penalties under this subchapter and withholding contract payments to the Board or Agency grantee.

(f) Penalties for Second-Year WIA Nonperformance. If a Board fails to meet its targets on 25 percent of its contracted measures by more than 20 percent of target for two consecutive program years, the Commission shall review the performance deficiencies and shall make a recommendation to TWIC that it impose a reorganization plan for the workforce area. The Commission's recommendation to TWIC for reorganization of a workforce area may include one or more of the corrective actions or penalties included in this subchapter. Notwithstanding this subsection, the Commission may take other action deemed appropriate as consistent with federal law.

(g) Penalties for Failures Regarding the One-Stop Service Delivery Network. Failure of a Board to ensure the continued operation of a one-stop service delivery network as required by WIA §121 and Chapter 801, Subchapter B, One-Stop Service Delivery Network of this title, including failure to properly certify Workforce Solutions Offices as defined in §801.24 of this title, may result in the imposition of penalties as provided in this subchapter, and the Agency's withholding of payment for any administrative expenses until the Board demonstrates to the satisfaction of the Agency that all of the required elements of a one-stop service delivery network are operational.

§802.125. Sanction Determination.

(a) The director of Agency's Workforce Development Division determines whether a sanction shall be imposed, including whether it is appropriate to impose a sanction level on the Board or Agency grantee and whether it is appropriate to assign a penalty.

(b) The Commission shall work in concert with TWIC, as appropriate, to impose sanctions as required by Texas Government Code §2308.268 and §2308.269.

(c) The Agency shall send a written notice of sanction determination (sanction determination) to the following:

(1) Board:

(A) The Board's executive director or administrative officer;

(B) The Board's chair; and

(C) The lead chief elected official of the workforce area; or

(2) The Agency grantees' executive leadership.

(d) The sanction determination date of notice shall be the date the sanction determination is sent by certified mail. All sanction determinations shall be sent by electronic transmission and by certified mail, return receipt requested.

(e) The sanction determination shall include the following information:

(1) the sanctionable act upon which the sanction was based;

(2) the sanction level in which the Board or Agency grantee is placed and the conditions under which the sanction may be removed;

(3) the penalty and the effective date of the penalty;

(4) the corrective action required, including the timeline for completing the corrective action; and

(5) the technical assistance contact from the Agency or other entity to assist in completing the corrective action.

(f) The Agency shall send the sanction determination at least 10 working days in advance of the effective date of the sanction.

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

Filed with the Office of the Secretary of State on November 9, 2010.

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Texas Workforce Commission
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SUBCHAPTER H. REMEDIES

40 TAC §§802.141 - 802.152

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§802.141. Informal Conferences and Informal Dispositions.

An informal conference is defined as an informal meeting between a Board or Agency grantee and designee of the director of the Agency's Workforce Development Division, held for the purpose of agreeing on a proposed informal disposition of a sanctionable act. An informal conference shall be voluntary and shall not be a prerequisite to a hearing in an appeal of a penalty.

§802.142. Appeal.

(a) A Board or Agency grantee may appeal a final determination or sanction determination; however, a recommendation to another entity by the Agency or Commission under Subchapter G of this chapter (relating to Corrective Actions), cannot be appealed.

(b) A request for appeal of a final determination or sanction determination shall be filed within 10 working days following the receipt of the determination. The appeal shall be in writing and filed with the General Counsel, Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778. Failure by a Board, workforce service provider, or Agency grantee to timely request a hearing waives the right to a hearing.

(c) The Agency shall refer the request for appeal to an impartial hearing officer for a hearing.

(d) The Agency shall mail a notice of hearing to the Board or Agency grantee as provided in §802.125(c) of this chapter, and to their representatives, if any. The notice of hearing shall be in writing and include:

(1) a statement of the date, time, place, and nature of the hearing;

(2) a statement of the legal authority under which the hearing is to be held; and

(3) a short and plain statement of the issues to be considered during the hearing.

§802.143. Hearing Procedures.

(a) The sanction determination hearing shall be conducted in person in Austin, Texas, unless the parties agree to a telephonic hearing or request a different location.

(b) The hearing shall be conducted informally and in such manner as to ascertain the substantial rights of the parties. All issues relevant to the appeal shall be considered and addressed, and may include:

(1) Presentation of Evidence. The parties to an appeal may present evidence that is material and relevant, as determined by the hearing officer. In conducting a hearing, the hearing officer shall actively develop the record on the relevant circumstances and facts to resolve all issues. To be considered as evidence in a decision, any document or physical evidence must be entered as an exhibit at the hearing.

(2) Examination of Parties and Witnesses. The hearing officer shall examine parties and any witnesses, and shall allow cross-examination to the extent the hearing officer deems necessary to afford the parties due process.

(3) Additional Evidence. The hearing officer, with or without notice to any of the parties, may take additional evidence as deemed necessary, provided that a party shall be given an opportunity to rebut the evidence if it is to be used against the party's interest.

(4) Appropriate Hearing Behavior. All parties shall conduct themselves in an appropriate manner. The hearing officer may expel any individual, including a party, who fails to correct behavior the hearing officer identifies as disruptive. After expulsion, the hearing officer may proceed with the hearing and render a decision.

(c) Records.

(1) The hearing record shall include the audio recording of the proceeding and any other relevant evidence relied on by the hearing officer, including documents and other physical evidence entered as exhibits.

(2) The hearing record shall be maintained in accordance with federal and state law.

(3) Confidentiality of information contained in the hearing record shall be maintained in accordance with federal and state law.

§802.144. Postponements, Continuances, and Withdrawals.

(a) The hearing officer may grant a postponement of a sanction determination hearing for good cause at a party's request.

(b) A continuance of a hearing may be ordered at the discretion of the hearing officer to consider additional, necessary evidence or for any other reason the hearing officer deems appropriate.

(c) A Board or Agency grantee may withdraw an appeal at any time prior to the issuance of the final decision.

§802.145. Evidence.

(a) Evidence Generally. Evidence, including hearsay evidence, shall be admitted if it is relevant and if in the judgment of the hearing officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. However, the hearing officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by reasonable concern for undue delay, waste of time, or needless presentation of cumulative evidence.

(b) Exchange of Exhibits. Any documentary evidence to be presented during a telephonic hearing shall be exchanged with all parties and a copy shall be provided to the hearing officer in advance of the hearing. Any documentary evidence to be presented at an in-person hearing shall be exchanged at the hearing.

(c) Stipulations. The parties, with the consent of the hearing officer, may agree in writing to relevant facts. The hearing officer may decide the appeal based on such stipulations or, at the hearing officer's discretion, may set the appeal for hearing and take such further evidence as the hearing officer deems necessary.

(d) Experts and Evaluations. If relevant and useful, testimony from an independent expert or a professional evaluation from a source satisfactory to the parties and the Agency may be ordered by hearing officers, on their own motion, or at a party's request. Any such expert or evaluation shall be at the expense of one or more of the parties.

(e) Subpoenas.

(1) The hearing officer may issue subpoenas to compel the attendance of witnesses and the production of records. A subpoena may be issued either at the request of a party or on the hearing officer's own motion.

(2) A party requesting a subpoena shall state the nature of the information desired, including names of any witnesses and the records that the requestor feels are necessary for the proper presentation of the case.

(3) The request shall be granted only to the extent the records or the testimony of the requested witnesses appears to be relevant to the issues on appeal.

(4) A denial of a subpoena request shall be made in writing or on the record, stating the reasons for such denial.

§802.146. Hearing Officer Independence and Impartiality.

(a) A hearing officer presiding over a hearing shall have all powers necessary and appropriate to conduct a full, fair, and impartial hearing. Hearing officers shall remain independent and impartial in all matters regarding the handling of any issues during the pendency of a case and in issuing their written proposals for decision.

(b) A hearing officer shall be disqualified if the hearing officer has a personal interest in the outcome of the appeal or if the hearing officer directly or indirectly participated in the determination on appeal. Any party may present facts to the Agency in support of a request to disqualify a hearing officer.

(c) The hearing officer may withdraw from a hearing to avoid the appearance of impropriety or partiality.

(d) Following any disqualification or withdrawal of a hearing officer, the Agency shall assign an alternate hearing officer to the case. The alternate hearing officer shall not be bound by any findings or conclusions made by the disqualified or withdrawn hearing officer.

§802.147. Ex Parte Communications.

(a) The hearing officer shall not participate in ex parte communications, directly or indirectly, in any matter in connection with any substantive issue, with any interested person or party. Likewise, no person shall attempt to engage in ex parte communications with the hearing officer on behalf of any interested person or party.

(b) If the hearing officer receives any such ex parte communication, the other parties shall be given an opportunity to review any such ex parte communication.

(c) Nothing shall prevent the hearing officer from communicating with parties or their representatives about routine matters such as requests for continuances or opportunities to inspect the file.

(d) The hearing officer may initiate communications with an impartial Agency employee who has not participated in a hearing or any determination in the case for the limited purpose of using the special skills or knowledge of the Agency and its staff in evaluating the evidence.

§802.148. Hearing Decision.

(a) Following the conclusion of the hearing, the hearing officer shall promptly prepare a written proposal for decision.

(b) The proposal for decision shall be based exclusively on the evidence of record in the hearing and on matters officially noticed in the hearing. The decision shall include:

(1) a list of the individuals who appeared at the hearing;

(2) the findings of fact and conclusions of law reached on the issues; and

(3) the affirmation, reversal, or modification of the sanctions.

(c) The proposal for decision shall be submitted to the Agency's executive director for issuance of a written decision on behalf of the Agency.

(d) Unless a party files a timely motion for rehearing, the Agency may assume continuing jurisdiction to modify or correct a decision until the expiration of 30 calendar days from the mailing date of the decision.

§802.149. Motion for Reopening.

(a) If a party does not appear for a hearing, the party may request a reopening of the hearing within 30 calendar days from the date the decision is mailed.

(b) The motion for reopening shall be in writing and detail the reason for failing to appear at the hearing.

(c) The hearing officer may schedule a hearing on whether to grant the reopening.

(d) The motion may be granted if the hearing officer determines that the party has shown good cause for failing to appear at the hearing.

§802.150. Motion for Rehearing.

(a) A Board or Agency grantee may file a motion for rehearing for the presentation of new evidence within 30 days from the date the

decision is mailed. A rehearing shall be granted only for the presentation of new evidence.

(b) A motion for rehearing shall be in writing and allege the new evidence to be considered.

(c) If the hearing officer determines that the alleged new evidence warrants a rehearing, a rehearing shall be scheduled at a reasonable time and place.

(d) The hearing officer shall issue a written proposal for decision in response to a timely filed motion for rehearing. The proposal for decision shall be submitted to the Agency's executive director for issuance of a final decision.

§802.151. Finality of Decision.

(a) The decision of the executive director is the final administrative decision of the Agency after the expiration of 30 calendar days from the mailing date of the decision, unless within that time:

(1) a request for reopening is filed with the Agency;

(2) a request for rehearing is filed with the Agency; or

(3) the Agency assumes continuing jurisdiction to modify or correct the decision.

(b) Any decision issued in response to a request for reopening or rehearing or a modification or correction issued by the Agency shall be final on the expiration of 30 calendar days from the mailing date of the decision, modification, or correction.

§802.152. Repayment.

(a) The Board and chief elected officials shall be jointly and severally liable for repayment to the Agency from nonfederal funds for expenditures in the workforce area that are found by the Agency not to have been expended in accordance §802.102 of this chapter.

(b) An Agency grantee shall be liable for repayment to the Agency from nonfederal funds for expenditures that are found by the Agency not to have been expended in accordance with §802.102 of this chapter.

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

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SUBCHAPTER I. INCENTIVE AWARDS

40 TAC §§802.161 - 802.168

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§802.161. Scope and Purpose.

The purpose of incentive awards is to reward Boards that meet or exceed the performance benchmarks identified in each incentive award and accomplish the Commission's goals to fulfill the workforce needs of employers and to put Texans to work. The Board is responsible for providing strategic and operational planning for its workforce area. The development of an integrated and coherent workforce development system at the local level is the primary focus of Boards. Thus, this policy seeks to recognize Boards for achieving high performance as a system, as well as high performance on behalf of employers and the populations annually targeted by the Commission during the budget process. Incentives will emphasize accountability, high performance, and continuous improvement and support the state in achieving workforce development goals.

§802.162. Definitions.

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

(1) Allocation of Funds--The total yearly funds initially identified for allocation to a Board for all programs. This does not include consideration of adjustments in funding made to a specific program(s) by the Commission for purposes of reallocating or redistributing those funds. This may include new allocations or distributions made during a year that result from changes in law or new funding made available to the Boards during a year.

(2) Classification--Grouping of Boards with one or more common characteristics (e.g., size) for the purpose of evaluating performance and giving incentive awards.

(3) Extraordinary Circumstances--Conditions that may have an impact on the determination of which Boards may receive or be excluded from receiving incentive awards, which may include, but are not limited to, matters such as serious unforeseen events, unresolved audit or monitoring findings, sanctions, unanticipated changes in economic conditions, the occurrence of a disaster, or legislative changes having a direct impact on the Commission or Boards.

(4) Local Coordination--Boards fostering leadership and cooperation to achieve the most effective customer service results for their employers and residents through one or more of the following:

(A) Memoranda of Understanding with required partners that achieve active implementation and integration of related services;

(B) Memoranda of Understanding with partners required by WIA §121(b)(1) but not required by §801.27(b) of this title that include active implementation and integration of related services;

(C) ongoing and regular communication and training on the best practices and benchmarks in building systems or delivering services; or

(D) demonstrating local coordination through other means as determined by the Commission, such as by demonstrating coordination with demonstration grants, youth opportunity grants, self-sufficiency grants, and skills development grants.

(5) Regional Cooperation--Boards working together as a cooperative unit in a region to provide excellence in customer service through one or more of the following:

(A) submitting joint plans or agreements;

(B) engaging in ongoing and regular communication regarding the best practices and working together to implement those practices by sharing ideas, data, staff, and other resources;

(C) providing opportunities for joint training, conferences, and staff interaction; or

(D) demonstrating regional cooperation through other means as determined by the Commission.

(6) Workforce development programs--Job-training, employment, and employment-related educational programs and functions as listed in Texas Labor Code §302.021.

§802.163. Types of Awards.

The following are the two types of incentive awards:

(1) Nonmonetary awards, which may be awarded annually based on high-performance achievement and/or continuous improvement in meeting performance measures and may include plaques, certificates of achievement, or other formalized recognition accolades.

(2) Monetary awards, which include:

(A) performance awards issued under §802.166 of this subchapter;

(B) WIA local incentive awards issued under §802.167 of this subchapter;

(C) job placement incentive awards issued under §802.168 of this subchapter; and

(D) other awards designated by the Commission.

§802.164. Data Collection.

(a) Boards are responsible for complete and accurate data entry prior to Commission-established deadlines.

(b) The Commission reserves the right not to consider data submitted after the deadline or data that it finds to be inaccurate in its evaluation of performance for awards.

§802.165. Board Classification.

(a) The Commission may group Boards in classifications for comparison purposes such as for awarding incentives.

(b) In classifying Boards, the Commission may group Boards based on similarities or differences among the Boards relating to:

(1) allocations of funds;

(2) prior performance; or

(3) demographic, economic, or other characteristics of the individual workforce areas.

§802.166. Performance Awards.

(a) The Commission may determine the amount of funds for use to reward performance annually.

(b) Incentive awards for performance may be given in each classification and the Commission may give more than one award in each classification.

(c) The Commission may use any combination of existing state or federal performance measures and may develop its own measures to evaluate performance.

(1) If the Commission includes a measure that does not already have a target, the Commission may:

(A) set an incentive target for the sole purpose of evaluating eligible Boards for the incentive awards (failure to meet an incentive target does not subject the Board to sanction);

(B) rate performance based on each Board's "relative improvement" in performance from the prior year; or

(C) compare exhibited performance among the Boards in a classification if the measure allows comparability across Boards of different sizes. (For example, the "percent of job orders timely posted" allows performance to be measured across Boards of different sizes, but the "number of job orders timely posted" does not.)

(2) The Commission may use a measure and a subset of a measure in the same year. For example, the Commission could include one measure that considers employers with job postings in the job matching system and another measure that considers employers with job postings in targeted occupations.

(d) If the Commission is considering issuing awards under this section, the Commission shall notify Boards of the method by which performance shall be evaluated for the purpose of giving awards under this rule for that year.

(1) The notice required under this subsection shall be provided to the Boards concurrent with their yearly contracts.

(2) The notice may include:

(A) a listing of the Boards assigned to each classification;

(B) a listing of awards;

(C) a listing of the performance measures to be included in each evaluation category including:

(i) the period of evaluation for each performance measure; and

(ii) the method of evaluation for each performance measure;

(D) the weightings to be used to aggregate the performance measures to allow each Board's overall performance to be ranked and also encourage an emphasis on employer-focused measures;

(E) the anticipated amount of funds available to be awarded; and

(F) other criteria to be used to identify superior performance.

(e) The Commission shall rank a Board's performance for each performance measure as follows.

(1) For measures that have performance targets, the Commission shall determine each Board's "success rate" by dividing the Board's actual performance by its target for the measure.

(2) For measures that have no performance targets, the Commission shall determine each Board's actual performance (or change in performance if that was the method identified as the method for evaluation) and call this the "performance rate."

(3) For each measure, the Commission shall replace the "success rate" or the "performance rate" with a ranking. The Board with the "best" ranking in its classification shall be ranked "1," the second best ranked "2," etc. If two Boards in a classification are tied for a position, such as second place, both shall be ranked "2" and the Board with the next "best" ranking shall be ranked "4."

(f) The Commission shall assign each Board a final rank as follows.

(1) The Commission shall use the weightings identified in subsection (d)(2)(D) of this section to determine the weighted rank of the performance rankings assigned under subsection (e) of this section.

(2) Each Board's weighted rank shall be converted to an overall ranking within the Board's classification. That is, the Board with the lowest weighted rank in a classification is ranked "1," the second lowest ranked "2," etc. If two Boards are tied for a position such as second place, both shall be ranked "2" and the next "best" Board will be ranked "4."

(g) The award for each classification shall be given to the Board in the classification with the best overall ranking. If the Commission is assigning more than one award in a classification, the Boards with the highest rankings shall receive the award.

(h) Boards that receive a performance award shall use the incentive award to carry out workforce activities as allowed by state and federal laws.

(i) The Commission may modify the assignment of awards based on factors that the Commission identifies as extraordinary circumstances.

§802.167. Workforce Investment Act Local Incentive Awards.

(a) The Commission shall determine annually the total amount of funds to be awarded from funds available through the WIA §128(a) and §133(a)(1) for local incentive awards.

(b) WIA local incentive awards may be awarded for one or more of the following:

(1) regional cooperation among workforce areas;

(2) local coordination of activities carried out under WIA; and

(3) exemplary performance on performance measures.

(c) The application for WIA local incentive awards shall be as follows.

(1) Only those Boards submitting a written application shall be eligible for WIA local incentive awards (other than awards for exemplary performance, which do not require a written application).

(2) The Commission shall issue instructions annually identifying the amount of funds available for awards, the maximum number of awards, and instructions for submitting applications for WIA local incentive awards.

(d) Awards may be made based on consideration of various factors consistent with WIA goals such as:

(1) identified changes in economic conditions, population characteristics, and the service delivery system in the workforce area;

(2) reported performance for each contract performance measure relative to other Boards;

(3) demonstrated performance in the elements considered most critical in accomplishing overall system goals, which includes performance related to each of the items listed in §802.168(b) of this subchapter;

(4) improved performance relative to the preceding year;

(5) demonstrated compliance with all expenditure requirements as required by §800.63(h) of this title; and

(6) finalized monitoring reports and resolution activities.

(e) Boards that receive a WIA local incentive award shall use the award to carry out workforce activities as allowed by state and federal laws.

(f) The Commission may modify the assignment of awards based on factors that the Commission identifies as extraordinary circumstances.

§802.168. Job Placement Incentive Awards.

(a) The Commission may set aside an amount of funds for job placement incentive awards during the annual budget process or at other times during the year as deemed appropriate by the Commission based on the funds available to meet the objectives of the Commission. For the purposes of this section, the term "Choices eligible" shall have the same meaning as set forth in §811.2 of this title.

(b) Administration through Boards shall be as follows.

(1) The Commission shall administer the job placement incentive awards through the Boards by distributing funds to Boards that demonstrate the highest percentage of increase in employment of Choices eligibles in higher wage jobs. Awards may be given in each classification and the Commission may give more than one award in each classification.

(2) Boards receiving a distribution of funds shall establish policies and procedures to create incentives for their workforce service providers. The Boards shall determine how the local awards of funds are expended to provide incentives to workforce service providers within the workforce area for effective employment of Choices eligibles in higher wage jobs. The Boards shall ensure that workforce service providers receiving the job placement incentive awards use the funds for expenses relating to education, training, and support services as necessary to prepare, place, and maintain Choices eligibles in employment leading to self-sufficiency.

(c) The criteria for distributing award funds to Boards shall be the same as the measure of higher wage jobs. The measure of higher wage jobs shall use the most recent available in unemployment insurance (UI) wages reported quarterly by employers for Choices eligibles in employment and be determined by:

(1) each workforce area's baseline average quarterly reported UI wages for all Choices eligibles in employment during a 12-month period designated by the Commission;

(2) each workforce area's average quarterly UI wages for all Choices eligibles in employment during the 12-month period subsequent to the baseline measurement period; and

(3) comparing the average quarterly UI wages for all Choices eligibles in employment for the two measurement periods to determine Boards that have achieved the highest percent increase in overall wages to Choices eligibles.

(d) The Commission may modify the assignment of awards based on factors that the Commission identifies as extraordinary circumstances.

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

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 207. PUBLIC INFORMATION
SUBCHAPTER A. ACCESS TO OFFICIAL RECORDS

43 TAC §207.3

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 207, Subchapter A, §207.3, concerning public access to official records.

EXPLANATION OF PROPOSED AMENDMENTS

The amendments to §207.3 are necessary to clarify the types of identification that are acceptable for accessing personal motor vehicle information.

The department's motor vehicle records contain personal information, as defined by Transportation Code, §730.003(6), including social security numbers, names, addresses, and medical or disability information. The Texas statutory definition is based on federal law. License plate numbers are also considered information subject to nondisclosure by the Texas Attorney General, Open Records Decision No. GA-684.

Section 207.3 provides that personal information may only be released if the requestor is the subject of the record, if the requestor has written authorization for release from the subject of the record, or if the intended use is for one of the lawful permitted uses. The amendments specify that a person requesting such information must present a current photo identification containing a unique identification number. The documents acceptable to the department will be a United States, or territory of the United States, driver's license or state identification certificate, a United States passport, or a foreign passport.

FISCAL NOTE

Linda Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Randy Elliston, Director of the Vehicle Titles and Registration Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Elliston has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments is protection of personal information.

There are no anticipated economic costs for persons required to comply with the amendments since the person who needs such information should have verifiable identification. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the amendments may be submitted to Randy Elliston, Director of the Vehicle Titles and Registration Division, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731. The deadline for receipt of comments is 5:00 p.m. on December 27, 2010.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 552; Transportation Code, §502.008, and Transportation Code, Chapter 730; and 18 U.S.C. §2721 et seq.

§207.3. Public Access.

(a) Request for records.

(1) Submittal of request. A person seeking public information shall submit a request in writing to the department.

(A) A request made by other than electronic mail shall be submitted to:

(i) the department's General Counsel;

(ii) the department's Director of Public Information; or

(iii) the division director responsible for the information.

(B) A request made by electronic mail shall be sent via the department's World Wide Web site, located at http://www.dmv.state.tx.us/.

(2) Information required. A request for official records shall include the name, address, and telephone number of the requestor, and a description of the records in sufficient detail to permit efficient gathering of the requested items. The request shall also include the preferred mailing, facsimile transmission, or electronic mail address at which the requestor wishes to receive a cost itemized statement provided pursuant to Government Code, §552.2615(a) and §207.4(d) of this subchapter;

(3) Vehicle title and registration information.

(A) The department will provide certain vehicle registration information by telephone or upon receipt of a written request. Requested information will be released in accordance with 18 U.S.C. §2721 et seq., Transportation Code, §502.008, and Transportation Code, Chapter 730.

(B) The department will provide a written form for requests for motor vehicle registration information. A completed and properly executed form must include, at a minimum:

(i) the name and address of the requestor;

(ii) the Texas license number, title or document number, or vehicle identification number of the motor vehicle about which information is requested;

(iii) a statement that the requested information may only be released if the requestor is the subject of the record, if the requestor has written authorization for release from the subject of the record, or if the intended use is for one of the permitted uses indicated on the form;

(iv) a statement that the information is requested for a lawful and legitimate purpose in accordance with Transportation Code, §502.008;

(v) a certification that the statements made on the form are true and correct; and

(vi) the signature of the requestor.

(C) The department will provide vehicle registration information by license number by telephone only in accordance with 18 U.S.C. §2721 et seq., Transportation Code, §502.008, and Transportation Code, Chapter 730, and only if requested by:

(i) a peace officer acting in an official capacity; or

(ii) an official of the state, city, town, county, special district, or other political subdivision, utilizing the obtained information for tax purposes or for the purpose of determining eligibility for a state public assistance program.

(D) A person may not receive information under this paragraph unless the person presents current photo identification containing a unique identification number and the document is a:

(i) driver's license or state identification certificate issued by a state or territory of the United States; or

(ii) United States or foreign passport.

(b) - (i) (No change.)

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

Filed with the Office of the Secretary of State on November 10, 2010.

TRD-201006488
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 26, 2010
For further information, please call: (512) 463-8683

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WITHDRAWN RULES

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

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES

SUBCHAPTER B. DETERMINATION OF RESIDENT STATUS AND WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §21.24, §21.25

The Texas Higher Education Coordinating Board withdraws the proposed amendments to §21.24 and §21.25 which appeared in the June 18, 2010, issue of the *Texas Register* (35 TexReg 5135).

Filed with the Office of the Secretary of State on November 16, 2010.

TRD-201006545
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 16, 2010
For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER F. ARCHITECT'S SEAL

22 TAC §1.103

The Texas Board of Architectural Examiners withdraws the proposed amendment to §1.103 which appeared in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6895).

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006411
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 9, 2010
For further information, please call: (512) 305-9040

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CHAPTER 3. LANDSCAPE ARCHITECTS

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §3.5

The Texas Board of Architectural Examiners withdraws the proposed amendment to §3.5 which appeared in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6899).

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006412
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 9, 2010
For further information, please call: (512) 305-9040

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SUBCHAPTER F. LANDSCAPE ARCHITECT'S SEAL

22 TAC §3.103

The Texas Board of Architectural Examiners withdraws the proposed amendment to §3.103 which appeared in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6903).

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006413
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 9, 2010
For further information, please call: (512) 305-9040

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CHAPTER 5. REGISTERED INTERIOR DESIGNERS

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §5.5

The Texas Board of Architectural Examiners withdraws the proposed amendment to §5.5 which appeared in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6907).

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006414
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 9, 2010
For further information, please call: (512) 305-9040

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SUBCHAPTER F. THE REGISTERED INTERIOR DESIGNER'S SEAL

22 TAC §5.113

The Texas Board of Architectural Examiners withdraws the proposed amendment to §5.113 which appeared in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6911).

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006415
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 9, 2010
For further information, please call: (512) 305-9040

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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 16. ECONOMIC REGULATION

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.308

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.308 ("Cash Five" On-Line Game) without changes to the proposed text as published in the September 24, 2010, issue of the *Texas Register* (35 TexReg 8635).

The purpose of the amendments is to delete the provision relating to the number of plays that may be purchased on one ticket; and to correct an erroneous reference. Specifically, in subsection (c), the sentence, "A player may purchase up to five plays on one ticket." has been deleted; and subsection (e)(4) is amended to change the reference from §466.4075 to §466.408.

A public hearing was held at 1:00 p.m. on Thursday, October 14, 2010, at 611 E. 6th Street, Austin, Texas 78701. No members of the public were present at the hearing and no comments were received during the public comment period. The Commission received no comments from any groups or associations during the comment period.

The amendments are adopted under Texas Government Code, §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006453
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: November 29, 2010
Proposal publication date: September 24, 2010
For further information, please call: (512) 344-5275

16 TAC §401.315

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.315 ("Mega Millions" On-Line Game Rule) without changes to the proposed text as published in the September 24, 2010, issue of the *Texas Register* (35 TexReg 8637).

The purpose of the amendments is to authorize a non-multiplied guaranteed second tier prize when a Megaplier option is purchased. Specifically, subsection (b)(7) has been amended to clarify that the multiplier does not apply to the second tier prize or the grand prize and that the second tier prize is $1,000,000 if the Megaplier feature is purchased. Subsection (b)(12) is changed to eliminate the number of playboards on a playslip. Subsection (c) is changed to delete the limitation of five plays per ticket, delete the number of plays per consecutive draw, and to reword the cost of a Megaplier play. Subsection (e) is amended to define the "Megaplier" feature rather than the "multiplier" feature, and to clarify that the multiplier number will be used to multiply the value of the prizes for the third through the ninth tiers. Subsection (e)(4) is re-titled "Application of multiplier number" and is divided into three subparagraphs: (A) which specifies that the multiplier will operate on the third through the ninth tiers; (B) which restates that the second tier prize is $1,000,000, if $1 has been paid for the Megaplier feature; and (C) which restates that the Megaplier feature does not apply to the grand prize/jackpot.

A public hearing was held at 2:00 p.m. on Thursday, October 14, 2010, at 611 E. 6th Street, Austin, Texas 78701. No members of the public were present at the hearing and no comments were received during the public comment period. The Commission received no comments from any groups or associations during the comment period.

The amendments are adopted under Texas Government Code, §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006454

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: November 29, 2010
Proposal publication date: September 24, 2010
For further information, please call: (512) 344-5275

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES AND HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER C. APPROVAL OF NEW ACADEMIC PROGRAMS AND ADMINISTRATIVE CHANGES AT PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND ASSESSMENT OF EXISTING DEGREE PROGRAMS

19 TAC §§5.43, 5.44, 5.52

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§5.43, 5.44, and 5.52, concerning Approval of New Academic Programs and Administrative Changes at Public Universities, Health-Related Institutions, and Assessment of Existing Degree Programs. Section 5.44 is adopted with changes to the proposed text as published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6888) and will be republished. Section 5.43 and §5.52 are adopted without changes.

Specifically, these amendments add a definition of new doctoral degree programs, will revise the requirements for submitting administrative change requests, add doctoral degree program audits for public institutions of higher education and health-related institutions, and reorganize information for clarity.

One comment was received regarding these amendments.

Comment: The University of Houston recommended removing the requirement that an institution's governing board participate in the approval process for certificate programs, thus allowing the institution and/or system to designate who has the institutional authority to approve certificate programs. Removing this requirement would streamline the process and facilitate the creation of certificate programs that often more closely align with the needs of workforce/professional development.

Response: As a result of this comment, changes were made to §5.44(b)(1)(A). The requirement for governing board approval of certificate programs was removed.

The amendments are adopted under the Texas Education Code, §61.051, which provides the Coordinating Board with the authority to coordinate institutions of higher education.

§5.44. Presentation of Requests and Steps for Implementation.

(a) Requests for new degree programs shall be made in accordance with the following procedures.

(1) Approval of new bachelor's and master's programs is automatic if all of the following conditions are met:

(A) The program has institutional and governing board approval.

(B) The institution certifies compliance with the Standards for New Bachelor's and Master's Programs.

(C) The institution certifies that adequate funds are available to cover the costs of the new program.

(D) New costs during the first five years of the program would not exceed $2 million.

(E) The program is a non-engineering program (i.e., not classified under CIP code 14).

(F) The program is not one which the institution previously offered and has been closed due to low productivity in the last 10 years.

(G) The program would be offered by a university or health-related institution.

(H) No objections to the proposed program are received by the Coordinating Board during the 30-day comment period.

(2) If a proposed bachelor's or master's program meets the conditions in paragraph (1) of this subsection, the institution shall submit a request to the Assistant Commissioner of Academic Affairs and Research to add the program. If a proposed program does not meet the conditions outlined in paragraph (1) of this subsection, the institution must submit a proposal using the standard degree program request form.

(3) The Coordinating Board shall post the proposed program online for public comment for a period of 30 days. If no objections occur, the Coordinating Board staff shall update the institution's program inventory accordingly. No new program shall be implemented until all objections are resolved. The Coordinating Board reserves the right to audit a certificate or degree program at any time to ensure compliance with any of the criteria outlined in paragraph (1) of this subsection.

(4) An institution requesting a new doctoral program shall submit a proposal using the standard doctoral program request form. All requests for new doctoral programs require preliminary authority prior to the submission of a degree program request.

(b) Requests for new certificate programs shall be made in accordance with the following procedures.

(1) Approval of new undergraduate and graduate certificate programs is automatic if all of the following conditions are met:

(A) The certificate program has institutional approval.

(B) The institution certifies that adequate funds are available to cover the costs of the new certificate program.

(C) The certificate program meets all other criteria in §5.48 of this title (relating to Criteria for Certificate Programs at Universities and Health-Related Institutions).

(D) No objections to the proposed certificate program are received by the Coordinating Board during the 30-day comment period.

(2) If a proposed certificate program meets the conditions in paragraph (1) of this subsection, the institution shall submit a request

to the Assistant Commissioner of Academic Affairs and Research. If a proposed certificate program does not meet the conditions outlined in paragraph (1) of this subsection, the institution must submit a proposal using the standard program request form.

(3) The Coordinating Board shall post the proposed program online for public comment for a period of 30 days. If no objections occur, the Coordinating Board staff shall update the institution's program inventory accordingly. No new certificate program shall be implemented until all objections are resolved. The Coordinating Board reserves the right to audit a certificate program at any time to ensure compliance with any of the conditions outlined in paragraph (1) of this subsection.

(c) Requests for administrative changes shall be made in accordance with the following procedures. Administrative changes include the creation of new administrative units--such as colleges, schools, divisions, and departments--as well as changes to existing administrative units, such as a name change, consolidation of existing units, or movement of a program into another unit.

(1) The Coordinating Board shall post the proposed administrative structure online for public comment for a period of 30 days for any administrative change request that concerns the creation of new administrative units such as colleges, schools, divisions, and departments. If no objections occur, the Coordinating Board staff shall update the institution's administrative unit structure accordingly. No new administrative unit shall be implemented until all objections are resolved. The Coordinating Board reserves the right to audit an administrative unit at any time to ensure compliance with any of the conditions outlined in paragraph (2) of this subsection.

(2) Approval of an administrative change is automatic if all of the following conditions are met:

(A) The administrative change has institutional and governing board approval;

(B) The institution certifies that adequate funds are available to cover the costs of the administrative change;

(C) New costs during the first five years would not exceed $2 million;

(D) The administrative change meets all other criteria in §5.47 of this title (relating to Criteria for Administrative Change Requests); and

(E) The administrative change request concerns changes to existing administrative units, such as a name change, consolidation of existing units, or movement of a program into another unit; or, no objections to the proposed administrative change are received by the Coordinating Board during the 30-day comment period for those administrative change requests that concern the creation of new administrative units such as colleges, schools, divisions and departments.

(3) If a proposed administrative change meets the conditions in paragraph (2) of this subsection, the institution shall submit a request to the Assistant Commissioner of Academic Affairs and Research to update the administrative structure of the institution. If a proposed administrative change does not meet the conditions outlined in paragraph (2) of this subsection, the institution must submit a proposal using the standard administrative change request form.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006432
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 29, 2010
Proposal publication date: August 13, 2010
For further information, please call: (512) 427-6114

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19 TAC §5.53, §5.54

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §5.53 and §5.54, concerning Approval of New Academic Programs and Administrative Changes at Public Universities, Health-Related Institutions, and Assessment of Existing Degree Programs, without changes to the proposed text as published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6889).

Specifically, these new sections would establish the authority for quality and effectiveness audits of new doctoral degree programs and establish a procedure for handling instances of noncompliance with conditions of approval of new doctoral degree programs.

No comments were received concerning these new sections.

The new sections are adopted under the Texas Education Code, §61.051, which provides the Coordinating Board with the authority to coordinate institutions of higher education.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006431
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 29, 2010
Proposal publication date: August 13, 2010
For further information, please call: (512) 427-6114

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CHAPTER 7. DEGREE GRANTING COLLEGES AND UNIVERSITIES OTHER THAN TEXAS PUBLIC INSTITUTIONS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §7.7, §7.8

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §7.7 and §7.8, concerning Degree Granting Colleges and Universities Other Than Texas Public Institutions, without changes to the proposed text as published in the September 24, 2010, issue of the *Texas Register* (35 TexReg 8642).

The intent of the amendments to these sections is to clarify the Commissioner's authority with respect to an institution operating under a Certificate of Authorization (CoAu) or a Certificate of Authority (CoA) in the event that the institution's Certificate of Approval or Letter of Exemption issued by the Texas Workforce Commission (TWC) is revoked or denied. The Texas Workforce Commission either authorizes all institutions to operate in Texas or the institution is granted a Letter of Exemption from Chapter 132 of the Texas Education Code. A requirement for a CoA or CoAu is that the institution must have authority from TWC to operate in the state, prior to obtaining degree granting authority. Presently, Chapter 7 rules allow the Board to take action against an institution that has had its Certificate of Approval revoked only after the recognized accrediting agency revokes their accreditation. The adopted changes will enable the Coordinating Board to act when an action is initiated by the Texas Workforce Commission.

No comments were received concerning these amendments.

The amendments are adopted under the provisions of Texas Education Code, Chapter 61, Subchapters G and H, which describes the Board's role in Regulation of Private Postsecondary Educational Institutions and Out-of-State Public Institutions, as well as Texas Education Code, Chapter 132, which provides the Coordinating Board's Role in the regulation of Career Schools and Colleges.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006433
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 29, 2010
Proposal publication date: September 24, 2010
For further information, please call: (512) 427-6114

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CHAPTER 17. RESOURCE PLANNING
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §17.3

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) adopts amendments to §17.3, concerning resource planning definitions, without changes to the proposed text as published in the August 27, 2010, issue of the *Texas Register* (35 TexReg 7636).

Specifically, these amendments will make necessary changes to existing definitions in order to facilitate implementation of modified reporting and standard changes in regards to deferred maintenance and critical deferred maintenance.

The following comments were received concerning the amendments:

Comment: The University of Texas at Arlington commented that the content regarding the statement in several preambles that "...each year of the first five years...there will not be any fiscal implications..." is patently incorrect, as illuminated by the following comments. Furthermore, the effort Coordinating Board staff would need to expend to make useful interpretations of the data is not mentioned or quantified.

Response: Staff responded because of the formatting of the rule changes, several rules will not have any impact because they are only pertaining to definitions or referencing changes in definitions. For Subchapter K, the preamble states there will be an increase in transaction costs to comply with this change. As a result of this comment no additional changes were made to the rules as proposed.

Comment: The University of Texas at Arlington commented that the Building Adaptation will be a new item to address that is not currently reported. New processes will need to be in place to track this new category.

Response: Staff concurs, but believes this is highly significant in order to realize the potential within existing facilities and to identify all needs associated with providing the best possible facilities for the students, staff, and faculty. As a result of this comment no additional changes were made to the rules as proposed.

Comment: The University of Texas at Arlington commented that the Planned Maintenance will be a very difficult concept upon which to have parity (equality) in reporting parameters, unless THECB defines such parameters. Examples: what is the "correct" life expectancy of any given building component? Even within the building and facilities management communities of professionals, the definitions of such vary. We currently have a program to determine preventative maintenance (PM) but this would not directly correlate with the Planned Maintenance as proposed.

Response: Staff agrees there are several methods to assess and determine planned maintenance. Whatever the methodology, the end result should be an amount of work to be accomplished and a cost associated with the conduct of planned maintenance. The Campus Condition Index simply requires the institution to make an assessment of the work that is required, assign a cost, and report the total cost, amount of the total cost that has been budgeted, and the amount that is unbudgeted. As a result of this comment no additional changes were made to the rules as proposed.

Comment: The University of Texas at Arlington commented that the document states there is no financial impact the first 5 years. What will be the impact after 5 years?

Response: Staff responded that given institutions are currently doing a good job of identifying maintenance needs, the increased cost associated with these changes would be transactional in nature. The proposed reporting changes are simply the data that should be available if the institutions are conducting assessments of their facilities on a routine basis. In order to prepare an annual maintenance budget, institutions should have some idea as to what tasks must be accomplished in the fiscal year to maintain facilities. Further, there should be a cost assigned to this work. Initially we anticipate an increased cost, but over time, procedures would become more routine, hence more efficient. Additionally, available technologies would be leveraged to further increase efficiency to further reduce the reporting demand. As a result of this comment no additional changes were made to the rules as proposed.

Comment: The University of Texas at Austin commented to reconsider the proposed use of "maintenance" which is confusing and misleading. The term maintenance is applied to the replace-

ment of major building systems; essentially a capital reinvestment activity as well as to on-going annual activities that insure proper operation of building systems. Recent work by APPA (Buildings...The Gifts That Keep on Taking) related to identifying and calculating the total cost of building operation (TCO) has created a much clearer definition and separation between these areas. TCO is divided into three categories: Birth and Burial - One-time costs associated with the initial construction and then final demolition of a building:

Planning and Design

Financing

Construction

Demolition

Maintenance and Operation - annual recurring costs necessary to maintain building operation

Planned and Routine maintenance

Breakdown/Repairs

Operations

Utilities

Recapitalization - Periodic reoccurring costs required to replace major building systems

Retrofits/Improvements - to address obsolescence

Programmatic Upgrades - to respond to new user/program needs

System Replacement/Capital Renewal - age driven requirements

APPA's Center for Facilities Research is currently undertaking a comprehensive study of TCO using the categories identified above. Aligning THECB definitions with this effort could provide substantial benefit in regards to long term benchmarking with the data from this project and as well as aligning the process with the current thinking regarding this issue. We recognize that the existing statute contains the term "deferred maintenance" however we will work with the Coordinating Board to address this issue in the upcoming legislative session to develop a more appropriate system that better suites institutional needs.

Response: Staff agrees the detailed taxonomy listed in this comment provides a comprehensive view of the facilities management process. However, the consumers of the data consolidated and reported by the THECB are not all facilities professionals. Therefore, detailing the data to the level presented in this comment would not be appropriate for a wider audience. The terminology used in the Campus Condition Index proposal is easily understood either nominally or with very little reference. As a result of this comment no additional changes were made to the rules as proposed.

Comment: The University of Texas at Austin commented to consider disconnecting the infrastructure value from building value. The information provided to The University of Texas at Austin indicates that the infrastructure value will be added to the institutional value for each building. This practice produces an inflated index value for individual buildings and precludes the clear identification of the value associated with campus infrastructure.

Response: Staff responded that the infrastructure value is an add-on to the calculation of values in the aggregate. While there was discussion in the working group about the attribution of a percentage of the infrastructure to individual buildings, the final decision was made to include this amount on the back-end. Therefore, there is no add-on per building for infrastructure. As a result of this comment no additional changes were made to the rules as proposed.

The amendments are adopted under the Texas Education Code, §§61.0572, 61.058, and 61.0582.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006434
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 29, 2010
Proposal publication date: August 27, 2010
For further information, please call: (512) 427-6114

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SUBCHAPTER D. RULES APPLYING TO NEW CONSTRUCTION AND ADDITION PROJECTS

19 TAC §17.30

The Texas Higher Education Coordinating Board adopts an amendment to §17.30, concerning Standards for New Construction and/or Addition Projects, without changes to the proposed text as published in the August 27, 2010, issue of the *Texas Register* (35 TexReg 7639).

Specifically, this amendment will make necessary changes to codify the Campus Condition Index and modifies the standards to facilitate implementation of new reporting and standards in regards to planned maintenance, facility adaptation, deferred maintenance and critical deferred maintenance.

There were no comments received regarding the amendment.

The amendment is adopted under the Texas Education Code, §§61.0572, 61.058, and 61.0582.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006435
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 29, 2010
Proposal publication date: August 27, 2010
For further information, please call: (512) 427-6114

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SUBCHAPTER G. RULES APPLYING TO AUXILIARY ENTERPRISE PROJECTS

19 TAC §17.60

The Texas Higher Education Coordinating Board adopts an amendment to §17.60, concerning Standards for Auxiliary Enterprise Projects, without changes to the proposed text as published in the August 27, 2010, issue of the *Texas Register* (35 TexReg 7640).

Specifically, this amendment will make necessary changes to reflect definitional changes necessary to facilitate implementation of new reporting and standards in regards to planned maintenance, facility adaptation, deferred maintenance and critical deferred maintenance.

There were no comments received concerning this amendment.

The amendment is adopted under the Texas Education Code, §§61.0572, 61.058, and 61.0582.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER H. RULES APPLYING TO INTERCOLLEGIATE ATHLETIC PROJECTS

19 TAC §17.70

The Texas Higher Education Coordinating Board adopts an amendment to §17.70, concerning Standards Applying to Intercollegiate Athletics Projects, without changes to the proposed text as published in the August 27, 2010, issue of the *Texas Register* (35 TexReg 7640).

Specifically, this amendment will make necessary changes to reflect definitional changes necessary to facilitate implementation of new reporting and standards in regards to planned maintenance, facility adaptation, deferred maintenance and critical deferred maintenance. This amendment will make necessary changes to reflect definitional changes necessary to facilitate implementation of new reporting and standards in regards to planned maintenance, facility adaptation, deferred maintenance and critical deferred maintenance.

There were no comments received concerning the amendment to the rules.

The amendment is adopted under the Texas Education Code, §§61.0572, 61.058, and 61.0582.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER I. RULES APPLYING TO ENERGY SAVINGS PERFORMANCE CONTRACT PROJECTS

19 TAC §17.81

The Texas Higher Education Coordinating Board adopts an amendment to §17.81, concerning Standards for Energy Savings Performance Contract Projects, without changes to the proposed text as published in the August 27, 2010, issue of the *Texas Register* (35 TexReg 7641).

Specifically, this amendment will make necessary changes to reflect definitional changes necessary to facilitate implementation of new reporting and standards in regards to planned maintenance, facility adaptation, deferred maintenance and critical deferred maintenance.

There were no comments received concerning the amendment to the rules.

The amendment is adopted under the Texas Education Code, §§61.0572, 61.058, and 61.0582.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. RULES APPLYING TO TUITION REVENUE BOND PROJECTS

19 TAC §17.90

The Texas Higher Education Coordinating Board adopts an amendment to §17.90, concerning Standards for Tuition Revenue Bond Projects, without changes to the proposed text as published in the August 27, 2010, issue of the *Texas Register* (35 TexReg 7642).

Specifically, this amendment will make necessary changes to reflect definitional changes necessary to facilitate implementation of new reporting and standards in regards to planned maintenance, facility adaptation, deferred maintenance and critical deferred maintenance.

There were no comments received concerning the amendment to the rule.

The amendment is adopted under the Texas Education Code, §§61.0572, 61.058, and 61.0582.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER K. REPORTS

19 TAC §17.100, §17.101

The Texas Higher Education Coordinating Board adopts amendments to §17.100 and §17.101, concerning Board Reports, without changes to the proposed text as published in the August 27, 2010, issue of the *Texas Register* (35 TexReg 7642).

Specifically, this amendment will make necessary changes to reflect definitional changes necessary to facilitate implementation of new reporting and standards in regards to planned maintenance, facility adaptation, deferred maintenance and critical deferred maintenance.

The following comments were received regarding the amendments:

Comment: The University of Texas at Arlington (UTA) commented that all the proposals need much more vetting and analysis before adoption. This past spring a group of institutional and The University of Texas System (UT System) representatives held meetings to discuss how to simplify the MP2 report. What has now been presented as new proposed rules, is completely the opposite. It makes the workload for completion of the MP2 order-of-magnitudes more complicated.

Response: Staff responded that currently, the amount and quality of information reported is minimal and does not provide the information necessary to respond to many Legislative requests. These proposed changes will provide the essential data to facilitate statistical analysis institutionally and statewide, to allow the Texas Higher Education Coordinating Board (THECB) staff to respond in a timely manner to those requests. In order to collect input from the institutions, the information contained in the report was sent to all workgroup members for comment on June 30, 2010, with a response due on July 14, 2010. The changes shown in the rules were developed in collaboration with representatives of all university systems and the non-system institutions. The UT System representative was one of the most involved and provided some of the most productive input. Further, the information regarding these changes was sent out again in mid July 2010 for system review, with the stated expectation that institutions provide feedback. By mid August, we had received several points of feedback and made modifications to the process and clarified several points. Institutions were given another chance for comment at the resource management meeting which was held at the THECB and broadcast with questions being fielded online. As a result of this comment no additional changes were made to the rules as proposed.

Comment: UTA commented that currently they do not have the staff or finances for Building Facilities Assessments (BFAs) to the extent as what is proposed. Simplified Building Facilities Assessments, cost in range of $0.12/SF to $0.15/SF. These are called for in the proposed changes. This level condition assessment (BFA) is very superficial, and does not yield sufficient technical data upon which real action plans, budgeting and prioritizing of risk management criteria can be assigned. BFAs to a degree of usefulness for this purpose, as would be necessary for MP2 usefulness, would cost much more. If The University of Texas at Arlington (UTA) were required to conduct these BFAs over the next two years (arbitrary time frame) the cost would exceed $800,000 not including in-house effort to utilize the data.

A. UTA maintains a list of deferred maintenance (DM); (including FRRM for UT System) which is a soft building assessment.

B. Comment - UTA addresses DM with funding allocated from the administration above our base-line operation and maintenance funds. Last year more than $1.4 million was expended in this category.

Response: THECB staff believes the institutional facilities staffs are highly proficient stewards of the state facilities. This belief was confirmed during our many meetings with the working group in the development of the Campus Condition Index system. Institutions are currently reporting deferred maintenance, critical deferred maintenance, and the expenditures associated with them via the MP2 and MP4 reports submitted annually. The mere existence of these reports and the data associated indicate the institutions are conducting some type of facility condition assessment. Since the institutions are reporting only items that are over $10,000, there is a very high likelihood other items exist that do not meet this threshold. This report is simply a means to transmit these needs to the THECB to paint a complete picture of the facilities condition. The THECB staff believes the institutions have a very good handle on the condition of the facilities, regardless of the method used to determine the condition. While we understand there may be costs associated with translating the information to align with the definitions agreed upon with the workgroup, the foundational data are presumed to already be tracked as a matter of routine. As a result of this comment no additional changes were made to the rules as proposed.

Comment: UTA commented that the Campus Condition Report (MP2) - This report has added Planned Maintenance & Facilities Adaptation as new categories in this report. It has also added to the report budget and unbudgeted in all four areas of reporting. The tracking of the data, collections of the data, and the time to report the data is a significant change for this report and should be discussed further with recommendations on how to accomplish this task.

Response: Staff concurs that additional coordination will be required to affect the implementation effort. Based on the recommendations of the working group and the needs of the THECB to track facilities information, the reporting areas are in agreement with the opinions of facilities professionals representing all institutions of higher education. We understand this is a significant, but necessary, change. There is a pressing need to have information that answers the fundamental question; what are the

capital needs in the State of Texas? Quite often, this excludes the institutional need for maintenance and adaptive support. As a result of this comment no additional changes were made to the rules as proposed.

Comment: UTA commented that the Facilities Development Plan (MP1) - This report has added Facilities Adaptation as a new category.

Response: Staff concurs. As a result of this comment no additional changes were made to the rules as proposed.

Comment: The University of Texas at Austin (UT Austin) commented that THECB staff reconsider the new requirement to report deferred maintenance items below $10,000. UT Austin's data collection process does not identify requirements below $10,000, this practice is based on two factors; analysis indicating that requirements below that cost do not have a significant impact on overall campus condition and the substantial cost in adding that additional data collection to our existing process. In addition, much of the work below that level is funded as a part of the annual maintenance budget, not funded from capital or non-reoccurring fund sources.

Response: Staff responded that the Campus Condition Index Report will not require any projects to be reported other than the five priority projects for the institution. Institutions can use whatever best practice that, in the opinion of the facilities experts and executive administration, will arrive at the most accurate reflection of the facilities needs of the institution. One of the strengths of this process is providing data that can lead to action and recommendations rather than simply a data collection effort. These data are essential to determine facilities needs and campus condition. While there is a category for ongoing maintenance which would be funded from the annual maintenance budget, this is not reported as part of the Campus Condition Index Report. As a result of this comment no additional changes were made to the rules as proposed.

Comment: UT Austin commented that THECB staff consider including the Facility Adaptation data on a test basis for a multi-year period. This category of facility requirements is new and developing processes to identify its requirements as well as their associated costs will be a challenge. One issue is that programmatic changes are likely to have a more subjective element to them than the requirements associated with building systems. Another challenge is that estimating costs could be more difficult because of the potential for adaptation needs to involve multiple building systems such as interiors, furnishings, as well as MEP systems. As a result there will be a substantial cost associated with the collection and reporting of this data. Also, note that adding Facility Adaptation to this process begins to change the nature of the information that is collected from "condition" to "functionality."

Response: The working group agreed that this process should be reviewed after a three to five year period to identify opportunities for improvement. The staff does not concur that facility adaptation is a matter of functionality rather than condition. If a building is not functionally adequate, then the condition of the building is inadequate. This report is far more than a report of deficiencies; rather it is intended to identify the actual needs. Coupled with the MP1 (Capital Expenditures Plan), this report will provide a comprehensive view of the campus' facilities rather than simply a report of deficiencies. It is understood there will be some transactional costs associated with implementation and the THECB staff will work closely with institutional representatives to minimize turbulence. Approaching this effort in a piecemeal or phase-in manner will not provide the complete picture required. Further, the consensus of the work group was that all parts of this report should be implemented as is evidenced by workgroup report. As a result of this comment no additional changes were made to the rules as proposed.

Comment: UT Austin commented that it recognizes that condition index has significant limitations as metric for the evaluation of campus facilities.

One limitation is that the reliability and validity of the index depends on a consistent methodology for the calculation of both facility value and deferred maintenance. Currently THECB staff assumes that all Texas institutions are calculating deferred maintenance costs in essentially the same manner. Given the wide variability of institutional operations in all other areas, this assumption seems very unlikely. As a result, there are significant limits on the ability of condition index to function as a comparative tool across institutions. However, depending on the consistency of internal calculations the index can be a useful tool for institutional management.

A second limitation is that the index is primarily a financial indicator measuring the level of reinvestment in existing campus facilities; there is no substantial research that supports the proposed ordinal ranges. In evaluating a similar issue, the establishment of a target range of funding based on institutional budget or facility value, the workgroup recommended that additional information be collected prior to the implementation of this approach. It may be that the proposed ranges are appropriate, however, if they are wrong the result could be an excessive reinvestment in facilities to the determent of other critical areas of institutional operation or reinvestment insufficient to sustain appropriate condition.

Another limitation is that at the institutional level, condition index is an accumulation of building and system level indices, essentially an average and the significance of an average can be impacted by the range of the values that are used to produce it. For example, from an operational/condition perspective an institutional FCI of 10% driven by building indices ranging from 5 percent to 15 percent may be significantly different from one with a range of 0 percent to 20 percent.

Finally, there is no data that supports the significance of the ordinal ranges regarding the operational capability of higher education facilities. As a result it is not possible to state that an FCI of 10% is significantly different than an FCI of 20% in terms of the risk to essential programs and activities.

Response: Staff responded that as to the validity and reliability being tied to the consistency of methodology used to determine the value and deferred maintenance, the staff concurs. To this end, a definition is provided for all categories reported; use of the nominal definition will provide sufficient alignment. The index value is calculated in a uniform manner across all institutions and is based on the projects submitted by the institutions and approved by the Board. This too, is uniform across all institutions. In response to the second and third points, the staff agrees the ranges are not supported by detailed research. However, the 5 percent threshold is currently in place and remains as the standard. The 5 to 10 percent and over 10 percent categories are based on available literature and was closely considered by institutional representatives serving on the working group. The Campus Condition Index is not intended to assess an institution's operational capability. Decomposing the data to the range of individual building values says little about the distribution of

values within that range. Lastly, the rule change does not call for the implementation of funding requirements based on a percentage of the budget. As a result of this comment no additional changes were made to the rules as proposed.

The amendments are adopted under the Texas Education Code, §§61.0572, 61.058, and 61.0582.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz
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SUBCHAPTER L. FACILITIES AUDIT

19 TAC §17.112

The Texas Higher Education Coordinating Board adopts an amendment to §17.112, concerning Data Sources, without changes to the proposed text as published in the August 27, 2010, issue of the *Texas Register* (35 TexReg 7644).

Specifically this amendment will make necessary changes to reflect definitional changes necessary to facilitate implementation of new reporting and standards in regards to planned maintenance, facility adaptation, deferred maintenance and critical deferred maintenance.

There were no comments received concerning the amendment.

The amendment is adopted under the Texas Education Code, §§61.0572, 61.058, and 61.0582.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §§22.21 - 22.35

The Texas Higher Education Coordinating Board adopts the repeal of §§22.21 - 22.35, concerning Provisions for the Tuition Equalization Grant Program, without changes to the proposal as published in the August 20, 2010, issue of the *Texas Register* (35 TexReg 7171).

Specifically, the repeal is adopted in order to adopt new sections that will more clearly differentiate between the requirements of the "2006 Revised Tuition Equalization Grant (TEG) Program" (awards made on or after September 1, 2005) and the "Original TEG Program" (awards made prior to September 1, 2005), as well as standardize terms and section references for uniformity. New sections concerning the TEG Program are simultaneously adopted with this repeal.

There were no comments received regarding the repeal.

The repeal is adopted under the Texas Education Code, §61.229, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules to implement the program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz
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19 TAC §§22.21 - 22.32

The Texas Higher Education Coordinating Board adopts new §§22.21 - 22.32, concerning Provisions for the Tuition Equalization Grant Program, without changes to the proposed text as published in the August 20, 2010, issue of the *Texas Register* (35 TexReg 7171).

Specifically, the new sections replace repealed §§22.21 - 22.35. The new sections separate and clarify program requirements for students who receive awards under the "new" and "old" programs. Students whose initial awards are received on or after September 1, 2005, fall under the provisions of the new, or "2006 Revised Tuition Equalization Grant (TEG) Program," requirements; students whose initial awards were received prior to September 1, 2005, fall under the provisions of the old, or "Original TEG Program." The new sections also describe the authority and purpose of the program, provide definitions of terms, and outline general program guidelines. The new sections standardize certain terms and section references for uniformity. In addition, there are several substantive changes made to the rules. Section 22.25(a)(4) clarifies that National Merit scholarship finalists may qualify for TEG awards only if they meet the competitive scholarship provisions outlined in the Texas Education Code, §54.064. This is in keeping with Rider 10, page III-52, Senate Bill 1, 81st Legislature, Regular Session (2009) (General Appropriations Act). Section 22.26(b)(2) indicates that students unable

to receive full awards because of limited need should receive prorated awards, and that the proration should be done in accordance with §22.26(g). Section 22.26(g) provides institutions with guidance in determining the amounts of prorated awards, whether the proration is due to the recipient being an Original TEG Program recipient enrolled less than full time, or a 2006 Revised TEG Program recipient receiving a partial award because of limited need or enrollment in only a few hours due to imminent graduation. Section 22.27(1) removes reference to documents to be sent to the Texas Higher Education Coordinating Board for identifying students for whom refunds are made. The refunds will be reflected in the award amounts reported to the Texas Higher Education Coordinating Board at year end. Section 22.27(2) reflects that all refunds must be made to the program by the end of the relevant state fiscal year. Section 22.28(d) indicates that late disbursements must be processed prior to the end of the relevant state fiscal year unless an extension has been granted to the institution by Texas Higher Education Coordinating Board staff.

There were no comments received regarding the new sections.

The new sections are adopted under the Texas Education Code, §61.229, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules to implement the program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §1.26

The Texas Board of Architectural Examiners (Board) adopts new §1.26, concerning Preliminary Evaluation of Criminal History, without changes to the proposed text as published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6893) and will not be republished.

New §1.26 establishes a process by which a person who has a criminal history may receive a written preliminary evaluation from the agency regarding the likelihood of becoming a registered architect in light of his or her criminal history. The rule permits a person to apply for the preliminary evaluation, receive a response after 90 days, request a re-evaluation of a determination of ineligibility based upon previously undisclosed evidence or evidence that was not readily available, seek a hearing on the determination, and apply again three years after the final determination of eligibility is made.

The Board received no public comments regarding the proposed rule.

The new rule is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Subchapter B, Texas Occupations Code. The rule is also adopted pursuant to Chapter 53, Texas Occupations Code, which specifies the procedures for consideration of criminal conduct in licensing or maintaining the licensure of professionals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Board of Architectural Examiners
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22 TAC §1.27

The Texas Board of Architectural Examiners (Board) adopts new §1.27, concerning Provisional Licensure, with changes to the proposed text as published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6894). The text of the rule will be republished.

New §1.27 creates a process for a person with a criminal history record which includes less serious offenses unrelated to the practice of architecture and which are less than five years old to obtain a provisional license for six months. If the provisional registrant successfully completes the provisional licensure period without committing another crime, violating a rule of the Board, or having his or her parole or supervision revoked, the registrant will become fully registered and not subject to provisional registration. The Board modified the rule as proposed to clarify that an applicant must be otherwise qualified for registration to obtain provisional or full registration status as an architect.

The Board received no public comments regarding the proposed rule.

The new rule is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Subchapter B, Texas Occupations Code. The rule is also adopted pursuant to Chapter 53, Texas Occupations Code, which specifies the procedures for consideration of criminal conduct in licensing or maintaining the licensure of professionals.

§1.27. Provisional Licensure.

(a) The Board shall grant a Certificate of Registration or a provisional Certificate of Registration to an otherwise qualified Candidate who has been convicted of an offense that:

(1) is not directly related to the Practice of Architecture as determined by the executive directory under §1.149 of this chapter (relating to Criminal Convictions);

(2) was committed earlier than five (5) years before the date the Candidate filed an application for registration;

(3) is not an offense listed in §3g, Article 42.12, Code of Criminal Procedure; and

(4) is not a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

(b) A provisional Certificate of Registration expires six (6) months after the date it is issued.

(c) A provisional Certificate of Registration may be Revoked for the following reasons:

(1) The provisional Registrant commits another offense during the 6-month provisional registration period;

(2) The provisional Registrant's community supervision, mandatory supervision, or parole is Revoked; or

(3) The provisional Registrant violates a statute or rule enforced by the Board.

(d) A provisional Registrant who is subject to community supervision, mandatory supervision, or parole shall provide the Board name and contact information of the probation or parole department to which the provisional Registrant reports. The Board shall provided notice to the department upon the issuance of the provisional Certificate of Registration, as well as any terms, conditions or limitations upon the provisional Registrant's practice.

(e) Upon successful completion of the provisional Registration period, the Board shall issue a Certificate of Registration to the provisional Registrant. If a provisional Registrant's provisional Certificate is Revoked, the provisional Registrant is disqualified from receiving a Certificate of Registration and may not apply for a Certificate of Registration for a period of three (3) years from the date of Revocation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §1.149

The Texas Board of Architectural Examiners (Board) adopts amendments to §1.149, concerning Criminal Convictions, without changes to the proposed text as published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6896) and will not be republished.

The amendments to §1.149 implement new standards regarding the consequences of a criminal conviction upon architects and applicants for registration as architects. The amendments incorporate references to the new process for becoming provisionally licensed. The amendments also clarify that architects and applicants for registration as an architect are subject to disciplinary action for committing an offense relating to architecture, an offense committed within the past five years, or one of a series of specified serious or violated offenses.

The Board received no public comments regarding the proposed rule.

The amendments are adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Subchapter B, Texas Occupations Code. The rule is also adopted pursuant to Chapter 53, Texas Occupations Code, which specifies the procedures for consideration of criminal conduct in licensing or maintaining the licensure of professionals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §1.153

The Texas Board of Architectural Examiners (Board) adopts new §1.153, concerning, Deferred Adjudication, without changes to the proposed text as published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6898) and will not be republished.

New §1.153 designates criminal offenses for which deferred adjudication is granted and eventually dismissed as conduct which the Board may not consider to be a criminal conviction. The rule allows the executive director to consider such conduct as a criminal conviction if the person who committed the offense may pose a continuing threat to the public or registration as an architect would provide an opportunity for the person to engage in the same sort of criminal activity.

The Board received no public comments regarding the proposed rule.

The new rule is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Subchapter B, Texas Occupations Code. The rule is also adopted pursuant to Chapter 53, Texas Occupations Code, which specifies the procedures for consideration of criminal conduct in licensing or maintaining the licensure of professionals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 3. LANDSCAPE ARCHITECTS
SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §3.26

The Texas Board of Architectural Examiners (Board) adopts new §3.26, concerning Preliminary Evaluation of Criminal History, without changes to the proposed text as published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6901) and will not be republished.

New §3.26 establishes a process by which a person who has a criminal history may receive a written preliminary evaluation from the agency regarding the likelihood of becoming a registered landscape architect in light of his or her criminal history. The rule permits a person to apply for the preliminary evaluation, receive a response after 90 days, request a re-evaluation of a determination of ineligibility based upon previously undisclosed evidence or evidence that was not readily available, seek a hearing on the determination, and apply again three years after the final determination of eligibility is made.

The Board received no public comments regarding the proposed rule.

The new rule is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Subchapter B, Texas Occupations Code. The rule is also adopted pursuant to Chapter 53, Texas Occupations Code, which specifies the procedures for consideration of criminal conduct in licensing or maintaining the licensure of professionals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §3.27

The Texas Board of Architectural Examiners (Board) adopts new §3.27, concerning Provisional Licensure, with changes to the proposed text as published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6903). The text of the rule will be republished.

New §3.27 creates a process for a person with a criminal history record which includes less serious offenses unrelated to the practice of landscape architecture and which are less than five years old to obtain a provisional license for six months. If the provisional registrant successfully completes the provisional licensure period without committing another crime, violating a rule of the Board, or having his or her parole or supervision revoked, the registrant will become fully registered and not subject to provisional registration. The Board modified the rule as proposed to clarify that an applicant must be otherwise qualified for registration to obtain provisional or full registration status as a landscape architect.

The Board received no public comments regarding the proposed rule.

The new rule is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Subchapter B, Texas Occupations Code. The rule is also adopted pursuant to Chapter 53, Texas Occupations Code, which specifies the procedures for consideration of criminal conduct in licensing or maintaining the licensure of professionals.

§3.27. Provisional Licensure.

(a) The Board shall grant a Certificate of Registration or a provisional Certificate of Registration to an otherwise qualified Candidate who has been convicted of an offense that:

(1) is not directly related to the Practice of Landscape Architecture as determined by the executive director under §3.149 of this chapter (relating to Criminal Convictions);

(2) was committed earlier than five (5) years before the date the Candidate filed an application for registration;

(3) is not an offense listed in §3g, Article 42.12, Code of Criminal Procedure; and

(4) is not a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

(b) A provisional Certificate of Registration expires six (6) months after the date it is issued.

(c) A provisional Certificate of Registration may be Revoked for the following reasons:

(1) the provisional Registrant commits another offense during the 6-month provisional Registration period;

(2) the provisional Registrant's community supervision, mandatory supervision, or parole is Revoked; or

(3) the provisional Registrant violates a statute or rule enforced by the Board.

(d) A provisional Registrant who is subject to community supervision, mandatory supervision, or parole shall provide the Board name and contact information of the probation or parole department to which the provisional Registrant reports. The Board shall provide notice to the department upon the issuance of the provisional Certificate

of Registration, as well as any terms, conditions or limitations upon the provisional Registrant's practice.

(e) Upon successful completion of the provisional Registration period, the Board shall issue a Certificate of Registration to the provisional Registrant. If a provisional Registrant's provisional Certificate is Revoked, the provisional Registrant is disqualified from receiving a Certificate of Registration and may not apply for a Certificate of Registration for a period of three (3) years from the date of Revocation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006421
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 29, 2010
Proposal publication date: August 13, 2010
For further information, please call: (512) 305-9040

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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §3.149

The Texas Board of Architectural Examiners (Board) adopts amendments to §3.149, concerning Criminal Convictions, without changes to the proposed text as published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6904) and will not be republished.

The amendments to §3.149 implement new standards regarding the consequences of a criminal conviction upon landscape architects and applicants for registration as landscape architects. The amendments incorporate references to the new process for becoming provisionally licensed. The amendments also clarify that landscape architects and applicants for registration as a landscape architect are subject to disciplinary action for committing an offense relating to landscape architecture, an offense committed within the past five years, or one of a series of specified serious or violated offenses.

The Board received no public comments regarding the proposed rule.

The amendments are adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Subchapter B, Texas Occupations Code. The rule is also adopted pursuant to Chapter 53, Texas Occupations Code, which specifies the procedures for consideration of criminal conduct in licensing or maintaining the licensure of professionals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006422
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 29, 2010
Proposal publication date: August 13, 2010
For further information, please call: (512) 305-9040

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22 TAC §3.153

The Texas Board of Architectural Examiners (Board) adopts new §3.153, concerning Deferred Adjudication, without changes to the proposed text as published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6906) and will not be republished.

New §3.153 designates criminal offenses for which deferred adjudication is granted and eventually dismissed as conduct which the Board may not consider to be a criminal conviction. The rule allows the executive director to consider such conduct as a criminal conviction if the person who committed the offense may pose a continuing threat to the public or registration as a landscape architect would provide an opportunity for the person to engage in the same sort of criminal activity.

The Board received no public comments regarding the proposed rule.

The new rule is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Subchapter B, Texas Occupations Code. The rule is also adopted pursuant to Chapter 53, Texas Occupations Code, which specifies the procedures for consideration of criminal conduct in licensing or maintaining the licensure of professionals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201006423
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 29, 2010
Proposal publication date: August 13, 2010
For further information, please call: (512) 305-9040

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CHAPTER 5. REGISTERED INTERIOR DESIGNERS
SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §5.36

The Texas Board of Architectural Examiners (Board) adopts new §5.36, concerning Preliminary Evaluation of Criminal History, without changes to the proposed text as published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6909) and will not be republished.

New §5.36 establishes a process by which a person who has a criminal history may receive a written preliminary evaluation from the agency regarding the likelihood of becoming a registered interior designer in light of his or her criminal history. The rule permits a person to apply for the preliminary evaluation, receive a response after 90 days, request a re-evaluation of a determination of ineligibility based upon previously undisclosed evidence or evidence that was not readily available, seek a hearing on the determination, and apply again three years after the final determination of eligibility is made.

The Board received no public comments regarding the proposed rule.

The new rule is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Subchapter B, Texas Occupations Code. The rule is also adopted pursuant to Chapter 53, Texas Occupations Code, which specifies the procedures for consideration of criminal conduct in licensing or maintaining the licensure of professionals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006424
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 29, 2010
Proposal publication date: August 13, 2010
For further information, please call: (512) 305-9040

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22 TAC §5.37

The Texas Board of Architectural Examiners (Board) adopts new §5.37, concerning Provisional Licensure, with changes to the proposed text as published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6910). The text of the rule will be republished.

New §5.37 creates a process for a person with a criminal history record which includes less serious offenses unrelated to the practice of interior design and which are less than five years old to obtain a provisional license for six months. If the provisional registrant successfully completes the provisional licensure period without committing another crime, violating a rule of the Board, or having his or her parole or supervision revoked, the registrant will become fully registered and not subject to provisional registration. The Board modified the rule as proposed to clarify that an applicant must be otherwise qualified for registration to obtain provisional or full registration status as a registered interior designer.

The Board received no public comments regarding the proposed rule.

The new rule is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Subchapter B, Texas Occupations Code. The rule is also adopted pursuant to Chapter 53, Texas Occupations Code, which specifies the procedures for consideration of criminal conduct in licensing or maintaining the licensure of professionals.

§5.37. Provisional Licensure.

(a) The Board shall grant a Certificate of Registration or a provisional Certificate of Registration to an otherwise qualified Candidate who has been convicted of an offense that:

(1) is not directly related to the Practice of Interior Design as determined by the executive director under §5.158 of this chapter (relating to Criminal Convictions);

(2) was committed earlier than five (5) years before the date the Candidate filed an application for registration;

(3) is not an offense listed in §3g, Article 42.12, Code of Criminal Procedure; and

(4) is not a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

(b) A provisional Certificate of Registration expires six (6) months after the date it is issued.

(c) A provisional Certificate of Registration may be Revoked for the following reasons:

(1) the provisional Registrant commits another offense during the 6-month provisional Registration period;

(2) the provisional Registrant's community supervision, mandatory supervision, or parole is Revoked; or

(3) the provisional Registrant violates a statute or rule enforced by the Board.

(d) A provisional Registrant who is subject to community supervision, mandatory supervision, or parole shall provide the Board name and contact information of the probation or parole department to which the provisional Registrant reports. The Board shall provide notice to the department upon the issuance of the provisional Certificate of Registration, as well as any terms, conditions or limitations upon the provisional Registrant's practice.

(e) Upon successful completion of the provisional Registration period, the Board shall issue a Certificate of Registration to the provisional Registrant. If a provisional Registrant's provisional Certificate is Revoked, the provisional Registrant is disqualified from receiving a Certificate of Registration and may not apply for a Certificate of Registration for a period of three (3) years from the date of Revocation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006425
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 29, 2010
Proposal publication date: August 13, 2010
For further information, please call: (512) 305-9040

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SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §5.158

The Texas Board of Architectural Examiners (Board) adopts amendments to §5.158, concerning Criminal Convictions, without changes to the proposed text as published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6912) and will not be republished.

The amendments to §5.158 implement new standards regarding the consequences of a criminal conviction upon registered interior designers and applicants for registration as a registered interior designer. The amendments incorporate references to the new process for becoming provisionally licensed. The amendments also clarify that registered interior designers and applicants for registration as a registered interior designer are subject to disciplinary action for committing an offense relating to interior design, an offense committed within the past five years, or one of a series of specified serious or violated offenses.

The Board received no public comments regarding the proposed rule.

The amendments are adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Subchapter B, Texas Occupations Code. The rule is also adopted pursuant to Chapter 53, Texas Occupations Code, which specifies the procedures for consideration of criminal conduct in licensing or maintaining the licensure of professionals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006426
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 29, 2010
Proposal publication date: August 13, 2010
For further information, please call: (512) 305-9040

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22 TAC §5.162

The Texas Board of Architectural Examiners (Board) adopts new §5.162, concerning Deferred Adjudication, without changes to the proposed text as published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6914) and will not be republished.

New §5.162 designates criminal offenses for which deferred adjudication is granted and eventually dismissed as conduct which the Board may not consider to be a criminal conviction. The rule allows the executive director to consider such conduct as a criminal conviction if the person who committed the offense may pose a continuing threat to the public or registration as a registered interior designer would provide an opportunity for the person to engage in the same sort of criminal activity.

The Board received no public comments regarding the proposed rule.

The new rule is adopted pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Subchapter B, Texas Occupations Code. The rule is also adopted pursuant to Chapter 53, Texas Occupations Code, which specifies the procedures for consideration of criminal conduct in licensing or maintaining the licensure of professionals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006427
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 29, 2010
Proposal publication date: August 13, 2010
For further information, please call: (512) 305-9040

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PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.25

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §75.25(b), concerning Impaired Licensees and Applicants, without changes to the proposed text as published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 8044) and will not be republished.

The amendment broadens the range of records from medical professionals upon which the Board can rely in determining whether probable cause exists for requiring a possibly impaired licensee or applicant to undergo a mental and/or physical examination. The amendment also broadens the range of criminal offenses upon which the Board can rely in making the same determination.

No comments were received by the Board on the proposed amendment.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 12, 2010.

TRD-201006510
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Effective date: December 2, 2010
Proposal publication date: September 3, 2010
For further information, please call: (512) 305-6716

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CHAPTER 80. PROFESSIONAL CONDUCT

22 TAC §80.3

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §80.3, concerning Request for Information and Records from Licensees, without changes to the proposed text as published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 8045) and will not be republished.

The adopted amendment clarifies fees that may be charged by a licensee for certifying records that are released to patients or to third parties. The Board has received several complaints recently that some licensees have charged excessive fees (sometimes exceeding $200) for certifying that copies of records provided by the licensee are true and current copies of the patient's records and have also charged excessive fees for having the records-release affidavit or certification document notarized. The amendment to §80.3 caps the affidavit or certification document fees at $15 and limits notarization charges by the licensee to no more than the actual notary costs paid by the licensee.

One comment in support of the amendment was received by the Board. The commenter stated that "it is in the best interest of the profession, the state, and the individuals that this rule would affect."

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 12, 2010.

TRD-201006511
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Effective date: December 2, 2010
Proposal publication date: September 3, 2010
For further information, please call: (512) 305-6716

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

DIVISION 3. STATEWIDE COMMERCIAL FISHING PROCLAMATION

The Texas Parks and Wildlife Commission adopts the repeal of §57.994 and new §57.994, concerning Individual Fishing Quota (IFQ), without changes to the proposed text as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6280).

The repeal and new rule eliminate the repetition of federal rule language regarding the Individual Fishing Quota and instead adopt the provisions of 50 CFR §622.16 and §622.20 by reference.

The IFQ is a federal regulatory program governing the commercial harvest of certain species of fish in federal waters. Federal rules require a federal permit and a federal Individual Fishing Quota (IFQ) vessel endorsement for the harvest of Gulf of Mexico reef fish. The IFQ is an allocation of a percentage of the total allowable harvest to individuals engaged in commercial fishing for certain species in federal waters, who in turn must comply with certain documentation and reporting requirements. Until recently, federal IFQ rules impacted Texas only with respect to the commercial harvest of red snapper; however recent federal action amended 50 CFR Part 622, Subpart B to extend the applicability of federal IFQ rules to include additional species in the Gulf of Mexico (gulf groupers and tilefish). The final rule was published in the Federal Register on March 1, 2010 (75 FR 9116) and took effect on March 31, 2010. The new rule is necessary to allow enforcement of these requirements in state as well as federal jurisdiction and to insure that fish landed in Texas are landed in compliance with federal limits.

The new rule will function by referencing federal rules governing the harvest of certain fish.

The department received two comments opposing adoption of the proposed new rule. One of the commenters provided a rationale or explanation for opposition, stating that the federal government should not be making rules for Texas fisheries. The department disagrees with the comment and responds that under the Magnuson-Stevens Act (16 U.S.C. §§1801 - 1882) the National Marine Fisheries Service may exercise regulatory authority necessary to conserve and manage the fishery resources off the U.S. coasts and U.S. anadromous species (species that spawn in fresh or estuarine waters and then migrate to the ocean) and Continental Shelf fishery resources. No changes were made as a result of the comment.

The department received two comments supporting adoption of the proposed new rule.

No groups or associations commented in favor of or opposition to adoption of the proposed new rule.

31 TAC §57.994

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2010.

TRD-201006501

Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: November 30, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 389-4775

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31 TAC §57.994

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2010.

TRD-201006502
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: November 30, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 389-4775

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CHAPTER 58. OYSTERS AND SHRIMP
SUBCHAPTER B. STATEWIDE SHRIMP FISHERY PROCLAMATION

31 TAC §58.160

The Texas Parks and Wildlife Commission adopts an amendment to §58.160, concerning Taking or Attempting to Take Shrimp (Shrimping)--General Rules, without changes to the proposed text as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6281).

The amendment updates the reference to federal regulations governing the dimensions and specifications of approved Bycatch Reduction Devices (BRDs) to accommodate changes to the federal rules.

Bycatch reduction devices (BRDs) reduce the mortality of nontarget aquatic organisms that occurs during shrimping, especially among juvenile finfish and invertebrate populations. The use of BRDs reduces shrimp-trawl bycatch fishing mortality for recreationally important species such as red snapper, flounder, Atlantic croaker, sand seatrout, and blue crab. The use of BRDs also allows the escapement of other organisms, which enhances the overall viability of the ecosystem and has the potential to increase populations of finfish and invertebrates impacted by trawling.

The state rules requiring shrimp trawls to be equipped with BRDs have been in effect since 2000 and specify that only those BRDs classified by the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration (NOAA) as "approved devices" are lawful for use in waters under state jurisdiction. From time to time NMFS engages in federal rulemaking to designate new or modified BRD types as "approved devices." In a final rule published in the Federal Register on May 24, 2010 (75 FR 28760), codified at 50 CFR Part 622, NMFS extended the effectiveness of provisional BRDs authorized by a previous rulemaking on February 13, 2008 (73 FR 8219), which added three new BRD types to the list of BRDs approved for use in the federal waters of the Gulf of Mexico. The extended approval is until May 24, 2012 and the effective date of the federal rule change is June 23, 2010.

The amendment to §58.160 allows the approved BRDs to continue to be used in state as well as federal waters. By creating regulatory consistency between state and federal rules, the department intends to enable shrimp vessels that fish in both federal and state waters to continue to do so without having to switch BRDs. The rule also permits an increased variety of BRDs to be lawfully used by shrimp vessels, giving fishermen more options in terms of what type of BRD to use. The rule also provides for greater economic efficiency in the fishery and eliminates potential confusion that could result from differential regulations enforced by state and federal authorities.

As required by Parks and Wildlife Code, §77.077, the department finds that the use of BRDs demonstrably reduces bycatch of fish species by shrimp trawls and that the approval of additional types of BRDs neither jeopardizes bycatch species nor causes hardship for shrimpers.

The rule will function by creating regulatory consistency between state and federal rules.

The department received no comments opposing adoption of the proposed rule.

The department received two comments supporting adoption of the proposed rule.

No groups or associations commented in favor or in opposition to adoption of the proposed rule.

The amendment is adopted under Parks and Wildlife Code, §77.007, which authorizes the commission to regulate the catching, possession, purchase, and sale of shrimp, including the times, places, conditions, and means and manner of catching shrimp.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2010.

TRD-201006503
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: November 30, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 389-4775

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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 368. FLOOD MITIGATION ASSISTANCE PROGRAM

31 TAC §§368.1 - 368.11

The Texas Water Development Board (Board) adopts the repeal of Chapter 368, §§368.1 - 368.11, regarding the Flood Mitigation Assistance Program. The repeal is adopted without changes to the proposal as published in the October 8, 2010, issue of the *Texas Register* (35 TexReg 9055).

BACKGROUND AND SUMMARY OF THE ADOPTED REPEAL.

The Board adopted Chapter 368 in 1998 to govern the Board's administration of grants under the Federal Emergency Management Agency's (FEMA) Flood Mitigation Program. At the time of adoption, the Board funded planning grants for flood mitigation from the Board's research and planning fund and cited the Board's requirement to adopt rules for administering the research and planning fund. The research and planning fund rules are currently at Chapter 355. Although Chapter 368 was adopted pursuant to the Board's authority under the research and planning fund, it was amended several times to ensure consistency with FEMA's Flood Mitigation Program. Projects funded from the research and planning fund will be considered under Chapter 355.

In 2007, the Legislature named the Board as the primary state agency for all National Flood Insurance programs in Texas. FEMA establishes the process and the procedures for the awards of grants for flood mitigation plans. Applications for flood mitigation assistance submitted to the Board must comply with FEMA regulations at Title 44 Code of Federal Regulations, Parts 78 and 79. The National Flood Insurance Act's programs administered by the Board, including the flood mitigation assistance program, are administered pursuant to FEMA regulations and guidance. Local entities applying for flood mitigation grants are required to comply with FEMA regulations and guidance. FEMA reviews all applications for assistance that are recommended by the Board, but FEMA makes the final decisions. In light of the 2007 assumption of more FEMA flood programs, the Board's role is now more multi-faceted than when Chapter 368 was first adopted by the Board. The Board has been operating under the federal rules for the grant programs without relying on its own rules and believes it is more efficient and less confusing for the public and for eligible entities to follow federal rules rather than state rules that reiterate the federal requirements.

Pursuant to Texas Water Code §16.318, the Board is not required to adopt rules relating to the FEMA flood insurance programs currently in place in Texas. Therefore, the Board adopts the repeal of Chapter 368 to avoid duplicating federal requirements at 44 CFR Parts 78 and 79.

COMMENTS.

The Board did not receive any comments on the proposed repeal.

STATUTORY AUTHORITY.

The repeal is adopted pursuant to the Board's rulemaking authority under the Texas Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board; and Texas Water Code §16.318 which allows, but does not require, the Board to adopt rules for the National Flood Insurance Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 9, 2010.

TRD-201006481
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Effective date: November 29, 2010
Proposal publication date: October 8, 2010
For further information, please call: (512) 463-8061

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS

40 TAC §815.29

The Texas Workforce Commission (Commission) adopts the following new section to Chapter 815, relating to Unemployment Insurance, without changes, as published in the September 17, 2010, issue of the *Texas Register* (35 TexReg 8490):

Subchapter B. Benefits, Claims, and Appeals, §815.29

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The Commission adopts new rules to comply with the benefit coordination provisions of the Unemployment Compensation Extension Act of 2010, Public Law (P.L.) 111-205, enacted July 22, 2010.

P.L. 111-205 §3, Coordination of Emergency Unemployment Compensation with Regular Compensation, speaks to circumstances in which an individual qualifies for a new benefit year pursuant to Texas Labor Code §201.011(5) but retains entitlement for emergency unemployment compensation (EUC) benefits from an immediately prior benefit year. In such cases, the Commission must determine whether the individual qualifies for a weekly benefit amount of regular compensation that is at least either $100 or 25 percent less than the individual's weekly benefit amount in the prior benefit year. The purpose of this section is to address cases in which individuals take intermittent, part-time work to augment their unemployment benefits. Such part-time work, inconsistent with their normal occupation and wage, comprises the base period wage credits of a new benefit year, qualifying the individual for a substantially reduced weekly benefit amount.

In such instances, the Act dictates that a state shall implement procedures that allow an individual to continue receiving the higher weekly benefit amount by continuing payment of EUC before payment of regular compensation or by paying both types of claims simultaneously. P.L. 111-205 allows the state to use one of the following options:

(A) The state shall, if permitted by state law, establish a new benefit year, but defer the payment of regular compensation with respect to that new benefit year until exhaustion of all emergency unemployment compensation payable with respect to the prior benefit year;

(B) The state shall, if permitted by state law, defer the establishment of a new benefit year (which uses all the wages and employment that would have been used to establish a benefit year but for the application of this section), until exhaustion of all emergency unemployment compensation payable with respect to the prior benefit year;

(C) The state shall pay, if permitted by state law:

(i) regular compensation equal to the weekly benefit amount established under the new benefit year, and

(ii) emergency unemployment compensation equal to the difference between that weekly benefit amount and the weekly benefit amount for the expired benefit year; or

(D) The state shall determine rights to emergency unemployment compensation without regard to any rights to regular compensation if the individual elects to not file a claim for regular compensation under the new benefit year.

In evaluating the options available under the federal law, the Commission has determined that Option A--establishing a new benefit year, but deferring the payment of regular compensation until exhaustion of all emergency unemployment compensation payable with respect to the prior benefit year--is the most financially sound, efficient, and beneficial method to comply with this new, temporary requirement. After exhaustive analysis, the Commission believes this option can be implemented through a mix of automation changes in the unemployment insurance (UI) Benefits System and changes to existing manual staff processes.

Option B--deferring the establishment of a new benefit year (which uses all the wages and employment that would have been used to establish a benefit year), until exhaustion of all emergency unemployment compensation payable with respect to the prior benefit year--is not permitted under Texas Labor Code §201.011.

Option C--paying regular compensation under the new benefit year and paying emergency unemployment compensation from the prior benefit year equal to the difference between the two weekly benefit amounts--requires extensive, costly modifications to the Commission's UI Benefits System as well as extensive changes to the UI claims-taking process. This option would pay benefits immediately from the already strained state unemployment compensation fund. Accordingly, the Commission has determined that it is not a cost-effective option.

Option D--allowing the individual to elect not to file a claim for regular compensation under the new benefit year--could be implemented within a relatively short period of time, but it puts claimants at the greatest risk of losing benefits eligibility. It requires claimants to make complex decisions about receipt of benefits based on potential future monetary eligibility. The Commission has found that Option A presents less risk to claimants than found under Option D.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS

The Commission adopts the following amendment to Subchapter B:

§815.29. Coordination of Emergency Unemployment Compensation with Regular Compensation

New §815.29 adds a temporary provision. It establishes a new benefit year, but defers the payment of regular compensation for that new benefit year until exhaustion of all emergency unemployment compensation payable for the prior benefit year--if the weekly benefit amount of regular compensation in a new benefit year is at least $100 or 25 percent less than the individual's weekly benefit amount in the immediately preceding benefit year. This section is repealed when the federal requirement no longer exists.

No comments were received.

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

The new rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Texas Labor Code, Title 4, the Texas Unemployment Compensation Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 8, 2010.

TRD-201006410
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Effective date: November 28, 2010
Proposal publication date: September 17, 2010
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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

SUBCHAPTER H. ADVERTISING

43 TAC §215.271

The Texas Department of Motor Vehicles adopts new §215.271, Auction, relating to advertising by motor vehicle dealer, manufacturer, distributor, converter, lessor, lease facilitator, represen-

tative, and in-transit licensees. New §215.271 is adopted without changes to the proposed text as published in the September 10, 2010 issue of the *Texas Register* (35 TexReg 8324) and will not be republished.

EXPLANATION OF ADOPTED NEW SECTION

House Bill 3097, 81st Legislature, Regular Session, 2009 created a new state agency, the Texas Department of Motor Vehicles (department), from the motor carrier, motor vehicle, vehicle titles and registration, and automobile burglary and theft prevention authority divisions of the Texas Department of Transportation. The department adopted rules on January 14, 2010 incorporating the content previously contained in Title 43, Chapter 8 to create new Chapter 215. At the time of the adoption of 43 TAC Chapter 215, Motor Vehicle Distribution, a provision contained in 43 TAC §8.256 relating to the use of "auction," "auction special," and similar wording was inadvertently omitted from the provisions related to advertising. New §215.271 adds the omitted language. The adopted new language states that the use of "auction," "auction special," and similar wording may only be used in advertising in connection with a vehicle that is offered or sold at a bona fide auction.

Transportation Code, §1002.002 authorizes the adoption of rules restricting advertising. Moreover, Occupations Code, §2301.152 requires the board to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles.

The business of buying, selling, and exchanging motor vehicles is of vital importance to the economy of the state of Texas and it is essential that the public have confidence in the oversight and regulation of the motor vehicle industry. The department considers it important that the use of "auction," "auction special," and similar wording be restricted to a context related to a bona fide auction. Usage outside this context creates opportunities for profiting from fraudulent or deceptive practices in motor vehicle transactions. These acts can cause serious financial harm to individuals who may be victims of deceptive, fraudulent, and illegal acts by persons in the business of selling motor vehicles.

COMMENTS

No comments on the proposed new section were received.

STATUTORY AUTHORITY

The new section is adopted under Transportation Code, §1002.001 and Occupations Code, §2301.155, which provide the Board of the Texas Department of Motor Vehicles Board (Board) with the authority to establish rules as necessary and appropriate to implement the powers and duties of the department, and more specifically, Transportation Code §1002.002, which authorizes the Board to adopt rules regulating motor vehicle advertising.

CROSS REFERENCE TO STATUTE

Transportation Code, §1002.002, and Occupations Code, §2301.203.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2010.

TRD-201006489

Brett Bray
General Counsel
Texas Department of Motor Vehicles
Effective date: November 30, 2010
Proposal publication date: September 10, 2010
For further information, please call: (512) 463-8683

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CHAPTER 217. VEHICLE TITLES AND REGISTRATION
SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.22, §217.40

The Texas Department of Motor Vehicles (department) adopts amendments to §217.22, Motor Vehicle Registration, and §217.40, Marketing of Specialty License Plates through a Private Vendor, all concerning motor vehicle registration. The amendments to §217.22 and §217.40 are adopted without changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8325) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

These amendments are necessary to continue the implementation of Transportation Code, Chapter 504, as amended by Senate Bill 1616, 81st Legislature, Regular Session, 2009, concerning the development of new specialty license plates, including the marketing of specialty license plates through a private vendor. These amendments allow registration renewal notices to be sent via electronic mail, delay the price increase for the generic white and "T" plates until December 2, 2010, which coincides with the next computer implementation date, and clarify that specialty plates issued under Transportation Code, Chapter 504, Subchapters G and I, are grandfathered at the issuance price if the sponsor of a specialty license plate signs a contract with the vendor under Transportation Code, Chapter 504, Subchapter J. The amendments provide that trailer plates may be issued for seven years without the windshield sticker if the registration receipt is retained on or inside the vehicle.

The amendments to §217.22(c) and (d) create "permanent" trailer plates which allow a trailer to retain the same plate for seven years without being issued a windshield sticker. The registration receipt retained inside or on the vehicle will provide evidence of registration. Other amendments to §217.22(d) allow the department to send renewal notices by electronic mail if the customer chooses that option. Once such an electronic system is implemented, receiving renewal notices by mail is still an option. Other changes update the rules to include that the registration renewal may be accomplished by the customer through the Internet, not just through the county's Internet capability.

Amendments to §217.40(h)(2) and (3) delay the increase in fees for one year for "T" plates and generic plates. The increase in fees was approved by the Texas Motor Vehicles Board on July 10, 2010, but is being delayed due to computer implementation timetables. Amendments to §217.40(h)(8) grandfather existing specialty license plate fees, including personalization, issued under Transportation Code, Chapter 504, Subchapters G and I, at the issuance price if the sponsor of a specialty license plate signs a contract with the vendor under Transportation Code, Chapter 504, Subchapter J and the plates are timely renewed.

Amendments to §217.40(l)(2) clarify that the transfer of patterns that have been purchased at auction may be by gift, inheritance, or sale. Such a transfer does not need to be through another auction.

COMMENTS

One comment was received from the Texas Motor Transportation Association, stating that it is in full support of the amendment regarding trailers.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §§504.004, 504.6011, 504.802, 504.851, and 504.853.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 10, 2010.

TRD-201006490
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Effective date: November 30, 2010
Proposal publication date: September 10, 2010
For further information, please call: (512) 463-8683

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

General Land Office

Title 31, Part 1

The Texas General Land Office (GLO) has completed its review of Subchapter A (relating to Rules, Practice, and Procedure for Land Leases and Trades), Subchapter B (relating to Rights-of-Way over Public Lands) and Subchapter C (relating to Groundwater Leasing) of Chapter 13 (relating to Land Resources) of Title 31, Part 1, of the Texas Administrative Code, in accordance with the requirements of Texas Government Code §2001.039. The GLO has determined that the reasons for initially adopting Subchapters A, B and C of Chapter 13 continue to exist, and it readopts these subchapters.

Notice of the review was published in the May 14, 2010, issue of the *Texas Register* (35 TexReg 3861). No comments were received as a result of that notice.

As a result of the rule review, the GLO has published in this issue of the *Texas Register* proposed amendments to §13.1 (relating to Leases) and the addition of proposed new rule §13.21 (relating to State-Owned Riverbeds and Beds of Navigable Streams).

This concludes the GLO's review of 31 Texas Administrative Code Chapter 13, Subchapters A, B and C.

TRD-201006506
Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
General Land Office
Filed: November 12, 2010

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §4.2

Schedule of Violations

Source Law	Violation	Type of Violation	Penalty	Enhancement
§153.082 of the Texas Natural Resources Code and 4 TAC §226.4	Failure to maintain insurance. (Initial violation) This violation includes the following conduct: -- misrepresenting the status of insurance, for example, not correctly reporting a policy change or modification on the annual insurance verification form -- failure to verify insurance by December 31st of each calendar year -- allowing insurance to lapse	Administrative	Initial violation: $1,000 fine.	1. Initial violation with harm to the public or third parties: $1,000 to $2,500. 2. If a Commercial Certified and Insured Prescribed Burn Manager ("CCPBM") or Private Certified and Insured Prescribed Burn Manager ("PCPBM") engages in false or misleading conduct when reporting or verifying insurance to the department, the department may impose enhanced administrative penalty(ies), up to and including the maximum fine of $5,000, temporary suspension of certification, and/or permanent revocation of certification, based on the factors set forth in §153.102 of the Texas Natural Resources Code.
§153.082 of the Texas Natural Resources Code and 4 TAC §226.4	Failure to maintain insurance. (Second violation) This violation includes the following conduct: -- misrepresenting the status of insurance, for example, not correctly reporting a policy change or modification on the annual insurance verification form -- failure to verify insurance December 31st of each calendar year -- allowing insurance to lapse	Administrative	Second violation within three years: $2,000 fine.	1. Second violation with harm to the public or third parties: fine of $2,500 to $3,000. 2. If a CCPBM or PCPBM engages in false or misleading conduct when reporting or verifying insurance to the department, the department may impose enhanced administrative penalty(ies), up to and including the maximum fine of $5,000, temporary suspension of certification, and/or permanent revocation of certification, based on the factors set forth in §153.102 of the Texas Natural Resources Code.

§153.082 of the Texas Natural Resources Code and 4 TAC §226.4	Failure to maintain insurance. (Third violation) This violation includes the following conduct: -- misrepresenting the status of insurance, for example, not correctly reporting a policy change or modification on the annual insurance verification form -- failure to verify insurance December 31st of each calendar year -- allowing insurance to lapse	Administrative	Third violation within three years: $3,000 fine.	1. Third violation with harm to the public or third parties: fine of $3,000 to $5,000. 2. If a CCPBM or PCPBM engages in false or misleading conduct when reporting or verifying insurance to the department, the department may impose enhanced administrative penalty(ies), up to and including the maximum fine of $5,000, temporary suspension of certification, and/or permanent revocation of certification, based on the factors set forth in §153.102 of the Texas Natural Resources Code.
§153.082 of the Texas Natural Resources Code and 4 TAC §226.3	Failure to provide proof of current insurance coverage to the landowner or landowner's agent prior to conducting a burn. (Initial violation)	Administrative	Initial violation: $250 fine.	1. Initial violation with harm to the public or third parties: $300 to $500. 2. If a CCPBM or PCPBM engages in false or misleading conduct when providing proof of coverage to a landowner or landowner's agent, the department may impose enhanced administrative penalty(ies), up to and including the maximum fine of $5,000, temporary suspension of certification, and/or permanent revocation of certification, based on the factors set forth in §153.102 of the Texas Natural Resources Code.
§153.082 of the Texas Natural Resources Code and 4 TAC §226.3	Failure to provide proof of current insurance coverage to the landowner or landowner's agent prior to conducting a burn. (Second violation)	Administrative	Second violation within three years: $500 fine.	1. Second violation with harm to the public or third parties: fine of $600 to $1,000. 2. If a CCPBM or PCPBM engages in false or misleading conduct when providing proof of coverage to a landowner or landowner's agent, the department may impose enhanced administrative penalty(ies), up to and including the maximum fine of $5,000, temporary suspension of certification, and/or permanent revocation of certification, based on the factors set forth in §153.102 of the Texas Natural Resources Code.

§153.082 of the Texas Natural Resources Code and 4 TAC §226.3	Failure to provide proof of current insurance coverage to the landowner or landowner's agent prior to conducting a burn. (Third violation)	Administrative	Third violation within three years: $1,000 fine.	1. Third violation with harm to the public or third parties: Permanent revocation of certification with a fine of $1,250 to $5,000 2. If a CCPBM or PCPBM engages in false or misleading conduct when providing proof of coverage to a landowner or landowner's agent, the department may impose enhanced administrative penalty(ies), up to and including the maximum fine of $5,000, temporary suspension of certification, and/or permanent revocation of certification, based on the factors set forth in §153.102 of the Texas Natural Resources Code.
4 TAC §226.3	Failure to provide a copy of the certified and insured prescribed burn manager certificate to the landowner or landowner's agent prior to conducting a burn. (Initial violation)	Administrative	Initial violation: $250 fine.	Initial violation with harm to the public or third parties: $300 to $500.
4 TAC §226.3	Failure to provide a copy of the certified and insured prescribed burn manager certificate to the landowner or landowner's agent prior to conducting a burn. (Second violation)	Administrative	Second violation within three years: $500 fine.	Second violation with harm to the public or third parties: fine of $2,500 to $3,000.
4 TAC §226.3	Failure to provide a copy of the certified and insured prescribed burn manager certificate to the landowner or landowner's agent prior to conducting a burn. (Third violation)	Administrative	Third violation within three years: $1,000 fine.	Third violation with harm to the public or third parties: Permanent revocation of certification with a fine of $1,250 to $5,000.
4 TAC §227.16	Failure to obtain required CEUs or maintain documentation of CEUs. (Initial violation)	Administrative	Initial violation: $250 fine.	Initial violation with harm to the public or third parties: fine of $500.

4 TAC §227.16	Failure to obtain required CEUs or maintain documentation of CEUs. (Second violation)	Administrative	Second violation within three years: $500 fine.	Second violation with harm to the public or third parties: fine of $600 to $1,000.
4 TAC §227.16	Failure to obtain required CEUs or maintain documentation of CEUs. (Third violation)	Administrative	Third violation within three years: $1,000 fine.	Third violation with harm to the public or third parties: Permanent revocation of certification with a fine of $1,250 to $5,000.
4 TAC §227.15(b)(2) and (3); 4 TAC §227.14	Failure by CEU sponsor to provide activity roster within 14 days after the end of a CEU activity. (Initial violation)	Administrative	Initial violation: 15 day suspension from administering or presenting CEU activities, or providing instruction at CEU activities.	Not applicable.
4 TAC §227.15(b)(2) and (3); 4 TAC §227.14	Failure by CEU sponsor to provide activity roster within 14 days after the end of a CEU activity. (Second violation)	Administrative	Second violation within three years: 30 day suspension from administering or presenting CEU activities, or providing instruction at CEU activities.	Not applicable
4 TAC §227.15(b)(2) and (3); 4 TAC §227.14; 4 TAC §227.12	Multiple violations of 4 TAC §227.15 by a CEU sponsor.	Administrative	Multiple violations: The department will refer the CEU sponsor to the Board, for consideration of a temporary suspension or permanent revocation of the CEU sponsor from further CEU activities.	In determining the recommended length of temporary suspension of a CEU sponsor, or whether to revoke a CEU sponsor, the department will consider those factors set forth in §153.102 of the Texas Natural Resources Code.

4 TAC §227.20	Failure to keep insurance records. Insurance records shall be kept for the longer of five years from the date of the original issuance of the insurance policy, or for so long as any complaint or litigation is pending against the CCPBM or PCPBM. (Initial violation)	Record Keeping	Initial violation: $250 fine.	Not applicable.
4 TAC §227.20	Failure to keep insurance records. Insurance records shall be kept for the longer of five years from the date of the original issuance of the insurance policy, or for so long as any complaint or litigation is pending against the CCPBM or PCPBM (Second violation)	Record Keeping	Second violation within three years: $500 fine.	Not applicable.
4 TAC §227.20	Failure to keep insurance records. Insurance records shall be kept for the longer of five years from the date of the original issuance of the insurance policy, or for so long as any complaint or litigation is pending against the CCPBM or PCPBM (Third violation)	Record Keeping	Third violation within three years: $1,000 fine.	Not applicable.
4 TAC §227.20	Failure to keep CEU records and have them available for inspection. CEU records shall be kept for a minimum of 5 years from the date of the CEU. (Initial violation)	Record Keeping	Initial violation: $250 fine	Not applicable.
4 TAC §227.20	Failure to keep CEU records and have them available for inspection. CEU records shall be kept for a minimum of 5 years from the date of the CEU. (Second violation)	Record Keeping	Second violation within three years: $400 fine.	Not applicable.

4 TAC §227.20	Failure to keep CEU records and have them available for inspection. CEU records shall be kept for a minimum of 5 years from the date of the CEU. (Third violation)	Record Keeping	Third violation within three years: $1,000 fine.	Not applicable.
4 TAC §227.20	Failure to keep training and experience records and have them available for inspection. Such records shall be kept for a minimum of 5 years from the date of the indicated training and/or experience. (Initial violation)	Record Keeping	Initial violation: $250 fine.	Not applicable.
4 TAC §227.20	Failure to keep training and experience records and have them available for inspection. Such records shall be kept for a minimum of 5 years from the date of the indicated training and/or experience. (Second violation)	Record Keeping	Second violation within three years: $400 fine.	Not applicable.
4 TAC §227.20	Failure to keep training and experience records and have them available for inspection. Such records shall be kept for a minimum of 5 years from the date of the indicated training and/or experience. (Third violation)	Record Keeping	Third violation within three years: $1,000 fine.	Not applicable.
4 TAC §227.20	Failure to have available or keep a Prescribed Burn File for a minimum of 5 years from the date of the burn. (Initial violation)	Record Keeping	Initial violation: $250 fine.	Not applicable.
4 TAC §227.20	Failure to have available or keep a Prescribed Burn File for a minimum of 5 years from the date of the burn. (Second violation)	Record Keeping	Second violation within three years: $500 fine.	Not applicable.

4 TAC §227.20	Failure to have available or keep a Prescribed Burn File for a minimum of 5 years from the date of the burn. (Third violation)	Record Keeping	Third violation within three years: $1,000 fine.	Not applicable
§153.047(2) of the Texas Natural Resources Code; 4 TAC §226.2(a)	Failure to have a CCPBM or PCPBM on site or leaving the area while a prescribed burn is in progress. (Initial violation)	Statutory or Rule	Initial violation: One year suspension and $1,000 fine.	Initial violation with harm to the public or third parties: 13 month to 24 month suspension; fine of $1,100 to $5,000.
§153.047(2) of the Texas Natural Resources Code; 4 TAC §226.2(a)	Failure to have a CCPBM or PCPBM on site or leaving the area while a prescribed burn is in progress. (Second violation)	Statutory or Rule	Second violation within three years: Permanent revocation of certification and a $2,000 fine.	Second violation with harm: Permanent revocation of certification and fine of $2,100 to $5,000.
§153.047(3)(B) of the Texas Natural Resources Code; 4 TAC §226.2 and §226.5	Failure to follow prescription while conducting the burn. (Initial violation)	Statutory or Rule	Initial violation: $1,000 fine.	Punishment may be enhanced for reckless or intentional conduct that results in substantial harm to a third party or the public, pursuant to the factors set forth in §153.102 of the Texas Natural Resources Code.
§153.047(3)(B) of the Texas Natural Resources Code; 4 TAC §226.2 and §226.5	Failure to follow prescription while conducting the burn. (Second violation)	Statutory or Rule	Second violation within three years: 15 to180 day suspension with $2,000 fine.	Punishment may be enhanced for reckless or intentional conduct that results in substantial harm to a third party or the public, pursuant to the factors set forth in §153.102 of the Texas Natural Resources Code.
§153.047(3)(B) of the Texas Natural Resources Code; 4 TAC §226.2 and §226.5	Failure to follow prescription while conducting the burn. (Third violation)	Statutory or Rule	Third violation within three years: Permanent revocation of certification with $3,000 fine.	Third violation with harm to the public or third parties: Permanent revocation of certification with a fine of $3,100 to $5,000.
§153.047(1) of the Texas Natural Resources Code; 4 TAC §226.1 and §226.5	Conducting a burn without a burn plan. (Initial violation)	Statutory or Rule	Initial violation: Permanent revocation of certification with a $5,000 fine.	Not applicable.
4 TAC §226.6	Failure to complete or follow a PBB burn checklist during a county burn ban. (Initial violation)	Statutory or Rule	Initial violation: $1,000 fine.	Initial violation with harm to the public or third parties: 15 to 180 day suspension with fine of $1,000 to $2,500.
4 TAC §226.6	Failure to complete or follow a PBB burn checklist during a county burn ban. (Second violation)	Statutory or Rule	Second violation within three years: 15 to180 day suspension with $2,000 fine.	Second violation with harm to the public or third parties: Suspension of license from 60 days to 18 months; fine of $2,100 to $3,000.

4 TAC §226.6	Failure to complete or follow a PBB burn checklist during a county burn ban. (Third violation)	Statutory or Rule	Third violation within three years: Permanent revocation of certification with $3,000 fine.	Third violation with harm to the public or third parties: Permanent revocation of certification with fine of $3,100 to $5,000.
§153.047(4) of the Texas Natural Resources Code; 4 TAC §226.3(d)	Failure to obtain written permission of occupants or operators of structures containing sensitive receptors (residences, greenhouses, stables, etc.) that are within 300 feet of and in the general direction downwind from the burn. (Initial violation)	Statutory or Rule	Initial violation: $1,000 fine.	Initial violation with harm to the public or third parties: 15 to 180 day suspension with fine of $1,200 to $2,500.
§153.047(4) of the Texas Natural Resources Code; 4 TAC §226.3(d)	Failure to obtain written permission of occupants or operators of structures containing sensitive receptors (residences, greenhouses, stables, etc.) that are within 300 feet of and in the general direction downwind from the burn. (Second violation)	Statutory or Rule	Second violation within three years: 15 to180 day suspension with $2,000 fine.	Second violation with harm to the public or third parties: Suspension of license from 60 days to 18 months; fine of $2,100 to $3,000.
§153.047(4) of the Texas Natural Resources Code; 4 TAC §226.3(d)	Failure to obtain written permission of occupants or operators of structures containing sensitive receptors (residences, greenhouses, stables, etc.) that are within 300 feet of and in the general direction downwind from the burn (Third violation)	Statutory or Rule	Third violation within three years: Permanent revocation of certification with $3,000 fine.	Third violation with harm to the public or third parties: Permanent revocation of certification with fine of $3,100 to $5,000.

§153.102 and §153.104 of the Texas Natural Resources Code	1. Engaging in conduct in violation of Chapter 153 of the Texas Natural Resources Code which constitutes an immediate threat to public welfare. 2. Upon reasonable determination by the department, a CCPBM or PCPBM is about to engage in conduct in violation of Chapter 153 of the Texas Natural Resources Code which constitutes an immediate threat to public welfare.	Statutory or Rule	Emergency temporary suspension. The department may impose permanent revocation of certification based on those factors set forth in §153.102 of the Texas Natural Resources Code.	Punishment may be enhanced for reckless or intentional conduct that results in substantial harm to a third party or the public.
Chapter 153 of the Texas Natural Resources Code; 4 TAC Chapters 225, 226, 227, 228, and 229	Multiple violations by a CCPBM or PCPBM of Chapter 153 of the Texas Natural Resources Code; multiple violations of administrative rules pertaining to obtaining, maintaining or keeping insurance; multiple violations of administrative rules pertaining to obtaining or reporting CEUs; multiple violations of record keeping rules; multiple violations of 4 TAC §§226.1, 226.2, 226.3, 226.4, 226.5, 227.6, 227.10, and 227.16; and/or any combination of the above.	Statutory or Rule	For four or more violations of statute or rules that regulate prescribed burning activities in Texas, the department may assess the following penalties: $1,500 to $5,000 fine; suspension of 15 days to 20 months; and/or permanent revocation of certification.	In determining the sanction(s) for four or more violations of any single statute or rule, or four or more violations of multiple statutes or rules, the department will consider those factors set forth in §153.102 of the Texas Natural Resources Code.
Texas Commission on Environmental Quality (TCEQ) Guidelines, *Outdoor Burning in Texas*, August 2007, page 9, General Requirements for Burning	Violation of TCEQ Rules or Guidelines	TCEQ rules and/or guidelines	The department will refer known or suspected violations of TCEQ rules or guidelines to TCEQ for enforcement.	Not applicable.

§153.103 of the Texas Natural Resources Code	If a person represents to the public that he or she is a certified and insured prescribed burn manager, but is not a certified and insured prescribed burn manager, the department may apply to a district court in any county for an injunction restraining such person from representing that he or she is a certified and insured prescribed burn manager.	Statute	Section 153.103 of the Texas Natural Resources Code gives the department authority to apply for an injunction from a district court in any county to restrain a person who is not a certified and insured prescribed burn manager from representing that the person is a certified and insured prescribed burn manager.	Not applicable.

Figure: 10 TAC §60.123(I)

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Major property condition violations	Material Noncompliance	10	All programs	Yes
Pattern of minor property condition violations	10	5	All programs	Yes
Administrative reporting of property condition violations	0	0	HTC	Yes
Owner refused to lease to a holder of rental assistance certificate/voucher because of the status of the prospective tenant as such a holder	Material Noncompliance	10	See §60.112	Yes
Owner failed to approve and distribute an Affirmative Marketing Plan as required under §60.114 of this chapter	10	3	See §60.114	No
Development failed to comply with requirements limiting minimum income standards for Section 8 residents.	10	3	See §60.112	No
Development is not available to general public	10	0	HTC	Yes
HUD or DOJ notification of possible Fair Housing Act violation	0	0	HTC	Yes
Determination of a violation under the Fair Housing Act	Material Noncompliance	10	All programs	Yes
Development is out of compliance and never expected to comply/ Foreclosure	Material Noncompliance	NA/No correction possible	All programs	Yes
Owner did not allow on-site monitoring review	Material Noncompliance	5	All programs	Yes
LURA not in effect	Material Noncompliance	5	All programs	Yes
Development failed to meet minimum set aside	20	10	HTC Bonds	Yes
No evidence of, or failure to certify to, material participation of a non-profit or HUB, if required by the Land Use Restriction Agreement	10	3	HTC	Yes

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Development failed to meet additional State required rent and occupancy restrictions	10	3	All programs	No
The Development failed to provide required supportive services as promised at Application	10	3	HTC Bonds	No
The Development failed to provide housing to the elderly as promised at Application	10	3	All programs	No
Failure to provide special needs housing	10	3	All programs	No
Changes in Eligible Basis or Applicable Percentage	3	NA, No correction possible	HTC	Yes
Failure to submit part or all of the AOCR or failure to submit any other annual, monthly, or quarterly report required by the Department	10	3	All programs	Yes
Utility Allowance not calculated properly	20	10	All programs	Yes
Owner failed to execute required lease provisions, including language required by §60.110 or exclude prohibited lease language	10	3	HTC HOME	No
Failure to provide annual Housing Quality Standards inspection	10	3	HOME	NA
Development has failed to establish and maintain a reserve account in accordance with §1.37 of this title	Material Noncompliance	10	All programs	No
Development substantially changed the scope of services as presented at initial Application without prior Department approval	10	3	HTC	No
Change in Ownership or General Partner without proper notification to and approval of Department	10	3	All programs	No

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Failure to provide a notary public as promised at Application	10	3	HTC	No
Violations of the Unit Vacancy Rule	3	1	HTC	Yes
Casualty loss	0	0	All programs	Yes
Failure to provide pre-onsite documentation as required.	10	3	All programs	No

Figure: 10 TAC §60.123(m)

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Unit not leased to Low Income Household	5	1	All programs	Yes
Low Income Units occupied by nonqualified full-time students	3	1	HTC during the compliance period and Bond	Yes
Low Income Units used on transient basis	3	1	HTC Bond	Yes
Household income increased above the re-certification limit and an available Unit was rented to a market tenant	3	1	HTC During the compliance period Bonds HOME HTF	Yes
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	5	1	All programs	Yes
Failure to maintain or provide tenant income certification and documentation	3	1	All programs	Yes
Unit not available for rent	3	1	All programs	Yes
Failure to maintain or provide Annual Eligibility Certification	3	1	All programs	No
Development evicted or terminated the tenancy of a low income tenant for other than good cause	10	3	HTC HOME	Yes
Household income increased above 80% at recertification and Owner failed to properly determine rent	3	1	HOME	NA

Figure: 19 TAC §21.25(a)(1)(B)

Chart I

AFFIDAVIT

STATE OF TEXAS §
§
COUNTY OF _____ §

Before me, the undersigned Notary Public, on this day personally appeared _____, known to me, who being by me duly sworn upon his/her oath, deposed and said:

1. My name is _____. I am ___ years of age. I have personal knowledge of the facts stated herein and they are all true and correct.

2. I graduated or will graduate from a Texas high school or received my GED certificate in Texas.

3. I resided in Texas for three years leading up to graduation from high school or receiving my GED certificate.

4. I have resided or will have resided in Texas for the 12 months immediately preceding the census date of the semester in which I will enroll in _____ (college/university).

5. I have filed or will file an application to become a permanent resident of the United States as soon as I am eligible to do so.

In witness whereof, this ____ day of _____, _____.

_____
(Signature)

_____
(Printed Name)

_____
(Student I.D.#)

_____
(Student Date of Birth)

SUBCRIBED TO AND SWORN TO BEFORE ME, on the ____ day of _____, _____, to certify which witness my hand and official seal.

_____ Notary Public in and for the State of Texas

Figure: 19 TAC §21.25(b)

Chart II
Documentation to Support Establishing and Maintaining Domicile in Texas

The following documentation may be requested by the institution regarding a person's responses to the Core Residency Questions. Documents that may be used as proof that:

(1) The person or the dependent's parent established domicile in Texas, and

(2) The person or the dependent's parent has maintained domicile in Texas continuously for at least 12 consecutive months immediately preceding the census date of the term in which the person enrolls, include but are not limited to the following:

Part A **Documents that may Support the Establishment of a Domicile in Texas and Maintenance of Domicile in Texas**
1. SIGNIFICANT GAINFUL EMPLOYMENT a. An employer's statement of dates of employment in Texas (beginning and current or ending dates) that encompass at least 12 consecutive months immediately preceding the census date of the term in which the person enrolls. b. Other documents that show the person or the dependent's parent, for at least 12 consecutive months immediately preceding the census date of the term in which the person enrolls: 1) has been engaged in employment intended to provide an income to the person or allow the person to avoid the expense of paying another to perform tasks (as in child care) that is sufficient to provide at least one-half of the individual's tuition and living expenses or represents an average of at least 20 hours per week; or 2) is self-employed in Texas or is living off his/her earnings; or 3) is primarily supported by public assistance in Texas. c. For a homeless person, written statements from the office of one or more social service agencies located in Texas that attest to the provision of services to the homeless person for the 12 consecutive months immediately preceding the census date of the term in which the person enrolls. 2. SOLE OR JOINT MARITAL OWNERSHIP OF RESIDENTIAL REAL PROPERTY Title to residential real property in Texas with documentation to verify 12 consecutive months of ownership immediately preceding the census date of the term in which the person enrolls, such as a Warranty Deed, with the person or the dependent's parent having established and maintained domicile at that residence. 3. MARRIAGE TO A PERSON WHO HAS ESTABLISHED AND MAINTAINED DOMICILE IN TEXAS Marriage Certificate or Declaration of Registration of Informal Marriage with documentation to support that spouse has established and maintained domicile in Texas for the 12 consecutive months preceding the census date of the term in which the person enrolls.

4. OWNERSHIP OF A BUSINESS ENTITY Documents that evidence the organization of the business in Texas that reflect the ownership interest of the person or dependent's parent, and the customary management of the business by the person or dependent's parent without the intention of liquidation for the foreseeable future.

Part B **Documents that May Provide Support to a Claim of Residence in Texas for the 12 Consecutive Months Immediately Preceding the Census Date of the Term in which the Person Enrolls**
1. Utility bills for the 12 consecutive months preceding the census date. 2. A Texas high school transcript for full senior year immediately preceding the census date. 3. A transcript from a Texas institution showing presence in the state for the 12 consecutive months preceding the census date. 4. A Texas driver's license or Texas ID card that has not expired and, if it reflects an origination date, shows an origination date at least 12 months prior to the census date. 5. Cancelled checks that reflect a Texas residence for the 12 consecutive months preceding the census date. 6. A current credit report that documents the length and place of residence of the person or the dependent's parent to be in Texas and the length of residence to be at least 12 consecutive months preceding the census date. 7. Texas voter registration card that was issued at least 12 months prior to the census date. 8. Pay stubs for the 12 consecutive months immediately preceding the census date, reflecting significant gainful employment in Texas. 9. Bank statements reflecting a Texas address for the 12 consecutive months immediately preceding the census date. 10. Written statements from the office of one or more social service agencies, attesting to the provision of services for at least the 12 consecutive months immediately preceding the census date. 11. Lease or rental of residential real property in the name of the person or the dependent's parent for the 12 consecutive months immediately preceding the census date.

Part C **Other Documents that May be Used to Lend Support To or Clarify an Individual's Claim of Domicile or Residence, as Appropriate, in Texas**
Among other documents that may be used to lend support to or clarify an individual's claim of having established and maintained domicile or residence, as appropriate, in Texas are the following: 1. Tax return of the student or parent(s). 2. Visa, passport or other pertinent immigration documents. 3. Leave and Earnings Statements (LES). 4. Documents or statements to clarify answers to Core Residency Questions. 5. A Texas high school transcript to verify thirty-six months' presence in the state and graduation from a Texas high school. 6. State or local licenses to conduct a business or practice a profession in this state.

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.

Texas State Affordable Housing Corporation

Notice of Public Hearing Regarding the Issuance of Bonds

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") at 2200 East Martin Luther King Jr. Boulevard, Austin, Texas 78702 on Wednesday, December 15, 2010 at 1:00 p.m., on the proposed issuance by the Issuer, pursuant to a plan of finance, of one or more series of multifamily housing revenue bonds (the "Bonds") to provide financing for the acquisition, renovation, rehabilitation and equipping of the following multifamily housing projects (collectively, the "Projects"), as well as to fund working capital for the Projects and reserve funds and costs of issuance for the Bonds:

1. Briarcrest Apartments, 25650 Interstate 45 North, City of Spring, County of Montgomery, Texas, approximately 376 units; Owner: HDSA - Briarcrest, LLC;

2. Clover Hill Apartments, 903 Road to Six Flags West, City of Arlington, County of Tarrant, Texas, approximately 216 units; Owner: HDSA - Clover Hill, LLC;

3. Hillcrest Apartments, 1960 West Tarrant Road, City of Grand Prairie, Counties of Tarrant and Dallas, Texas, approximately 310 units; Owner: HDSA - Hillcrest, LLC;

4. Mill Creek Apartments, 16339 Stuebner Airline Road, City of Spring, County of Harris, Texas, approximately 174 units; Owner: HDSA - Mill Creek, LLC;

5. One Westfield Lake Apartments, 2800 Hirschfield Road, City of Spring, County of Harris, Texas, approximately 246 units; Owner: HDSA - Westfield Lake, LLC;

6. Regal Park Apartments, 3200 Thousand Oaks Drive, City of San Antonio, County of Bexar, Texas, approximately 114 units; Owner: HDSA - Regal Park, LLC;

7. Vista Landing Apartments, 4620 Thousand Oaks Drive, City of San Antonio, County of Bexar, Texas, approximately 296 units; Owner: HDSA - Vista Landing, LLC.

The maximum aggregate face amount of the Bonds to be issued with respect to the Projects is $55,000,000. The sole member of the owners of the Projects is AOF/Bexar Affordable Housing Corp., a Texas non-profit corporation and subordinate entity of The American Opportunity Foundation, Inc. All interested persons are invited to attend the public hearing to express orally, or in writing, their views on the Projects and the issuance of the Bonds. The Bonds shall not constitute or create an indebtedness, general or specific, or liability of the State of Texas, or any political subdivision thereof. The Bonds shall never constitute or create a charge against the credit or taxing power of the State of Texas, or any political subdivision thereof. Neither the State of Texas, nor any political subdivision thereof shall in any manner be liable for the payment of the principal of or interest on the Bonds or for the performance of any agreement or pledge of any kind which may be undertaken by the Issuer and no breach by the Issuer of any agreements will create any obligation upon the State of Texas, or any political subdivision thereof. Further information with respect to the proposed Bonds will be available at the hearing or upon written request prior thereto addressed to the Issuer at 2200 East Martin Luther King Jr. Boulevard, Austin, Texas 78702, Attention: David W. Danenfelzer; (512) 477-3562.

Individuals who require auxiliary aids in order to attend this meeting should contact Laura Ross, ADA Responsible Employee, at (512) 477-3560 at least two days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to David Danenfelzer at *ddanenfelzer@tsahc.org.*

TRD-201006561
David Long
President
Texas State Affordable Housing Corporation
Filed: November 17, 2010

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/22/10 - 11/28/10 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 11/22/10 - 11/28/10 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/10 - 12/31/10 is 5.00% for Consumer/Agricultural/Commercial/credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/10 - 12/31/10 is 5.00% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-201006536
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 16, 2010

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Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from First Service Credit Union (Houston) seeking approval to merge with Right Choice Credit Union (Houston), with the latter being the surviving credit union. Upon completion of the merger, the surviving credit union will use the name First Service 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-201006549
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 17, 2010

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Application for Foreign Credit Union to Operate a Branch Office

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from Baxter Credit Union, Vernon Hills, Illinois to operate a Foreign (out-of-state) Branch Office at 7034 Alamo Downs Parkway, San Antonio, Texas.

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-201006550
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 17, 2010

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Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from Reed Credit Union, Houston, Texas to expand its field of membership. The proposal would permit persons who live, work, worship or attend school within a 10-mile radius of the credit union's office located at 10200 East Freeway Ste. 125, Houston, Texas 77029, to be eligible for membership in the credit union.

An application was received from First Central Credit Union, Waco, Texas (#1) to expand its field of membership. The proposal would permit members of Friends of Consumer Freedom who live, work, worship or attend school in Callahan, Eastland, Comanche, Mills, San Saba, McCulloch, Coleman, and Hamilton Counties, Texas, to be eligible for membership in the credit union.

An application was received from First Central Credit Union, Waco, Texas (#2) to expand its field of membership. The proposal would permit members of Friends of Consumer Freedom who live, work, worship or attend school in Bosque, Johnson, Ellis, Navarro, Limestone, Falls, and Coryell Counties, Texas.

An application was received from City Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit persons who work, worship, reside or attend school within a 10-mile radius of the branch office located at 3015 Frankford Road, Dallas, Texas, to be eligible for membership in the credit union.

An application was received from YOUR Community Credit Union, Irving, Texas to expand its field of membership. The proposal would permit persons who live, worship, attend school, or work within a 10-mile radius of the following branches of YOUR Community Credit Union: 8384 N. Beltline Road, Irving, Texas 75063; 2101 Valwood Parkway, Farmers Branch, Texas 75234; 2823 E. Illinois Avenue, Dallas, Texas 75216; 9143 Boulevard 26, Suite 660, N. Richland Hills, Texas 76180; 17286 Tomball Parkway, Houston, Texas 77064; and 202 North Texas Avenue, Suite 400, Webster, Texas 77598, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. 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-201006548
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 17, 2010

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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 applications:

Application to Expand Field of Membership - Approved

Cabot & NOI Employees Credit Union, Pampa, Texas (#1) - See *Texas Register* issue, dated August 27, 2010.

Cabot & NOI Employees Credit Union, Pampa, Texas (#2) - See *Texas Register* issue, dated August 27, 2010.

SPCO Credit Union, Waco, Texas (#1) - See *Texas Register* issue, dated August 27, 2010.

SPCO Credit Union, Waco, Texas (#2) - See *Texas Register* issue, dated August 27, 2010.

GECU, El Paso, Texas - See *Texas Register* issue, dated August 27, 2010.

TRD-201006551
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 17, 2010

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 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. Section 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 **December 27, 2010.** Section 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 December 27, 2010.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: 3-T Exploration, Inc.; DOCKET NUMBER: 2010-1804-WR-E; IDENTIFIER: RN105996292; LOCATION: Tyler, Smith County; TYPE OF FACILITY: water rights; RULE VIOLATED: the Code, §11.081 and §11.121, by impound, diverting, or using state water without a required permit; PENALTY: $350; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Belvan Corporation; DOCKET NUMBER: 2010-1038-AIR-E; IDENTIFIER: RN100214022; LOCATION: Crockett County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 Texas Administrative Code (TAC) §101.223(a)(1)(D), Docket Number 2008-1389-AIR-E, Ordering Provision 2.d, and Texas Health and Safety Code (THSC), §382.085(b), by failing to implement all components of a corrective action plan (CAP) within the specified time frame; PENALTY: $63,600; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 898-3838; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(3) COMPANY: Brazos Electric Power Cooperative, Inc.; DOCKET NUMBER: 2010-1557-AIR-E; IDENTIFIER: RN100216993; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: natural gas-fired power plant; RULE VIOLATED: 30 TAC §122.146(1) and (2), Federal Operating Permit (FOP) Number O-00003, General Terms and Conditions (GTC), THSC, §382.085(b), by failing to submit the permit compliance certification; PENALTY: $2,075; ENFORCEMENT COORDINATOR: Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Chem-Pruf Door Company, Limited; DOCKET NUMBER: 2010-1123-AIR-E; IDENTIFIER: RN100244433; LOCATION: Brownsville, Cameron County; TYPE OF FACILITY: fiberglass manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), New Source Review (NSR) Permit Number 19777A, General Condition (GC) Number 8, and THSC, §382.085(b), by failing to maintain the volatile organic compound (VOC) and acetone emissions within the permitted annual emissions rates; PENALTY: $8,825; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: Chevron U.S.A., Inc.; DOCKET NUMBER: 2010-1310-IWD-E; IDENTIFIER: RN100706811; LOCATION: Galena Park, Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and §319.1, Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0001745000, Monitoring and Reporting Requirements Number 1, by failing to submit the complete discharge monitoring reports; and 30 TAC §305.125(1) and §319.7(c), by failing to make readily available calibration records for the pH meter; PENALTY: $405; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2009-1821-AIR-E; IDENTIFIER: RN100222330; LOCATION: Goldsmith, Ector County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit the initial notification for a reportable emissions event within 24 hours after discovery; 30 TAC §116.115(b)(2)(F), Permit Number 676A, GC Number 8, Standard Permit Number 73563, and THSC, §382.085(b), by failing to prevent the discharge of unauthorized emissions; 30 TAC §101.201(b)(1)(B) and THSC, §382.085(b), by failing to submit the final report for a reportable emissions event within two weeks after the end of the incident; 30 TAC §116.115(b)(2)(F), Standard Permit Number 73563, and THSC, §382.085(b), by failing to prevent the discharge of unauthorized emissions resulting from 19 emissions events associated with the B-Turbine; PENALTY: $755,251; Supplemental Environmental Project offset amount of $377,625 applied to Texas Parent Teacher Association - *Clean School Bus Program;* ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 3300 North A Street, Building A-107, Midland, Texas 79705-5406, (432) 570-1359.

(7) COMPANY: Demontrond Buick Company; DOCKET NUMBER: 2010-1426-PWS-E; IDENTIFIER: RN101284743; LOCATION: Houston, Harris County; TYPE OF FACILITY: car dealership with public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification of the failure to collect routine samples; PENALTY: $6,477; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Peter Wilfridus Deridder dba Deridder Dairy; DOCKET NUMBER: 2010-0986-AGR-E; IDENTIFIER: RN101522233; LOCATION: Erath County; TYPE OF FACILITY: dairy farm; RULE VIOLATED: 30 TAC §321.45(a) and TPDES Permit Number WQ0003290000, Part VII Pollution Prevention Plan (PPP) Requirements C.3., by failing to document in the PPP that employee training for all employees who are responsible for work

activities relating to compliance with the permit was being conducted; 30 TAC §321.42(h) and TPDES Permit Number WQ0003290000, Part VII PPP Requirements A.5(a)(3) and Part VIII Recordkeeping, Reporting, and Notification Requirements A.1(b), by failing to record daily pond marker reading and document conditions resulting in the encroachment into the storage volume reserved for the design rainfall event; 30 TAC §321.46(d)(8)(F) and TPDES Permit Number WQ0003290000, Part VIII Recordkeeping, Reporting, and Notification Requirements A.4(e), by failing to maintain complete records for a concentrated animal feeding operation; 30 TAC §321.39(c) and TPDES Permit Number WQ0003290000, Part X Special Provisions N., by failing to submit the current sludge volume of the retention control structures (RCS) within 30 days of the permit issuance; 30 TAC §321.46(d) and TPDES Permit Number WQ0003290000, Part VII PPP Requirements A.1(a)(7) and Part VIII Recordkeeping, Reporting, and Notification Requirements A., by failing to maintain records on site for a minimum of five years from the date the record was created and submit records within five days of written request; 30 TAC §321.36(j) and TPDES Permit Number WQ0003290000, Part VIII Recordkeeping, Reporting, and Notification Requirements B.7 and Part X Special Provisions C., by failing to submit timely, complete, and accurate annual report by February 15 of each year; 30 TAC §321.42(g) and TPDES Permit Number WQ0003290000, Part VII PPP Requirements A.5(a)(2) and Part X Special Provisions A.2., by failing to develop and implement an RCS management plan; 30 TAC §321.38(g)(3) and TPDES Permit Number WQ0003290000, Part X Special Provisions J., by failing to submit a liner certification for the settling basin; 30 TAC §321.39(g)(2) and TPDES Permit Number WQ0003290000, Part VII PPP Requirements B.7., by failing to maintain vegetation, crops, forage growth, or post harvest residues in the normal growing season in pastures that maintain animals; 30 TAC §321.36(b) and TPDES Permit Number WQ0003290000, Part X Special Provisions L., by failing to maintain manure and settled solids accumulations in the settling basins; and 30 TAC §21.4 and the Code, §5.702 and §26.0135(h), by failing to pay outstanding consolidated water quality fees and associated late fees; PENALTY: $14,183; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: William Emmett Hartzog, Jr.; DOCKET NUMBER: 2010-1381-MWD-E; IDENTIFIER: RN102517372; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.65 and §305.125(2) and the Code, §26.121(a)(1), by failing to maintain authorization for the discharge of wastewater; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0012917001, Sludge Provisions, by failing to submit the annual sludge report; and 30 TAC §317.4(a)(8), by failing to provide a backflow prevention device on the portable water line to the facility; PENALTY: $17,500; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Rita Laura Redow Karbalai; DOCKET NUMBER: 2010-0497-MWD-E; IDENTIFIER: RN102075769, RN101514271, RN101227478, and RN102186822; LOCATION: Harris and Montgomery Counties; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d), and TPDES Permit Number WQ0014217001, Monitoring and Reporting Requirements Number 1 and Sludge Provisions, by failing to submit monitoring results at the intervals specified in the permit; 30 TAC §305.125(1), TPDES Permit Number WQ0014217001, Effluent Limitations and Monitoring Requirements Number 2, and the Code, §26.121(a)(1), by failing to maintain compliance with permitted effluent limitations; 30 TAC §30.350(d) and §305.125(1) and TPDES Permit Number WQ0014217001, Other Requirements Number 1, by failing to employ or contract with a licensed operator; 30 TAC §305.125(1) and §319.11(d) and TPDES Permit Number WQ0014217001, Monitoring and Reporting Requirements Number 2 and Operational Requirements Number 5, by failing to measure flow in an accurate and representative manner; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0014217001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1), TPDES Permit Number WQ0014217001, Effluent Limitations and Monitoring Requirements Number 4 and Permit Conditions Number 2.d, and the Code, §26.121(a)(1), by failing to prevent a discharge of solids into the receiving stream; 30 TAC §305.125(1) and (9) and TPDES Permit Number WQ0014217001, Monitoring and Reporting Requirements Number 7, by failing to submit a noncompliance notification to the TCEQ; 30 TAC §305.125(1), TPDES Permit Number WQ0014217001, Permit Conditions Number 2.g, and the Code, §26.121(a)(1), by failing to prevent a discharge of raw sewage; 30 TAC §305.125(1) and (11)(B) and §319.7(a) and (c), and TPDES Permit Number WQ0014217001, Monitoring and Reporting Requirements Numbers 3.b and c, and Operational Requirements Number 1, by failing to maintain calibration and maintenance records, quality assurance/quality control records, process control records, and operation and maintenance records; 30 TAC §305.125(1) and TPDES Permit Number WQ0012399001, Other Requirements Number 8, by failing to install a dual-feed chlorination system; 30 TAC §305.125(1) and §319.11(d) and TPDES Permit Number WQ0012399001, Monitoring and Reporting Requirements Number 5, by failing to ensure the accuracy of flow measuring devices; 30 TAC §317.3(b)(1), by failing to equip the lift station with a standby pump; 30 TAC §305.125(1), TPDES Permit Number WQ0012692001, Permit Conditions Number 2.g, and the Code, §26.121(a)(1), by failing to prevent a discharge of municipal waste; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0012761001, Sludge Provisions, by failing to submit the annual sludge report; PENALTY: $89,531; ENFORCEMENT COORDINATOR: Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: KEITHVILLE WELL DRILLING & SERVICE, INC.; DOCKET NUMBER: 2010-1502-WR-E; IDENTIFIER: RN105950448; LOCATION: Nacogdoches County; TYPE OF FACILITY: water well drilling operation; RULE VIOLATED: 30 TAC §297.11 and the Code, §11.121, by failing to obtain a temporary water right permit prior to diverting, storing, impounding, taking, or using water of the state; PENALTY: $605; ENFORCEMENT COORDINATOR: Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: Zachary King; DOCKET NUMBER: 2010-1800-WOC-E; IDENTIFIER: RN103616942; LOCATION: Hays County; TYPE OF FACILITY: licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(13) COMPANY: Lawn Appeal, LLC; DOCKET NUMBER: 2010-1034-LII-E; IDENTIFIER: RN105944805; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: landscape and ground maintenance company; RULE VIOLATED: 30 TAC §30.5(b) and §344.30(a)(2) and (d) and the Code, §37.003, by failing to refrain from advertising or representing oneself to the public as a holder of a license or registration unless they possess a current license or registration, or unless they employ an individual who holds a current license; PENALTY: $450; ENFORCEMENT COORDINATOR:

Audra Benoit, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: Lucite International, Inc.; DOCKET NUMBER: 2010-1079-AIR-E; IDENTIFIER: RN102736089; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: industrial organic chemical plant; RULE VIOLATED: 30 TAC §§101.20(3), 112.143(4), 115.112(a)(1), 116.115(b)(2)(F) and (G) and (c), FOP Number O-001437, GTC and Special Condition (SC) Number 11, Air Permit Number 19003, GC Number 8 and SC Number 8, Air Permit Number 19005/PSD-TX-753, SC Number 1, and THSC, §382.085(b), by failing to maintain emission rates below the allowable emission limits; PENALTY: $14,550; ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(15) COMPANY: MAHNAZ ENTERPRISES, INC. dba Moon Mart; DOCKET NUMBER: 2010-1166-PST-E; IDENTIFIER: RN101828176; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $2,290; ENFORCEMENT COORDINATOR: Andrea Park, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77703-1452, (713) 767-3500.

(16) COMPANY: Navasota Concrete, Inc.; DOCKET NUMBER: 2010-0998-IWD-E; IDENTIFIER: RN104760962; LOCATION: Navasota, Grimes County; TYPE OF FACILITY: ready-mix concrete production; RULE VIOLATED: 30 TAC §305.125(1), TPDES General Permit Number TXG110826, Part III, Section A., Permit Requirements, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limits for pH and total suspended solids (TSS); PENALTY: $12,000; ENFORCEMENT COORDINATOR: Carlie Konkol, (512) 239-0735; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: Stice Enterprises, Inc.; DOCKET NUMBER: 2010-0430-AIR-E; IDENTIFIER: RN105700256, RN105700249; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: portable cement silos; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization to construct a portable cement silo; PENALTY: $3,550; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Universal Forest Products Texas, LLC; DOCKET NUMBER: 2010-1214-IWD-E; IDENTIFIER: RN100214493; LOCATION: New Waverly, Walker County; TYPE OF FACILITY: bark mulch bagging and bulk mulch; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0001905000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits for TSS and *E. coli;* PENALTY: $22,200; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: Nickie Joe Sublett dba Uphill Dairy; DOCKET NUMBER: 2010-1507-AGR-E; IDENTIFIER: RN101527893; LOCATION: Hamilton County; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §305.125(1) and §321.36(b) and TPDES Permit Number WQ0004858000, Special Provisions Number A.1. and A.2., by failing to complete the construction of new and modified RCS to meet total capacity required by the permit; PENALTY: $1,240; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-201006541
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 16, 2010

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Enforcement Orders

An order was entered regarding 4200 Rosedale LLC and/or Goodyear Tire & Rubber Company, Docket No. 2007-1259-PST-E on November 8, 2010 assessing $3,675 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2007-1469-IHW-E on November 8, 2010 assessing $58,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Tommy Davis dba Slick Machines Screening Plant, Docket No. 2009-0184-WQ-E on November 8, 2010 assessing $4,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie J. Frazee, Staff Attorney at (512) 239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Z.A.O., Inc. fka Bell-Thunderbird Oil Co., Inc., Docket No. 2009-1052-MLM-E on November 8, 2010 assessing $7,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary K. Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Bynum, Docket No. 2009-1406-MWD-E on November 8, 2010 assessing $3,575 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-0620, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ricardo Flores, Docket No. 2009-1491-PST-E on November 8, 2010 assessing $6,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie J. Frazee, Staff Attorney at (512) 239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fatima Enterprises Inc dba HWY 6 Valero, Docket No. 2009-1800-PST-E on November 8, 2010 assessing $16,403 in administrative penalties with $3,280 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Calvert C. Huffmaster, Jr. dba Coleto Creek Mobile Home Park, Docket No. 2009-1878-PWS-E on November 8, 2010 assessing $762 in administrative penalties with $152 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Doyle Trent dba ETEX Properties, Docket No. 2009-1942-PST-E on November 8, 2010 assessing $3,675 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-0620, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Caddo Mills, Docket No. 2009-2028-MWD-E on November 8, 2010 assessing $14,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary K. Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fikes Wholesale, Inc. dba CEFCO Convenience Stores aka CEFCO 55, Docket No. 2009-2057-MLM-E on November 8, 2010 assessing $10,115 in administrative penalties with $2,023 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Angel Rodriguez, Docket No. 2009-2059-LII-E on November 8, 2010 assessing $250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0205, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding XTO Energy Inc., Docket No. 2009-2084-AIR-E on November 8, 2010 assessing $237,247 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ali Ahmad Alhindi dba Oil Depot, Docket No. 2009-2086-PST-E on November 8, 2010 assessing $5,665 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie J. Frazee, Staff Attorney at (512) 239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Shepherd, Docket No. 2010-0004-MWD-E on November 8, 2010 assessing $2,882 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding U.S. Recycling Corporation, Docket No. 2010-0213-MSW-E on November 8, 2010 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J N J OPERATIONS, INC. dba Alvin Express, Docket No. 2010-0235-PST-E on November 8, 2010 assessing $3,035 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2010-0258-AIR-E on November 8, 2010 assessing $132,500 in administrative penalties with $26,500 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Richard L. Tillery, Docket No. 2010-0267-MLM-E on November 8, 2010 assessing $24,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey J. Huhn, Staff Attorney at (210) 403-4023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANUM TEXAS CORP dba Big Country Mart, Docket No. 2010-0281-PST-E on November 8, 2010 assessing $6,171 in administrative penalties with $1,234 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WEATHERFORD FARMS, INC., Docket No. 2010-0282-IWD-E on November 8, 2010 assessing $8,250 in administrative penalties with $1,650 deferred.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rody Alejandro Quinton dba Texstar Landscape & Irrigation, Docket No. 2010-0290-LII-E on November 8, 2010 assessing $1,125 in administrative penalties with $225 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SandRidge Midstream, Inc., Docket No. 2010-0340-AIR-E on November 8, 2010 assessing $42,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E.I. du Pont de Nemours and Company, Docket No. 2010-0379-AIR-E on November 8, 2010 assessing $30,050 in administrative penalties with $6,010 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bhima Corporation dba Handi Stop 52 Araon Food Mart 2, Docket No. 2010-0399-PST-E on November 8, 2010 assessing $1,925 in administrative penalties with $385 deferred.

Information concerning any aspect of this order may be obtained by contacting Tate Barrett, Enforcement Coordinator at (713) 422-8968, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Attebury Grain, LLC, Docket No. 2010-0418-AIR-E on November 8, 2010 assessing $17,520 in administrative penalties with $3,504 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Wilke Tire Service, Inc., Docket No. 2010-0428-MSW-E on November 8, 2010 assessing $3,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hector Ortiz, Docket No. 2010-0432-MLM-E on November 8, 2010 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FT-EZCO, INC., Docket No. 2010-0438-PST-E on November 8, 2010 assessing $4,484 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-0736, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Henry Gonzales, Docket No. 2010-0454-MSW-E on November 8, 2010 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-0620, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Maximus Coffee Group, LP, Docket No. 2010-0457-AIR-E on November 8, 2010 assessing $8,560 in administrative penalties with $1,712 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of La Feria, Docket No. 2010-0485-PWS-E on November 8, 2010 assessing $695 in administrative penalties with $139 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 850 Pine Street Inc., Docket No. 2010-0491-AIR-E on November 8, 2010 assessing $11,050 in administrative penalties with $2,210 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Felipe Posada dba Key Road Subdivision Water Supply, Docket No. 2010-0506-PWS-E on November 8, 2010 assessing $727 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A & N MOMIN ENTERPRISES, INC. dba Chevron Food Mart, Docket No. 2010-0513-PST-E on November 8, 2010 assessing $30,456 in administrative penalties with $6,091 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Market Place Innovation, Inc., Docket No. 2010-0514-PWS-E on November 8, 2010 assessing $3,262 in administrative penalties with $652 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SJKR, INC. dba Steves Texaco, Docket No. 2010-0520-PST-E on November 8, 2010 assessing $3,125 in administrative penalties with $625 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Glen R. Bonds dba Bonds Septic Services, Docket No. 2010-0521-MLM-E on November 8, 2010 assessing $5,870 in administrative penalties with $1,174 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Wilmer, Docket No. 2010-0549-WQ-E on November 8, 2010 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bart L. McWilliams dba Angelo Landscape, Docket No. 2010-0563-LII-E on November 8, 2010 assessing $375 in administrative penalties with $75 deferred.

Information concerning any aspect of this order may be obtained by contacting Georgena Hawkins, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UNITED TRANSMISSIONS, INC. dba Alvarez Chevron, Docket No. 2010-0584-PST-E on November 8, 2010 assessing $2,796 in administrative penalties with $559 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Orange County Water Control and Improvement District No. 1, Docket No. 2010-0592-MWD-E on November 8, 2010 assessing $15,045 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A&A PETROLEUM OF TEXAS, INC. dba Texaco OST, Docket No. 2010-0599-PST-E on November 8, 2010 assessing $5,059 in administrative penalties with $1,011 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mardoche Abdelhak dba Big Trees Trailer City, Docket No. 2010-0602-PWS-E on November 8, 2010 assessing $5,659 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Federico Mendez, LLC, Docket No. 2010-0610-PST-E on November 8, 2010 assessing $4,976 in administrative penalties with $995 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MeadWestvaco Texas, L.P., Docket No. 2010-0617-IWD-E on November 8, 2010 assessing $28,361 in administrative penalties with $5,672 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Walnut Cove Water Supply Corporation, Docket No. 2010-0618-MWD-E on November 8, 2010 assessing $7,339 in administrative penalties with $1,467 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CROWN Cork & Seal USA, Inc., Docket No. 2010-0629-AIR-E on November 8, 2010 assessing $1,640 in administrative penalties with $328 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Montgomery County Municipal Utility District 9, Docket No. 2010-0630-PWS-E on November 8, 2010 assessing $508 in administrative penalties with $101 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Montgomery County Municipal Utility District 8, Docket No. 2010-0631-PWS-E on November 8, 2010 assessing $508 in administrative penalties with $101 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding DAVIS AND WARDLAW OIL CO., INC., Docket No. 2010-0634-PST-E on November 8, 2010 assessing $6,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Houston Refining LP, Docket No. 2010-0641-AIR-E on November 8, 2010 assessing $20,499 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ELWANS, INC. dba A&S Food Mart, Docket No. 2010-0648-PST-E on November 8, 2010 assessing $4,524 in administrative penalties with $904 deferred.

Information concerning any aspect of this order may be obtained by contacting Tate Barrett, Enforcement Coordinator at (713) 422-8968, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LUCKY ASSOCIATES, INC. dba 7 Days Food Stores, Docket No. 2010-0657-PST-E on November 8, 2010 assessing $4,856 in administrative penalties with $971 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Hagood, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Petroleum Group, LLC dba TPG 253 05, Docket No. 2010-0663-PST-E on November 8, 2010 assessing $4,946 in administrative penalties with $989 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WTG Gas Processing, L.P., Docket No. 2010-0668-AIR-E on November 8, 2010 assessing $6,240 in administrative penalties with $1,248 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company, Docket No. 2010-0675-AIR-E on November 8, 2010 assessing $70,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Knife River Corporation - South, Docket No. 2010-0687-IWD-E on November 8, 2010 assessing $4,092 in administrative penalties with $818 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lake Forest Falls, Inc., Docket No. 2010-0698-MLM-E on November 8, 2010 assessing $269 in administrative penalties with $53 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Best Sea-Pack of Texas, Inc., Docket No. 2010-0704-IWD-E on November 8, 2010 assessing $26,030 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (512) 239-0735, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lampasas, Docket No. 2010-0717-PWS-E on November 8, 2010 assessing $2,136 in administrative penalties with $427 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Quang Dang Pham dba Sunmart 302, Docket No. 2010-0718-PST-E on November 8, 2010 assessing $3,446 in administrative penalties with $689 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Yunbae Choe, Docket No. 2010-0720-PST-E on November 8, 2010 assessing $6,602 in administrative penalties with $1,320 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding N.K.S.S. ENTERPRISES, INC. dba Petro Plus, Docket No. 2010-0722-PST-E on November 8, 2010 assessing $5,775 in administrative penalties with $1,155 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding N & S Investments, Inc. dba Sonik Mart, Docket No. 2010-0725-PST-E on November 8, 2010 assessing $3,850 in administrative penalties with $770 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Hagood, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William Waggoner, Docket No. 2010-0728-PST-E on November 8, 2010 assessing $2,443 in administrative penalties with $488 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NEW VISION CUSTOM HOMES, INC., Docket No. 2010-0732-WQ-E on November 8, 2010 assessing $3,600 in administrative penalties with $720 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2010-0741-AIR-E on November 8, 2010 assessing $5,350 in administrative penalties with $1,070 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of New Waverly, Docket No. 2010-0763-MWD-E on November 8, 2010 assessing $2,040 in administrative penalties with $408 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Atlanta, Docket No. 2010-0764-MWD-E on November 8, 2010 assessing $2,134 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SOMANG MANAGEMENT, INC. dba Times Market 103, Docket No. 2010-0767-PST-E on November 8, 2010 assessing $5,355 in administrative penalties with $1,071 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William Emmett Hartzog, Jr., Docket No. 2010-0776-MWD-E on November 8, 2010 assessing $1,150 in administrative penalties with $230 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Himalayan Star, Inc. dba Junction Shell, Docket No. 2010-0780-PST-E on November 8, 2010 assessing $6,684 in administrative penalties with $1,336 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David Schuler dba Spirit Custom Homes, Docket No. 2010-0804-WQ-E on November 8, 2010 assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (512) 239-0735, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Monarch Utilities I L.P., Docket No. 2010-0818-IWD-E on November 8, 2010 assessing $2,100 in administrative penalties with $420 deferred.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (512) 239-0735, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2010-0830-AIR-E on November 8, 2010 assessing $3,075 in administrative penalties with $615 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LDH ENERGY MONT BELVIEU L.P., Docket No. 2010-0844-IWD-E on November 8, 2010 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tarkington Independent School District, Docket No. 2010-0848-MWD-E on November 8, 2010 assessing $5,680 in administrative penalties with $1,136 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S.I. Enterprises, LLC, Docket No. 2010-0850-MWD-E on November 8, 2010 assessing $2,040 in administrative penalties with $408 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jerry L. Robertson, Docket No. 2010-0853-MLM-E on November 8, 2010 assessing $2,684 in administrative penalties with $536 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 737-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Targa Permian LP, Docket No. 2010-0871-AIR-E on November 8, 2010 assessing $3,983 in administrative penalties with $796 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Turlington Water Supply Corporation, Docket No. 2010-0893-PWS-E on November 8, 2010 assessing $224 in administrative penalties with $44 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sonic Automotive of Texas, L.P., Docket No. 2010-0904-PWS-E on November 8, 2010 assessing $2,293 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRT Development Company - CCS, Docket No. 2010-0968-PST-E on November 8, 2010 assessing $6,503 in administrative penalties with $1,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RACETRAC PETROLEUM, INC. dba Racetrac 6761, Docket No. 2010-1000-PST-E on November 8, 2010 assessing $4,786 in administrative penalties with $957 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dallas Chemical Technologies, Inc., Docket No. 2010-1100-IWD-E on November 8, 2010 assessing $14,169 in administrative penalties with $2,833 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, P.G., Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hays City Corporation dba Texcon Wholesale, Docket No. 2010-1243-PST-E on November 8, 2010 assessing $1,020 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Centergas Fuels, Inc., Docket No. 2010-1415-PST-E on November 8, 2010 assessing $1,750 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Central Freight Lines, Inc., Docket No. 2010-1368-PST-E on November 8, 2010 assessing $1,750 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Longview Bridge and Road, Ltd, Docket No. 2010-1367-WR-E on November 8, 2010 assessing $350 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201006564
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 17, 2010

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Notice of Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility

REGISTRATION APPLICATION NO. 40251

APPLICATION. The City of Cotulla, 117 North Front Street, Cotulla, Texas 78014, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration (No. 40251), to construct and operate a Type V municipal solid waste transfer station. The proposed facility, the Cotulla Transfer Station will be located 0.80 miles southeast of the intersection of State Highway 97 and FM-624, in La Salle County. This facility is requesting authorization to transfer municipal solid waste which includes household and commercial solid waste, scrap tires, white goods, and scrap metal. The registration application is available for viewing and copying at the City Hall, 117 N. Front Street, Cotulla, Texas 78104 and may be viewed online at http://www.scsengineers.com/State_Info/Cotulla/Cotulla_TS.html.

PUBLIC COMMENT/PUBLIC MEETING. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. Comments may also be received if a public meeting is held on the facility. 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 prior to the notice of final determination. 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 reconsider 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, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically submitted to http://www10.tceq.state.tx.us/epic/ecmnts/. Individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Further information may also be obtained from the City of Cotulla at the address stated above or by calling Ryan Kuntz, Project Engineer at (817) 358-6117.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201006563
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 17, 2010

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Notice of Water Quality Applications

The following notices were issued on October 25, 2010 through November 12, 2010.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

BNSF RAILWAY COMPANY which operates the Amarillo Eastern Fueling Facility, a diesel locomotive refueling and light locomotive repair facility has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002376000, which authorizes the discharge of treated wash water and storm water on an

intermittent and flow variable basis via Outfall 001. The facility is located north of S.E. 3rd Avenue, approximately 0.25 mile west of Lakeside Drive in the City of Amarillo, Potter County, Texas 76106.

CITY OF PFLUGERVILLE has applied for a new permit, proposed TPDES Permit No. WQ0011845006, to authorize the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 975,000 gallons per day. The facility will be located at 17601 Weiss Lane in Travis County, Texas 78660.

CITY OF CORPUS CHRISTI has applied for a renewal of TPDES Permit No. WQ0010401004, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 16,200,000 gallons per day. The facility is located at 601 Nile Drive, at the intersection of Nile Drive and Ennis Joslin Road in the City of Corpus Christi in Nueces County, Texas 78412.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of TPDES Permit No. WQ0003994000 issued to National Oilwell Varco, L.P., 12950 West Little York Road, Houston, Texas 77041, which operates an oil and gas field equipment manufacturing and refurbishing facility to include effluent limitations, monitoring requirements and sampling location at Outfall 001. The existing permit authorizes the discharge of treated process wash water and domestic wastewater at a daily average flow not to exceed 50,000 gallons per day via Outfall 001. The facility is located at 12950 West Little York Road, approximately one-quarter mile northwest of the intersection of Addicks Fairbanks Road and West Little York Road, Harris County, Texas 77041.

CITY OF NAPLES has applied for a renewal of TPDES Permit No. WQ0010230001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located approximately 0.5 mile southeast of the intersection of State Highway 77 and State Highway 338 in Morris County, Texas 75568.

CITY OF PEARSALL has applied for a renewal of TPDES Permit No. WQ0010360001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,950,000,000 gallons per day. The facility is located on Old Loma Vista Road, approximately 0.25 mile northeast of the intersection of Farm-to-Market Road 1581 and Interstate Highway 35 in Frio County, Texas 78061.

THE CITY OF LAREDO has applied for a renewal of TPDES Permit No. WQ0010681006, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day in the Interim phase and 160,000 gallons per day in the Final phase. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 6.63 acres of non-public access land. The facility and irrigation site is located approximately 1 mile southwest of Farm-to-Market Road 1472 on an unnamed country road and 10.5 miles west-northwest of Farm-to-Market Roads 1472 and 3338, adjacent to the Rio Grande in Webb County, Texas 78040.

CITY OF IOWA PARK has applied for a renewal of TPDES Permit No. WQ0010691002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The facility is located southwest of the City of Iowa Park, approximately 0.25 mile west of Farm-to-Market Road 368 and one mile north of Farm-to-Market Road 367 in Wichita County, Texas 76367.

CITY OF ELKHART has applied for a renewal of TPDES Permit No. WQ0010735001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 210,000 gallons per day. The facility is located approximately 0.3 mile east-southeast of the intersection of State Highway 294 and Farm-to-Market Road 319 and approximately 0.6 mile southwest of the intersection of State Highway 294 and Farm-to-Market Road 861 in Anderson County, Texas 75839.

THE CITY OF TATUM has applied for a renewal of TPDES Permit No. WQ0010850001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 410,000 gallons per day. The facility is located approximately 4,000 feet southwest of the intersection of State Highway 43 and State Highway 149 on County Road 2183 in Rusk County, Texas 75691.

HOUSTON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a major amendment to TPDES Permit No. WQ0010871001 to authorize an increase in the discharge of treated filter backwash effluent from a water treatment plant from a daily average flow not to exceed 60,000 gallons per day to a daily average flow not to exceed 120,000 gallons per day and add a new outfall. The facility is located approximately one mile southwest of Latexo, approximately 1 and 3/4 miles northwest of the intersection of U.S. Highway 287 and Farm-to-Market Road 2160 in Houston County, Texas 75849.

SPLENDORA INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0011143001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located east of State Highway Spur 512, approximately 0.4 mile northeast of the intersection of State Highway Spur 512 and Farm-to-Market Road 2090 in Montgomery County, Texas 77372.

SPLENDORA INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0011143002 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located at 23411 Farm-to-Market Road 2090, on the west side of the earthen dam with the concrete spillway, approximately 3 miles northwest of the intersection of Interstate Highway 59 and Farm-to-Market Road 2090 in Montgomery County, Texas 77372.

MONARCH UTILITIES I LP has applied for a renewal of TPDES Permit No. WQ0011282001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located east of State Highway 274, adjacent to Cedar Creek Reservoir and approximately seven miles north of the City of Trinidad in Henderson County, Texas 75163.

ALGONQUIN WATER RESOURCES OF TEXAS LLC has applied for a renewal of TPDES Permit No. WQ0012482001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 68,000 gallons per day. TCEQ received this application on August 26, 2010. The facility is located approximately 7,600 feet south and 2,400 feet east of the intersection of Farm-to-Market Road 49 and Farm-to-Market Road 2869 and 9 miles north of the Town of Hawkins in Wood County, Texas 75765.

DAVID LEE SHEFFIELD has applied for a renewal of TPDES Permit No. WQ0013147001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located 1.2 miles north of the intersection of Farm-to Market Road 350 and Farm to Market Road 3126, approximately 5 miles west of the City of Livingston and on the east shoreline of Lake Livingston in Polk County, Texas 77351.

BIG OAK LIMITED has applied for a renewal of TPDES Permit No. WQ0013522001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located at 3,300 Lansing Switch Road, approximately 1,500 feet southwest of the intersection of Maple Springs Road and Interstate Highway 20 in Harrison County, Texas 75602.

MOORPARK VILLAGE INC has applied for a renewal of TPDES Permit No. WQ0013727001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The facility is located at 9201 Havenway, approximately 0.5 mile north of the intersection of Fairbanks-North Houston Road and Breen Road following Fairbanks-North Houston Road and 975 feet west of Fairbanks-North Houston Road and 2,520 feet south of Taub Road in Harris County, Texas 77064.

CITY OF CUMBY has applied for a renewal of TPDES Permit No. WQ0013792001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located approximately 2,000 feet east of the intersection of State Highway 30 and Farm-to-Market Road 275 on the east side of the City of Cumby.

KAUFMAN COUNTY FRESH WATER SUPPLY DISTRICT NO 1A has applied for a renewal of TPDES Permit No. WQ0013910001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day in Outfall 001 and a daily average flow not to exceed 350,000 gallons per day in Outfall 002. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day in Outfall 001. The facility is located approximately 600 feet north of U.S. Highway 80, approximately two miles east of the City of Forney in Kaufman County, Texas 75126.

AQUA DEVELOPMENT INC has applied for a renewal of TPDES Permit No. WQ0014106001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located approximately 1.3 miles southeast of the intersection of Interstate Highway 45 and Farm-to-Market Road 1960, and at the northeast corner of the intersection of Imperial Valley Drive and North Vista in the City of Houston, Harris County, Texas 77073.

THE BROWNSVILLE NAVIGATION DISTRICT has applied for a renewal of TPDES Permit No. WQ0014355001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located on the north side of State Highway 48, approximately 0.7 mile east of the intersection of State Highway 48 and Farm-to-Market Road 511 northeast of the City of Brownsville in Cameron County, Texas 78521.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201006565
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 17, 2010

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800 or (800) 325-8506.

Deadline: 30-Day Pre-Election Report due October 4, 2010 for Candidates and Officeholders

Eric M. Brandt, 900 E. South St. #6, Kilgore, Texas 75662

Diane L. Chisholm, 4313 Keys Dr., The Colony, Texas 75056

Ronald E. Reynolds, 6140 Hwy 6 South #233, Missouri City, Texas 77459

Joey Roland, 4915 Chritien Point Ct., Sugar Land, Texas 77478-5423

Gena N. Slaughter, 3109 Knox St. #313, Dallas, Texas 75205

Deadline: Lobby Activities Report due September 10, 2010

Michael Krusse, P.O. Box 1429, Austin, Texas 78767-1429

TRD-201006540
David Reisman
Executive Director
Texas Ethics Commission
Filed: November 16, 2010

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General Land Office

Notice of Violation - Derelict Vessel

Official Notice to Vessel Owner/Operator (Pursuant to §40.254, Texas Natural Resources Code)

This preliminary report and notice of violation was issued by Greg Pollock, Deputy Commissioner, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on 16 November 2010.

PRELIMINARY REPORT

Based upon an inspection conducted by OSPR Region 3 staff on 4 October 2010, the Deputy Commissioner of the General Land Office (GLO), Oil Spill Prevention and Response Division has determined that the remains of four (4) steel-hulled barges, USCG Vessel Documentation No. Unknown, are in an abandoned, wrecked, and derelict condition without the consent of the commissioner. The four steel-hulled vessels are identified by GLO tracking # as 3-1002, 3-1003, 3-1004, and 3-1005. The vessels are located in Copano Bay, near Copano Ridge in Aransas County, Texas. The vessels specifically are located at the following locations:

Vessel #3-1002 - Latitude 28° 7’ 3.1" N, Longitude 97° 2’ 8.7" W

Vessel #3-1003 - Latitude 28° 7’ 3.1" N, Longitude 97° 2’ 8.7" W

Vessel #3-1004 - Latitude 28° 7’ 3.1" N, Longitude 97° 2’ 8.7" W

Vessel #3-1005 - Latitude 28° 5’ 22.9 N, Longitude 97° 3’ 46.1" W

The GLO is unable to determine the owner or responsible person(s) for these vessels. The Commissioner has further determined that, because of the vessel’s condition and location, the vessel poses a navigational hazard, an unreasonable threat to public health, safety, and welfare, and is a hazard to the environment.

Violation

You are hereby given notice, pursuant to the provisions of §40.254 of the Texas Natural Resources Code (OSPRA) that you are in violation of OSPRA §40.108(a) that prohibits a person from leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition, and the Commissioner determines the vessel is involved in an actual or threatened unauthorized discharge of oil, a threat to the public health, safety, and welfare, or a hazard to the environment or navigation. The Commissioner is authorized by OSPRA §40.108(b) to dispose of or contract for the disposal of any vessel described in §40.108(a).

Recommendation

The Commissioner recommends that the vessel be removed from Texas coastal waters and disposed of in accordance with OSPRA §40.108.

The owner or operator of any of these vessels can request a hearing to contest the violation and the removal and disposal of the vessel. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of this notice being posted on the vessel. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, TX 78711. Failure to request a hearing may result in the removal and disposal of the vessel by the TGLO. If the TGLO removes and disposes of the vessel, the TGLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the vessel's owner or operator.

For additional information contact Wm. D. "Bill" Grimes at (512) 475-1464.

TRD-201006554
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: November 17, 2010

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective January 1, 2011.

The amendments will modify the reimbursement methodologies in the Texas Medicaid State Plan as a result of Medicaid fee changes for the following services:

Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)

Family Planning Providers

Physicians and Certain Other Practitioners

The proposed amendments are estimated to result in an additional annual aggregate expenditure of $1,751,791 for federal fiscal year (FFY) 2011, with approximately $1,282,561 in federal funds and $469,230 in State General Revenue (GR). For FFY 2012, the estimated additional aggregate expenditure is $2,640,988, with approximately $1,763,066 in federal funds and $877,922 in GR.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201006552
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: November 17, 2010

♦ ♦ ♦

Public Notice

The Texas Health and Human Services Commission announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective February 1, 2011.

The amendments will modify the reimbursement methodologies in the Texas Medicaid State Plan as a result of Medicaid fee changes for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS).

The proposed amendments are estimated to result in an additional annual aggregate expenditure of $873,945 for federal fiscal year (FFY) 2011, with approximately $580,824 in federal funds and $293,121 in State General Revenue (GR). For FFY 2012, the estimated additional aggregate expenditure is $1,390,242, with approximately $809,399 in federal funds and $580,843 in GR.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201006553
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: November 17, 2010

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	St. David's Healthcare Partnerships LP, LLP dba St. David's Medical Center	L06335	Austin	00	7/16/10
Katy	Innovative Energy Services, Inc.	L06344	Katy	00	7/26/10
Throughout TX	Fesco Ltd., Inc.	L06343	Alice	00	7/06/10

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	Abilene Diagnostic Clinical PLLC	L05101	Abilene	19	7/26/10
Abilene	Hendrick Medical Center	L02433	Abilene	103	7/23/10
Allen	Texas Health Presbyterian Hospital - Allen	L05765	Allen	20	7/23/10
Austin	ARA Imaging	L05862	Austin	49	7/21/10
Austin	Cedra Corporation	L04427	Austin	17	7/23/10
Austin	Austin Radiology Association	L00545	Austin	162	7/21/10
Bay City	Equistar Chemicals LP	L03938	Bay City	24	7/21/10
Baytown	DMS Health Technologies	L05594	Baytown	11	7/15/10
Baytown	DMS Health Technologies	L05594	Baytown	12	7/26/10
Beaumont	Christus Health Southeast Texas dba Christus Hospital - St. Elizabeth	L00269	Beaumont	111	7/23/10
Beaumont	E. I. Dupont De Nemours & Company, Inc.	L00517	Beaumont	79	7/28/10
Bedford	Columbia North Hills Outpatient Imaging Center Subsidiary LP dba Bedford Imaging Center	L03455	Bedford	55	7/21/10
Brenham	Scott and White Hospital - Brenham	L03419	Brenham	26	7/15/10
Burnet	Seton Healthcare dba Seton Highland Lakes Hospital	L03515	Burnet	42	7/23/10
College Station	Energy Laboratories, Inc.	L06171	College Station	02	7/26/10
Corpus Christi	True Medical Imaging	L06191	Corpus Christi	03	7/15/10
Dallas	Baylor University Medical Center	L01290	Dallas	98	7/22/10
El Paso	East El Paso Physicians Medical Center LLC	L05676	El Paso	22	7/17/10
El Paso	East El Paso Physicians Medical Center LLC	L05676	El Paso	23	7/28/10
El Paso	Louis M. Alpern, M.D., M.P.H., P.A. dba The Cataract and Glaucoma Center	L02928	El Paso	08	7/16/10
Friendswood	IsoTex Diagnostics, Inc.	L02999	Friendswood	47	7/09/10
Grapevine	Cardiovascular Consultants of North Texas LLP	L04627	Grapevine	21	7/30/10
Houston	The University of Texas M.D. Anderson Cancer Center	L06227	Houston	14	7/16/10
Houston	The University of Texas M.D. Anderson Cancer Center	L06227	Houston	15	7/21/10
Houston	University of Houston	L01886	Houston	64	7/14/10
Houston	NIS Holdings, Inc.	L05775	Houston	66	7/21/10
Houston	Houston Cyclotron Partners LP	L05585	Houston	16	7/26/10
Houston	Memorial Hermann Hospital System dba Memorial Hospital Memorial City	L01168	Houston	119	7/26/10
Irving	Baylor Medical Center at Irving dba Irving Healthcare System	L02444	Irving	82	7/23/10
Lubbock	Cardinal Health	L02737	Lubbock	58	7/13/10
Lubbock	Radiation Oncology of the South Plains P.A.	L05418	Lubbock	14	7/30/10

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
McAllen	McAllen Hospital LP dba McAllen Medical Center	L01713	McAllen	91	7/26/10
Mount Pleasant	Cardiology Consultants of East Texas P.A.	L06274	Mount Pleasant	01	7/21/10
North Richland Hills	Columbia North Hills Hospital Subsidiary LP dba North Hills Hospital	L02271	North Richland Hills	66	7/21/10
Orange	E. I. Dupont De Nemours & Company, Inc.	L00005	Orange	71	7/28/10
Pampa	Titan Specialties Ltd.	L04920	Pampa	17	7/26/10
Plano	Columbia Medical Center of Plano Subsidiary LP dba Medical Center of Plano	L02032	Plano	94	7/30/10
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	187	7/14/10
San Antonio	Methodist Healthcare System of San Antonio Ltd., LLP	L00594	San Antonio	273	7/23/10
San Antonio	Methodist Healthcare System of San Antonio Ltd., LLP	L00594	San Antonio	274	7/28/10
San Antonio	VHS San Antonio Partners LLC dba Baptist Health System	L00455	San Antonio	199	7/30/10
San Antonio	Alamo Heart Associates P.A.	L04909	San Antonio	12	7/28/10
Seguin	Guadalupe Regional Medical Center	L02292	Seguin	35	7/19/10
Stafford	Aloki Enterprise, Inc.	L06257	Stafford	05	7/21/10
Sugar Land	Methodist Sugar Land Hospital	L05788	Sugar Land	25	7/26/10
Texarkana	Christus Health Ark-La-Tex dba Christus Saint Michael Health System	L04805	Texarkana	23	7/21/10
Texarkana	Brim Healthcare of Texas LLC dba Wadley Regional Medical Center	L06242	Texarkana	01	7/23/10
Throughout TX	Global X-Ray & Testing Corporation	L03663	Aransas Pass	113	7/28/10
Throughout TX	Xxtreme Pipe Services LLC	L02576	Channelview	27	7/27/10
Throughout TX	Geotel Engineering, Inc.	L05674	Dallas	09	7/14/10
Throughout TX	Terracon Consultants, Inc.	L05268	Dallas	32	7/19/10
Throughout TX	Pioneer Wireline Services LLC	L06220	Graham	04	7/27/10
Throughout TX	Arends Inspection LLC	L06333	Houston	01	7/14/10
Throughout TX	HVJ Associates, Inc.	L03813	Houston	42	7/15/10
Throughout TX	HVJ Associates, Inc.	L03813	Houston	43	7/23/10
Throughout TX	Roxar, Inc.	L05547	Houston	17	7/14/10
Throughout TX	National Inspection Services LLC	L05930	Houston	30	7/14/10
Throughout TX	Metco	L03018	Houston	209	7/14/10
Throughout TX	Nuclear Scanning Services, Inc.	L04339	Houston	25	7/26/10
Throughout TX	Applied Technical Services, Inc.	L06282	Kemah	03	7/28/10
Throughout TX	Acuren Inspections, Inc.	L01774	La Porte	265	7/22/10
Throughout TX	Tracerco	L03096	Pasadena	71	7/27/10
Throughout TX	Century Inspections, Inc.	L00062	Ponder	108	7/22/10
Throughout TX	Frost Geosciences, Inc.	L06015	San Antonio	04	7/21/10
Throughout TX	Professional Services Industries, Inc.	L03642	Spring	26	7/21/10
Throughout TX	Ludlum Measurements, Inc.	L01963	Sweetwater	89	7/26/10
Tyler	Physician Reliance Network, Inc. dba Tyler Cancer Center	L04788	Tyler	15	7/21/10
Victoria	Texas Internal Medicine & Diagnostic Center P.A.	L06304	Victoria	02	7/26/10
Waco	Hillcrest Baptist Medical Center	L00845	Waco	93	7/15/10

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Wadsworth	STP Nuclear Operating Company	L04222	Wadsworth	27	7/28/10

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	Abilene Imaging Center	L05687	Abilene	09	7/21/10
Denton	Mayhill Cancer Center LLC dba Denton Regional Radiation Oncology	L06093	Denton	05	7/28/10
Houston	Cardiac Medical Solutions, Inc. dba Heartscan of N W Houston LP	L05944	Houston	02	7/14/10

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289, regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, TX 78714-9347. For information call (512) 834-6688.

TRD-201006546
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: November 16, 2010

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Texas Department of Housing and Community Affairs

2011 Community Services Block Grant Program Request for Applications

(I) Request for Applications (RFA). The Texas Department of Housing and Community Affairs (the "Department") is soliciting eligible organizations to administer the Community Services Block Grant, providing services and assistance to the eligible low-income population in Duval County.

(II) The initial grant period for the program is as follows:

(a) Community Services Block Grant (CSBG): from contract initiation through December 31, 2011. Contracts will be renewed annually.

(b) The Department, through this RFA, is soliciting existing Texas CSBG eligible entities or other eligible organizations to administer the Community Service Block Grant Program in the following unserved areas:

(1) the County of Mitchell; and

(2) the Counties of Taylor, Shackelford, and Stephens. Organizations may submit an application for serving either of the two areas or one application for serving both areas combined.

(III) Applicant Eligibility. Organizations eligible to apply for designation as the eligible entity(ies) to serve the identified unserved group of counties must be a private non-profit organization or a political subdivision of the State.

(IV) Application Deadline and Availability. The RFA is posted on the Department's website: http://www.tdhca.state.tx.us/community-services/index.htm and organizations on the Department's Listserv will receive an email notification that the RFA is available on the Department's web site.

(V) Deadline for Receipt. The original and one (1) complete copy of your organization's proposal submission shall be provided to the Department by **5:00 p.m. on December 23, 2010,** regardless of method of delivery.

Mailing Address:

Mr. Michael DeYoung, Director

Community Affairs Division

Texas Department of Housing and Community Affairs

P.O. Box 13941

Austin, Texas 78711-3941

(All U.S. Postal Service including Express)

Courier Delivery:

221 East 11th Street, 1st Floor

Austin, Texas 78701

(FedEx, UPS, Overnight, etc.)

Hand Delivery:

If you are hand delivering the application, contact Al Almaguer at (512) 475-3908 or Kathy Watkins at (512) 305-8869 when you arrive at the lobby of our building.

Questions. Questions relating to this RFA packet and instructions for preparing an application may be directed to Al Almaguer, within the TDHCA's Community Services Section, at (512) 475-3908 or by email to al.almaguer@tdhca.state.tx.us.

TRD-201006556
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 17, 2010

♦ ♦ ♦

2011 Comprehensive Energy Assistance Program Request for Applications

(I) Request for Applications (RFA). The Texas Department of Housing and Community Affairs (the "Department") is soliciting eligible organizations to administer the Comprehensive Energy Assistance Program (CEAP) providing services and assistance to the eligible low-income population in Tom Green County.

(II) The initial grant period for the CEAP: January 1, 2011 through December 31, 2011. Contracts will be renewed annually.

(III) Applicant Eligibility. Organizations eligible to apply for designation as the eligible entity to serve Tom Green County must be a private non-profit organization or a political subdivision of the state. **Organizations that currently administer Community Services Block Grant (CSBG) and CEAP funds shall receive priority consideration over all other applicants for the administration of the program.**

(IV) Application Deadline and Availability. The RFA is posted on the Department's website: http://www.tdhca.state.tx.us/ea/index.htm and organizations on the Department's Listserv will receive an email notification that the RFA is available on the Department's website.

(V) Deadline for Receipt. The original and one complete copy of your organization's application submission shall be provided to the Department by **5:00 p.m., December 23, 2010,** regardless of method of delivery.

Mailing Address:

Mr. Michael DeYoung, Director

Community Affairs Division

Texas Department of Housing and Community Affairs

P.O. Box 13941

Austin, Texas 78711-3941

(All U.S. Postal Service including Express)

Courier Delivery:

221 East 11th Street, 1st Floor

Austin, Texas 78701

(FedEx, UPS, Overnight, etc.)

Hand Delivery:

If you are hand delivering the application, contact Sharon Gamble at (512) 475-0471 or Marcella Perry at (512) 475-3913 when you arrive at the lobby of our building.

Questions. Questions pertaining to the 2011 Comprehensive Energy Assistance Program Request for Applications may be directed to Sharon Gamble at (512) 475-0471 or by email to sharon.gamble@tdhca.state.tx.us.

TRD-201006557
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 17, 2010

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2011 Emergency Solutions Grants Program Notice of Funding Availability

(I) Notice of Funding Availability (NOFA). The Texas Department of Housing and Community Affairs (the "Department") is soliciting eligible organizations to apply for funds available to administer the Emergency Solutions Grants Program.

(II) The initial grant period for Emergency Solutions Grants Program (ESGP): September 1, 2011 through August 31, 2012.

(III) Applicant Eligibility. Organizations eligible to apply for ESGP Funds must be a private non-profit organization or a local unit of government.

(IV) Application Deadline and Availability. The NOFA is posted on the Department's website: http://www.tdhca.state.tx.us/community-services/index.htm and organizations on the Department's Listserv will receive an email notification that the NOFA is available on the Department's web site.

(V) Deadline for Receipt. The original and three (3) complete copies of your organization's application shall be provided to the Department by **5:00 p.m. January 6, 2011,** regardless of method of delivery.

Mailing Address:

Mr. Stuart Campbell, Manager

Community Services Section

Texas Department of Housing and Community Affairs

P.O. Box 13941

Austin, Texas 78711-3941

(All U.S. Postal Service including Express)

Courier Delivery:

221 East 11th Street, 1st Floor

Austin, Texas 78701

(FedEx, UPS, Overnight, etc.)

Hand Delivery:

If you are hand delivering the application, contact Mariana Salazar at (512) 475-4576 or Al Almaguer at (512) 475-3908 prior to your arrival at the lobby of our building.

Questions. Questions pertaining to the 2011 Emergency Solutions Grants Program may be directed to Rita Gonzales-Garza at (512) 475-3905 or by email to rita.garza@tdhca.state.tx.us.

TRD-201006555
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 17, 2010

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Notice of Public Hearing

Residential Mortgage Revenue Bonds

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at 221 East 11th Street, Room 116, Austin, Texas, at 12:00 noon on January 7, 2011, with respect to a plan of financing (the "Plan") that consists of: (i) the conversion, on one or more separate dates, to tax-exempt bonds in the maximum aggregate face amount of $300,000,000 of all or a portion of the Department's Residential Mortgage Revenue Bonds, Series 2009C previously issued as taxable bonds (the "Series 2009C Bonds") (each, a "Conversion"), and (ii) the issuance, on one or more separate dates, of tax-exempt residential mortgage revenue bonds in the maximum aggregate face amount of $300,000,000 (the "New Money Bonds" and together with the Series 2009C Bonds, collectively, the "Bonds") in connection with a Conversion. Upon Conversion, the Series 2009C Bonds will become "qualified mortgage bonds" within the meaning of §143 of the Internal Revenue Code of 1986, as amended (the "Code"). The New Money Bonds will be issued as "qualified mortgage bonds" under §143 of the Code. The first Bonds delivered under the Plan will be delivered no later than one year following approval of the Plan pursuant to this Notice. All Bonds under the Plan will be delivered no later than three years following such approval.

The proceeds of the Bonds will be used directly to make, or to refund up to $100,000,000 of the Department's outstanding qualified mortgage bonds the proceeds of which were used to make, single family residential mortgage loans in an aggregate estimated amount of $600,000,000. All of such single family residential mortgage loans have been or will be made to eligible very low, low and moderate income homebuyers for the purchase of homes located within the State of Texas.

For purposes of the Department's mortgage loan finance programs, eligible borrowers generally will include individuals and families (a) whose family income does not exceed, (i) for families of three or more persons, 115% (140% in certain targeted areas) of the area median income, and (ii) for individuals and families of two persons, 100% (120% in certain targeted areas) of the area median income; and (b) who have not owned a principal residence during the preceding three years (except in certain cases (Qualified Veterans/Targeted Areas/Eligible Refinancings) permitted under applicable provisions of the Code). Further, residences financed with loans under the programs generally will be subject to certain other limitations, including limits on the purchase prices of the residences being acquired. All the limitations described in this paragraph are subject to revision and adjustment from time to time by the Department pursuant to changes in applicable federal or state law and Department policy.

All interested parties are invited to attend such public hearing to express their views with respect to the Department's mortgage loan finance program, the Conversion of the Series 2009C Bonds and the issuance of the New Money Bonds. Questions or requests for additional information may be directed to Heather Hodnett at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701; telephone (512) 475-1899.

Persons who intend to appear at the hearing and express their views are invited to contact Heather Hodnett in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Heather Hodnett prior to the date scheduled for the hearing.

TDHCA WEBSITE: www.tdhca.state.tx.us/hf.htm

Individuals who require auxiliary aids for the hearing should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989 at least two days before the hearing so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the hearing should contact Heather Hodnett at (512) 475-1899 at least three days before the hearing so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

This notice is published and the above-described hearing is to be held in satisfaction of the requirements of §147(f) of the Code regarding the public approval prerequisite to the exclusion from gross income for federal income tax purposes of interest on the Bonds.

TRD-201006558
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 17, 2010

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Houston-Galveston Area Council

Request for Proposals

The Houston-Galveston Area Council solicits qualified organizations to provide a wide variety of employment, education and support services to low income, out of school young people living in the Gulf Coast region. Services will help young people to finish school, learn skills for good jobs, get good jobs, and learn how to keep those jobs. A proposal package (RFP and attachments) will be available beginning at 10:00 a.m. Central Standard Time on Monday, November 15, 2010. You can download it at http://wrksolutions.com and http://www.h-gac.com. H-GAC will also fill requests for hard copies of the proposal package beginning at that time - contact Carol Kimmick at (713) 627-3200, or sending an email to carol.kimmick@h-gac.com. There will be no bidder's conference for this request. However, you may email questions to carol.kimmick@h-gac.com through Tuesday, November 30, 2010. We will post all questions and answers on our website, www.wrksolutions.com, by Friday, December 3, 2010.

Proposals are due at H-GAC offices on or before 12:00 noon Central Standard Time on Monday, December 20, 2010. Mailed proposals must be postmarked no later than Thursday, December 16, 2010. H-GAC will not accept late proposals; we will make no exceptions. Prospective bidders may contact Carol Kimmick at (713) 627-3200, carol.kimmick@h-gac.com, or visit the website to request a proposal package.

TRD-201006529
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: November 15, 2010

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Texas Department of Insurance

Company Licensing

Application to change the name of HARBOR POINT REINSURANCE U.S., INC. to ALTERRA REINSURANCE US INC., a foreign fire and/or casualty company. The home office is in Greenwich, Connecticut.

Application for HEALTHSPRING LIFE & HEALTH INSURANCE COMPANY, INC., a domestic life, accident and/or health company, DBA (doing business as) TEXAS HEALTHSPRING. The home office is in Houston, Texas.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication,

addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-201006559
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: November 17, 2010

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Texas Department of Insurance, Division of Workers' Compensation

Notice of Public Hearing

The Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) seeks comment and input regarding a draft of the Medical Quality Review Procedures. Additionally, agency staff will provide an update of the status of corrective actions undertaken to resolve issues identified by TDI-DWC and reported by the State Auditor.

Commissioners' Rod Bordelon and Mike Geeslin will hold a stakeholder meeting on December 14, 2010, at 7551 Metro Center Drive, Tippy Foster Room, Austin, Texas at 1:00 p.m. The draft of the Medical Quality Review Procedure will be available at *http://www.tdi.state.tx.us/wc/hcprovider/medadvisor.html#proc* no later than November 30, 2010.

The TDI-DWC invites your input on the procedure. This is an informal posting and not a publication for rulemaking as required by Chapter 2001 of the Texas Government Code.

To expedite the process, we encourage comments to the proposed procedures be submitted electronically via email to the address below. We request that any comments be submitted by 5:00 p.m. on December 14, 2010.

Thank you for your interest and assistance in this process. A copy of the draft Medical Quality Review Procedures may be downloaded from *http://www.tdi.state.tx.us/wc/hcprovider/medadvisor.html#proc*. Feel free to contact the individual listed below if you have any questions:

Mary Landrum

Director, Health Care Quality Review

Telephone: (512) 804-4814

Fax: (512) 490-1040

OMA.atlas.TDI@tdi.state.tx.us

TRD-201006560
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: November 17, 2010

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 9, 2010, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable to Amend its State-Issued Certificate of Franchise Authority, Project Number 38888.

The requested amendment is to expand the service area footprint to include the City of Wichita Falls, the City of Pharr, and the City of Weslaco, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 38888.

TRD-201006516
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 15, 2010

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Notice of Application for Amendment to Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 9, 2010, for an amendment to a certificate of operating authority (COA), pursuant to §§54.101 - 54.105 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Cumby Telephone Cooperative, Inc. for an Amendment to its Certificate of Operating Authority, Docket Number 38889.

Applicant seeks an expansion of its service area to include the Waco, Longview, and Houston LATAs.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 29, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 38889.

TRD-201006515
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 15, 2010

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Notice of Application for Waiver of Denial of Numbering Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on November 10, 2010, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of ten (10) thousand-blocks of numbers in the Houston rate center.

Docket Title and Number: Petition of AT&T Texas for Waiver of Denial of Numbering Resources, Docket Number 38893.

The Application: AT&T Texas submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-ex-

haust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 6, 2010. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 38893.

TRD-201006542
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 16, 2010

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Notice of Application for Waiver of Denial of Numbering Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on November 12, 2010, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of two (2) thousand-blocks of numbers in the Houston rate center.

Docket Title and Number: Petition of AT&T Texas for Waiver of Denial of Numbering Resources, Docket Number 38897.

The Application: AT&T Texas submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 6, 2010. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 38897.

TRD-201006543
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 16, 2010

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed CREZ Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on November 10, 2010, to amend a certificate of convenience and necessity (CCN) for a proposed Competitive Renewable Energy Zone (CREZ) transmission line in Borden, Coke, Glasscock, Howard, Mitchell, and Sterling Counties, Texas.

Docket Style and Number: Application of Wind Energy Transmission Texas, LLC to Amend its Certificate of Convenience and Necessity for the Long Draw to Sand Bluff, Sand Bluff to Divide, and Sand Bluff to Bearkat 345-kV CREZ Transmission Line in Borden, Coke, Glasscock, Howard, Mitchell, and Sterling Counties. SOAH Docket Number 473-11-1266; PUC Docket Number 38825.

The Application: Wind Energy Transmission Texas, LLC (WETT) requests to amend its CCN for a proposed CREZ transmission line designated the Long Draw to Sand Bluff, Sand Bluff to Divide, and Sand Bluff to Bearkat Transmission Line Project (formerly known as the West A to Central D, Central D to Divide, and Central D to Central E) (project). The proposed project consists of constructing three separate segments of a new single-circuit, double-circuit capable 345-kV transmission line: (1) Long Draw to Sand Bluff, (2) Sand Bluff to Divide, and (3) Sand Bluff to Bearkat. The proposed project is described in the ERCOT CREZ Transmission Optimization (ERCOT CTO) Study as the "West A to Central D, Central D to Divide, and Central D to Central E." The preferred route for the new 345-kV single-circuit, double-circuit capable line is approximately 123.1 miles in length and will be constructed using single-circuit, double-circuit capable 345-kV lattice steel towers. The estimated date to energize facilities for this transmission line is April 30, 2013. The estimated cost of the combined project is $187,295,000.

(1) Long Draw to Sand Bluff. This segment of the proposed project is described in the ERCOT CTO Study as "West A (Long Draw) to Central D (Sand Bluff) single-circuit, double-circuit capable 345-kV line." The proposed 62.8 mile line will extend from the proposed WETT Long Draw Switching Station located in Borden County to the proposed WETT Sand Bluff Switching Station in Glasscock County. The Long Draw to Sand Bluff segment includes a total of 21 alternative routes. WETT has identified Route 10-5 as its preferred route. (2) Sand Bluff to Divide. This segment of the proposed project is described in the ERCOT CTO Study as "Central D (Sand Bluff) to Divide single-circuit, double-circuit capable 345-kV line." The proposed 33 mile line will extend from the proposed WETT Sand Bluff Switching Station in Glasscock County to LCRA Transmission Service Corporation's existing Divide Switching Station located in Coke County. The Sand Bluff to Divide segment includes a total of 11 alternative routes. WETT has identified Route 6-6 as its preferred route. (3) Sand Bluff to Bearkat. This segment of the proposed project is described in the ERCOT CTO Study as "Central D (Sand Bluff) to Central E (Bearkat) single-circuit, double-circuit capable 345-kV line." The proposed 27.3 mile line will extend from the proposed WETT Sand Bluff Switching Station in Glasscock County to the proposed WETT Bearkat Switching Station located in Glasscock County. The Sand Bluff to Bearkat segment includes a total of 14 alternative routes. WETT has identified Route 14-7 as its preferred route. Any route of any of the segments presented in the application could, however, be approved by the commission. Any combination of routes or route links, within or among any segment presented in the application, could be approved by the commission.

Pursuant to the Public Utility Regulatory Act §39.203(e), the commission must issue a final order in this docket before the 181st day after the date the application is filed with the commission.

In Docket Number 33672, the commission determined that the transmission facilities identified in the final order were necessary to deliver to customers renewable energy generated in the CREZ. The Long Draw to Sand Bluff, Sand Bluff to Divide, and Sand Bluff to Bearkat single-circuit, double-circuit capable 345-kV transmission-line project, the subject of this application, was specifically identified in that order as a necessary facility. In Docket Number 37902, WETT was selected as the responsible entity and was ordered to construct the subject transmission-line project. In Docket Number 36802, WETT was ordered to file its CCN application for the subject project.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this pro-

ceeding is December 10, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference SOAH Docket Number 473-11-1266 and PUC Docket Number 38825.

TRD-201006518
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 15, 2010

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed CREZ Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on November 10, 2010, to amend a certificate of convenience and necessity (CCN) for a proposed Competitive Renewable Energy Zone (CREZ) transmission line in Armstrong, Briscoe, Carson, Donley, Gray, and Swisher Counties, Texas.

Docket Style and Number: Application of Sharyland Utilities, LP to Amend its Certificate of Convenience and Necessity for the White Deer to Silverton 345-kV CREZ Transmission Line in Armstrong, Briscoe, Carson, Donley, Gray, and Swisher Counties, SOAH Docket Number 473-11-1267; Docket Number 38829.

The Application: Sharyland Utilities, LP (Sharyland) requests amendment of its CCN for a proposed CREZ transmission line designated as the White Deer to Silverton 345-kV Transmission Line Project (project). The project consists of a new 345-kV double-circuit transmission line from Sharyland's proposed White Deer Collection Station (formerly Panhandle BA), located in southern Carson County, to Sharyland's proposed Silverton Collection Station (formerly Panhandle AC), located in southwest Briscoe County. The proposed project is described in the ERCOT CREZ Transmission Optimization Study as the Panhandle BA to Panhandle AC (White Deer to Silverton) line.

The application includes a total of 13 alternative routes presented for consideration. Sharyland identified Route 3 as its preferred route. Any route presented in the application could, however, be approved by the commission. Any combination of routes or route links could also be approved by the commission. The preferred route for the new 345-kV line is approximately 65.21 miles in length and is proposed to be constructed on double-circuit lattice steel tower structures. The estimated date to energize facilities is September 30, 2013. The estimated cost of the project is $101,490,000. Pursuant to the Public Utility Regulatory Act §39.203(e), the commission must issue a final order in this docket before the 181st day after the date the application is filed with the commission.

In Docket Number 33672, the commission determined that the transmission facilities identified in the final order were necessary to deliver to customers renewable energy generated in the CREZ. The White Deer to Silverton 345-kV CREZ transmission line project, the subject of this application, was specifically identified in that order as a necessary facility. In Docket Number 36802, Sharyland was ordered to complete the project identified as White Deer to Silverton (formerly known as Panhandle BA to Panhandle AC).

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is December 10, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference SOAH Docket Number 473-11-0539 and PUC Docket Number 38829.

TRD-201006519
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 15, 2010

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing on November 10, 2010, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The applicant will file the LRIC study on or after November 19, 2010.

Docket Title and Number: Application of Verizon Southwest, Inc. for Approval of LRIC Study for Wholesale Directory Listing Service Order NRC Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 38892.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 38892. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 38892.

TRD-201006517
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 15, 2010

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Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

The City of Dimmitt, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Dimmitt Municipal Airport during the course of the next five years through multiple grants.

Current Project: City of Dimmitt. TxDOT CSJ No.:CSJ.1105DIMIT. Rehabilitate and mark apron, crack seal on remaining pavement and rehabilitate and mark south parallel TW to RW 1.

The DBE goal for the current project is 8%. TxDOT Project Manager is Ed Mayle.

Future scope work items for engineering/design services within the next five years may include the following:

1. Rehabilitate airport entrance road.
2. Rehabilitate stub and hangar access TW.
3. Mark RW 1-19.
4. Rehabilitate RW 1-19.
5. Install PAPI-2 RW 1-19.
6. Rehabilitate south T-hangar apron.
7. Rehabilitate parallel TW from stub TW to RW 19.

The City of Dimmitt reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Dimmitt Municipal Airport." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/business/projects/aviation.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than December 28, 2010, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Kelle Chancey.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at http://www.txdot.gov/business/projects/aviation.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Kelle Chancey, Grant Manager. For technical questions, please contact Ed Mayle, Project Manager.

TRD-201006534
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 15, 2010

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Texas State University-San Marcos

Notice of Consultant Contract Amendment

This notice states the Intent to Amend Asbestos Abatement Consulting Services Contract Related to Asbestos Abatement.

Pursuant to the provisions of Texas Government Code, Chapter 2254, Texas State University-San Marcos intends to amend a contract for consulting services related to asbestos abatement. Preliminary asbestos abatement consulting services have been provided by Burcham Environmental Services, L.L.C. The original contract was in the sum of $13,790, with a beginning date of September 2, 2010. The contract will be amended for a total amount not to exceed $70,290.

As required by Chapter 2254 of the Texas Government Code, prior to amending its contract with Burcham Environmental Services, L.L.C., Texas State University-San Marcos is posting this Notice of Intent to Amend Asbestos Consulting Services Contract.

For further information, please call Bill Tomlinson at (512) 245-2202.

TRD-201006544
Robert C. Moerke
Director of Contract Compliance
Texas State University-San Marcos
Filed: November 16, 2010

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 35 (2010) is cited as follows: 35 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 "35 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 35 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*