TEXAS REGISTER

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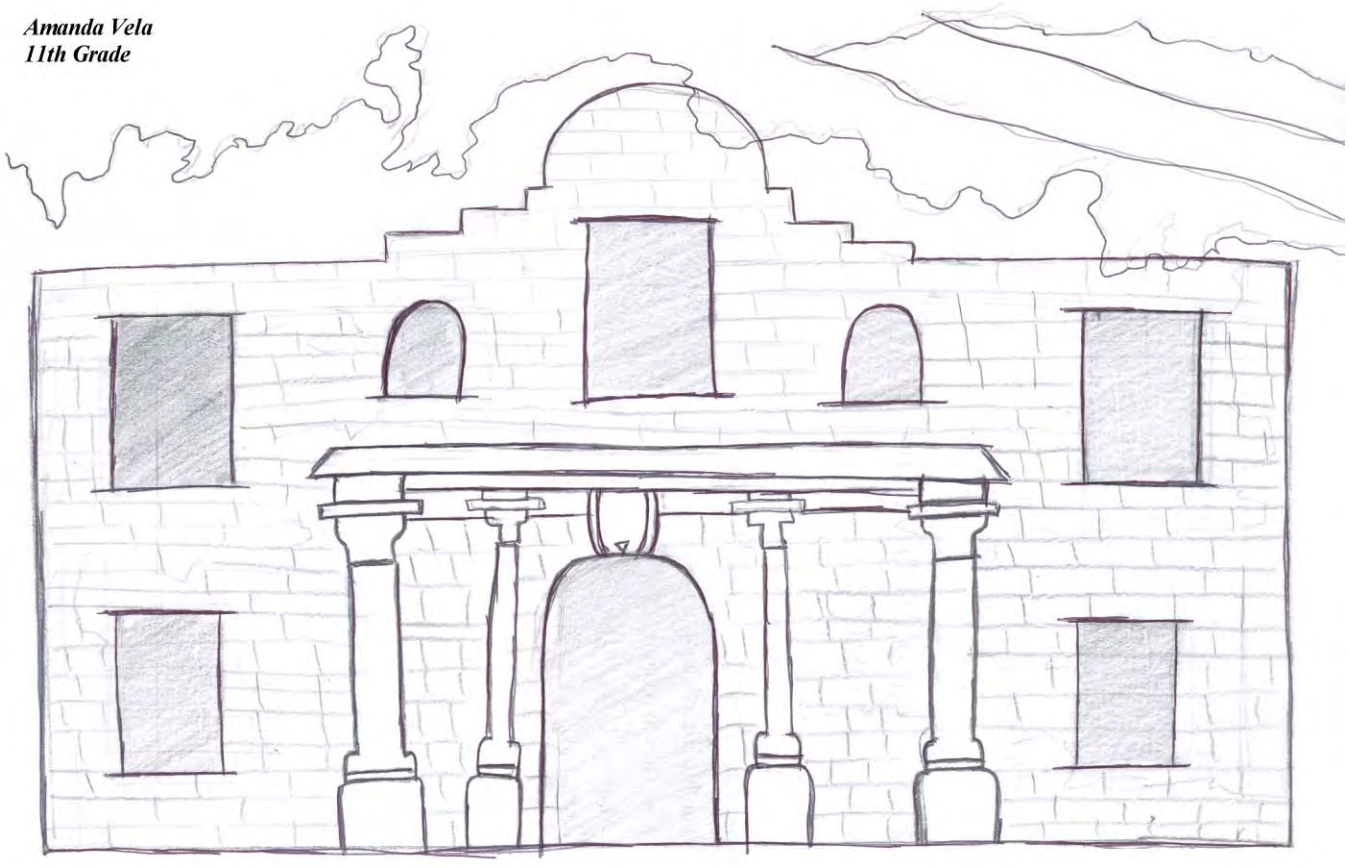

Amanda Vela
11th Grade

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

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Open Meetings

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

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

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

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

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

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

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

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

Requests for Opinions

RQ-0956-GA

Requestor:

The Honorable Fred H. Brown

Chair, Joint Committee on Oversight of the Health and Human Services Eligibility System

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Constitutionality of residency requirements for applicants for a license to fit and dispense hearing instruments under section 402.209, Occupations Code (RQ-0956-GA)

Briefs requested by April 28, 2011

RQ-0957-GA

Requestor:

Ms. Anne Heiligenstein, Commissioner

Texas Department of Family and Protective Services

Post Office Box 149030

Austin, Texas 78714-9030

Re: Whether the Department of Family and Protective Services in entitled to receive from a law enforcement agency information regarding investigations of child abuse and neglect (RQ-0957-GA)

Briefs requested by May 4, 2011

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201101332
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: April 6, 2011

♦ ♦ ♦

Opinions

Opinion No. GA-0850

The Honorable Mike Hamilton

Chair, House Committee on Licensing and Administrative Procedures

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the Eagle Pass Independent School District is subject to a municipal ordinance that requires the District to expend funds for certain kinds of infrastructure (RQ-0923-GA)

S U M M A R Y

Pursuant to Local Government Code subsection 395.022(b), if it is determined that a City of Eagle Pass ordinance imposes an impact fee under chapter 395, the Eagle Pass Independent School District is not required to pay that fee in the absence of an agreement to do so.

The District's trustees must determine whether the expenditure for a waterline is "necessary in the conduct of public schools" and therefore permitted under Education Code section 45.105.

To the extent that the City ordinance at issue imposes unilateral action, Education Code section 11.168 is inapplicable to the issue of whether the District must comply with the City ordinance.

If the District determines that paying for city-requested infrastructure accomplishes a public purpose of the District and that it otherwise meets the requirements established by the Texas Supreme Court, the District's expenditure of funds for city-mandated infrastructure will not violate article III, section 52 of the Texas Constitution.

Opinion No. GA-0851

The Honorable Mike Jackson

Chair, Committee on Economic Development

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Restrictions on a municipality's use of certain reserve funds originally generated from a hotel occupancy tax (RQ-0924-GA)

S U M M A R Y

Hotel occupancy tax revenues collected under chapter 351, Tax Code, must be expended only as authorized by the chapter. Chapter 351 prohibits hotel occupancy tax revenues, including any surplus funds, from being expended for general city purposes.

Opinion No. GA-0852

The Honorable Jeff Wentworth

Chair, Select Committee on Open Government

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Meaning of the term "enacted revenue measures" for purposes of section 17.10 of article IX of the 2010-2011 General Appropriations Act, which relates to the funding of rail relocation and improvement (RQ-0925-GA)

S U M M A R Y

Legislative enactments that provide incoming revenue for the State Highway Fund constitute "enacted revenue measures" under article IX, section 17.10(b)(1) of the Appropriations Act, regardless of when they were enacted.

Opinion No. GA-0853

The Honorable D. Matt Bingham

Smith County Criminal District Attorney

Smith County Courthouse

100 North Broadway, 4th Floor

Tyler, Texas 75702

Re: Whether volunteer assistant fire marshals may be designated as "reserve deputies" (RQ-0927-GA)

S U M M A R Y

The Legislature did not grant county commissioners courts and county fire marshals authority to commission or appoint a volunteer assistant fire marshal as a reserve law enforcement officer. The Legislature did not include the term "volunteer assistant fire marshal" in the statutory definition of a "reserve law enforcement officer." Accordingly, a person appointed to serve as a volunteer assistant fire marshal is not, as an automatic consequence of the appointment, a reserve law enforcement officer.

Opinion No. GA-0854

The Honorable Vince Ryan

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002

Re: Authority of the Harris County Department of Education to operate an on-site health clinic for its employees (RQ-0928-GA)

S U M M A R Y

By operating an on-site healthcare clinic, the Harris County Department of Education does not propose to offer healthcare insurance, but rather it proposes to provide optional healthcare services to its employees. Offering direct healthcare services does not implicate Education Code subsection 22.004(i), which prohibits districts from offering group healthcare coverage.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201101333
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: April 6, 2011

♦ ♦ ♦

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) proposes new §354.1042, concerning home health supplies provided by a pharmacy, and new §354.1877, concerning quantity limitations; and proposes the repeal of Subchapter W concerning pharmacy limitations, which consists of §354.3047, concerning quantity limitations, and §354.3092, concerning review and evaluation.

Background and Justification

House Bill (H.B.) 1487, 81st Legislature, Regular Session, 2009, allows diabetic supplies to be prescribed for Medicaid clients using a method similar to that allowed under Medicare, i.e., valid prescription. Prior to the enactment of H.B. 1487, diabetic supplies (other than insulin syringes and needles) required a home health order form instead of a prescription.

Additionally, effective January 2012, new Health Insurance Portability and Accountability Act (HIPAA) transaction requirements explicitly allow pharmacies to bill for non-drug items using the HIPAA National Council for Prescription Drug Programs (NCPDP) transaction. The Centers for Medicare and Medicaid Services provided informal approval for use of the NCPDP transaction in the interim.

Currently, with the exception of insulin syringes and needles that are already reimbursable under the Medicaid Vendor Drug Program (VDP), durable medical equipment (DME) and home health providers are the only providers that may receive Medicaid reimbursement for home health supplies that are a benefit of Texas Medicaid. Pharmacies enrolled with the VDP may currently enroll as a DME provider, which requires Medicare DME certification.

HHSC proposes to amend the pharmacy services rules to allow pharmacies enrolled in the VDP to provide a limited set of basic home health supplies commonly found in pharmacies without requiring enrollment as a DME provider. The limited set of basic supplies includes aerosol holding chambers, blood glucose meters, blood glucose reagent strips, diabetic lancet devices, diabetic lancets, hypertonic saline solution, oral bowel evacuants, oral electrolyte solution, and orally administered iron salts (ferrous sulfate, ferrous gluconate) in addition to insulin syringes and needles, which are currently reimbursable under VDP. Pharmacies will not be allowed to provide the full scope of benefits provided by DME and home health providers. Because of the low cost of the supplies that will be provided by pharmacies for reimbursement, prior authorization will not be required. The limited set of home health supplies will continue to be available from DME and home health providers. The reimbursement amounts and limitations will be the same regardless of the provider type.

Additionally, the pharmacy rules are being updated to eliminate duplicative information and move rule information to a more appropriate subchapter.

Section-by-Section Summary

Proposed new §354.1042(a) allows certain supplies that are covered benefits of Texas Medicaid to be provided by a pharmacy.

Proposed new §354.1042(b) defines covered supplies and lists a website where the list of supplies can be viewed.

Proposed new §354.1042(c) allows supplies covered under this section to be reimbursed through the VDP if a claim is properly submitted.

Proposed new §354.1042(d) requires supplies covered under this section to be provided to clients under the authority of a valid prescription and does not require prior authorization. A prescription for supplies covered under this section is valid for six months.

Proposed new §354.1042(e) requires supplies covered under this section to be subject to the limitations defined in the Texas Medicaid Provider Procedures Manual.

Proposed new §354.1042(f) requires that supplies covered under this section be supported by medical literature or evidence-based practice guidelines indicating the use of the supply in the treatment of a disease or condition; billed by the pharmacy using a National Drug Code number; and eligible for federal financial participation under the Medicaid program.

Proposed new §354.1042(g) allows supplies covered under this section to be provided and reimbursed at a Medicaid VDP pharmacy or a Medicaid DME/home health provider, but not both under the same prescription or order. Additionally, supplies covered under this section cannot be provided under the VDP to clients who reside in a long-term care facility or are enrolled in Medicaid managed care, except clients enrolled in Primary Care Case Management, because supplies for these clients are reimbursed through a different funding stream.

Proposed new §354.1877(a) includes the limitations on the quantity of drugs that can be prescribed. The language in this proposed new rule was taken from §354.3047, which is being proposed for repeal, and has been formatted. The language has not changed from the current version of the rule with the exception of (a)(1), which now includes clarifying language to ensure the public understands that a six-month supply is not guaranteed for every drug.

Proposed new §354.1877(b) includes the limitations on how refills of drugs can be dispensed. The language in this proposed new rule was taken from §354.3047 and has been reformatted. The language has not changed from the current version of the rule.

Section 354.3047 is proposed for repeal to move the language to a more appropriate subchapter.

The proposed repeal of §354.3092 deletes duplicative language, as this language currently exists in §354.1923.

Proposed repealed Subchapter W is no longer necessary since the rules in this subchapter are being repealed.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the new rules and repeals are in effect there will be no fiscal impact to state government. The proposed rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Under §2006.002 of the Government Code, a state agency proposing an administrative rule that may have an adverse economic effect on small businesses must prepare an economic impact statement and, generally, a regulatory flexibility analysis. The economic impact statement estimates the number of small businesses subject to the rule and projects the economic impact of the rule on small businesses. The regulatory flexibility analysis describes the alternative methods the agency considered to achieve the purpose of the proposed rule while minimizing adverse effects on small businesses. A regulatory flexibility analysis is not required if the proposed rule is required by a state or federal mandate.

Ms. Rymal has determined that there is a potential impact to small or micro-businesses to comply with the new rules. The potential impact is due primarily to a potential loss in sales and profits resulting from changes in market competition. New §354.1042 may shift the business for this limited set of low-cost supplies from one small business to another small business. Medicaid reimbursement for these supplies is currently only available to enrolled DME providers; therefore, if a client obtains one of these supplies at a pharmacy, the client must pay out-of-pocket unless the pharmacy is also enrolled as a DME provider. Few pharmacies are currently enrolled as DME providers. There are chains or national providers with outlets in both the DME and pharmacy provider industry. This rule will not authorize pharmacies to provide the full scope of benefits provided by DME providers, i.e., pharmacies will not be reimbursed for higher-cost supplies such as rental/purchase of canes, wheelchairs, bed pans, oxygen, or IV-related products.

The exact size of the potential impact to small or micro-businesses is not known at this time. HHSC estimates that approximately 85 percent of current DME providers could be potentially impacted by this rule. The number of small businesses that could be potentially impacted is 1,250.

HHSC has worked to minimize the impact new §354.1042 may have on small or micro-businesses by: 1) limiting the number of home health supplies that may be provided by a pharmacy to 11 low-cost supplies; 2) ensuring the reimbursement for these supplies is the same for pharmacies as for DME providers; and 3) establishing the same limitations for pharmacies as is currently expected of DME providers for these supplies (e.g., a prescription for these supplies is valid for six months). HHSC considered the following alternative methods for achieving the purpose of the rule while minimizing the adverse impact on small or micro-businesses:

1) Do not reimburse pharmacies for providing any home health supplies unless they are enrolled as a DME provider. The purpose of new §354.1042 is to increase Medicaid clients' access to home health supplies. If HHSC did not reimburse pharmacies for providing any home health supplies unless they were enrolled as DME providers, the possible impact to small or micro-businesses would be minimized, but access to home health supplies would not increase.

2) Require pharmacies to enroll as DME providers using an expedited process to provide the 11 types of home health supplies. HHSC's expedited process for enrolling as a DME provider requires pharmacies to obtain Medicare DME certification. Obtaining Medicare DME certification places requirements on pharmacies that are administratively cumbersome; many pharmacies have not chosen to enroll as DME providers because of these requirements. Therefore, this alternative method would not increase access to home health supplies because pharmacies would continue to enroll as DME providers at the current low rate.

3) Allow pharmacies to provide fewer than 11 types of home health supplies without enrolling as a DME provider. HHSC intentionally limited the number of home health supplies to 11 and chose low-cost items in order to minimize the impact to small or micro-businesses. To further limit the number of supplies that may be provided by a pharmacy would not reduce the impact to small or micro-businesses enough to justify further limiting the types of supplies to which Medicaid clients have increased access.

Public Benefit

Mr. Billy Millwee, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the new rules and repeals. The anticipated public benefit, as a result of enforcing the rules, will be to increase access to certain home health supplies for Medicaid clients.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Michelle Erwin, Senior Policy Analyst, at 11209 Metric Blvd. MC H-600,

Austin, TX 78758; by fax to (512) 491-1953; or by e-mail to michelle.erwin@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for April 27, 2011 from 10:00 a.m. to 11:00 a.m. (central time) in the Health and Human Services Braker Center, Lone Star Conference Room, located at 11209 Metric Boulevard, Building H, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

SUBCHAPTER A. PURCHASED HEALTH SERVICES
DIVISION 3. MEDICAID HOME HEALTH SERVICES

1 TAC §354.1042

Statutory Authority

The new rule is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Government Code §531.099, which requires HHSC to modify rules for ordering diabetic supplies under the Medicaid program to provide for a system that is comparable to ordering diabetic supplies under the Medicare program.

The new rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1042. Supplies Provided by a Pharmacy.

(a) Certain supplies that are covered benefits of Texas Medicaid may be provided by a pharmacy enrolled in the Medicaid Vendor Drug Program (VDP) as described in this section.

(b) Covered supplies include medical equipment or products typically obtained through a pharmacy with a valid prescription that are designated by the Health and Human Services Commission (HHSC) or its designee. A list of covered supplies can be found on HHSC's website at http://www.txvendordrug.com. The list includes insulin syringes and needles, which are also described in §354.1039 of this division (relating to Home Health Services Benefits and Limitations).

(c) The supplies covered under this section may be reimbursed through the Vendor Drug Program (VDP) if a claim is properly submitted and complies with this section.

(d) The supplies covered under this section require a valid prescription and do not require prior authorization unless otherwise specified in HHSC policy. A prescription for supplies covered under this section is valid for six months.

(e) The supplies covered under this section are subject to the limitations defined in the Texas Medicaid Provider Procedures Manual. Exceptions to these limitations require authorization by HHSC.

(f) Supplies covered under this section must be:

(1) Supported by medical literature or evidence-based practice guidelines indicating the use of the supply in the treatment of a disease or condition;

(2) Billed by the pharmacy using a National Drug Code number; and

(3) Eligible for federal financial participation under the Medicaid program.

(g) Supplies covered under this section are not reimbursable through the VDP if they are:

(1) Obtained through a Medicaid home health or durable medical equipment supplier under the same valid prescription or order; or

(2) Provided to clients who reside in a long-term care facility or are enrolled in Medicaid managed care, except clients enrolled in Primary Care Case Management.

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 March 31, 2011.

TRD-201101252
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 15, 2011
For further information, please call: (512) 424-6900

♦ ♦ ♦

SUBCHAPTER F. PHARMACY SERVICES
DIVISION 4. LIMITATIONS

1 TAC §354.1877

Statutory Authority

The new rule is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Government Code §531.099, which requires HHSC to modify rules for ordering diabetic supplies under the Medicaid program to provide for a system that is comparable to ordering diabetic supplies under the Medicare program.

The new rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1877. Quantity Limitations.

(a) Quantity. The quantity of drugs prescribed depends on the prescribing practice of the prescriber and the needs of the patient.

(1) For recipients with monthly prescription limitations, the Vendor Drug Program (VDP) reimburses the provider for the prescribed quantity, up to but not exceeding a six-month supply.

(2) For recipients with access to unlimited prescriptions, the VDP reimburses the provider dispensing a medication for a quantity that does not exceed a one-month (34-day) supply.

(b) Refills. Except for medications that may be too unstable to be dispensed as a one-month supply, the Health and Human Services Commission requires that the same drug in the same strength be dispensed no more than once per month. The dispensing of authorized

refills must be consistent with the prescribed dosage schedule and existing federal and state laws.

(1) To be reimbursed by the VDP, a refill must be dispensed only after 75 percent of a previous dispensing of the same prescription would have been used if taken according to the accompanying prescriber's orders. A higher percentage limit may be required for a drug that has been determined to be subject to abuse or overuse.

(2) A recipient may obtain an early medication refill for a justifiable reason.

(A) A justifiable reason includes, but is not limited to, a dosage increase or an anticipated prolonged absence from the community. The reason must be noted on the prescription.

(B) Unless specific authorization is obtained from the prescriber, breakage, spillage, or loss of a medication are not considered justifiable reasons. The prescription obtained under this authorization is considered a new prescription.

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 March 31, 2011.

TRD-201101253
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 15, 2011
For further information, please call: (512) 424-6900

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SUBCHAPTER W. PHARMACY LIMITATIONS

1 TAC §354.3047, §354.3092

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repeals are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Government Code §531.099, which requires HHSC to modify rules for ordering diabetic supplies under the Medicaid program to provide for a system that is comparable to ordering diabetic supplies under the Medicare program.

The repeals affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.3047. Quantity Limitations.

§354.3092. Review and Evaluation.

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. PHARMACY SERVICES DIVISION 8. DRUG UTILIZATION REVIEW BOARD

1 TAC §354.1941

The Texas Health and Human Services Commission (HHSC) proposes new §354.1941, concerning Conflict of Interest Policy, in new Division 8, Drug Utilization Review Board.

Background and Justification

The Medicaid Drug Utilization Review (DUR) Board is a group composed of physicians and pharmacists who meet on a quarterly basis to determine criteria for retrospective and prospective prescription drug utilization.

House Bill 2030, 81st Legislature, Regular Session, 2009, requires the establishment of a conflict of interest policy for the members of the Medicaid DUR Board. The bill created §531.0692 of the Texas Government Code, which requires that DUR Board members not have a contractual relationship, ownership interest, or other conflict of interest with a pharmaceutical manufacturer or labeler or with an entity engaged by HHSC. The HHSC Executive Commissioner is given the authority to implement a conflict of interest policy either by adopting rules or by requiring the board to develop a conflict of interest policy.

The proposed new rule will outline the conflict of interest policy that each DUR Board member must agree to uphold for the duration of their term on the board. Board members will be required to sign and date a form disclosing any potential conflicts of interest.

Section-by-Section Summary

Proposed new §354.1941(a) establishes that persons appointed to the Texas Medicaid DUR Board should be free of personal financial interests and other relationships that may conflict with their duties. Specifically, a member of the DUR Board must not have a contractual relationship, ownership interest, or other prohibited relationship with a pharmaceutical manufacturer or labeler, or an entity engaged by HHSC to assist in the administration of the DUR Board.

Proposed new §354.1941(b) defines "contractual relationship," "ownership interest," "other interest," "member," and "third party."

Proposed new §354.1941(c) requires members of the DUR Board to report any new or existing contractual relationship, ownership interest, or other conflict of interest that the member, the member's parents, the member's spouse, or the member's children hold or acquire during the member's tenure on the DUR Board or that was held or acquired during the two-year period that immediately precedes the member's tenure.

Proposed new §354.1941(d) outlines the actions to be taken if HHSC or the DUR Board determines there is a potential conflict of interest and actions that can be taken to mitigate the potential conflict of interest.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the new rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no effect on small businesses or micro businesses to comply with the amendment as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Mr. Billy Millwee, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the new section is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit, as a result of enforcing the rule, will be appropriate application of a conflict of interest policy for members serving on the Texas Medicaid DUR Board.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Michelle Erwin, Senior Policy Analyst, Texas Health and Human Services Commission, 11209 Metric Blvd. MC H-370, Austin, TX 78758; by fax to (512) 491-1953; or by e-mail to michelle.erwin@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for April 27, 2011 from 11:00 a.m. to 12:00 p.m. (central time) in the Health and Human Services Braker Center, Lone Star Conference Room, located at 11209 Metric Boulevard, Building H, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

Statutory Authority

The new section is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.0692, which gives the Executive Commissioner authority to adopt rules that identify prohibited relationships and conflicts for members of the Texas Medicaid Drug Utilization Review Board.

The new section affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1941. Conflict of Interest Policy.

(a) Policy.

(1) Persons appointed to the Texas Medicaid Drug Utilization Review (DUR) Board must be free of personal financial interests and other relationships that may conflict with their duties as to the Medicaid DUR Program under Social Security Act §1927(g) and Texas Government Code §531.0691. Specifically, in accordance with Texas Government Code §531.0692, a member of the DUR Board must not have a contractual relationship with or an ownership interest or other interest in:

(A) A pharmaceutical manufacturer or labeler; or

(B) An entity engaged by the Texas Health and Human Services Commission (HHSC) to assist in the administration of the DUR Board.

(2) Persons appointed to the DUR Board must disclose any apparent or potential conflict of interest under subsection (c) of this section and take affirmative steps to mitigate the effect of each conflict under subsection (d) of this section.

(b) Definitions. The following words or phrases have the meaning indicated for purposes of this section:

(1) Contractual relationship--A written or oral agreement between a member and a third party that results in the payment of federally reportable income to the member (i.e., income reported on IRS Form 1099 or Form W-2).

(2) Member--A person who is appointed to the DUR Board.

(3) Other interest--Involvement in the affairs of a third party that impairs or may be perceived as impairing a member's independence of judgment regarding the member's performance of duties for the DUR Board, including but not limited to involvement that interferes with the member's duties for the DUR Board.

(4) Ownership interest--An equity interest in a third party where a member exercises control over the selection of investments and any other financial interest whose value cannot be readily determined through reference to public records.

(5) Third party--A pharmaceutical manufacturer or labeler with a product on the Texas Drug Code Index and any other entity engaged by HHSC to assist in the administration of the DUR Board.

(c) Disclosure.

(1) Each member of or person under consideration for appointment to the DUR Board must report any new or existing contractual relationship, ownership interest, or other interest that the member, the member's parent, the member's spouse, or the member's son or daughter holds or acquires during the member's tenure on the DUR Board or that was held or acquired during the two-year period that immediately precedes the member's tenure.

(2) A member must report any conflict of interest on a form developed by HHSC.

(d) Mitigation. If the DUR Board or HHSC determines that a potential conflict of interest exists, the following actions will be taken:

(1) HHSC will determine whether the potential conflict will impair the member's exercise of independent judgment on behalf of the DUR Board and recommend appropriate action to the DUR Board. HHSC will examine the extent of the potential conflict, the length of time the potential conflict existed, and the impact of the potential conflict on any matter on which the member may be required to deliberate.

(2) HHSC will inform the DUR Board member and the DUR Board chair of its recommended action.

(3) In response to a recommendation from HHSC, the DUR Board may require:

(A) Recusal of the member on any action that relates to a specific product marketed by a third party for which the member may have a conflict;

(B) Recusal of the member on any action that relates to all products marketed by a third party for which the member may have a conflict;

(C) Recusal of the member on any action that involves a class of pharmaceuticals for which the member may have a conflict; or

(D) Any other action the DUR Board determines is necessary to avoid or mitigate a potential conflict 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 March 30, 2011.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.112, concerning Attendant Compensation Rate Enhancement.

Background and Justification

This rule establishes the reimbursement methodology for the Attendant Compensation Rate Enhancement (enhancement program). Under this rule providers may choose to maintain a certain attendant compensation spending level in return for increased attendant compensation reimbursement rates. Providers participating in the enhancement program who fail to meet their spending requirements are subject to a recoupment of all attendant compensation revenues associated with unmet spending goals.

HHSC, under its authority and responsibility to administer and implement rates, is proposing changes to this rule to:

replace references to the Department of Aging and Disability Services (DADS) Form 2031 with a generic form description;

clarify cost report training requirements for cost reports functioning as attendant compensation reports;

expand the definition of an attendant for the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR), Home and Community-based Services (HCS) and Texas Home Living (TxHmL) programs;

add a definition of a driver;

allow direct care workers, direct care trainers and job coaches to count as attendants for all programs; current rule language limits these staff types to the ICF/MR, HCS and TxHmL programs;

lessen long-term penalties for providers who fail to meet their spending requirement during a specific time period;

define a new contract as one whose effective date is on or after the first day of the open enrollment period;

clarify that certain rule provisions apply at the ICF/MR, HCS and TxHmL component code level rather than the contract level; and

describe how the attendant compensation rate component for HCS employment assistance is calculated for providers not participating in the enhancement program.

The following is a detailed discussion of the changes noted above.

DADS Form 2031 References

Currently, enhancement program rules refer to the DADS Form 2031. The proposed amendment will replace references to a specific DADS form number with a generic description of the form. This change is being made so that if the DADS form number is changed in the future, the rule will still be accurate.

Cost Report Training Requirements

Current rule language describes required cost report training for individuals completing cost reports and for individuals completing attendant compensation reports. Since attendant compensation reports were replaced by cost reports effective for services delivered on or after September 1, 2009, language describing training requirements for individuals completing those reports has become extraneous and HHSC is proposing that this language be deleted.

Expanded Definition of an Attendant

The definition of an attendant in the ICF/MR, HCS and TxHmL programs is being broadened to correct oversights in the amendment that initially added these programs to the Attendant Compensation Rate Enhancement. Specifically, the amendment proposes to allow as attendants: individuals spending at least 80% of their time providing attendant care in the HCS and TxHmL day habilitation (DH) settings, drivers in the HCS and TxHmL DH settings; and Medication Aides in the ICF/MR program and the HCS supervised living and residential support services (SL/RSS) setting.

Definition of a Driver

Current rule language allows a driver to be considered an attendant in certain programs and settings but does not define the

term driver. The proposed amendment defines a driver as an individual who is transporting consumers.

Direct Care Workers, Direct Care Trainers and Job Coaches

Current rule language indicates that direct care workers, direct care trainers and job coaches are considered attendants for the ICF/MR, HCS and TxHmL programs only. The proposed amendment deletes this restriction and allows these staff types to be considered attendants for any program.

Penalties for Providers who Fail to Meet Spending Requirements

Current rule language limits future enhancement participation for providers who failed to meet their spending requirement in a single year for the remaining life of the provider's contract. Such a limitation is excessive. The proposed amendment replaces the lifetime limitation with a limitation that will remain in effect for two years following identification of the infraction.

Definition of a New Contract

Current rule language defines a new contract as one delivering its first day of service to a DADS consumer on or after the first day of the enhancement open enrollment period. Information on when a contract delivered its first day of service to a DADS consumer is not always available when HHSC conducts its enhancement enrollments. HHSC is proposing to amend this definition to indicate that a new contract is a contract with an effective date on or after the first day of the enhancement open enrollment period.

Component Codes versus Contracts

While most programs eligible for participation in the enhancement program participate at the provider contract level, the ICF/MR, HCS and TxHmL programs participate at the component code level. A component code is a conglomeration of multiple contracts controlled by the same entity. HHSC is proposing to amend this section to clarify that requirements enforced at the contract level for most programs are enforced at the component code level for the ICF/MR, HCS and TxHmL programs.

Employment Assistance in the HCS Program

DADS will be adding employment assistance as a covered service to the HCS program effective September 1, 2011. In response to this action, HHSC is proposing to amend this section to incorporate a rate methodology for the attendant component of the HCS employment assistance reimbursement rate.

Section-by-Section Summary

The proposed amendments to §355.112 are as follows:

Revise subsection (b)(1) to include HCS and TxHmL DH settings and to include staff performing attendant functions in both the HCS SL/RSS and HCS and TxHmL DH settings that combine to equal at least 80% of their total hours worked.

Revise subsection (b)(3) to define a driver as one who is transporting consumers and to include drivers in the HCS and TxHmL DH settings;

Revise subsection (b)(4) to include medication aides in the HSC SL/RSS setting and ICF/MR program;

Revise subsection (b)(5) to allow direct care workers, direct care trainers and job coaches to be considered attendants in any program rather than limiting them to the ICF/MR, HCS and TxHmL programs;

Revise subsection (f)(4) to allow providers whose enrollment was limited due to prior performance to request to participate at any level beginning two years after the limitation was effective;

Revise subsection (g) to define a new contract or component code as one whose effective date is on or after the first day of the open enrollment period;

Revise subsection (h)(2)(C) and (D) to include component codes for the ICF/MR, HCS and TxHmL Programs;

Revise subsection (h)(4)(A) and (B) to indicate that references to component codes are for the ICF/MR, HCS and TxHmL programs only;

Revise subsection (j) to delete outdated references to cost report training for staffing and compensation reports and repetitive section title references;

Revise subsection (l)(2) to replace references to day habilitation with references to DH and to add HCS employment assistance;

Revise subsection (u)(1)(C) to replace references to DADS Form 2031 with references to the DADS signature authority designation form applicable to the provider's contract or ownership type;

Revise subsection (v) to include component codes;

Revise subsections (x) and (y) to replace references to DADS Form 2031 with references to the DADS signature authority designation form applicable to the provider's contract or ownership type.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

Carolyn Pratt, Director of Rate Analysis, has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The implementation of the proposed rule amendment does not require any changes in practice or any additional cost to the contracted provider.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect local employment.

Public Benefit

Carolyn Pratt has also determined that, for each of the first five years the amendment is in effect, the expected public benefits are that readers will have an increased understanding of requirements of the enhancement program; the definition of an attendant for the ICF/MR, HCS and TxHmL programs will match the definition of an attendant for the other programs eligible for participation in the enhancement program; penalties for providers who fail to meet their spending requirements will be reasonable; and HHSC will be able to determine the attendant portion of the HCS employment assistance rate.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist

in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

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

Public Comment

Questions about the content of this proposal may be directed to Laura Marble in the HHSC Rate Analysis Department by telephone at (512) 491-1354. Written comments on the proposal may be submitted to Ms. Marble by fax to (512) 491-1998; by e-mail to laura.marble@hhsc.state.tx.us; or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

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

The amendment affects Texas Government Code Chapter 531and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.112. Attendant Compensation Rate Enhancement.

(a) Eligible programs. Providers contracted in the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR), Home and Community-based Services (HCS), Texas Home Living (TxHmL), Primary Home Care (PHC); Day Activity and Health Services (DAHS); Residential Care (RC); Community Living Assistance and Support Services (CLASS)--Direct Service Agency (DSA); Community Based Alternatives (CBA)--Home and Community Support Services (HCSS); Integrated Care Management (ICM)-HCSS; Deaf-Blind Multiple Disabilities Waiver (DBMD); CBA--Assisted Living/Residential Care (AL/RC) programs; and ICM AL/RC are eligible to participate in the attendant compensation rate enhancement. References in this section to CBA program services also apply to the parallel services offered under the ICM program.

(b) Definition of attendant. An attendant is the unlicensed caregiver providing direct assistance to the clients with Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL).

(1) In the case of the ICF/MR, DAHS, RC, and CBA AL/RC programs and the HCS Supervised Living (SL)/[~~and~~] Residential Support Services (RSS) and HCS and TxHmL Day Habilitation (DH) settings [~~services~~], the attendant may perform some nonattendant functions. In such cases, the attendant must perform attendant functions at least 80% of his or her total time worked. Staff in these settings not providing attendant services at least 80% of their total time worked are not considered attendants. Time studies must be performed in accordance with §355.105(b)(2)(B)(i) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures) for staff in the ICF/MR, DAHS, RC, and CBA AL/RC programs and the HCS SL/RSS and HCS and TxHmL DH settings [~~services~~] that are not full-time attendants but perform attendant functions to determine if a staff member meets this 80% requirement. Failure to perform the time studies for these staff will result in the staff not being considered to be attendants. Staff performing attendant functions in both the HCS SL/RSS and HCS and TxHmL DH settings that combine to equal at least 80% of their total hours worked would be included in this designation.

(2) Attendants do not include the director, administrator, assistant director, assistant administrator, clerical and secretarial staff, professional staff, other administrative staff, licensed staff, attendant supervisors, cooks and kitchen staff, maintenance and groundskeeping staff, activity director, DBMD Interveners I, II or III, Qualified Mental Retardation Professionals (QMRPs), assistant QMRPs, direct care worker supervisors, direct care trainer supervisors, job coach supervisors, foster care providers, and laundry and housekeeping staff. In the case of HCS Supported Home Living, TxHmL Community Supports, PHC, CLASS, CBA--HCSS, and DBMD, staff other than attendants may deliver attendant services and be considered an attendant if they must perform attendant services that cannot be delivered by another attendant to prevent a break in service.

(3) An attendant also includes a driver who is transporting consumers in the ICF/MR, DAHS, RC, and CBA AL/RC programs and the HCS SL/RSS and HCS and TxHmL DH settings [~~services~~].

(4) An attendant also includes a medication aide [~~aides~~] in the HCS SL/RSS setting and the ICF/MR, RC and CBA AL/RC programs.

(5) An attendant also includes direct care workers, direct care trainers and job coaches [~~in the ICF/MR, HCS and TxHmL programs~~].

(c) Attendant compensation cost center. This cost center will include employee compensation, contract labor costs, and personal vehicle mileage reimbursement for attendants as defined in subsection (b) of this section.

(1) Attendant compensation is the allowable compensation for attendants defined in §355.103(b)(1) of this title (relating to Specifications for Allowable and Unallowable Costs) and required to be reported as either salaries and/or wages, including payroll taxes and workers' compensation, or employee benefits. Benefits required by §355.103(b)(1)(A)(iii) of this title to be reported as costs applicable to specific cost report line items, except as noted in paragraph (3) of this subsection, are not to be included in this cost center. For ICF/MR, attendant compensation is also subject to the requirements detailed in §355.457 of this title (relating to Cost Finding Methodology). For HCS and TxHmL, attendant compensation is also subject to the requirements detailed in §355.722 of this title (relating to Reporting Costs by Home and Community-based Services (HCS) [~~Providers)~~] and Texas Home Living (TxHmL) Providers).

(2) Contract labor refers to personnel for whom the contracted provider is not responsible for the payment of payroll taxes, such as FICA, Medicare, and federal and state unemployment insurance, and who perform tasks routinely performed by employees where allowed by program rules. Allowable contract labor costs are defined in §355.103(b)(2)(C) of this title.

(3) Mileage reimbursement paid to the attendant for the use of his or her personal vehicle and which is not subject to payroll taxes is considered compensation for this cost center.

(d) Rate year. The rate year begins on the first day of September and ends on the last day of August of the following year.

(e) Open enrollment. Open enrollment begins on the first day of July and ends on the last day of that same July preceding the rate year for which payments are being determined, unless the Texas Health and Human Services Commission (HHSC) notified providers before the first day of July that open enrollment has been postponed or cancelled. Should conditions warrant, HHSC may conduct additional enrollment periods during a rate year.

(f) Enrollment contract amendment.

(1) For CBA--HCSS and AL/RC, CLASS--DSA, DBMD, DAHS, ICM--HCSS and AL/RC, RC and PHC, an initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each contract a desire to participate or not to participate. The participating provider must specify for each program the desire to have all participating contracts be considered as a group as defined in subsection (ee) of this section or as individuals for purposes related to the attendant compensation rate enhancement.

(A) For the PHC program, the participating provider must also specify if he wishes to have priority, nonpriority, or both priority and nonpriority services participate in the attendant compensation rate enhancement. If the PHC provider selects to have their contracts participating as a group as defined in subsection (ee) of this section, then the provider must select to have priority, nonpriority, or both priority and nonpriority services participate for the entire group of contracts.

(B) For providers delivering services to both RC and CBA AL/RC clients in the same facility, participation includes both the RC and CBA AL/RC programs.

(2) For ICF/MR, HCS and TxHmL, an initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each component code a desire to participate or not to participate. All contracts of a component code within a specific program must either participate or not participate. The participating provider must specify for each program the desire to have all participating component codes be considered as a group as defined in subsection (ee) of this section or as individuals for purposes related to the attendant compensation rate enhancement.

(A) For the ICF/MR program, the participating provider must also specify the services he wishes to have participate in the attendant compensation rate enhancement. Eligible services are residential services and day habilitation services. The participating provider must specify whether he wishes to participate for residential services only, day habilitation services only or both residential services and day habilitation services. If the ICF/MR provider selects to have their component codes participate as a group as defined in subsection (ee) of this section, then the provider must have all participating services participate as a group.

(B) For the HCS and TxHmL programs, eligible services are divided into two categories: non-day habilitation services and day habilitation services. The non-day habilitation services category includes SL/RSS, supported home living/community supports, respite, supported employment and employment assistance. The day habilitation services category includes day habilitation. The participating provider must specify whether he wishes to participate for non-day habilitation services only, day habilitation services only or both non-day habilitation services and day habilitation services. If the HCS/TxHmL provider selects to have their component codes participating as a group as defined in subsection (ee) of this section, then the provider must have all participating categories participate as a group. For providers delivering services in both the HCS and TxHmL programs, the categories selected for participation must be the same for their HCS and TxHmL programs.

(3) After initial enrollment, participating and nonparticipating providers may request to modify their enrollment status during any open enrollment period. A nonparticipant can request to become a participant; a participant can request to become a nonparticipant; a participant can request to change its participation level; a provider whose participating contracts (for ICF/MR, HCS and TxHmL, participating component codes), are being considered as a group can request to have them considered as individuals; and a provider whose participating contracts (for ICF/MR, HCS and TxHmL, participating component codes), are being considered as individuals can request to have them considered as a group.

(4) Providers whose prior year enrollment was limited by subsection (u) of this section who request to increase their enrollment levels will be limited to increases of three or fewer enhancement levels during the first open enrollment period after the limitation. Providers that were subject to an enrollment limitation may request to participate at any level during open enrollment beginning two years after limitation [~~any single open enrollment period~~].

(5) Requests to modify a provider's enrollment status during an open enrollment period must be received by HHSC Rate Analysis by the last day of the open enrollment period as per subsection (e) of this section. If the last day of open enrollment is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. Providers from which HHSC Rate Analysis has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation and group or individual status in effect during the open enrollment period within available funds until the provider notifies HHSC in accordance with subsection (x) of this section that it no longer wishes to participate or until the provider's enrollment is limited in accordance with subsection (u) of this section.

(6) To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized representative as per the Texas Department of Aging and Disability Services' (DADS') signature authority designation form applicable to the provider's contract or ownership type, and legible.

(g) New contracts. For the purposes of this section, for each rate year a new contract is defined as a contract or component code whose effective date is [~~delivering its first day of service to a DADS client~~] on or after the first day of the open enrollment period, as defined in subsection (e) of this section, for that rate year. Contracts that underwent a contract assignment or change of ownership and new contracts that are part of an existing component code are not considered new contracts. For purposes of this subsection, an acceptable contract amendment is defined as a legible enrollment contract amendment that has been completed according to instructions, signed by an authorized representative as per the DADS' signature authority designation form applicable to the provider's contract or ownership type, and received by HHSC Rate Analysis within 30 days of the mailing of notification to the provider that such an enrollment contract amendment must be submitted. If the 30th day is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day re-

quests will be accepted. New contracts will receive the nonparticipant attendant compensation rate as specified in subsection (l) of this section with no enhancements. For new contracts specifying their desire to participate in the attendant compensation rate enhancement on an acceptable enrollment contract amendment, the attendant compensation rate is adjusted as specified in subsection (r) of this section, effective on the first day of the month following receipt by HHSC of an acceptable enrollment contract amendment. If the granting of newly requested enhancements was limited by subsection (p)(2)(B) of this section during the most recent enrollment, enrollment for new contracts will be subject to that same limitation. If the most recent enrollment was cancelled by subsection (e) of this section, new contracts will not be permitted to be enrolled.

(h) Attendant Compensation Report submittal requirements.

(1) Annual Attendant Compensation Report. For services delivered on or before August 31, 2009, providers must file Attendant Compensation Reports as follows. All participating contracted providers will provide HHSC Rate Analysis, in a method specified by HHSC Rate Analysis, an annual Attendant Compensation Report reflecting the activities of the provider while delivering contracted services from the first day of the rate year through the last day of the rate year. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all contracts participating at the end of the rate year within one program of the provider. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with reporting requirements for the owner prior to the termination or contract assignment. This report will be used as the basis for determining compliance with the spending requirements and recoupment amounts as described in subsection (s) of this section. Contracted providers failing to submit an acceptable annual Attendant Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC Rate Analysis.

(A) When a participating provider changes ownership through a contract assignment, the prior owner must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the effective date of the contract assignment as determined by HHSC, or its designee. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. The new owner will be required to submit an Attendant Compensation Report covering the period from the day after the date recognized by HHSC, or its designee, as the contract-assignment effective date to the end of the rate year.

(B) Participating providers whose contracts are terminated voluntarily or involuntarily must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the contract termination date. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.

(C) Participating providers who voluntarily withdraw from participation, as described in subsection (x) of this section, must submit an Attendant Compensation Report within 60 days from the date of withdrawal as determined by HHSC. This report must cover the period from the beginning of the rate year through the date of withdrawal as determined by HHSC and will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section.

(D) Participating providers whose cost report year, as defined in §355.105(b)(5) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures), coincides with the state of Texas fiscal year, are exempt from the requirement to submit a separate annual Attendant Compensation Report. For these contracts, their cost report will be considered their annual Attendant Compensation Report.

(2) For services delivered on September 1, 2009, and thereafter, cost reports as described in §355.105(b) of this title will replace the Attendant Compensation Report with the following exceptions:

(A) For services delivered from September 1, 2009, to August 31, 2010, participating providers may be required to submit Transition Attendant Compensation Reports in addition to required cost reports. The Transition Attendant Compensation Report reporting period will include those days in calendar years 2009 and 2010 not included in either the 2009 Attendant Compensation report or the provider's 2010 cost report. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all contracts participating at the end of the transition reporting period within one program of the provider. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with transition reporting requirements for the owner prior to the termination or contract assignment. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section for the transition reporting period. Participating providers failing to submit an acceptable Transition Attendant Compensation Report within 60 days of the date of the HHSC request for the report will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC Rate Analysis.

(B) When a participating provider changes ownership through a contract assignment or change of ownership, the previous owner must submit an Attendant Compensation Report covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract-assignment or ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. The new owner will be required to submit a cost report covering the period from the day after the date recognized by HHSC or its designee as the contract-assignment or ownership-change effective date to the end of the provider's fiscal year.

(C) When one or more contracts or, for the ICF/MR, HCS and TxHmL programs, component codes of a participating provider are terminated, either voluntarily or involuntarily, the provider must submit an Attendant Compensation Report for the terminated contract(s) or component code(s) covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract or component code termination date. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section.

(D) When one or more contracts or, for the ICF/MR, HCS and TxHmL programs, component codes of a participating provider is voluntarily withdrawn from participation as per subsection (x) of this section, the provider must submit an Attendant Compensation Report within 60 days of the date of withdrawal as determined by HHSC, covering the period from the beginning of the provider's cost reporting period to the date of withdrawal as determined by HHSC. This report will be used as the basis for determining any recoupment

amounts as described in subsection (s) of this section. These providers must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(E) For new contracts as defined in subsection (g) of this section, the cost reporting period will begin with the effective date of participation in the enhancement.

(F) Existing providers who become participants in the enhancement as a result of the open enrollment process described in subsection (e) of this section on any day other than the first day of their fiscal year are required to submit an Attendant Compensation Report with a reporting period that begins on their first day of participation in the enhancement and ends on the last day of the provider's fiscal year. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. These providers must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(3) Other reports. HHSC may require other reports from all contracts as needed.

(4) Vendor hold. HHSC, or its designee, will place on hold the vendor payments for any participating provider who does not submit a timely report as described in paragraph (1) of this subsection, or for services delivered on or after September 1, 2009, a timely report as described in paragraph (2) of this subsection completed in accordance with all applicable rules and instructions. This vendor hold will remain in effect until HHSC Rate Analysis receives an acceptable report.

(A) Participating contracts or, for the ICF/MR, HCS and TxHmL programs, component codes that do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the due dates described in this subsection or, for cost reports, the due dates described in §355.105(b) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures) will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the contractor for services provided during the reporting period in question. These contracts or component codes will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment from subsection (s) of this section. If an acceptable report is not received within 365 days of the due date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC, or its designee, the vendor hold associated with the report will be released.

(B) Participating contracts or, for the ICF/MR, HCS and TxHmL programs, component codes that have terminated or undergone a contract assignment or ownership-change from one legal entity to a different legal entity and do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the contract assignment, ownership-change or [~~contract~~] termination effective date will become nonparticipants retroactive to the first day of the reporting period in question. These contracts or component codes will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment under subsection (s) of this section. If an acceptable report is not received within 365 days of the contract assignment, ownership change or [~~contract~~] termination effective date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC, or its designee, the vendor hold associated with the report will be released.

(5) Provider-initiated amended Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports. Reports must be received prior to the date the provider is notified of compliance with spending requirements for the report in question in accordance with subsection (s) of this section.

(i) Report contents. Each Attendant Compensation Report and cost report functioning as an Attendant Compensation Report will include any information required by HHSC to implement this attendant compensation rate enhancement.

(j) Completion of compensation reports. All Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports must be completed in accordance with the provisions of §§355.102 - 355.105 of this title (relating to General Principles of Allowable and Unallowable Costs, Specifications for Allowable and Unallowable Costs, Revenues, and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Beginning with the rate year that starts September 1, 2002, all Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports must be completed by preparers who have attended the required cost report training for the applicable program under §355.102(d) of this title. [~~For services delivered on or before August 31, 2009, for Attendant Compensation Reports for even numbered state fiscal years, preparers must have attended the cost report training for that same even numbered year. For Attendant Compensation Reports for odd numbered state fiscal years, preparers must have attended the most recent cost report training sessions provided prior to the due date of the Attendant Compensation Report. For services delivered on or after September 1, 2009, preparers must have attended cost report training as described in §355.102(d) of this title.~~] For the ICF/MR program, cost reports functioning as Attendant Compensation Reports must also be completed in accordance with the provisions of §355.457 of this title. For the HCS and TxHmL programs, cost reports functioning as Attendant Compensation Reports must also be completed in accordance with the provisions of §355.722 of this title [~~and Texas Home Living (TxHmL) Providers)~~].

(k) Enrollment. Providers choosing to participate in the attendant compensation rate enhancement must submit to HHSC a signed enrollment contract amendment as described in subsection (f) of this section. Participation is determined separately for each program specified in subsection (a) of this section, except that for providers delivering services to both RC and CBA AL/RC clients in the same facility, participation includes both the RC and CBA AL/RC programs and for providers delivering services to both HCS and TxHmL clients, participation includes both the HCS and TxHmL programs. For PHC, participation is also determined separately for priority and nonpriority services. For ICF/MR, participation is also determined separately for residential services and day habilitation services. For HCS and TxHmL, participation is also determined separately for the non-day habilitation services category and the day habilitation services category as defined in subparagraph (f)(2)(B) of this section. Participation will remain in effect, subject to availability of funds, until the provider notifies HHSC, in accordance with subsection (x) of this section, that it no longer wishes to participate or until HHSC excludes the contract from participation for reasons outlined in subsection (u) of this section. Contracts or component codes voluntarily withdrawing from participation will have their participation end effective with the date of withdrawal as determined by HHSC. Contracts or components codes excluded from

participation will have their participation end effective on the date determined by HHSC.

(l) Determination of attendant compensation rate component for nonparticipating contracts.

(1) For the PHC; DAHS; RC; CLASS--DSA; CBA--HCSS; ICM-HCSS; DBMD; CBA--AL/RC; and ICM AL/RC programs, HHSC will calculate an attendant compensation rate component for nonparticipating contracts as follows.

(A) Determine for each contract included in the cost report data base used in determination of rates in effect on September 1, 1999, the attendant compensation cost center from subsection (c) of this section.

(B) Adjust the cost center data from subparagraph (A) of this paragraph in order to account for inflation utilizing the inflation factors used in the determination of the September 1, 1999 rates.

(C) For each contract included in the cost report database used to determine rates in effect on September 1, 1999, divide the result from subparagraph (B) of this paragraph by the corresponding units of service. Provider projected costs per unit of service are rank-ordered from low to high, along with the provider's corresponding units of service. For DAHS, the median cost per unit of service is selected. For all other programs, the units of service are summed until the median unit of service is reached. The corresponding projected cost per unit of service is the weighted median cost component. The result is multiplied by 1.044 for PHC; DAHS; CLASS--DSA; CBA--HCSS; ICM-HCSS; DBMD and by 1.07 for RC; CBA--AL/RC; and ICM AL/RC. The result is the attendant compensation rate component for nonparticipating contracts.

(D) The attendant compensation rate component for nonparticipating contracts will remain constant over time, except in the case of increases to the attendant compensation rate component for nonparticipating contracts explicitly mandated by the Texas legislature and for adjustments necessitated by increases in the minimum wage. Adjustments necessitated by increases in the minimum wage are limited to ensuring that these rates are adequate to cover mandated minimum wage levels.

(2) For ICF/MR DH [~~day habilitation~~], ICF/MR residential services, HCS SL/RSS, HCS DH [~~day habilitation~~], HCS supported home living, HCS respite, HCS supported employment, HCS employment assistance, TxHmL DH [~~day habilitation~~], TxHmL community supports, TxHmL respite, TxHmL supported employment, and TxHmL employment assistance, for each level of need, HHSC will calculate an attendant compensation rate component for nonparticipating contracts for each service as follows:

(A) For each service, for each level of need, determine the percent of the fully-funded model rate in effect on August 31, 2010 for that service accruing from attendants. For ICF/MR, the fully-funded model is the model as calculated under §355.456(d) of this title (relating to Reimbursement Methodology) prior to any adjustments made in accordance with §355.101 of this title (relating to Introduction) and §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs). For HCS and TxHmL, the fully-funded model is the model as calculated under §355.723(d) of this title (relating to Reimbursement Methodology for Home and Community-based Services) prior to any adjustments made in accordance with §355.101 of this title and §355.109 of this title for the rate period.

(B) For each service, for each level of need, multiply the percent of the fully-funded model rate in effect on August 31, 2010 for that service accruing from attendants from subparagraph (A) of this paragraph by the total adopted reimbursement rate for that service in effect on August 31, 2010. The result is the attendant compensation rate component for that service for nonparticipating contracts.

(C) The attendant compensation rate component for nonparticipating contracts will remain constant over time, except in the case of increases to the attendant compensation rate component for nonparticipating contracts explicitly mandated by the Texas legislature and for adjustments necessitated by increases in the minimum wage. Adjustments necessitated by increases in the minimum wage are limited to ensuring that these rates are adequate to cover mandated minimum wage levels.

(m) Determination of attendant compensation base rate for participating contracts.

(1) For each of the programs identified in subsection (a) of this section except for CBA AL/RC, the attendant compensation base rate is equal to the attendant compensation rate component for nonparticipating contracts from subsection (l) of this section.

(2) For CBA AL/RC, the attendant compensation base rate will be determined by taking into consideration quality of care, labor market conditions, economic factors, and budget constraints.

(n) Determination of attendant compensation rate enhancements. HHSC will determine a per diem add-on payment for each enhanced attendant compensation level using data from sources such as cost reports, surveys, and/or other relevant sources and taking into consideration quality of care, labor market conditions, economic factors, and budget constraints. The attendant compensation rate enhancement add-ons will be determined on a per-unit-of-service basis applicable to each program or service. Add-on payments may vary by enhancement level.

(o) Enhanced attendant compensation. Contracts or component codes desiring to participate in the enhanced attendant compensation rate may request attendant compensation levels from an array of enhanced attendant compensation options and associated add-on payments determined in subsection (n) of this section during open enrollment.

(1) For CBA--HCSS and AL/RC, CLASS, DBMD, DAHS, ICM-HCSS and AL/RC, and RC, participating providers who select to have all of their contracts participate in a program as a group must request a single attendant compensation level for the entire group of contracts.

(2) PHC providers participating as a group must select a single attendant compensation level for their entire group of contracts for the priority and/or nonpriority services they have selected for participation.

(3) ICF/MR providers must select a single attendant compensation level for all contracts within a component code for the day habilitation and/or residential services they have selected for participation. ICF/MR providers who select to have all their component codes participate as a group must select a single attendant compensation level for their entire group of contracts for the day habilitation and/or residential services they have selected for participation.

(4) HCS and TxHmL must select a single attendant compensation level for all contracts within a component code for the non-day habilitation and/or day habilitation services they have selected for participation. HCS and TxHmL providers who select to have all their component codes participate as a group must select a single attendant compensation level for their entire group of contracts for the non-day habilitation services and/or day habilitation services they have selected for participation.

(p) Granting attendant compensation rate enhancements. Eligible programs are divided into two populations for purposes of granting attendant compensation rate enhancements. The first population includes the PHC; DAHS; RC; CLASS--DSA; CBA--HCSS; ICM-HCSS; DBMD; CBA--AL/RC; and ICM AL/RC programs and the second population includes the ICF/MR; HCS; and TxHmL programs. Enhancements for the two populations are funded separately; funds intended for enhancements for the first population of programs will never be used for enhancements for the second population and funds intended for enhancements for the second population of programs will never be used for enhancements for the first population. For each population of programs, HHSC divides all requested enhancements, after applying any enrollment limitations from subsection (u) of this section, into two groups: pre-existing enhancements, which providers request to carry over from the prior year, and newly-requested enhancements. Newly-requested enhancements may be enhancements requested by providers who were nonparticipants in the prior year or by providers who were participants in the prior year who seek additional enhancements. Using the process described herein separately for each population of programs, HHSC first determines the distribution of carry-over enhancements. If funds are available after the distribution of carry-over enhancements, HHSC determines the distribution of newly-requested enhancements. HHSC may not distribute newly-requested enhancements to providers owing funds identified for recoupment under subsection (s) of this section.

(1) For all programs and levels except for CBA AL/RC Level 1, HHSC determines projected units of service for contracts and/or component codes requesting each enhancement level and multiplies this number by the enhancement rate add-on amount associated with that enhancement level as determined in subsection (n) of this section. For CBA AL/RC Level 1, HHSC determines projected units of service for CBA AL/RC contracts requesting Level 1 and multiplies this number by the sum of the difference between the base rate and the nonparticipant rate and the enhancement add-on amount associated with enhancement Level 1 as follows: (Base Rate - Nonparticipant Rate) + Level 1 add-on amount.

(2) HHSC compares the sum of the products from paragraph (1) of this subsection to available funds.

(A) If the sum of the products is less than or equal to available funds, all requested enhancements are granted.

(B) If the sum of the products is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds. Based upon an examination of existing compensation levels and compensation needs, HHSC may grant certain enhancement options priority for distribution.

(q) Notification of granting of enhancements. Participating contracts and component codes are notified, in a manner determined by HHSC, as to the disposition of their request for attendant compensation rate enhancements.

(r) Total attendant compensation rate for participating providers. Each participating provider's total attendant compensation rate will be equal to the attendant compensation base rate from subsection (m) of this section plus any add-on payments associated with enhanced attendant compensation levels selected by and awarded to the provider during open enrollment.

(s) Spending requirements for participating contracts and component codes. HHSC will determine from the Attendant Compensation Report or cost report functioning as an Attendant Compensation Report, as specified in subsection (h) of this section and other appropriate data sources, the amount of attendant compensation spending per unit of service delivered. The provider's compliance with the spending requirement is determined based on the total attendant compensation spending as reported on the Attendant Compensation Report or cost report functioning as an Attendant Compensation Report for each participating contract or component code if the provider requested participation individually for each contract or component code. A participating contract or component code that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with the spending requirement for the owner prior to the termination or contract assignment. In all other cases, if the provider specified that he wished to have all participating contracts or component codes be considered as a group for purposes related to the attendant compensation rate enhancement (as specified in subsection (f) of this section) compliance with the spending requirement is based on the total attendant compensation as reported on the single aggregate Attendant Compensation Report described in subsection (h) of this section or, for cost reports functioning as Attendant Compensation Reports, the total attendant compensation as reported on the aggregated cost reports for the group. Compliance with the spending requirement is determined separately for each program specified in subsection (a) of this section, except for providers delivering services to both RC and CBA AL/RC clients in the same facility whose compliance is determined by combining both programs and providers delivering services in both the HCS and TxHmL programs whose compliance is determined by combining both programs. HHSC will calculate recoupment, if any, as follows.

(1) For the rate years beginning September 1, 2003 and September 1, 2004, the attendant compensation spending per unit of service is multiplied by 1.10 to determine the adjusted attendant compensation per unit of service. The adjusted attendant compensation per unit of service will be subtracted from the accrued attendant compensation revenue to determine the amount to be recouped. If the adjusted attendant compensation per unit of service is greater than or equal to the accrued attendant compensation revenue per unit of service, there is no recoupment.

(2) For the rate year beginning September 1, 2005, and thereafter, the accrued attendant compensation revenue per unit of service is multiplied by 0.90 to determine the spending requirement per unit of service. The unadjusted accrued attendant compensation spending per unit of service will be subtracted from the spending requirement per unit of service to determine the amount to be recouped. If the unadjusted accrued attendant compensation spending per unit of service is greater than or equal to the spending requirement per unit of service, there is no recoupment.

(3) The amount paid for attendant compensation per unit of service after adjustments for recoupment must not be less than the amount determined for nonparticipating contracts or component codes in subsection (l) of this section.

(4) In cases where more then one enhancement level is in effect during the reporting period, the spending requirement will be based on the weighted average enhancement level in effect during the reporting period calculated as follows:

(A) Multiply the first enhancement level in effect during the reporting period by the most recently available, reliable Medicaid units of service utilization data for the time period the first enhancement level was in effect.

(B) Multiply the second enhancement level in effect during the reporting period by the most recently available, reliable

Medicaid units of service utilization data for the time period the second enhancement level was in effect.

(C) Sum the products from subparagraphs (A) and (B) of this paragraph.

(D) Divide the sum from subparagraph (C) of this paragraph by the sum of the most recently available, reliable Medicaid units of service utilization data for the entire reporting period used in subparagraphs (A) and (B) of this paragraph.

(t) Notification of recoupment. Providers will be notified in a manner specified by HHSC of the amount to be repaid to HHSC, or its designee. If a subsequent review by HHSC or audit results in adjustments to the annual Attendant Compensation Report or cost reporting, as described in subsection (h) of this section, that change the amount to be repaid, the provider will be notified in writing of the adjustments and the adjusted amount to be repaid. HHSC, or its designee, will recoup any amount owed from a provider's vendor payment(s) following the date of the notification letter.

(u) Enrollment limitations. A provider will not be enrolled in the attendant compensation rate enhancement at a level higher than the level it achieved on its most recently available, audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report. HHSC will issue a notification letter that informs a provider in writing of its enrollment limitations (if any) prior to the first day of the open enrollment period.

(1) Requests for revision. A provider may request a revision of its enrollment limitation if the provider's most recently available audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report does not represent its current attendant compensation levels.

(A) A request for revision of enrollment limitation must include the documentation specified in subparagraph (B) of this paragraph and must be received by HHSC Rate Analysis by hand delivery, United States mail, or special delivery mail no later than 30 calendar days from the date on the notification letter. If the 30th calendar day is a weekend day, national holiday, or state holiday, the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted. A request for revision that is not received by the stated deadline and that is not submitted on the form specified by HHSC will not be accepted, and the enrollment limitation specified in the notification letter will apply.

(B) A provider that requests a revision of its enrollment limitation must submit documentation, in the form specified by HHSC in the notification letter, which shows that, for the period beginning September 1 of the current rate year and ending April 30 of the current rate year, the provider met a higher attendant compensation level than the notification letter indicates. In such cases, the provider's enrollment limitation will be established at the level supported by its request for revision documentation. It is the responsibility of the provider to render all required documentation at the time of its request for revision. Requests not in the form specified by HHSC in the notification letter and requests that fail to support an attendant compensation level different from what is indicated in the notification letter will result in a rejection of the request, and the enrollment limitation specified in the notification letter will apply.

(C) A request for revision must be signed by an individual legally responsible for the conduct of the provider or legally authorized to bind the provider, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable DADS signature authority designation form [~~Form 2031~~] for the interested party on file at the time of the request, or a legal representative for the interested party. A request for revision that is not signed by an individual legally responsible for the conduct of the interested party will not be accepted, and the enrollment limitation specified in the notification letter will apply.

(D) If the provider's Attendant Compensation Report or cost report functioning as an Attendant Compensation Report for the rate year that included the open enrollment period described in subsection (e) of this section shows the provider compensated attendants below the level it presented in its request for revision, HHSC will immediately recoup all enhancement payments associated with the request for revision documents, and the provider will be limited to the level supported by the report for the remainder of the rate year.

(2) Informal reviews and formal appeals. The filing of a request for an informal review or formal appeal relating to a provider's most recently available, audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report under §355.110 of this title (relating to Informal Reviews and Formal Appeals) does not stay or delay implementation of an enrollment limitation applied in accordance with the requirements of this subsection. If an informal review or formal appeal relating to a provider's most recently available, audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report is pending at the time the enrollment limitation is applied, the result of the informal review or formal appeal shall be applied to the provider's enrollment retroactively to the beginning of the rate year to which the enrollment limitation was originally applied.

(3) New owners after a contract assignment or change of ownership that is an ownership change from one legal entity to a different legal entity. Enhancement levels for a new owner after a contract assignment or change of ownership that is an ownership change from one legal entity to a different legal entity will be determined in accordance with subsection (w) of this section. A new owner after a contract assignment or change of ownership that is an ownership-change from one legal entity to a different legal entity will not be subject to enrollment limitations based upon the prior owner's performance.

(4) New providers. A new provider's enrollment will be determined in accordance with subsection (g) of this section.

(v) Contract terminations. For contracted providers or component codes required to submit an Attendant Compensation Report due to a [~~contract~~] termination as described in subsection (h) of this section, HHSC, or its designee, will place a vendor hold on the payments of the contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (h) of this section, and funds identified for recoupment from subsection (s) of this section are repaid to HHSC, or its designee. Informal reviews and formal appeals relating to these reports are governed by §355.110 of this title. HHSC, or its designee, will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to HHSC, or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other HHSC and/or DADS contracts controlled by the responsible entity, placement of a vendor hold on all HHSC and/or DADS contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC and/or DADS until repayment is made in full. The responsible entity for these contracts will be notified as described in subsection (t) of this section prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contracts.

(w) Contract assignments. The following applies to contract assignments.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Assignee--A legal entity that assumes a Community Care contract through a legal assignment of the contract from the contracting entity as provided in 40 TAC §49.15 (relating to Contract Assignment).

(B) Assignor--A legal entity that assigns its Community Care contract to another legal entity as provided in 40 TAC §49.15 [~~(relating to Contract Assignment)~~].

(C) Contract assignment--The transfer of a contract by one legal entity to another legal entity as provided in 40 TAC §49.15 [~~(relating to Contract Assignment)~~].

(i) Type One Contract Assignment--A contract assignment by which the assignee is an existing Community Care contract.

(ii) Type Two Contract Assignment--A contract assignment by which the assignee is a new Community Care contract.

(2) Participation and group status after a contract assignment. Participation and group status after a contract assignment are determined as follows:

(A) Type One Contract Assignments. For Type One contract assignments, the assignee's level of participation and group status remains the same while the assignor's level of participation and grouping status changes to the assignee's.

(B) Type Two Contract Assignments. For Type Two contract assignments the following applies:

(i) In cases where the assignee is controlled by a legal entity that controls other contracts participating in the attendant compensation rate enhancement, the following applies:

(I) If the assignee's participating contracts are participating as a group as described in subsection (f) of this section, then the following applies:

(-a-) If the assignor was a participating contract, the new contract becomes part of the assignee's group at the level of participation of the assignee's group.

(-b-) If the assignor was not a participating contract, the new contract remains a nonparticipating contract.

(II) If the assignee's participating contracts are participating as individuals as described in subsection (f) of this section, the following applies:

(-a-) If the assignor was a participating contract, the new contract continues participation at the assignor's level as an individual contract whether or not the assignor contract was part of a group.

(-b-) If the assignor was not a participating contract, the new contract remains a nonparticipating contract.

(ii) In cases where the assignee is controlled by a legal entity that does not control any contracts participating in the attendant compensation rate enhancement, the level of participation and individual or group status of the assignor contract(s) will continue unchanged under the assignee contract(s).

(3) The assignee is responsible for the reporting requirements in subsection (h) of this section for any reporting period days occurring after the contract assignment effective date. If the contract assignment occurs during an open enrollment period as defined in subsection (e) of this section, the owner recognized by HHSC, or its designee, on the last day of the enrollment period may request to modify the enrollment status of the contract in accordance with subsection (f) of this section.

(4) For contracted providers required to submit an Attendant Compensation Report due to contract assignment, as described in subsection (h) of this section, HHSC, or its designee, will place a vendor hold on the payments of the existing contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (h) of this section, and until funds identified for recoupment from subsection (s) of this section are repaid to HHSC, or its designee. HHSC, or its designee, will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to HHSC, or its designee. Failure to repay the amount due within 60 days of notification will result in the recoupment of the owed funds from other HHSC and/or DADS contracts controlled by the responsible entity, placement of a vendor hold on all HHSC and/or DADS contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC and/or DADS until repayment is made in full. The responsible entity for these contracts will be notified, as described in subsection (t) of this section, prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contract.

(x) Voluntary withdrawal. Participating contracts or component codes wishing to withdraw from the attendant compensation rate enhancement must notify HHSC Rate Analysis in writing by certified mail and the request must be signed by an authorized representative as designated per the DADS signature authority designation form [~~Form 2031~~] applicable to the provider's contract or ownership type. The requests will be effective the first of the month following the receipt of the request. Contracts or component codes voluntarily withdrawing must remain nonparticipants for the remainder of the rate year. Providers whose contracts or component codes are participating as a group must request withdrawal of all the contracts or component codes in the group. Providers whose contracts are participating as part of a component code must request withdrawal of all the contracts in the component code.

(y) Adjusting attendant compensation requirements. Providers that determine that they will not be able to meet their attendant compensation requirements may request to reduce their attendant compensation requirements and associated enhancement payment to a lower participation level by submitting a written request to HHSC Rate Analysis by certified mail and the request must be signed by an authorized representative as designated per the DADS signature authority designation form [~~Form 2031~~] applicable to the provider's contract or ownership type. These requests will be effective the first of the month following the receipt of the request. Providers whose contracts or component codes are participating as a group must request the same reduction for all of the contracts or component codes in the group. Providers whose contracts are participating as part of a component code must request the same reduction for all of the contracts in the component code.

(z) All other rate components. All other rate components will continue to be calculated as specified in the program-specific reimbursement methodology and will be uniform for all providers.

(aa) Failure to document spending. Undocumented attendant compensation expenses will be disallowed and will not be used in the determination of the attendant compensation spending per unit of service in subsection (s) of this section.

(bb) Appeals. Subject matter of informal reviews and formal appeals is limited as per §355.110 of this title.

(cc) Responsible entities. The contracted provider, owner, or legal entity which received the attendant compensation rate enhancement is responsible for the repayment of the recoupment amount.

(dd) Reinvestment. For services delivered on or before August 31, 2009, HHSC will reinvest recouped funds in the attendant compensation rate enhancement to the extent there are qualifying contracts. For services delivered beginning September 1, 2009, and thereafter, HHSC will not reinvest recouped enhanced attendant compensation rate funds.

(1) Identify qualifying contracts. Contracts that meet the following criteria during the most recently completed reporting period are qualifying contracts for reinvestment purposes.

(A) The contract was a participant in the attendant compensation rate enhancement.

(B) The contract's attendant compensation spending per unit of service was greater than the total attendant compensation rate per unit of service granted to the contract.

(C) An acceptable Attendant Compensation Report for the reporting period completed in accordance with all applicable rules and instructions was received by HHSC Rate Analysis at least 30 days prior to the date on which HHSC determined how available reinvestment funds would be distributed.

(D) The DADS contract that was in effect during the reinvestment reporting period is still in effect as an active contract when reinvestment is determined and there has been no ownership change from one legal entity to a different legal entity.

(2) Distribution of available reinvestment funds. Available funds are distributed as follows:

(A) For each qualifying report, HHSC subtracts the attendant compensation revenue per unit of service from the attendant compensation spending per unit of service and determines the number of full levels by which attendant compensation costs exceeded attendant compensation revenues. This number is multiplied by the add-on value of a level during the reporting period and the product is multiplied by the units of service provided during the reporting period as determined by HHSC.

(B) HHSC compares the sum of the products from subparagraph (A) of this paragraph to funds available for reinvestment.

(i) If the product is less than or equal to available funds, all enhancements for qualifying contracts are retroactively awarded for the reporting period.

(ii) If the product is greater than available funds, retroactive enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until enhancements are granted within available funds.

(3) Non-qualification as pre-existing enhancements. Retroactively awarded enhancements do not qualify as pre-existing enhancements for enrollment purposes.

(4) Notification of reinvested enhancements. Qualifying facilities are notified of the award of reinvested enhancements in a manner determined by HHSC.

(ee) Determination of compliance with spending requirements in the aggregate for a group.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Commonly owned corporations--two or more corporations where five or fewer identical persons who are individuals, estates, or trusts own greater than 50 percent of the total voting power in each corporation.

(B) Entity--a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

(C) Combined entity--one or more commonly owned corporations and one or more limited partnerships where the general partner is controlled by the same identical persons as the commonly owned corporation(s).

(D) Control--greater than 50 percent ownership by the entity.

(E) Group--an entity, commonly owned corporation, or combined entity that controls more than one participating contract or component code within a single program.

(2) Aggregation. For a group, compliance with the spending requirements detailed in subsection (s) of this section can be determined in the aggregate for all participating contracts or component codes controlled by the group at the end of the rate year, the effective date of the change of ownership of the group's last participating contract or component code, or the effective date of the termination of the group's last participating contract or component code rather than requiring each contract or component code to meet its spending requirement individually. Corporations that do not meet the definitions under paragraph (1)(A) - (C) of this subsection are not eligible for aggregation to meet spending requirements.

(A) Aggregation Request. To exercise aggregation, the entity, combined entity, or commonly owned corporations must request to participate as a group, in a manner prescribed by HHSC, upon submission of each Enrollment Contract Amendment. In limited partnerships in which the same single general partner controls all the limited partnerships, the single general partner must make this request. Other such aggregation requests will be reviewed on a case-by-case basis.

(B) Ownership changes or terminations. Contracts or component codes that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per subsection (s) of this section, are excluded from all aggregate spending calculations. These contracts' or component codes' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

(ff) Conditions of participation for day habilitation. The following conditions of participation apply to each ICF/MR, HCS and TxHmL provider specifying its wish to have day habilitation services participate in the attendant compensation rate enhancement.

(1) Job trainer and job coach compensation and hours must be reported on the required cost report items (e.g., hours, salaries and wages, payroll taxes, employee benefits/insurance/workers' compensation, contract labor costs, and personal vehicle mileage reimbursement). This requirement applies to providers who directly provide day habilitation "in-house", providers who contract with a related party to provide day habilitation and providers who contract with a non-related party to provide day habilitation. Day habilitation costs cannot be combined and reported in one cost report item.

(2) The provider must ensure access to any and all records necessary to verify information submitted to HHSC on Attendant Compensation Reports and cost reports functioning as an Attendant Compensation Report. This requirement includes ensuring access to records

held by the provider, a related-party day habilitation provider and a non-related-party day habilitation provider.

(3) Failure to comply with the requirements of paragraphs (1) and (2) of this subsection will result in recoupment of all attendant compensation rate enhancement funds associated with the day habilitation service for the provider for the reporting period in question.

(4) HHSC will require each ICF/MR, HCS and TxHmL provider specifying their wish to have day habilitation services participate in the attendant compensation rate enhancement to certify during the enrollment process that it will comply with the requirements of paragraphs (1) - (3) of this subsection.

(gg) New contracts within existing component codes. For ICF/MR, HCS and TxHmL, new contracts within existing component codes will be assigned a level of participation equal to the existing component code's level of participation effective on the start date of the contract as recognized by HHSC or its designee.

(hh) Disclaimer. Nothing in these rules should be construed as preventing providers from compensating attendants at a level above that funded by the enhanced attendant compensation rate.

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 April 4, 2011.

TRD-201101291
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 15, 2011
For further information, please call: (512) 424-6900

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SUBCHAPTER B. ESTABLISHMENT AND ADJUSTMENT OF REIMBURSEMENT RATES BY THE HEALTH AND HUMAN SERVICES COMMISSION

1 TAC §355.201

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.201, concerning establishment and adjustment of reimbursement rates by the Health and Human Services Commission.

Background and Justification

The proposed amendment to §355.201 clarifies that HHSC may establish fees, rates, and charges for Medicaid services in accordance with state and federal policies, rules, regulations, or guidelines, in addition to state or federal law, as authorized by §531.021(d)(2) of the Government Code. The proposed amendment also clarifies that: (1) reimbursements may be adjusted under this rule if state or federal law is implemented in a way that requires such an adjustment; and (2) notice of an adjustment of a fee, rate, or charge can appear either on the HHSC website or in the *Texas Register* to comply with notice requirements in §32.0282 of the Human Resources Code. The current rule creates confusion regarding whether notice of an adjustment should be included in both. Finally, the proposed amendment removes the requirement that the content of a notice of an adjustment of a fee, rate, or charge must include the period during which the adjustment will be in effect. Given that the expiration date of an adjustment is often unknown, the period during which the adjustment will be in effect often cannot be determined. Therefore, HHSC proposes that only the implementation date of the adjustment be included in the notice.

Section-by-Section Summary

Amended subsection (c) adds language that HHSC establishes fees, rates, and charges to be paid for Medicaid services in accordance with state and federal policies, rules, regulations, or guidelines, in addition to state or federal law.

Amended subsection (d) clarifies that fees, rates, and charges may be adjusted pursuant to this rule if state or federal law is implemented in a way that requires such an adjustment.

Amended subsection (e) clarifies that notice of an adjustment may appear either on the HHSC website or in the *Texas Register* to comply with the notice requirements.

Amended subsection (f) removes the requirement that the content of the notice must include the period during which the adjustment will be in effect.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule amendment is in effect, there will be no fiscal impact to costs or revenues of state or local governments.

Small Business and Micro-business Impact Analysis

Carolyn Pratt, Director of Rate Analysis, has determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering the proposed rule amendment, because the amendment will not require them to alter their business practices. There is no anticipated economic cost to persons who are required to comply with the proposed amendment. There is no anticipated effect on local employment in geographic areas affected by the proposed amendment.

Public Benefit and Costs

Ms. Pratt has determined that for the first five years the proposed rule amendment is in effect, the public benefit expected as a result of this amendment is that the rule will provide additional information regarding why HHSC may establish fees, rates and charges; clarify where the rate notice will appear; and establish that rate notices will include the effective date of a fee, rate, or charge.

Regulatory Analysis

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

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist

in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to James Jenkins in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC H-400, Austin, TX 78708-5200; by fax to (512) 491-2865; or by e-mail at james.jenkins@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.201. Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission.

(a) Definitions. Unless the context clearly indicates otherwise, the following words and terms when used in this section are defined as follows:

(1) "Commission" means the Health and Human Services Commission.

(2) "Medical assistance" means a medical or health care related service, item, or supply that is delivered to a Medicaid recipient and is approved and authorized for payment or reimbursement by the Commission or a health and human services agency pursuant to state and federal law.

(3) "Program" means a specific component of the Medicaid program for which the Commission establishes either a methodology to reimburse a provider or a specific fee, payment rate, or charge that is paid to a provider for medical assistance in accordance with state and federal law.

(4) "Provider" means a health care practitioner, institution, or other entity that is enrolled in the medical assistance program and is authorized to submit claims for payment or reimbursement of medical assistance.

(b) Purpose. This section implements the provisions of §531.021(d) and (e), Government Code and applies to all programs that provide medical assistance and to all reimbursement methodologies prescribed under this chapter.

(c) Establishment of fees, rates, and charges. The Commission establishes fees, rates, and charges to be paid for medical assistance in accordance with:

(1) the formulas, procedures, or methodologies prescribed in this chapter;

(2) the requirements of applicable state and federal law, policies, rules, regulations, or guidelines, including:

(A) legislative or Congressional enactments that change state or federal laws in a manner that affects such fees, rates, and charges;

(B) changes in federal regulations, and policies that affect such fees, rates, and charges; and

(C) judicial orders, opinions, or interpretations regarding state or federal law that affect such fees, rates, and charges;

(3) the consideration of economic factors that, in the Commission's determination:

(A) have or may have a significant and measurable effect on provider participation; or

(B) have or may have a significant and measurable effect on providers' ability to deliver services in accordance with state and federal law; and

(4) levels of appropriated state and federal funds or state or federal laws or enactments that limit, restrict, or condition the availability of appropriated funds for medical assistance.

(d) Adjustment of fees, rates, and charges. Notwithstanding any other provision of this chapter, the Commission may adjust fees, rates, and charges paid for medical assistance if:

(1) state or federal law is enacted, amended, [~~or~~] judicially interpreted, or implemented to:

(A) require the Commission to increase or reduce a fee, rate, or charge paid to a provider for medical assistance;

(B) change the amount, scope, or type of allowable or unallowable costs for providers of medical assistance that are required to report costs to the Commission or a health and human services agency for purposes of establishing a reimbursement rate for medical assistance;

(C) require all providers within a program or category of providers to incur additional costs to provide medical assistance, other than unallowable costs, that are not currently recognized in the reimbursement methodology established by the Commission for the program; or

(D) restrict, limit, or condition the availability of appropriated funds to the Commission for payment or reimbursement of medical assistance;

(2) economic conditions that prevail among all providers within a specific program or category of providers and:

(A) result in a demonstrable increase in the cost of providing services beyond amounts recognized in the Commission's established reimbursement methodology; or

(B) require providers within a program or category of providers to incur costs, other than unallowable costs, that are not currently recognized in the reimbursement methodology established by the Commission for the program.

(e) Notice of adjustment of fees, rates, and charges. If the Commission adjusts fees, rates, or charges under this section, the Commission or its designee will publish notice of the proposed adjustment at the earliest feasible date but not later than 10 state working days before the effective date of the adjustment. If the adjustment is required by the enactment or amendment of state or federal law, such notice may be published before the effective date of such enactment or amendment, but the adjustment to fees, rates, or charges will not take effect before the effective date of the enactment or amendment. The notice must be published either by publication on the Commission's Internet web site

or [and] in the *Texas Register.* In addition, the Commission may issue written or electronic communication to providers, if economically feasible.

(f) Contents of notice. The notice required under subsection (e) of this section will include the following:

(1) a description of the specific increase or reduction of fees, rates, and charges;

(2) the date on which such adjustment will take effect [and the period during which the adjustment will be in effect];

(3) a description of the legal and factual bases for the adjustment;

(4) a description of the specific requirements of the rate setting methodology established under this chapter that cannot effectively be implemented as a result of the adjustment;

(5) instructions for interested parties to submit written comments to the Commission regarding the proposed adjustment; and

(6) the [The] date, time, and location of a public hearing in accordance with §32.0282, Human Resources Code.

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 March 31, 2011.

TRD-201101255
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 15, 2011
For further information, please call: (512) 424-6900

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SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.306

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.306, concerning Cost Finding Methodology.

Background and Justification

This rule establishes the cost finding methodology for the Nursing Facility program, including details on when providers are excused from submitting cost reports.

Effective for nursing facility services delivered on September 1, 2009, and thereafter, cost reports replaced Staffing and Compensation Reports as the reports that are used to determine participating providers' compliance with their Direct Care Staff Rate enhancement requirements. As a result of this change, cost-reporting requirements vary depending on whether the provider participates in the Direct Care Staff Rate enhancement program. Providers participating in rate enhancement may no longer be wholly relieved of the obligation to file cost reports. All providers who participate in the rate enhancement program must file a cost report, as described in §355.308 of this title (relating to Direct Care Staff Rate Component). Cost-reporting requirements for providers participating in the rate enhancement, including the submission of abbreviated cost reports in certain situations in which cost reports had previously been excused, are detailed in §355.308(f)(2). This rule amendment will modify the cost-reporting requirements in §355.306(a) so that it is clear that subsection (a) applies only to providers not participating in the rate enhancement and will direct providers participating in the rate enhancement to §355.308(f)(2) for details on their cost-reporting requirements.

Section-by-Section Summary

The proposed amendment to §355.306 is as follows:

Amends subsection (a) to state that the cost-reporting requirements for participants in the Direct Care Staff Rate enhancement program are described in §355.308(f)(2).

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

Carolyn Pratt, Director of Rate Analysis, has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The implementation of the proposed rule amendment does not require any changes in practice or any additional cost to the contracted provider.

It is not anticipated that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect local employment.

Public Benefit

Carolyn Pratt also has determined that, for each of the first five years the amendment is in effect, the expected public benefit is that nursing facility providers will have clear guidance on their cost-reporting requirements.

Takings Impact Assessment

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

Regulatory Analysis

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

Public Comment

Questions about the content of this proposal may be directed to Pam McDonald in the HHSC Rate Analysis Department by telephone at (512) 491-1373. Written comments on the proposal may be submitted to Ms. McDonald by fax to (512) 491-1998; by e-mail to pam.mcdonald@hhsc.state.tx.us; or by mail to HHSC

Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

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

The amendment affects Texas Government Code Chapter 531and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.306. Cost Finding Methodology.

(a) Cost reports. Cost reporting requirements vary depending on whether the provider participates in the Direct Care Staff Rate enhancement program. All providers who participate in the rate enhancement program must file a cost report, as described in §355.308 of this title (relating to Direct Care Staff Rate Component). Providers not participating in the rate enhancement program must file a cost report unless [~~Providers excused from completing a cost report. Providers are excused from completing a cost report if~~]:

(1) the cost report would represent costs accrued during a time period immediately preceding a period of decertification, if the decertification period was greater than either 30 calendar days or one entire calendar month.

(2) the cost report would be a final cost report (due to a change of ownership or if the facility no longer contracts to serve Medicaid clients) and one of the following applies:

(A) the final cost-reporting period would end after more than 30 calendar days, or more than one entire calendar month before the end of the facility's cost report fiscal year, during the reporting period in question; or

(B) the Texas Health and Human Services Commission (HHSC), or its designee, has excused the provider from submitting a final cost report because:

(i) the report would be due before the appropriate cost report form was finalized, which would result in the final cost report being completed on an inappropriate cost report form; or

(ii) the facility was controlled by at least two different owners during a single calendar year and each owner would otherwise have submitted a cost report with an ending date that fell within that calendar year.

(3) the cost-reporting period would be less than or equal to 30 calendar days or one entire calendar month.

(b) Exclusion of and adjustments to certain reported expenses. Providers are responsible for eliminating unallowable expenses from the cost report. HHSC reserves the right to exclude any unallowable costs from the cost report and to exclude entire cost reports from the reimbursement determination database if there is reason to doubt the accuracy or allowability of a significant part of the information reported.

(1) Cost reports included in the database used for reimbursement determination.

(A) Individual cost reports will not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(B) In the event that all cost reports submitted for a specific facility are disqualified through the application of subparagraph (A)(i) and/or (ii) of this paragraph, the facility will not be represented in the reimbursement database for the cost report year in question.

(2) Adjustments and exclusions of cost report data include, but are not necessarily limited to:

(A) Fixed capital asset costs.

(i) HHSC staff determine fixed capital asset costs as detailed in this section.

(ii) Fixed capital asset costs are reimbursed in the form of a use fee calculated as described in §355.307 of this title (relating to Reimbursement Setting Methodology). The following fixed capital charges are excluded from the reimbursement base:

(I) building and building equipment depreciation and lease expense;

(II) mortgage interest;

(III) land improvement depreciation; and

(IV) leasehold improvement amortization.

(B) Limits on other facility and administration costs. To ensure that the results of HHSC's cost analyses accurately reflect the costs that an economic and efficient provider must incur, HHSC may place upper limits or caps on expenses for specific line items and categories of line items included in the rate base for the administration and facility cost centers. HHSC sets upper limits at the 90th percentile in the array of all costs per unit of service or total annualized cost, as appropriate for a specific line item or category of line item, as reported by all contracted facilities, unless otherwise specified. The specific line items and categories of line items that are subject to the 90th percentile cap are:

(i) total buildings and equipment rental or lease expense;

(ii) total other rental or lease expense for transportation, departmental, and other equipment;

(iii) building depreciation;

(iv) building equipment depreciation;

(v) departmental equipment depreciation;

(vi) leasehold improvement amortization;

(vii) other amortization;

(viii) total interest expense;

(ix) total insurance for buildings and equipment;

(x) facility administrator salary, wages, and/or benefits with the cap based on an array of nonrelated-party administrator salaries, wages, and/or benefits;

(xi) assistant administrator salary, wages, and/or benefits with the cap based on an array of nonrelated-party assistant administrator salaries, wages, and/or benefits;

(xii) facility owner, partner, or stockholder salaries, wages, and/or benefits (when the owner, partner, or stockholder is not the facility administrator or assistant administrator), with the cap based on an array of nonrelated-party administrator salaries, wages, and/or benefits;

(xiii) other administrative expenses including the cost of professional and facility malpractice insurance, advertising expenses, travel and seminar expenses, association dues, other dues, professional service fees, management consultant fees, interest expense on working capital, management fees, other fees, and miscellaneous office expenses; and

(xiv) total central office overhead expenses or individual central office line items. Individual line item caps are based on an array of all corresponding line items.

(C) Occupancy adjustments. HHSC adjusts the facility and administration costs of providers with occupancy rates below a target occupancy rate. The target occupancy rate is the lower of:

(i) 85%; or

(ii) the overall average occupancy rate for contracted beds in facilities included in the rate base during the cost reporting periods included in the base.

(D) Cost projections. HHSC projects certain expenses in the reimbursement base to normalize or standardize the reporting period and to account for cost inflation between reporting periods and the period to which the prospective reimbursement applies as specified in §355.108 of this title (relating to Determination of Inflation Indices).

(3) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in paragraph (1)(A)(i) of this subsection.

(c) Reimbursement determinations and allowable costs. Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursement. HHSC excludes from reimbursement determinations any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers.

(d) General information. In addition to the requirements of this section, cost reports will be governed by the information in §355.101 of this title (relating to Introduction), §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs), §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs), §355.104 of this title (relating to Revenues), §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures), §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), §355.107 of this title (relating to Notification of Exclusions and Adjustments), §355.108 of this title (relating to Determination of Inflation Indices), §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs), and §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(e) Final cost reports for change of ownership. Except when excused from the requirement to submit a cost report according to subsection (a) of this section, when a facility changes ownership, the prior owner must submit a completed cost report reflecting the facility's activities from the beginning of the prior owner's cost report fiscal year until the ownership-change effective date. The prior owner's vendor payments may be held until HHSC receives an acceptable final cost report according to 40 TAC §19.2308(c)(1)(A) (relating to Change of Ownership).

(1) In cases where the prior owner's vendor payment is held, within seven calendar days of receipt by HHSC of an acceptable final cost report, HHSC will forward the final cost report to audit.

(2) In cases where the facility is sold and its prior year's cost report is pending audit completion, the owner's vendor payment may be held until the audit of the prior year's cost report and the final cost report are complete.

(f) Requirements for cost report completion. A completed nursing facility cost report must:

(1) meet the definition of completed cost report specified in §355.105(b)(4)(A) of this title;

(2) have attached the property appraisal used to determine the allowable appraised property value as described in subsection (g) of this section;

(3) not report figures for days of service and number of beds that reflect occupancy of greater than 100%;

(4) have a management contract attached, if applicable; and

(5) have a lease agreement attached, if applicable.

(g) Allowable appraised property values. Allowable appraised property values are determined as follows:

(1) Proprietary facilities. The allowable appraised values of proprietary facilities to be reported on Texas Medicaid cost reports are determined from local property taxing authority appraisals. The year of the property appraisal must be the calendar year within which the provider's cost report fiscal year ends, or the prior calendar year.

(2) Tax exempt facilities. The allowable appraised property values for tax exempt facilities are determined as follows.

(A) Tax exempt facilities provided an appraisal from their local property taxing authority. Tax exempt facilities provided an appraisal from their local property taxing authority must report this appraised value on their Texas Medicaid cost report. The year of the property appraisal must be the calendar year within which the provider's cost report fiscal year ends, or the prior calendar year.

(B) Tax exempt facilities not provided an appraisal from their local property taxing authority. Tax exempt facilities not provided an appraisal from their local property taxing authority because of an "exempt" status must provide documentation received from the local taxing authority certifying exemption for the current reporting period and must contract with an independent appraiser to appraise the facility land and improvements. These independent appraisals must meet the following criteria.

(i) The appraisal must value land and improvements using the same basis used by the local taxing authority under Texas laws regarding appraisal methods and procedures.

(ii) The appraisal must be updated every five years with the initial appraisal setting the five-year interval.

(I) Facilities achieving exempt status during their fiscal year ending in calendar year 1997 or a subsequent year must submit an initial appraisal to HHSC's Rate Analysis Department as part of their cost report for the fiscal year during which the exempt status was achieved. This appraisal must be reflective of the facility's appraised value during that fiscal year.

(II) If a facility is reappraised due to improvements or reconstruction as defined in clause (iii) of this subparagraph, a new five-year interval will be set.

(iii) Facilities making capital improvements, or requiring reconstruction due to fire, flood, or other natural disaster, when the improvements or reconstruction cost more than $2,000 per licensed bed, may contract with an independent appraiser to have land and improvements reappraised within the cost reporting period in which the improvement(s) is placed into service.

(iv) If for any reason an appraisal becomes available from the local taxing authority for a provider who previously lacked such an appraisal, the provider must report, on the next Texas Medicaid cost report submitted, the local taxing authority's appraised values instead of the independent appraisal values.

(3) Governmental facilities. Governmental facilities are exempt from the requirement to report an appraised property value.

(h) In addition to the requirements of §355.102 and §355.103 of this title, the following apply to costs for the nursing facilities (NF) program.

(1) Medical costs. The costs for medical services and items delineated in 40 TAC §19.2601 (relating to Vendor Payment) are allowable. These costs must also comply with the general definition of allowable costs as stated in §355.102 of this title.

(2) Chaplaincy or pastoral services. Expenses for chaplaincy or pastoral services are allowable costs.

(3) Voucherable costs. Except as detailed in subparagraphs (A) and (B) of this paragraph, any expenses directly reimbursable to the provider through a voucher payment and any expenses in excess of the limit, or ceiling, for a voucher payment system are unallowable costs.

(A) The ventilator dependent supplemental voucher system and the children with tracheostomies supplemental voucher system are not subject to the cost reporting restrictions described in this paragraph.

(B) Select voucher systems, when indicated by department procedures, are not subject to the cost reporting restrictions described in this paragraph. To avoid the possibility of providers being reimbursed through the voucher system and the daily rate for the same expenses, the department may not waive the cost reporting restrictions described in this paragraph unless the following criteria are met:

(i) the voucher system is a temporary system;

(ii) the costs represent ongoing costs; and

(iii) the costs are not represented in the payment rate until after the voucher system has been discontinued.

(4) Preferred items. Costs for preferred items which are billed to the recipient, responsible party, or the recipient's family are not allowable costs.

(5) Preadmission Screening and Annual Resident Review (PASARR) expenses. Any expenses related to the direct delivery of specialized services and treatment required by PASARR for residents are unallowable costs.

(6) Advanced Clinical Practitioner (ACP) or Licensed Professional Counselor (LPC) services. Expenses for services provided by an ACP or LPC are unallowable costs.

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 April 4, 2011.

TRD-201101307
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 15, 2011
For further information, please call: (512) 424-6900

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1 TAC §355.308

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.308, concerning Direct Care Staff Rate Component.

Background and Justification

This rule establishes the reimbursement methodology for the Nursing Facility Direct Care Staff Rate Component rate enhancement (enhancement program). Under this rule, nursing facilities may choose to maintain a certain staffing level in return for increased direct care staff reimbursement rates. Facilities participating in the enhancement program who fail to meet their staffing or spending requirements are subject to a recoupment of all direct care staff revenues associated with unmet staffing or spending goals.

HHSC, under its authority and responsibility to administer and implement rates, is proposing changes to this rule to:

replace references to DADS Form 2031 with a generic form description;

clarify cost report training requirements for cost reports functioning as staffing and compensation reports; and

correct out-of-date rule references.

The following is a discussion of the changes noted above.

DADS Form 2031 Reference

Currently, enhancement program rules refer to the Department of Aging and Disability Services (DADS) Form 2031. The proposed amendment will replace references to a specific DADS form number with a generic description of the form. This change is being made so that if the DADS form number is changed in the future, the rule will still be accurate.

Cost Report Training Requirements

Current rule language describes required cost report training for individuals completing cost reports and for individuals completing staffing and compensation reports. Since staffing and compensation reports were replaced by cost reports effective for services delivered on or after September1, 2009, language describing training requirements for individuals completing those reports has become obsolete and HHSC is proposing that this language be deleted.

Rule References

Various subsections of this rule contain erroneous or out-of-date references to other rules. This amendment corrects these erroneous or out-of-date references.

Section-by-Section Summary

The proposed amendments to §355.308 are as follows:

Revise subsections (d), (e), (r), and (i)(1)(C) to replace references to DADS Form 2031 with references to the DADS signa-

ture authority designation form applicable to the provider's contract or ownership type.

Revise subsection (h) to delete references to cost report training for staffing and compensation reports.

Modify subsection (k)(4) to refer to §355.307(b)(3)(C).

Modify subsection (p)(3) and (4) to refer to §355.306(b)(2)(A).

Modify subsection (t) to refer to §19.2308.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The implementation of the proposed rule amendment does not require any changes in practice or any additional cost to the contracted provider.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that, for each of the first five years the amendment is in effect, the expected public benefits are that readers will have an increased understanding of requirements of the enhancement program.

Takings Impact Assessment

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

Regulatory Analysis

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

Public Comment

Questions about the content of this proposal may be directed to Laura Marble in the HHSC Rate Analysis Department by telephone at (512) 491-1354. Written comments on the proposal may be submitted to Ms. Marble by fax to (512) 491-1998; by e-mail to laura.marble@hhsc.state.tx.us; or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

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

The amendment affects Texas Government Code Chapter 531and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.308. Direct Care Staff Rate Component.

(a) Direct care staff cost center. This cost center will include compensation for employee and contract labor Registered Nurses (RNs), including Directors of Nursing (DONs) and Assistant Directors of Nursing (ADONs); Licensed Vocational Nurses (LVNs), including DONs and ADONs; medication aides; and nurse aides performing nursing-related duties for Medicaid contracted beds.

(1) Compensation to be included for these employee staff types is the allowable compensation defined in §355.103(b)(1) of this title (relating to Specifications for Allowable and Unallowable Costs) that is reported as either salaries and/or wages (including payroll taxes and workers' compensation) or employee benefits. Benefits required by §355.103(b)(1)(A)(iii) of this title (relating to Specifications for Allowable and Unallowable Costs) to be reported as costs applicable to specific cost report line items are not to be included in this cost center.

(2) Direct care staff who also have administrative duties not related to nursing must properly direct charge their compensation to each type of function performed based upon daily time sheets maintained throughout the entire reporting period.

(3) Nurse aides must meet the qualifications enumerated under 40 TAC §19.1903 (relating to Required Training of Nurse Aides) to be included in this cost center. Nurse aides include certified nurse aides and nurse aides in training as per 40 TAC §94.3(k) (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(4) Contract labor refers to personnel for whom the contracted provider is not responsible for the payment of payroll taxes (such as FICA, Medicare, and federal and state unemployment insurance) and who perform tasks routinely performed by employees. Allowable contract labor costs are defined in §355.103(b)(2)(C) of this title (relating to Specifications for Allowable and Unallowable Costs).

(5) For facilities receiving supplemental reimbursement for children with tracheostomies requiring daily care as described in §355.307(b)(3)(F) of this title (relating to Reimbursement Setting Methodology), staff required by 40 TAC §19.901(14)(C)(iii) (relating to Quality of Care) performing nursing-related duties for Medicaid contracted beds are included in the direct care staff cost center.

(6) For facilities receiving supplemental reimbursement for qualifying ventilator-dependent residents as described in §355.307(b)(3)(E) of this title (relating to Reimbursement Setting Methodology), Registered Respiratory Therapists and Certified Respiratory Therapy Technicians are included in the direct care staff cost center.

(7) Nursing facility administrators and assistant administrators are not included in the direct care staff cost center.

(8) Staff members performing more than one function in a facility without a differential in pay between functions are categorized at the highest level of licensure or certification they possess. If this highest level of licensure or certification is not that of an RN, LVN, medication aide, or certified nurse aide, the staff member is not to be included in the direct care staff cost center but rather in the cost center where staff members with that licensure or certification status are typically reported.

(9) Paid feeding assistants are not included in the direct care staff cost center and are not to be counted toward the staffing requirements described in subsection (j) of this section. Paid feeding assistants are intended to supplement certified nurse aides, not to be a substitute for certified or licensed nursing staff.

(b) Rate year. The standard rate year begins on the first day of September and ends on the last day of August of the following year.

(c) Open enrollment. Open enrollment for the enhanced direct care staff rates will begin on the first day of July and end on the last day of that same July preceding the rate year for which payments are being determined unless the Texas Health and Human Services Commission (HHSC) notified providers prior to the first day of July that open enrollment has been postponed or cancelled. Should conditions warrant, HHSC may conduct additional enrollment periods during a rate year.

(d) Enrollment contract amendment. An initial enrollment contract amendment is required from each facility choosing to participate in the enhanced direct care staff rate. Participating and nonparticipating facilities may request to modify their enrollment status (i.e., a nonparticipant can request to become a participant, a participant can request to become a nonparticipant, a participant can request to change its enhancement level) during any open enrollment period. Nonparticipants and participants requesting to increase their enrollment levels will be limited to requesting increases of three or fewer enhancement levels during any single open enrollment period unless such limits are waived by HHSC. Requests to modify a facility's enrollment status during an open enrollment period must be received by HHSC Rate Analysis by the last day of the open enrollment period as per subsection (c) of this section. If the last day of the open enrollment period falls on a weekend, a national holiday, or a state holiday, then the first business day following the last day of the open enrollment period is the final day the receipt of the enrollment contract amendment will be accepted. An enrollment contract amendment that is not received by the stated deadline will not be accepted. A facility from which HHSC Rate Analysis has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation in effect during the open enrollment period within available funds until the facility notifies HHSC in accordance with subsection (r) of this section that it no longer wishes to participate or until the facility's enrollment is limited in accordance with subsection (i) of this section. If HHSC determines that funds are not available to continue participation at the level of participation in effect during the open enrollment period, facilities will be notified as per subsection (ee) of this section. To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized representative as per the Texas Department of Aging and Disabilities Services (DADS) signature authority designation form [~~Form~~ 2031] applicable to the provider's contract or ownership type, and be legible.

(e) New facilities. For purposes of this section, for each rate year a new facility is defined as a facility delivering its first day of service to a Medicaid recipient after the first day of the open enrollment period, as defined in subsection (c) of this section, for that rate year. Facilities that underwent an ownership change are not considered new facilities. For purposes of this subsection, an acceptable enrollment contract amendment is defined as a legible enrollment contract amendment that has been completed according to instructions, signed by an authorized representative as per the DADS signature authority designation form [~~Form~~ 2031] applicable to the provider's contract or ownership type, and received by HHSC within 30 days of the mailing of notification to the facility by HHSC that such an enrollment contract amendment must be submitted. New facilities will receive the direct care staff base rate as determined in subsection (k) of this section with no enhancements. For new facilities specifying their desire to participate on an acceptable enrollment contract amendment, the direct care staff rate is adjusted as specified in subsection (l) of this section, effective on the first day of the month following receipt by HHSC of the acceptable enrollment contract amendment. If the granting of newly requested enhancements was limited as per subsection (j)(3) of this section during the most recent enrollment, enrollment for new facilities will be subject to that same limitation.

(f) Staffing and Compensation Report submittal requirements.

(1) Annual Staffing and Compensation Report. For services delivered on or before August 31, 2009, providers must file Staffing and Compensation Reports as follows. All participating facilities will provide HHSC, in a method specified by HHSC, an Annual Staffing and Compensation Report reflecting the activities of the facility while delivering contracted services from the first day of the rate year through the last day of the rate year. This report will be used as the basis for determining compliance with the staffing requirements and recoupment amounts as described in subsection (n) of this section, and as the basis for determining the spending requirements and recoupment amounts as described in subsection (o) of this section. Participating facilities failing to submit an acceptable Annual Staffing and Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC.

(A) When a participating facility changes ownership, the prior owner must submit a Staffing and Compensation Report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. The new owner will be required to submit a Staffing and Compensation Report covering the period from the day after the date recognized by HHSC or its designee as the ownership-change effective date to the end of the rate year.

(B) Participating facilities whose contracts are terminated either voluntarily or involuntarily must submit a Staffing and Compensation Report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the contract termination date. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section.

(C) Participating facilities who voluntarily withdraw from participation as per subsection (r) of this section must submit a Staffing and Compensation Report within 60 days of the date of withdrawal as determined by HHSC, covering the period from the beginning of the rate year to the date of withdrawal as determined by HHSC. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section.

(D) Participating facilities whose cost report year coincides with the state of Texas fiscal year as per §355.105(b)(5) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures) are exempt from the requirement to submit

a separate Annual Staffing and Compensation Report. For these facilities, their cost report will be considered their Annual Staffing and Compensation Report.

(2) For services delivered on September 1, 2009, and thereafter, cost reports as described in §355.105(b) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures) will replace the Staffing and Compensation Report with the following exceptions:

(A) For services delivered from September 1, 2009, to August 31, 2010, participating facilities may be required to submit Transition Staffing and Compensation Reports in addition to required cost reports. The Transition Staffing and Compensation Report reporting period will include those days in calendar years 2009 and 2010 not included in either the 2009 Staffing and Compensation report or the facility's 2010 cost report.

(B) When a participating facility changes ownership, the prior owner must submit a Staffing and Compensation Report covering the period from the beginning of the facility's cost reporting period to the date recognized by HHSC or its designee as the ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. The new owner will be required to submit a cost report covering the period from the day after the date recognized by HHSC or its designee as the ownership-change effective date to the end of the facility's fiscal year.

(C) Participating facilities whose contracts are terminated either voluntarily or involuntarily must submit a Staffing and Compensation Report covering the period from the beginning of the facility's cost reporting period to the date recognized by HHSC or its designee as the contract termination date. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section.

(D) Participating facilities who voluntarily withdraw from participation as per subsection (r) of this section must submit a Staffing and Compensation Report within 60 days of the date of withdrawal as determined by HHSC, covering the period from the beginning of the facility's cost reporting period to the date of withdrawal as determined by HHSC. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. These facilities must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(E) For new facilities as defined in subsection (e) of this section, the cost reporting period will begin with the effective date of participation in enhancement.

(F) Existing facilities which become participants in the enhancement as a result of the open enrollment process described in subsection (c) of this section on any day other than the first day of their fiscal year are required to submit a Staffing and Compensation Report with a reporting period that begins on their first day of participation in the enhancement and ends on the last day of the facility's fiscal year. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. These facilities must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(3) Other reports. HHSC may require other Staffing and Compensation Reports from all facilities as needed.

(4) Vendor hold. HHSC or its designee will place on hold the vendor payments for any participating facility that does not submit a timely report as described in paragraph (1) of this subsection, or for services delivered on or after September 1, 2009, a timely report as described in paragraph (2) of this subsection completed in accordance with all applicable rules and instructions. This vendor hold will remain in effect until HHSC receives an acceptable report.

(A) Participating facilities that do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the due dates described in this subsection or, for cost reports, the due dates described in §355.105(b) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures), will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the facility for services provided during the reporting period in question. These facilities will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment from subsections (n) and/or (o) of this section. If an acceptable report is not received within 365 days of the due date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC or its designee, the vendor hold associated with the report will be released.

(B) Participating facilities with an ownership change or contract termination that do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the change in ownership or contract termination will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the facility for services provided during the reporting period in question. These facilities will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC or its designee funds identified for recoupment from subsections (n) and/or (o) of this section. If an acceptable report is not received within 365 days of the change of ownership or contract termination date, the recoupment will become permanent and if all funds associated with participation during the reporting period in question have been recouped by HHSC or its designee, the vendor hold associated with the report will be released.

(5) Provider-initiated amended accountability reports and cost reports functioning as Staffing and Compensation Reports. Reports must be received prior to the date the provider is notified of compliance with spending and/or staffing requirements for the report in question as per subsections (n) and/or (o) of this section.

(g) Report contents. Annual Staffing and Compensation Reports and cost reports functioning as Staffing and Compensation Reports will include any information required by HHSC to implement this enhanced direct care staff rate.

(h) Completion of Reports. All Staffing and Compensation Reports and cost reports functioning as Staffing and Compensation Reports must be completed in accordance with the provisions of §§355.102 - 355.105 of this title (relating to General Principles of Allowable and Unallowable Costs, Specifications for Allowable and Unallowable Costs, Revenues, and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Beginning with the state fiscal year 2002 report, all Staffing and Compensation Reports and cost reports functioning as Staffing and Compensation Reports must be completed by preparers who have attended the required nursing facility cost report training as per §355.102(d) of this title (relating to General Principles of Allowable and Unallowable Costs). [~~For services delivered on or before August~~

~~31, 2009, for Staffing and Compensation Reports for even-numbered state fiscal years, preparers must have attended the cost report training for that same even-numbered year. For Staffing and Compensation Reports for odd-numbered state fiscal years, preparers must have attended the most recent cost report training sessions provided prior to the due date of the Staffing and Compensation Report. For services delivered on or after September 1, 2009, preparers must have attended cost report training as described in §355.102(d) of this title (relating to General Principles of Allowable and Unallowable Costs).~~]

(i) Enrollment limitations. A facility will not be enrolled in the enhanced direct care staff rate at a level higher than the level it achieved on its most recently available, audited Staffing and Compensation Report or cost report functioning as its Staffing and Compensation Report. HHSC will issue a notification letter that informs a facility in writing of its enrollment limitations (if any) prior to the first day of the open enrollment period.

(1) Requests for revision. A facility may request a revision of its enrollment limitation if the facility's most recently available, audited Staffing and Compensation Report or cost report functioning as its Staffing and Compensation Report does not represent its current staffing levels.

(A) A request for revision of enrollment limitation must include the documentation specified in subparagraph (B) of this paragraph and must be received by HHSC Rate Analysis by hand delivery, United States mail, or special delivery mail no later than 30 calendar days from the date on the notification letter. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted. A request for revision that is not received by the stated deadline and that is not submitted on the form specified by HHSC will not be accepted and the enrollment limitation specified in the notification letter will apply.

(B) A facility that requests a revision of its enrollment limitation must submit documentation, in the form specified by HHSC in the notification letter, which shows that, for the period beginning September 1 of the current rate year and ending April 30 of the current rate year, the facility met a higher staffing level than the notification letter indicates. In such cases, the facility's enrollment limitation will be established at the level supported by its request for revision documentation. It is the responsibility of the facility to render all required documentation at the time of its request for revision. Requests not in the form specified by HHSC in the notification letter and requests that fail to support a staffing level different than indicated in the notification letter will result in a rejection of the request and the enrollment limitation specified in the notification letter will apply.

(C) A request for revision must be signed by an individual legally responsible for the conduct of the facility or legally authorized to bind the facility, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable DADS signature authority designation form [~~Form 2031~~] for the interested party on file at the time of the request, or a legal representative for the interested party. A request for revision that is not signed by an individual legally responsible for the conduct of the interested party will not be accepted and the enrollment limitation specified in the notification letter will apply.

(D) If the facility's Staffing and Compensation Report or cost report functioning as its Staffing and Compensation Report for the rate year that included the open enrollment period described in subsection (d) of this section shows the facility staffed below the level it presented in its request for revision, HHSC will immediately recoup all enhancement payments associated with the request for revision documents and the facility will be limited to the level supported by the report for the remainder of the rate year.

(E) At no time will a facility be allowed to enroll in the enhancement program at a level higher than its current level of enrollment plus three additional levels unless otherwise instructed by HHSC Rate Analysis.

(2) New owners after a change of ownership. Enhancement levels for a new owner after a change of ownership will be determined in accordance with subsection (y) of this section. A new owner will not be subject to enrollment limitations based upon the prior owner's performance. This exemption from enrollment limitations does not apply in cases where HHSC or its designee has approved a successor-liability-agreement that transfers responsibility from the former owner to the new owner.

(3) New facilities. A new facility's enrollment will be determined in accordance with subsection (e) of this section.

(j) Determination of staffing requirements for participants. Facilities choosing to participate in the enhanced direct care staff rate agree to maintain certain direct care staffing levels above the minimum staffing levels described in paragraph (1) of this subsection. In order to permit facilities the flexibility to substitute RN, LVN and aide (Medication Aide and nurse aide) staff resources and, at the same time, comply with an overall nursing staff requirement, total nursing staff requirements are expressed in terms of LVN equivalent minutes. Conversion factors to convert RN and aide minutes into LVN equivalent minutes are based upon most recently available, reliable relative compensation levels for the different staff types.

(1) Minimum staffing levels. HHSC determines, for each participating facility, minimum LVN equivalent staffing levels as follows.

(A) Determine minimum required LVN equivalent minutes per resident day of service for various types of residents using time study data, cost report information, and other appropriate data sources.

(i) Determine LVN equivalent minutes associated with Medicare residents based on the data sources from this subparagraph adjusted for estimated acuity differences between Medicare and Medicaid residents.

(ii) Determine minimum required LVN equivalent minutes per resident day of service associated with each Resource Utilization Group (RUG-III) case mix group and additional minimum required minutes for Medicaid residents reimbursed under the RUG-III system who also qualify for supplemental reimbursement for ventilator care or pediatric tracheostomy care as described in §355.307 of this title (relating to Reimbursement Setting Methodology) based on the data sources from this subparagraph adjusted for acuity differences between Medicare and Medicaid residents and other factors.

(B) Based on most recently available, reliable utilization data, determine for each facility the total days of service by RUG-III group, days of service provided to Medicaid residents qualifying for Medicaid supplemental reimbursement for ventilator or tracheostomy care, total days of service for Medicare Part A residents in Medicaid-contracted beds, and total days of service for all other residents in Medicaid-contracted beds.

(C) Multiply the minimum required LVN equivalent minutes for each RUG-III group and supplemental reimbursement group from subparagraph (A) of this paragraph by the facility's Medicaid days of service in each RUG-III group and supplemental

reimbursement group from subparagraph (B) of this paragraph and sum the products.

(D) Multiply the minimum required LVN equivalent minutes for Medicare residents by the facility's Medicare Part A days of service in Medicaid-contracted beds.

(E) Divide the sum from subparagraph (C) of this paragraph by the facility's total Medicaid days of service, with a day of service for a Medicaid RUG-III recipient who also qualifies for a supplemental reimbursement counted as one day of service, compare this result to the minimum required LVN-equivalent minutes for a RUG-III PD1 and multiply the lower of the two figures by the facility's other resident days of service in Medicaid-contracted beds.

(F) Sum the results of subparagraphs (C), (D) and (E) of this paragraph, divide the sum by the facility's total days of service in Medicaid-contracted beds, with a day of service for a Medicaid recipient who also qualifies for a supplemental reimbursement counted as one day of service. The results of these calculations are the minimum LVN equivalent minutes per resident day a participating facility must provide.

(G) In cases where the minimum required LVN-equivalent minutes per resident day of service associated with a RUG-III case mix group or supplemental reimbursement group change during the reporting period, the minimum required LVN-equivalent minutes for the RUG-III case mix group or supplemental reimbursement group for the reporting period will be equal to the weighted average LVN-equivalent minutes in effect during the reporting period for that group calculated as follows:

(i) Multiply the first minimum required LVN equivalent minutes per resident day of service associated with the RUG-III case mix group or supplemental reimbursement group in effect during the reporting period by the most recently available, reliable Medicaid days of service utilization data for the time period the first minimum required LVN equivalent minutes were in effect.

(ii) Multiply the second minimum required LVN equivalent minutes per resident day of service associated with the RUG-III case mix group or supplemental reimbursement group in effect during the reporting period by the most recently available, reliable Medicaid days of service utilization data for the time period the second minimum required LVN equivalent minutes were in effect.

(iii) Sum the products from clauses (i) and (ii) of this subparagraph.

(iv) Divide the sum from clause (iii) of this subparagraph by the sum of the most recently available, reliable Medicaid days of service utilization data for the entire reporting period used in clauses (i) and (ii) of this subparagraph.

(2) Enhanced staffing levels. Facilities desiring to participate in the enhanced direct care staff rate are required to staff above the minimum requirements from paragraph (1) of this subsection. These facilities may request LVN-equivalent staffing enhancements from an array of LVN-equivalent enhanced staffing options and associated add-on payments during open enrollment under subsection (d) of this section.

(3) Granting of staffing enhancements. HHSC divides all requested enhancements, after applying any enrollment limitations from subsection (i) of this section, into two groups: pre-existing enhancements that facilities request to carry over from the prior year and newly-requested enhancements. Newly-requested enhancements may be enhancements requested by facilities that were nonparticipants in the prior year or by facilities that were participants in the prior year desiring to be granted additional enhancements. Using the process described herein, HHSC first determines the distribution of carry-over enhancements. If HHSC determines that funds are not available to carry over some or all pre-existing enhancements, facilities will be notified as per subsection (ee) of this section. If funds are available after the distribution of carry-over enhancements, HHSC then determines the distribution of newly requested enhancements. HHSC may not distribute newly requested enhancements to facilities owing funds identified for recoupment from subsections (n) and/or (o) of this section.

(A) HHSC determines projected Medicaid units of service for facilities requesting each enhancement option, and multiplies this number by the rate add-on associated with that enhancement option as determined in subsection (l) of this section.

(B) HHSC compares the sum of the products from subparagraph (A) of this paragraph to available funds.

(i) If the product is less than or equal to available funds, all requested enhancements are granted.

(ii) If the product is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds. Based upon an examination of existing staffing levels and staffing needs, HHSC may grant certain enhancement options priority for distribution.

(4) Notification of granting of enhancements. Participating facilities are notified, in a manner determined by HHSC, as to the disposition of their request for staffing enhancements.

(5) In cases where more than one enhanced staffing level is in effect during the reporting period, the staffing requirement will be based on the weighted average enhanced staffing level in effect during the reporting period calculated as follows:

(A) Multiply the first enhanced staffing level in effect during the reporting period by the most recently available, reliable Medicaid days of service utilization data for the time period the first enhanced staffing level was in effect.

(B) Multiply the second enhanced staffing level in effect during the reporting period by the most recently available, reliable Medicaid days of service utilization data for the time period the second enhanced staffing level was in effect.

(C) Sum the products from subparagraphs (A) and (B) of this paragraph.

(D) Divide the sum from subparagraph (C) of this paragraph by the sum of the most recently available, reliable Medicaid days of service utilization data for the entire reporting period used in subparagraphs (A) and (B) of this paragraph.

(k) Determination of direct care staff base rate.

(1) Determine the sum of recipient care costs from the direct care staff cost center in subsection (a) of this section in all nursing facilities included in the Texas Nursing Facility Cost Report database used to determine the nursing facility rates in effect on January 1, 2000 (hereinafter referred to as the initial database).

(2) Adjust the sum from paragraph (1) of this subsection as specified in §355.108 of this title (relating to Determination of Inflation Indices) to inflate the costs to the prospective rate year.

(3) Divide the result from paragraph (2) of this subsection by the sum of recipient days of service in all facilities in the initial

database and multiply the result by 1.07. The result is the average direct care staff base rate component for all facilities.

(4) For rates effective September 1, 2009 and thereafter, to calculate the direct care staff per diem base rate component for all facilities for each of the RUG-III case mix groups and for the default groups, divide each RUG-III index from §355.307(b)(3)(C) [~~§355.307(3)(C)~~] of this title (relating to Reimbursement Methodology) by 0.9908, which is the weighted average Texas Index for Level of Effort (TILE) case mix index associated with the initial database, and then multiply each of the resulting quotients by the average direct care staff base rate component from paragraph (3) of this subsection.

(5) The direct care staff per diem base rates will remain constant except for adjustments for inflation from paragraph (2) of this subsection. HHSC may also recommend adjustments to the rates in accordance with §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(l) Determine each participating facility's total direct care staff rate. Each participating facility's total direct care staff rate will be equal to the direct care staff base rate from subsection (k) of this section plus any add-on payments associated with enhanced staffing levels selected by and awarded to the facility during open enrollment. HHSC will determine a per diem add-on payment for each enhanced staffing level taking into consideration the most recently available, reliable data relating to LVN equivalent compensation levels.

(m) Staffing requirements for participating facilities. Each participating facility will be required to maintain adjusted LVN-equivalent minutes equal to those determined in subsection (j) of this section. Each participating facility's adjusted LVN-equivalent minutes maintained during the reporting period will be determined as follows.

(1) Determine unadjusted LVN-equivalent minutes maintained. Upon receipt of the staffing and spending information described in subsection (f) of this section, HHSC will determine the unadjusted LVN-equivalent minutes maintained by each facility during the reporting period.

(2) Determine adjusted LVN-equivalent minutes maintained. Compare the unadjusted LVN-equivalent minutes maintained by the facility during the reporting period from paragraph (1) of this subsection to the LVN-equivalent minutes required of the facility as determined in subsection (j) of this section. The adjusted LVN-equivalent minutes are determined as follows:

(A) If the number of unadjusted LVN-equivalent minutes maintained by the facility during the reporting period is greater than or equal to the number of LVN-equivalent minutes required for the facility or less than the minimum LVN-equivalent minutes required for participation as determined in subsection (j)(1) of this section; the facility's adjusted LVN-equivalent minutes maintained is equal to its unadjusted LVN-equivalent minutes; or

(B) If the number of unadjusted LVN-equivalent minutes maintained by the facility during the reporting period is less than the number of LVN-equivalent minutes required of the facility, but greater than or equal to the minimum LVN-equivalent minutes required for participation as determined in subsection (j)(1) of this section, the following steps are performed.

(i) Determine what the facility's accrued Medicaid fee-for-service direct care revenue for the reporting period would have been if their staffing requirement had been set at a level consistent with the highest LVN-equivalent minutes that the facility actually maintained, as defined in subsection (j) of this section.

(ii) Determine the facility's adjusted accrued direct care revenue by multiplying the accrued direct care revenue from clause (i) of this subparagraph by 0.85.

(iii) Determine the facility's accrued allowable Medicaid fee-for-service direct care staff expenses for the rate year.

(iv) Determine the facility's direct care spending surplus for the reporting period by subtracting the facility's adjusted accrued direct care revenue from clause (ii) of this subparagraph from the facility's accrued allowable direct care expenses from clause (iii) of this subparagraph.

(v) If the facility's direct care spending surplus from clause (iv) of this subparagraph is less than or equal to zero, the facility's adjusted LVN-equivalent minutes maintained is equal to the unadjusted LVN-equivalent minutes maintained as calculated in paragraph (1) of this subsection.

(vi) If the facility's direct care spending surplus from clause (iv) of this subparagraph is greater than zero, the adjusted LVN-equivalent minutes maintained by the facility during the reporting period is set equal to the facility's direct care spending surplus from clause (iv) of this subparagraph divided by the per diem enhancement add-on as determined in subsection (l) of this section plus the unadjusted LVN-equivalent minutes maintained by the facility during the reporting period from paragraph (1) of this subsection according to the following formula: (Direct Care Spending Surplus/Per Diem Enhancement Add-on for One LVN-equivalent Minute) + Unadjusted LVN-equivalent Minutes.

(C) For adjusted LVN-equivalent minutes calculated on or after March 1, 2004, requirements relating to the minimum LVN-equivalent minutes required for participation in subparagraphs (A) and (B) of this paragraph do not apply.

(n) Staffing accountability. Participating facilities will be responsible for maintaining the staffing levels determined in subsection (j) of this section. HHSC will determine the adjusted LVN-equivalent minutes maintained by each facility during the reporting period by the method described in subsection (m) of this section. HHSC or its designee will recoup all direct care staff revenues associated with unmet staffing goals from participating facilities that fail to meet their staffing requirements during the reporting period.

(o) Spending requirements for participants. Participating facilities are subject to a direct care staff spending requirement with recoupment calculated as follows:

(1) At the end of the rate year, a spending floor will be calculated by multiplying accrued Medicaid fee-for-service direct care staff revenues (net of revenues recouped by HHSC or its designee due to the failure of the facility to meet a staffing requirement as per subsection (n) of this section) by 0.85.

(2) Accrued allowable Medicaid direct care staff fee-for-service expenses for the rate year will be compared to the spending floor from paragraph (1) of this subsection. HHSC or its designee will recoup the difference between the spending floor and accrued allowable Medicaid direct care staff fee-for-service expenses from facilities whose Medicaid direct care staff spending is less than their spending floor.

(3) At no time will a participating facility's direct care rates after spending recoupment be less than the direct care base rates.

(p) Dietary and Fixed Capital Mitigation. Recoupment of funds described in subsection (o) of this section may be mitigated by high dietary and/or fixed capital expenses as follows.

(1) Calculate dietary cost deficit. At the end of the facility's rate year, accrued Medicaid dietary per diem revenues will be compared to accrued, allowable Medicaid dietary per diem costs. If costs are greater than revenues, the dietary per diem cost deficit will be equal to the difference between accrued, allowable Medicaid dietary per diem costs and accrued Medicaid dietary per diem revenues. If costs are less than revenues, the dietary cost deficit will be equal to zero.

(2) Calculate dietary revenue surplus. At the end of the facility's rate, accrued Medicaid dietary per diem revenues will be compared to accrued, allowable Medicaid dietary per diem costs. If revenues are greater than costs, the dietary per diem revenue surplus will be equal to the difference between accrued Medicaid dietary per diem revenues and accrued, allowable Medicaid dietary per diem costs. If revenues are less than costs, the dietary revenue surplus will be equal to zero.

(3) Calculate fixed capital cost deficit. At the end of the facility's rate year, accrued Medicaid fixed capital per diem revenues will be compared to accrued, allowable Medicaid fixed capital per diem costs as defined in §355.306(b)(2)(A) [~~§355.306(a)(2)(A)~~] of this title (relating to Cost Finding Methodology). If costs are greater than revenues, the fixed capital cost per diem deficit will be equal to the difference between accrued, allowable Medicaid fixed capital per diem costs and accrued Medicaid fixed capital per diem revenues. If costs are less than revenues, the fixed capital cost deficit will be equal to zero. For purposes of this paragraph, fixed capital per diem costs of facilities with occupancy rates below 85% are adjusted to the cost per diem the facility would have accrued had it maintained an 85% occupancy rate throughout the rate year.

(4) Calculate fixed capital revenue surplus. At the end of the facility's rate year, accrued Medicaid fixed capital per diem revenues will be compared to accrued, allowable Medicaid fixed capital per diem costs as defined in §355.306(b)(2)(A) [~~§355.306(a)(2)(A)~~] of this title (relating to Cost Finding Methodology). If revenues are greater than costs, the fixed capital revenue per diem surplus will be equal to the difference between accrued Medicaid fixed capital per diem revenues and accrued, allowable Medicaid fixed capital per diem costs. If revenues are less than costs, the fixed capital revenue surplus will be equal to zero. For purposes of this paragraph, fixed capital per diem costs of facilities with occupancy rates below 85% are adjusted to the cost per diem the facility would have accrued had it maintained an 85% occupancy rate throughout the rate year.

(5) Facilities with a dietary per diem cost deficit will have their dietary per diem cost deficit reduced by their fixed capital per diem revenue surplus, if any. Any remaining dietary per diem cost deficit will be capped at $2.00 per diem.

(6) Facilities with a fixed capital cost per diem deficit will have their fixed capital cost per diem deficit reduced by their dietary revenue per diem surplus, if any. Any remaining fixed capital per diem cost deficit will be capped at $2.00 per diem.

(7) Each facility's recoupment, as calculated in subsection (o) of this section, will be reduced by the sum of that facility's dietary per diem cost deficit as calculated in paragraph (5) of this subsection and its fixed capital per diem cost deficit as calculated in paragraph (6) of this subsection.

(q) Adjusting staffing requirements. Facilities that determine that they will not be able to meet their staffing requirements from subsection (m) of this section may request a reduction in their staffing requirements and associated rate add-on. These requests will be effective on the first day of the month following approval of the request.

(r) Voluntary withdrawal. Facilities wishing to withdraw from participation must notify HHSC in writing by certified mail and the request must be signed by an authorized representative as designated per the DADS signature authority designation form [~~Form 2031~~] applicable to the provider's contract or ownership type. Facilities voluntarily withdrawing must remain nonparticipants for the remainder of the rate year. Facilities that voluntarily withdraw from participation will have their participation end effective on the date of the withdrawal, as determined by HHSC.

(s) Notification of recoupment based on Annual Staffing and Compensation Report or cost report. Facilities will be notified, in a manner specified by HHSC, within 90 days of the determination of their recoupment amount by HHSC of the amount to be repaid to HHSC or its designee. If a subsequent review by HHSC or audit results in adjustments to the Annual Staffing and Compensation Report or cost report as described in subsection (f) of this section that changes the amount to be repaid to HHSC or its designee, the facility will be notified in writing of the adjustments and the adjusted amount to be repaid. HHSC or its designee will recoup any amount owed from a facility's vendor payment(s) following the date of the notification letter.

(t) Change of ownership and contract terminations. Facilities required to submit a Staffing and Compensation Report due to a change of ownership or contract termination as described in subsection (f) of this section will have funds held as per 40 TAC §19.2308 [~~§19.2308(2)~~] (relating to Change of Ownership) until an acceptable Staffing and Compensation Report is received by HHSC and funds identified for recoupment from subsections (n) and/or (o) of this section are repaid to HHSC or its designee. Informal reviews and formal appeals relating to these reports are governed by §355.110 of this title (relating to Informal Reviews and Formal Appeals). HHSC or its designee will recoup any amount owed from the facility's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (x) of this section will be jointly and severally liable for any additional payment due to HHSC or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other Medicaid contracts controlled by the responsible entity, placement of a vendor hold on all Medicaid contracts controlled by the responsible entity and will bar the responsible entity from receiving any new contracts with HHSC or its designees until repayment is made in full. The responsible entity for these contracts will be notified as described in subsection (s) of this section prior to the recoupment of owed funds, placement of vendor hold and barring of new contracts.

(u) Failure to document staff time and spending. Undocumented direct care staff and contract labor time and compensation costs will be disallowed and will not be used in the determination of direct care staff time and costs per unit of service.

(v) All other rate components. All other rate components will be calculated as specified in §355.307 of this title (relating to Reimbursement Setting Methodology) and will be uniform for all providers.

(w) Appeals. Subject matter of informal reviews and formal appeals is limited as per §355.110(a)(3)(B) of this title (relating to Informal Reviews and Formal Appeals).

(x) Responsible entities. The contracted provider, owner, or legal entity that received the revenue to be recouped upon is responsible for the repayment of any recoupment amount.

(y) Change of ownership. Participation in the enhanced direct care staff rate confers to the new owner as defined in 40 TAC §19.2308 (relating to Change of Ownership) when there is a change of ownership. The new owner is responsible for the reporting requirements in

subsection (f) of this section for any reporting period days occurring after the change. If the change of ownership occurs during an open enrollment period as defined in subsection (c) of this section, then the owner recognized by HHSC or its designee on the last day of the enrollment period may request to modify the enrollment status of the facility in accordance with subsection (d) of this section.

(z) Contract cancellations. If a facility's Medicaid contract is cancelled before the first day of an open enrollment period as defined in subsection (c) of this section and the facility is not granted a new contract until after the last day of the open enrollment period, participation in the enhanced direct care staff rate as it existed prior to the date when the facility's contract was cancelled will be reinstated when the facility is granted a new contract, if it remains under the same ownership, subject to the availability of funding. Any enrollment limitations from subsection (i) of this section that would have applied to the cancelled contract will apply to the new contract.

(aa) Determination of compliance with spending requirements in the aggregate.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Commonly owned corporations--two or more corporations where five or fewer identical persons who are individuals, estates, or trusts control greater than 50 percent of the total voting power in each corporation.

(B) Entity--a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

(C) Combined entity--one or more commonly owned corporations and one or more limited partnerships where the general partner is controlled by the same person(s) as the commonly owned corporation(s).

(D) Control--greater than 50 percent ownership by the entity.

(2) Aggregation. For an entity, commonly owned corporation, or combined entity that controls more than one participating nursing facility contract, compliance with the spending requirements detailed in subsection (o) of this section can be determined in the aggregate for all participating nursing facility contracts controlled by the entity, commonly owned corporations, or combined entity at the end of the rate year, the effective date of the change of ownership of its last participating NF contract, or the effective date of the termination of its last participating NF contract rather than requiring each contract to meet its spending requirement individually. Corporations that do not meet the definitions under paragraph (1)(A) - (C) of this subsection are not eligible for aggregation to meet spending requirements.

(A) Aggregation Request. To exercise aggregation, the entity, combined entity, or commonly owned corporations must submit an aggregation request, in a manner prescribed by HHSC, at the time each Staffing and Compensation Report or cost report is submitted. In limited partnerships in which the same single general partner controls all the limited partnerships, the single general partner must make this request. Other such aggregation requests will be reviewed on a case-by-case basis.

(B) Frequency of Aggregation Requests. The entity, combined entity, or commonly owned corporations must submit a separate request for aggregation for each reporting period.

(C) Ownership changes or terminations. Nursing facility contracts that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per subsection (o) of this section, are excluded from all aggregate spending calculations. These contracts' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

(bb) Medicaid Swing Bed Program for Rural Hospitals. When a rural hospital participating in the Medicaid swing bed program furnishes NF nursing care to a Medicaid recipient under 40 TAC §19.2326 (relating to Medicaid Swing Bed Program for Rural Hospitals), HHSC or its designee makes payment to the hospital using the same procedures, the same case-mix methodology, and the same RUG-III rates that HHSC authorizes for reimbursing NFs receiving the direct care staff base rate with no enhancement levels. These hospitals are not subject to the staffing and spending requirements detailed in this section.

(cc) Reinvestment. For services delivered on or before August 31, 2009, HHSC will reinvest recouped funds in the enhanced direct care staff rate program, to the extent that there are qualifying facilities. For services delivered beginning September 1, 2009, and thereafter, HHSC will not reinvest recouped enhanced direct care staff rate funds.

(1) Identify qualifying facilities. Facilities meeting the following criteria during the most recent completed reporting period are qualifying facilities for reinvestment purposes.

(A) The facility was a participant in the enhanced direct care staff rate or, for state fiscal years 2004 and 2005 only, had been a participant at level 0 in state fiscal year 2003 and was reclassified as a nonparticipant due to the elimination of level 0 in state fiscal year 2004.

(B) The facility's unadjusted LVN-equivalent minutes as determined in subsection (m)(1) of this section were greater than the number of LVN-minutes required of the facility as determined in subsection (j) of this section.

(C) The facility met its spending requirement as determined in subsection (o) of this section.

(D) An acceptable Annual Staffing and Compensation Report for the reporting period was received by HHSC Rate Analysis at least 30 days prior to the date distribution of available reinvestment funds was determined.

(E) The Medicaid contract that was in effect for the facility during the reinvestment reporting period is still in effect as an active contract when reinvestment is determined or, in cases where a change of ownership has occurred, HHSC or its designee has approved a Successor Liability Agreement between the contract in effect during the reinvestment reporting period and the contract in effect when reinvestment is determined.

(2) Distribution of available reinvestment funds. Available funds are distributed as described below.

(A) HHSC determines units of service provided during the most recent completed reporting period by each qualifying facility achieving, with unadjusted LVN-equivalent minutes as determined in subsection (m)(1) of this section, each enhancement option above the enhancement option awarded to the facility during the reporting period and multiplies this number by the rate add-on associated with that enhancement in effect during the reporting period.

(B) HHSC compares the sum of the products from subparagraph (A) of this paragraph to funds available for reinvestment.

(i) If the product is less than or equal to available funds, all achieved enhancements for qualifying facilities are retroactively awarded for the reporting period.

(ii) If the product is greater than available funds, retroactive enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until achieved enhancements are granted within available funds.

(3) All retroactive enhancements are subject to spending requirements detailed in subsection (o) of this section. Revenue from retroactive enhancements is not eligible for mitigation of spending recoupment as described in subsection (p) of this section.

(4) Retroactively awarded enhancements do not qualify as pre-existing enhancements for enrollment purposes.

(5) Notification of reinvested enhancements. Qualifying facilities are notified in a manner determined by HHSC, as to the award of reinvested enhancements.

(dd) Disclaimer. Nothing in these rules should be construed as preventing facilities from adding direct care staff in addition to those funded by the enhanced direct care staff rate.

(ee) Notification of lack of available funds. If HHSC determines that funds are not available to continue participation for facilities from which it has not received an acceptable request to modify their enrollment by the last day of an enrollment period as per subsection (d) of this section or to fund carry-over enhancements as per subsection (j)(3) of this section, HHSC will notify providers in a manner determined by HHSC that such funds are not available.

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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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.502, concerning Reimbursement Methodology for Professional Services in Home and Community-Based Services Waivers; §355.503, concerning Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs; §355.505, concerning Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program; §355.507, concerning Reimbursement Methodology for the Medically Dependent Children Program; §355.513, concerning Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program; and §355.725, concerning Reimbursement Methodology for Professional Services and Requisition Fees for Home and Community-based Services (HCS). HHSC also proposes to repeal §355.508, concerning Reimbursement Methodology for Transition Assistance Services.

Background and Justification

Sections 355.502, 355.503, 355.505, 355.507, 355.508, 355.513, and 355.725 establish the reimbursement methodologies for various home and community-based services (HCBS) waiver programs administered by the Department of Aging and Disability Services (DADS). HHSC, under its authority and responsibility to administer and implement rates, is updating these rules to combine all common services in one section; reflect appropriate service arrays for these various programs; clarify reimbursement methodology descriptions; and standardize language. Additional changes are proposed to remove unnecessary or obsolete language.

Combining Common Services in One Section

Many HCBS waiver programs provide common services. Since the service definitions and provider specifications for these common services are the same across these programs, the rates for these services are the same for each program. Currently, HHSC has a single reimbursement methodology for determining rates for common professional services at §355.502, which includes nursing services provided by a registered nurse (RN), nursing services provided by a licensed vocational nurse (LVN), physical therapy, occupational therapy, speech/language therapy, behavioral support services, audiology services, and nutrition/dietary services.

Employment services, including supported employment and employment assistance, and transition assistance services are also common to many HCBS waiver programs. Therefore, HHSC is proposing to amend §355.502 to include reimbursement methodologies for these services and repeal the existing rate methodology rule for transition assistance services at §355.508.

Due to the addition of the reimbursement methodologies for employment services and transition assistance services, HHSC is proposing to amend the title of §355.502 to "Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers." The proposed amendment to the title of §355.502 results in subsequent changes to all reimbursement methodologies that make reference to §355.502.

Reflecting Appropriate Service Arrays

DADS is revising the Community Living Assistance and Support Services (CLASS) and Home and Community-Based Services (HCS) waiver programs to add employment assistance as an allowable service in these programs. In response to the addition of employment assistance to the CLASS and HCS waiver programs, HHSC is proposing to amend the reimbursement methodologies for these programs to include methodologies for determining reimbursement rates for this new service.

The Community Based Alternatives (CBA) waiver program provides out-of-home respite services in an Assisted Living/Residential Care (AL/RC) facility. The reimbursement methodology for out-of-home respite in an AL/RC facility is not currently included in the reimbursement methodology at §355.503. HHSC is proposing to amend the reimbursement methodology for this program to include a methodology for this service.

Dental services and medical supplies requisition fees are currently included in the array of services in the CLASS, HCS, and Deaf Blind with Multiple Disabilities (DBMD) waiver programs and specialized therapies requisition fees are currently included in the array of services in the CLASS waiver program, but the reimbursement methodologies for these programs do not include methodologies for these fees. HHSC is proposing to amend the reimbursement methodology rules for the HCS, CLASS, and

DBMD waiver programs to include methodologies for determining these fees.

Finally, a description of how the pre-enrollment and case management services are determined in the DBMD waiver program is being added to the reimbursement methodology at §355.513.

Clarifying Reimbursement Methodology Descriptions

Clarifications to reimbursement methodology descriptions include clarifications for the following services and programs: the attendant care cost component of the CBA AL/RC rate; out-of-home respite provided in a CBA Adult Foster Care (AFC) home; CBA Emergency Response Services (ERS) and Home Delivered Meals (HDM); and out-of-home respite and in-home respite in the CLASS waiver program.

Attendant Care Cost Component of the CBA AL/RC Rate.

There are six different attendant care cost areas for CBA AL/RC services based upon client need for attendant care (i.e., client level of care). The reimbursement methodology described in §355.503(c)(2)(B) is not clear regarding the use of client need in the calculation of these six different cost areas. HHSC is proposing to amend the reimbursement methodology rule for the CBA AL/RC waiver program to clarify language regarding the use of client need in the calculation of the attendant care cost component of the CBA AL/RC rate.

Out-of-Home Respite in CBA AFC.

The reimbursement methodology for CBA AFC at §355.503(c)(2)(A) includes out-of-home respite services provided in an AFC home, however the language does not clearly indicate this. HHSC is proposing to amend the reimbursement methodology for the CBA waiver program to clearly indicate the application of this subparagraph to out-of-home respite services provided in an AFC home.

CBA ERS and HDM.

The reimbursement methodologies for CBA ERS and CBA HDM are both included in §355.503(c)(3) under the title "Monthly reimbursement ceilings." While the rate for ERS is a cost ceiling per month, the cost ceiling for HDM is per meal. HHSC is proposing to amend the reimbursement methodology for the CBA waiver program to separate the reimbursement methodologies for ERS and HDM into two paragraphs and clarify that the HDM cost ceiling is a ceiling per meal.

CLASS Respite Services.

The reimbursement methodology for CLASS respite services at §355.505(c)(4)(B) states the respite care rates are modeled, however, the rate for out-of-home respite services in CLASS is calculated using cost report data, while the rate for in-home respite is calculated using cost report data and then combining the resulting costs per unit of service into an array as described in §355.502. HHSC is proposing to amend the reimbursement methodology for the CLASS waiver program to codify current practice by deleting the outdated respite services methodology at §355.505(c)(4)(B), and adding the current methodology to §355.505(c)(4)(A).

Standardizing Language

The reimbursement methodologies and the rates for the HCS and Texas Home Living (TxHmL) waiver programs are identical. HHSC is proposing to revise §355.725 to apply to both the HCS and TxHmL programs and to change the section name to "Reimbursement Methodology for Common Waiver Services in Home and Community-based Services (HCS) and Texas Home Living (TxHmL)." HHSC is also proposing to add a new subsection to §355.725 to identify unallowable costs related to requisition fees.

Finally, HHSC is proposing to update references to "speech pathology" to the current name in §355.502 of "speech/language therapy" wherever references to "speech pathology" occur in Subchapter C or §355.725.

Section-by-Section Summary

HHSC proposes amendments to §355.502 as follows:

Change the name of the section to "Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers."

Revise subsection (a) to indicate that common services are those services available in multiple HCBS waivers.

Revise subsection (b) to use appropriate service names for various professional services.

Revise subsection (c) to define employment services, and move the language specific to the reimbursement methodology for common services to new subsection (d).

Revise subsection (d)(1)(A) to abbreviate Home and Community-Based Services.

Subsume former subsection (d) as paragraph (3) under new subsection (d); reformat to eliminate the lead-in title; and delete a reference to former subsection (b).

Add new subsection (e) to define the reimbursement methodology for transition assistance services. This reimbursement methodology is being transferred from §355.508, which is being repealed.

HHSC proposes amendments to §355.503 as follows:

Revise the name of "speech pathology" in subsection (c)(1) and subsection (c)(1)(F) to "speech/language therapy."

Revise subsection (c)(1)(F) to reflect the revised name of §355.502.

Add language to subsection (c)(2)(A) to clarify that subparagraph (A) describes the methodology for out-of-home-respite provided in an AFC.

Revise the language in subsection (c)(2)(B) to clarify the role of client need in the calculation of the six levels of care in the reimbursement methodology for AL/RC services and to add a reimbursement methodology for out-of-home respite provided in an AL/RC facility.

Revise subsection (c)(3) to change the name of the paragraph to "Emergency Response Services" and to delete the reimbursement methodology for Home Delivered Meals. The reimbursement methodology for Home Delivered meals is transferred to subsection (c)(6).

Revise subsections (c)(4) and (e)(5)(B) to include medical supplies and dental services in the reimbursement methodology for requisition fees.

Add new paragraph (6) to subsection (c) to add the reimbursement methodology for Home Delivered Meals and renumber the subsequent paragraph.

Revise subsection (e)(5)(B) to include medical supplies and dental services in the standardized language used in other waiver programs for unallowable costs.

HHSC proposes amendments to §355.505 as follows:

Revise subsection (c)(1) to revise the name of "speech pathology" to "speech/language therapy," to add employment assistance and supported employment, to clarify that respite care services includes both in-home and out-of-home respite, and to clarify that auditory integration training/auditory enhancement training is also known as audiology services.

Revise subsection (c)(4) to include services with a cost ceiling in the reimbursement methodology.

Revise subsection (c)(4)(A) to revise the name of "speech pathology" to "speech/language therapy" and to add employment assistance, supported employment, and respite care services to the reimbursement methodology.

Revise subsection (c)(4)(A)(vii) to change the name of "speech pathology" to "speech/language therapy"; add employment assistance, supported employment, and in-home respite care services; clarify that auditory integration training/auditory enhancement training is also known as audiology services; and reflect the new name of section §355.502.

Add new subsection (c)(4)(A)(ix) to add the reimbursement methodology for out-of-home respite care services.

Delete the reimbursement methodology for respite care services in subsection (c)(4)(B) and subsection (c)(4)(B)(i) - (ii) because the reimbursement methodology for out-of-home respite is now in clause (ix), and the reimbursement methodology for in-home respite has been merged into subparagraph (A)(i) - (vii). The subsequent subparagraphs are renumbered.

Revise subsection (e) to include medical supplies, dental services, and specialized therapies in the reimbursement methodology for requisition fees.

Amend subsection (f)(3) to standardize this language to the language used in other waiver programs for unallowable adaptive aids, medical supplies, dental services, and minor home modifications.

HHSC proposes an amendment to §355.507(b) to reflect the new name of §355.502.

HHSC proposes to repeal §355.508 and to transfer the reimbursement methodology for transition assistance services to §355.502.

HHSC proposes amendments to §355.513 as follows:

Revise subsection (c)(4) to delete a reference to out-of-home assisted living and to rename "habilitation day services" to "day habilitation services."

Revise subsection (c)(5) to reorder the list of existing services to match the language used in other waiver programs; add employment assistance and supported employment services; update the names of other services; delete case management so that it can be moved to subsection (c)(10); and reflect the new name of section §355.502.

Revise subsection (c)(6) to eliminate the lead-in title, correct the name of the DBMD program and include medical supplies and dental services in the reimbursement methodology for requisition fees.

Revise subsection (c)(7) to correct the name of day habilitation services; update the name of residential habilitation services; delete 24 hour residential habilitation and assisted living services so that they can be moved to subsection (c)(9); and add chore services. Chore services are currently available in this waiver and were inadvertently excluded from this paragraph.

Delete subsection (c)(7)(D) so that the reimbursement methodology relating to room and board payments for clients receiving assisted living services can be moved to subsection (c)(9).

Revise subsection (c)(9) to delete the language relating to annual and lifetime ceilings for adaptive aids and minor home modifications, and add the current reimbursement methodology for assisted living services.

Revise subsection (c)(10) to describe the reimbursement methodology for pre-enrollment assessment and case management services.

Add new paragraph (11) to subsection (c) to describe the reimbursement methodology for orientation and mobility services. Orientation and mobility services are currently delivered in the waiver and were inadvertently not included in the reimbursement methodology. The subsequent paragraph is renumbered.

Revise subsection (e)(4)(B) to match the language used in other waiver programs for unallowable adaptive aids, medical supplies, dental services, and minor home modifications.

HHSC proposes amendments to §355.725 as follows:

Revise the name of the section to "Reimbursement Methodology for Common Waiver Services in Home and Community-based Services (HCS) and Texas Home Living (TxHmL)."

Revise subsection (a) to:

1) add a description of this subsection to reflect that these are common waiver services;

2) reorder the list of common waiver services to match the language used in other waiver programs;

3) change "speech/hearing/language" to "speech/language therapy";

4) change "auditory services" to "audiology services";

5) add employment assistance and supported employment services;

6) change the name of the reimbursement methodology referenced in §355.723 for HCS and TxHmL to "Reimbursement Methodology for Home and Community-Based Services (HCS) and Texas Home Living (TxHmL) Programs"; and

7) change the name of the reimbursement methodology referenced at §355.502 to "Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers."

Revise subsection (b) to include dental services and medical supplies in the reimbursement methodology for requisition fees.

Add new subsection (c) to clarify the current definition of unallowable requisition fee costs and to standardize this language across similar waivers.

Additional changes are proposed throughout the rule to update terms, remove obsolete or incorrect language, and clarify language.

Fiscal Note

Gordon Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amendments and repeal are in effect there

will be no fiscal impact to state government. There is no fiscal impact from the amendments and repeal because any additional costs accruing from the addition of the employment assistance to the CLASS and HCS waivers will be covered within the existing waivers' program budgets. The requisition fees for dental and medical services in the CLASS, HCS, and DBMD waivers, and specialized therapies in the CLASS waiver have already been implemented, and these rules are being revised to reflect that change. Other changes are administrative in nature and have no fiscal impact. The amendments and repeal will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the sections.

Small Business and Micro-business Impact Analysis

Carolyn Pratt, Director of Rate Analysis, has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendments and repeal. The new services reflected in the rules have associated new rates that have been or will be implemented to reimburse for the cost of the new services. Other changes in the proposal are clarifications and therefore do not require any changes in practice or any additional cost to the contracted provider.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with the amendments and repeal. The amendments and repeal will not affect local employment.

Public Benefit

Carolyn Pratt has also determined that for each of the first five years the amendments and repeal are in effect, the expected public benefits are that the rule amendments will add reimbursement methodologies for employment assistance, requisition fees for various services to various waiver program reimbursement methodologies and HCS to the list of programs in the reimbursement methodology for transition assistance services, which will allow reimbursement rates to be determined for these services. Additionally, the rule amendments revising the reimbursement methodologies to reflect the current practices, clarifying current methodologies, adding omitted methodologies, and updating rule references and service names will make the reimbursement methodologies comprehensive and accurate, which will enhance public understanding of the reimbursement methodologies for these various programs.

Takings Impact Assessment

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

Regulatory Analysis

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

Public Comment

Questions about the content of this proposal may be directed to Sarah Hambrick in the HHSC Rate Analysis Department by telephone at (512) 491-1431. Written comments on the proposal may be submitted to Ms. Hambrick by facsimile at (512) 491-1998, by e-mail to sarah.hambrick@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register.*

SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §§355.502, 355.503, 355.505, 355.507, 355.513

Statutory Authority

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

The amendments affect Texas Government Code Chapter 531and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.502. Reimbursement Methodology for Common [~~Professional~~] Services in Home and Community-Based Services Waivers.

(a) General requirements. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction). Common services are those services that are available in multiple home and community-based services (HCBS) waivers. [~~The general principles of cost determination as specified in §355.101 of this title (relating to Introduction) applies to these rules.~~]

(b) Professional services [~~Services~~]. Professional services include nursing services provided by a registered nurse (RN) or a licensed vocational nurse (LVN) (including Adjunct Support and Respite in the Medically Dependent Children Program), physical therapy, occupational therapy, speech/language therapy, nutrition/dietary services [~~(including nutritional services)~~], audiology services [~~(including auditory integration training/auditory enhancement training)~~], and behavioral support services.

(c) Employment services. Employment services include employment assistance and supported employment [~~Professional Services Rates~~].

(d) Rates for professional services, employment services, and in-home respite. The rates for these [~~professional~~] services are calculated in the following manner:

(1) If there is sufficient reliable cost report data from which to determine reimbursements, rates are calculated in the following manner.

(A) An allowable cost per unit of service for each cost report is calculated in accordance with the specific methodology for each HCBS [~~Home and Community-Based Services (HCBS)~~] waiver.

(B) The allowable cost per unit of service for each cost report for all HCBS waivers is combined into an array.

(C) The array of allowable costs per unit of service for all HCBS waivers is weighted by the number of units of service, and the median cost per unit of service is calculated.

(2) If there is not sufficient, reliable cost report data from which to determine reimbursements, reimbursements will be developed by using pro forma costing. This approach involves using historical costs of delivering similar services, where appropriate data are available, and estimating the basic types and costs of products and services necessary to deliver services meeting federal and state requirements.

(3) [~~(d)~~] [~~Specialized nursing rates.~~] Specialized nursing rates will be determined for both RN and LVN services by multiplying the RN and LVN rates [~~determined in subsection (b) of this section~~] by 1.15. The specialized nursing rate is paid when a client requires, as determined by a physician, daily skilled nursing to cleanse, dress, and suction a tracheostomy or daily skilled nursing assistance with ventilator or respirator care. The client must be unable to do self-care and require the assistance of a nurse for the ventilator, respirator, or tracheostomy care.

(e) Transition assistance services. The reimbursement for transition assistance services will be determined as a one-time rate per client based on modeled costs of compensation and other support costs using data from surveys, cost reports, consultation with other professionals in delivering contracted services, or other sources determined appropriate by HHSC.

§355.503. Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs.

(a) General requirements. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction). Providers are [~~Texas Medicaid contracted providers will be~~] reimbursed for waiver services provided to individuals who meet the criteria for alternatives to nursing facility care. Additionally, providers are [~~Texas Medicaid contracted providers will be~~] reimbursed a one-time administrative expense fee for a pre-enrollment assessment of potential waiver participants. The pre-enrollment assessment covers care planning for the participant [~~and is reimbursed by a one-time administrative expense fee which is not included in the waiver services but will be paid from Medicaid administrative funds~~].

(b) Other sources of cost information. If HHSC has determined that there is not sufficient reliable cost report data from which to determine reimbursements and reimbursement ceilings for waiver services, reimbursements and reimbursement ceilings will be developed by using data from surveys; cost report data from other similar programs, consultation with other service providers or professionals experienced in delivering contracted services; and other sources.

(c) Waiver reimbursement determination. Recommended reimbursements are determined in the following manner:

(1) Unit of service reimbursement. Reimbursement for personal assistance services and in-home respite care services, and cost per unit of service for nursing services provided by a registered nurse (RN), nursing services provided by a licensed vocational nurse (LVN), physical therapy, occupational therapy, and speech/language therapy [~~pathology~~] will be determined on a fee-for-service basis in the following manner:

(A) Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report.

(B) Total allowable costs are reduced by the amount of the pre-enrollment expense fee and requisition fee revenues accrued for the reporting period.

(C) Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). The prospective reimbursement period is the period of time that the reimbursement is expected to be in effect.

(D) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or Social Security, Medicare Contributions, Workers' Compensation Insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(E) Allowable administrative and facility costs are allocated or spread to each waiver service cost component on a pro rata basis based on the portion of each waiver service's units of service to the amount of total waiver units of service.

(F) For nursing services provided by an RN, nursing services provided by an LVN, physical therapy, occupational therapy, speech/language therapy [~~pathology~~], and in-home respite care services, an allowable cost per unit of service is calculated for each contracted provider cost report for each service. The allowable cost per unit of service, for each contracted provider cost report is multiplied by 1.044. This adjusted allowable cost per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining rates for these services in accordance with §355.502 of this title (relating to Reimbursement Methodology for Common [~~Professional~~] Services in Home and Community-Based Services Waivers).

(G) For personal assistance services, two cost areas are created:

(i) The attendant cost area includes salaries, wages, benefits, and mileage reimbursement calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(ii) Another attendant cost area is created which includes the other personal attendant services costs not included in subparagraph (G)(i) of this paragraph as determined in subparagraphs (A) - (E) of this paragraph. An allowable cost per unit of service is determined for each contracted provider cost report for the other attendant cost area. The allowable cost per unit of service for each contracted provider cost report are arrayed. The units of service for each contracted provider cost report in the array are summed until the median unit of service is reached. The corresponding expense to the median unit of service is determined and is multiplied by 1.044.

(iii) The attendant cost area and the other attendant cost area are summed to determine the personal assistance services cost per unit of service.

(2) Per day reimbursement.

(A) The reimbursement for Adult Foster Care (AFC) and out-of-home respite care in an AFC home will be determined as

a per day reimbursement using a method based on modeled projected expenses, which are developed [by] using data from surveys,[;] cost report data from other similar programs, consultation with other service providers or professionals experienced in delivering contracted services,[;] and other sources. The room and board payments for AFC Services are not covered in these reimbursements and will be paid to providers from the client's Supplemental Security Income, less a personal needs allowance.

(B) The reimbursement for Assisted Living/Residential Care (AL/RC) will be determined as a per day reimbursement in accordance with §355.509(a) - (c)(2)(F)(iii) of this title (relating to Reimbursement Methodology for Residential Care).

(i) The per day reimbursement for attendant care for each of the six levels of care will be determined[,] based upon client need for attendant care [into six levels of care].

(ii) A total reimbursement amount will be calculated and the proposed reimbursement is equal to the total reimbursement less the client's room and board payments.

(iii) The room and board payment is paid to the provider by the client from the client's Supplemental Security Income (SSI), less a personal needs allowance.

(iv) The reimbursement for out-of-home respite in an AL/RC facility is determined using the same methodology as the reimbursement for AL/RC except that the out-of-home respite rates:

(I) are set at the rate for providers who choose not to participate in the attendant compensation rate enhancement; and

(II) include room and board costs equal to the client's SSI, less a personal needs allowance.

(v) When the SSI is increased or decreased by the Federal Social Security Administration, the reimbursement for AL/RC and out-of-home respite provided in an AL/RC facility will be adjusted in amounts equal to the increase or decrease in SSI received by clients.

(C) The reimbursement for out-of-home respite care provided in a Nursing Facility will be based on the amount determined for the Nursing Facility case mix class into which the CBA participant is classified.

(D) The reimbursement for Personal Care III will be composed of two rate components, one for the direct care cost center and one for the non-direct care cost center.

(i) Direct care costs. The rate component for the direct care cost center will be determined by modeling the cost of the minimum required staffing for the Personal Care III setting, as specified by the Department of Aging and Disability Services, and using staff costs and other statistics from the most recently audited cost reports from providers delivering similar care.

(ii) Non-direct care costs. The rate component for the non-direct care cost center will be equal to the non-attendant portion of the non-apartment assisted living rate per day for non-participants in the Attendant Compensation Rate Enhancement. Providers receiving the Personal Care III rate are not eligible to participate in the Attendant Compensation Rate Enhancement and receive direct care add-on's to the Personal Care III rates.

(3) Emergency Response Services [Monthly reimbursement ceilings]. The reimbursement for Emergency Response Services will be determined as monthly reimbursement ceiling, based on the ceiling amount determined in accordance with §355.510 of this title (relating to Reimbursement Methodology for Emergency Response Services (ERS)). [The reimbursement for Home-Delivered Meals will be determined on a per meal basis, based on the ceiling amount determined in accordance with §355.511 of this title (relating to Reimbursement Methodology for Home-Delivered Meals).]

(4) Requisition fees. Requisition fees are reimbursements paid to the CBA home and community support services contracted providers for their efforts in acquiring adaptive aids, medical supplies, dental services, and minor home modifications for CBA participants. Reimbursement for requisition fees for adaptive aids, medical supplies, dental services, and minor home modifications will vary based on the actual cost of the adaptive aids, medical supplies, dental services, [aid] and minor home modifications [modification]. Reimbursements are determined using a method based on modeled projected expenses, which are developed by using data from surveys; cost report data from similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and/or other sources.

(5) Pre-enrollment expense fee. Reimbursement for pre-enrollment assessment is determined using a method based on modeled projected expenses that are developed by using data from surveys; cost report data from other similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and other sources.

(6) Home-Delivered Meals. The reimbursement for Home-Delivered Meals will be determined on a per meal basis, based on the ceiling amount determined in accordance with §355.511 of this title (relating to Reimbursement Methodology for Home-Delivered Meals).

(7) [(6)] Exceptions to the reimbursement determination methodology. HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(d) Authority to determine reimbursement. The authority to determine reimbursement is specified in §355.101 of this title (relating to Introduction).

(e) Reporting of cost.

(1) Cost reporting guidelines. If HHSC requires a cost report for any waiver service in this program, providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Excused from submission of cost reports. If required by HHSC, all contracted providers must submit a cost report unless the number of days between the date the first Texas Department of Aging and Disability Services (DADS) client received services and the provider's fiscal year end is 30 days or fewer. The provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost-report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any regulatory agency. An AL/RC provider may also be excused from submitting a cost report if the total number of days serving AL/RC or Residential Care residents is 366 or fewer during its fiscal year. Requests to be excused from submitting a cost report must be received by HHSC before the due date of the cost report.

(3) Number of cost reports to be submitted. Contracted providers are required to submit one cost report per legal entity if all contracts under the legal entity participate in the attendant compensation rate enhancement in accordance with §355.112 of this title (relating to Attendant Compensation Rate Enhancement). Contracted providers who operate both contracts that are participating in the attendant compensation rate enhancement program and contracts that are not partic-

ipating in the attendant compensation rate enhancement program must file two separate cost reports per legal entity, one report for the contracts that are participating in the attendant compensation rate enhancement program and one cost report for the contracts that are not participating in the attendant compensation rate enhancement.

(4) Reporting and verification of allowable cost.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursements. HHSC excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers; the purpose is to ensure that the database reflects costs and other information which are necessary for the provision of services, and are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(C) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (B)(i) of this paragraph.

(5) Allowable and unallowable costs. Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs), in addition to the following.

(A) Client room and board expenses are not allowable, except for those related to respite care.

(B) The actual cost of adaptive aids, medical supplies, dental services, and home modifications are not allowable for cost reporting purposes. Allowable labor costs associated with acquiring adaptive aids, medical supplies, dental services, and home modifications should be reported in the cost report. Any item purchased for participants in this program and reimbursed through a voucher payment system is unallowable for cost reporting purposes. Refer to §355.103(17)(K) of this title (relating to Specifications for Allowable and Unallowable Costs).

(f) Reporting revenue. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(g) Reviews and field audits of cost reports. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

§355.505. Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program.

(a) General requirements. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction). Providers are [~~Texas Medicaid contracted providers will be~~] reimbursed for waiver services provided to Medicaid-enrolled [~~eligible~~] persons with related conditions [~~(waiver services)~~]. Additionally, [~~Texas Medicaid contracted~~] providers will be reimbursed a one-time administrative expense fee for a pre-enrollment assessment of potential waiver participants. The pre-enrollment assessment covers care planning for the participant [~~and is reimbursed by a one-time administrative expense fee which is not included in the waiver services but will be paid from Medicaid administrative funds~~].

(b) Reporting of cost.

(1) Providers must follow the cost reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Number of cost reports to be submitted. Contracted providers are required to submit one cost report per legal entity if all contracts under the legal entity participate in the attendant compensation rate enhancement in accordance with §355.112 of this title (relating to Attendant Compensation Rate Enhancement). Contracted providers who operate both contracts that are participating in the attendant compensation rate enhancement program and contracts that are not participating in the attendant compensation rate enhancement program must file two separate cost reports per legal entity, one cost report for the contracts that are participating in the attendant compensation rate enhancement program and one cost report for the contracts that are not participating in the attendant compensation rate enhancement. All legal entities must submit a cost report unless the number of days between the date the legal entity's first Texas Department of Aging and Disability Services (DADS) client received services and the legal entity's fiscal year end is 30 days or fewer.

(3) A provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any governmental entity. Requests to be excused from submitting a cost report must be received by HHSC Rate Analysis before the due date of the cost report.

(c) Waiver reimbursement determination methodology.

(1) Unit of service reimbursement or reimbursement ceiling by unit of service. Reimbursement or reimbursement ceilings for related-conditions waiver services, habilitation, nursing services provided by a registered nurse (RN), nursing services provided by a licensed vocational nurse (LVN), physical therapy, occupational therapy, speech/language therapy [~~pathology~~], behavioral support, auditory integration training/auditory enhancement training (audiology services), nutritional services, employment assistance, supported employment, day activity and health services, and in-home and out-of-home respite care services will be determined on a fee-for-service basis. These services are provided under §1915(c) of the Social Security Act Medicaid waiver for persons with related conditions.

(2) Monthly reimbursement. The reimbursement for case management waiver service will be determined as a monthly reimbursement. This service is provided under the §1915(c) of the Social Security Act Medicaid waiver for persons with related conditions.

(3) Reporting and verification of allowable cost.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursements. HHSC excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers; the purpose is to ensure that the database reflects costs and other information that are necessary for the provision of services and are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(C) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (B)(i) of this paragraph.

(4) Reimbursement determination. Recommended unit of service reimbursements and reimbursement ceilings by unit of service are determined in the following manner:[~~.~~]

(A) Unit of service reimbursement for habilitation, and cost per unit of service for nursing services provided by an RN, nursing services provided by an LVN, physical therapy, occupational therapy, speech/language therapy [~~pathology~~], behavioral support services, auditory integration training/auditory enhancement training (audiology services), [~~and~~] nutritional services, employment assistance, supported employment, and in-home and out-of-home respite care are determined in the following manner:

(i) The total allowable cost for each contracted provider cost report will be determined by analyzing the allowable historical costs reported on the cost report and other pertinent cost survey information.

(ii) The total allowable cost is reduced by the amount of the administrative expense fee and requisition fee revenues accrued for the reporting period.

(iii) Each provider's total allowable cost, excluding depreciation and mortgage interest, is projected from the historical cost reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices).

(iv) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or social security, Medicare contributions, Workers' compensation Insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(v) Allowable administrative and facility costs are allocated or spread to each waiver service cost component on a pro rata basis based on the portion of each waiver service's units of service to the amount of total waiver units of service.

(vi) Each provider's projected total allowable cost is divided by the number of units of service to determine the projected cost per unit of service.

(vii) For nursing services provided by an RN, nursing services provided by an LVN, physical therapy, occupational therapy, speech/language therapy [~~pathology~~], in-home respite care, behavioral support services, auditory integration training/auditory enhancement training (audiology services), [~~and~~] nutritional services, employment assistance, and supported employment, the projected cost per unit of service, for each provider is multiplied by 1.044. This adjusted allowable cost per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining rates for these services in accordance with §355.502 of this title (relating to Reimbursement Methodology for Common [~~Professional~~] Services in Home and Community-Based Services Waivers).

(viii) For habilitation services two cost areas are created:

(I) The attendant cost area includes salaries, wages, benefits, and mileage reimbursement calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(II) Another attendant cost area is created which includes the other habilitation services costs not included in subclause (I) of this clause as determined in clauses (i) - (v) of this subparagraph to create an other attendant cost area. An allowable cost per unit of service is calculated for the other habilitation cost area. The allowable costs per unit of service for each contracted provider cost report are arrayed and weighted by the number of units of service, and the median cost per unit of service is calculated. The median cost per unit of service is multiplied by 1.044.

(III) The attendant cost area and the other attendant cost area are summed to determine the habilitation attendant cost per unit of service.

(ix) For out-of-home respite care, the allowable costs per unit of service are calculated as determined in clauses (i) - (vi) of this subparagraph. The allowable costs per unit of service for each contracted provider cost report are multiplied by 1.044. The costs per unit of service are then arrayed and weighted by the number of units of service, and the median cost per unit of service is calculated.

[~~(B) Unit of service reimbursement and reimbursement ceilings for respite care services are determined in the following manner:~~]

[~~(i) For in-home respite care services, a unit of service reimbursement is determined using a method based on modeled projected expenses which are developed using data from surveys, cost report data from other similar programs or services, professionals' experience in delivering similar type services, and other relevant sources.~~]

[~~(ii) For out-of-home respite care services, a unit of service reimbursement ceiling is determined using a method based on modeled projected expenses which are developed using data from surveys, cost report data from other similar programs or services, professionals' experience in delivering similar type services, and other relevant sources.~~]

(B) [~~(C)~~] The monthly reimbursement for case management services is determined in the following manner:

(i) Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report and other pertinent cost survey information.

(ii) Total allowable costs are reduced by the amount of administrative expense fee revenues reported.

(iii) Each provider's total allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices).

(iv) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or social security, Medicare contributions, Workers' compensation Insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(v) Each provider's projected total allowable costs are divided by the number of monthly units of service to determine the projected cost per client month of service.

(vi) Each provider's projected cost per client month of service is arrayed from low to high and weighted by the number of units of service and the median cost per client month of service is calculated.

(vii) The median projected cost per client month of service is multiplied by 1.044.

(C) [~~(D)~~] The unit of service reimbursement for day activity and health services is determined in accordance with §355.6907 (Relating to Reimbursement Methodology for Day Activity and Health Services).

(D) [~~(E)~~] HHSC also adjusts reimbursement according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs) if new legislation, regulations, or economic factors affect costs.

(5) The reimbursement for support family services and continued family services will be determined as a per day rate using a method based on modeled costs which are developed by using data from surveys, cost report data from other similar programs, payment rates from other similar programs, consultation with other service providers and/or professionals experienced in delivering contracted services, or other sources as determined appropriate by HHSC. The per day rate will have two parts, one part for the child placing agency and one part for the support family.

(d) Administrative expense fee determination methodology.

(1) One-time administrative expense fee. Reimbursement for the pre-enrollment assessment and care planning process required to determine eligibility for the waiver program will be provided as a one-time administrative expense fee.

(2) Administrative expense fee determination process. The recommended administrative expense fee is determined using a method based on modeled projected expenses which are developed using data from surveys, cost report data from other similar programs or services, professionals' experience in delivering similar services, and other relevant sources.

(e) Requisition fees. Requisition fees are reimbursements paid to the CLASS direct service agency contracted providers for their efforts in acquiring adaptive aids, medical supplies, dental services, specialized therapies, and minor home modifications for CLASS participants. Reimbursement for requisition fees for adaptive aids, medical supplies, dental services, specialized therapies, and minor home modifications will vary based on the actual cost of the adaptive aids, medical supplies, dental services, specialized therapies, [~~aid~~] and minor home modifications [~~modification~~]. Reimbursements are determined using a method based on modeled projected expenses which are developed by using data from surveys; cost report data from similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and/or other sources.

(f) Allowable and unallowable costs.

(1) Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs) as well as the following provisions.

(2) Participant room and board expenses are not allowable, except for those related to respite care.

(3) The actual cost of adaptive aids, medical supplies, dental services, and home modifications is not allowable for cost reporting purposes. Allowable labor costs associated with acquiring adaptive aids, medical supplies, dental services, and home modifications should be reported in the cost report. Any item purchased for participants in this program and reimbursed through a voucher payment system is unallowable. Refer to §355.103(b)(17)(K) of this title (relating to Specifications for Allowable and Unallowable Costs).

(g) Authority to determine reimbursement. The authority to determine reimbursement is specified in §355.101 of this title (relating to Introduction).

(h) Reporting revenue. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(i) Reviews and field audits of cost reports. Desk reviews or field audits are performed on all contracted providers' cost reports. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(j) Reporting requirements. The program director's full salary is to be reported on the line item of the cost report designated for the director.

§355.507. Reimbursement Methodology for the Medically Dependent Children Program.

(a) The Texas Health and Human Services Commission (HHSC) determines payment rates for qualified contracted providers for the provision of services in the Medically Dependent Children Program (MDCP). HHSC applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(b) The rates for nursing services provided by a registered nurse (RN) or licensed vocational nurse (LVN) will be determined in accordance with §355.502 of this title (Relating to Reimbursement Methodology for Common [~~Professional~~] Services in Home and Community-Based Services Waivers).

(c) The rates for personal assistance services (PAS) without delegation of the service by an RN will be based upon the Community-Based Alternatives (CBA) approved rates for PAS in accordance with §355.503 of this title (relating to Reimbursement Methodology for the Community-Based Alternatives Waiver Program) and §355.112(l) of this title (relating to Attendant Compensation Rate Enhancement).

The rates for PAS with delegation of the service by an RN will be based upon the Community-Based Alternatives (CBA) approved rates for PAS in accordance with §355.503 of this title (relating to Reimbursement Methodology for the Community-Based Alternatives Waiver Program) and the add-on payment for the highest level of attendant compensation rate enhancement in accordance with §355.112(n) of this title (relating to Attendant Compensation Rate Enhancement).

(d) The rate ceiling for camp services will be equivalent to the Community Living Assistance and Support Services direct service agency (CLASS DSA) out-of-home respite rate. Actual payments for this service will be the lesser of the rate ceiling or the actual cost of the camp.

(e) Facility-based respite care rates are determined on a 24-hour basis. The rates for facility-based respite care are calculated at 77 percent of the daily nursing facility base rates by level of care. The base rates used in this calculation do not include nursing facility rate add-ons.

(f) The following sections of this title will apply to cost reports or surveys required to obtain the necessary information to determine new payment rates: §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs), §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs), §355.104 of this title (relating to Revenues), §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures), §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), §355.107 of this title (relating to Notification of Exclusions and Adjustments), §355.108 of this title (relating to Determination of Inflation Indices), §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs), §355.110 of this title (relating to Informal Reviews and Formal Appeals), and §355.111 of this title (relating to Administrative Contract Violations).

§355.513. Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program.

(a) General information. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction). Providers are reimbursed [~~HHSC will reimburse qualified Texas Medicaid contracted providers~~] for waiver services provided to individuals who are deaf-blind with multiple disabilities.

(b) Other sources of cost information. If HHSC has determined that there is not sufficient reliable cost report data from which to set reimbursements and reimbursement ceilings for waiver services, reimbursements and reimbursement ceilings will be developed by using rates for similar services from other Medicaid programs; data from surveys; cost report data from other similar programs; consultation with other service providers or professionals experienced in delivering contracted services; and other sources.

(c) Waiver rate determination methodology. If HHSC deems it appropriate to require contracted providers to submit a cost report, recommended reimbursements for waiver services will be determined on a fee-for-service basis in the following manner for each of the services provided:

(1) Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report.

(2) Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). The prospective reimbursement period is the period of time that the reimbursement is expected to be in effect.

(3) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or Social Security, Medicare Contributions, Workers' Compensation Insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(4) Allowable administrative and overall facility/operations costs are allocated or spread to each waiver service cost component on a pro rata basis based on the portion of each waiver service's service units reported to the amount of total waiver service units reported. Service-specific facility and operations costs for [~~out-of-home assisted living,~~] out-of-home respite[~~,~~] and day habilitation [~~day~~] services will be directly charged to the specific waiver service.

(5) For nursing services provided by a registered nurse (RN), nursing services provided by a licensed vocational nurse (LVN), physical therapy, occupational therapy, speech/language therapy, behavioral support services, audiology services, dietary services, employment assistance, and supported employment [~~professional services, including physical therapy, occupational therapy, speech/hearing/language, case management, nursing services provided by an RN, nursing services provided by an LVN, dietary services, auditory services and behavioral support services~~], an allowable cost per unit of service is calculated for each contracted provider cost report in accordance with paragraphs (1) - (4) of this subsection. The allowable costs per unit of service for each contracted provider cost report is multiplied by 1.044. This adjusted allowable costs per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining rates for these services in accordance with §355.502 of this title (relating to Reimbursement Methodology for Common [~~Professional~~] Services in Home and Community-Based Services Waivers).

(6) [~~Requisition fees.~~] Requisition fees are reimbursements paid to the Deaf Blind with Multiple Disabilities (DBMD) Waiver contracted providers for their efforts in acquiring adaptive aids, medical supplies, dental services, and minor home modifications for DBMD participants. Reimbursement for adaptive aids, medical supplies, dental services, and minor home modifications will vary based on the actual cost of the adaptive aid, medical supply, dental service, and minor home modification. Reimbursements are determined using a method based on modeled projected expenses, which are developed by using data from surveys; cost report data from similar programs; consultation with other service providers or professionals experienced in delivering contracted services; or other sources.

(7) For day habilitation [~~day~~], residential habilitation [~~(less than 24-hour and 24-hour residential habilitation), assisted living (24-hour supervision and less than 24-hour supervision)~~], chore, and intervener (excluding Interveners I, II and III) services, two cost areas are created:

(A) The attendant cost area, which includes salaries, wages, benefits, and mileage reimbursement calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(B) An "other direct care" cost area, which includes costs for services not included in subparagraph (A) of this paragraph as determined in paragraphs (1) - (4) of this subsection. An allowable

cost per unit of service is determined for each contracted provider cost report for the other direct care cost area. The allowable costs per unit of service for each contracted provider cost report are arrayed. The units of service for each contracted provider cost report in the array are summed until the median unit of service is reached. The corresponding expense to the median unit of service is determined and is multiplied by 1.044.

(C) The attendant cost area and the other direct care cost area are summed to determine the cost per unit of service.

[~~(D) The room and board payments for waiver clients receiving assisted living services are covered in the reimbursement for these services and will be paid to providers from the client's Supplemental Security Income, less a personal needs allowance.~~]

(8) For Interveners I, II and III, payment rates are developed based on rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma approach in accordance with §355.105(h) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures). Interveners I, II and III are not considered attendants for purposes of the Attendant Compensation Rate Enhancement described in §355.112 of this title and providers are not eligible to receive direct care add-ons to the Intervener [~~Intervenor~~] I, II or III rates.

(9) Assisted living services payment rates are determined using a pro forma approach in accordance with §355.105(h) of this title. The rates are adjusted periodically for inflation. The room and board payments for waiver clients receiving assisted living services are covered in the reimbursement for these services and will be paid to providers from the client's Supplemental Security Income, less a personal needs allowance. [~~The lifetime ceiling per client for minor home modifications is determined from sources other than cost reports for this program. The annual ceiling per client for adaptive aids is determined from sources other than cost reports for this program.~~]

(10) Pre-enrollment assessment services and [~~are based on the hourly~~] case management services payment rates are determined by modeling the salary for a Case Manager staff position. This rate is periodically updated for inflation [~~reimbursement~~].

(11) The orientation and mobility services payment rate is determined by modeling the salary for an Orientation and Mobility Specialist staff position. This rate is updated periodically for inflation.

(12) [~~(11)~~] HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(d) Authority to determine reimbursement. The authority to determine reimbursement is specified in §355.101 of this title.

(e) Reporting of cost.

(1) Cost-reporting guidelines. If HHSC requires a cost report for any waiver service in this program, providers must follow the cost-reporting guidelines as specified in §355.105 of this title.

(2) Excused from submission of cost reports. If required by HHSC, all contracted providers must submit a cost report unless the number of days between the date the first Department of Aging and Disabilities Services (DADS) client received services and the provider's fiscal year end is 30 days or fewer. The provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost-report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any regulatory agency. A DBMD Waiver contracted provider may also be excused from submitting a cost report if the total number of DBMD clients served during the reporting period is three or less. Requests to be excused from submitting a cost report must be received by HHSC's Rate Analysis Department before the due date of the cost report.

(3) Reporting and verification of allowable cost.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost-report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursements. HHSC excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers, in order to ensure the database reflects costs and other information necessary for the provision of services and is consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(C) Material pertinent to proposed reimbursements and made available to the public shall include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (B) of this paragraph.

(4) Allowable and unallowable costs. Providers must follow the guidelines specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs and Specifications for Allowable and Unallowable Costs), in determining whether a cost is allowable or unallowable. In addition, providers must adhere to the following principles:

(A) Client room and board expenses are not allowable, except for those related to respite care.

(B) The actual cost of adaptive aids, medical supplies, dental services, and minor home modifications is not allowable for cost-reporting purposes. Allowable labor costs associated with acquiring adaptive aids, medical supplies, dental services, and home modifications should be reported in the cost report. Any item purchased for participants in this program and reimbursed through a voucher payment system is unallowable. Refer to §355.103(b)(17)(K) of this title.

(f) Reporting revenue. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(g) Reviews and field audits of cost reports. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of field audits are determined by HHSC staff to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

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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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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1 TAC §355.508

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

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

The repeal affects Texas Government Code Chapter 531and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.508. Reimbursement Methodology for Transition Assistance 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 F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

1 TAC §355.725

Statutory Authority

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

The amendment affects Texas Government Code Chapter 531and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.725. Reimbursement Methodology for Common Waiver Services in [~~Professional Services and Requisition Fees for~~] Home and Community-based Services (HCS) and Texas Home Living (TxHmL).

(a) Common waiver services. For nursing services provided by a registered nurse (RN), nursing services provided by a licensed vocational nurse (LVN), physical therapy, occupational therapy, speech/language therapy, behavioral support services, audiology services, dietary services, employment assistance, and supported employment [~~professional services, including physical therapy, occupational therapy, speech/hearing/language, nursing services provided by a registered nurse, nursing services provided by an licensed vocational nurse, auditory services, dietary services, and behavioral support services~~], an allowable cost per unit of service is calculated for each contracted provider in accordance with §355.723 of this title (relating to Reimbursement Methodology for Home and Community-Based Services (HCS) and Texas Home Living (TxHmL) Programs). This adjusted allowable cost per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining rates for these services in accordance with §355.502 of this title (relating to Reimbursement Methodology for Common [~~Professional~~] Services in Home and Community-Based Services Waivers).

(b) Requisition fees. Requisition fees are reimbursements paid to the HCS and TxHmL contracted providers for their efforts in acquiring adaptive aids, medical supplies, dental services, and minor home modifications for HCS and TxHmL participants. Requisition fee reimbursement for adaptive aids, medical supplies, dental services, and minor home modifications will vary based on the actual cost of the adaptive aid, medical supply, dental service, and minor home modification. Reimbursements are determined using a method based on modeled projected expenses which are developed by using data from surveys; cost report data from similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and/or other sources.

(c) Requisition fees unallowable costs. The actual cost of adaptive aids, medical supplies, dental services, and home modifications is not allowable for cost reporting purposes. Allowable labor costs associated with acquiring adaptive aids, medical supplies, dental services, and home modifications should be reported in the cost report. Any item purchased for participants in this program and reimbursed through a voucher payment system is unallowable. Refer to §355.103(b)(17)(K) of this title (relating to Specifications for Allowable and Unallowable Costs).

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. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.723, concerning Reimbursement Methodology for Home and Community-Based Services (HCS), and the repeal of §355.791, concerning Reimbursement Methodology for the Texas Home Living (TxHmL) Program.

Background and Justification

An amendment is proposed to §355.723, Reimbursement Methodology for Home and Community-Based Services (HCS), to add the TxHmL program into this rule. Effective September 1, 2009, the rates for HCS and TxHmL are the same for the same services in both programs. Before that date, the rates were not the same for the same services. Because these rates are now the same, a single reimbursement methodology is needed to determine the rates for both programs. The current rule for TxHmL at §355.791, Reimbursement Methodology for the Texas Home Living (TxHmL) Program, will be repealed.

In addition, two subparagraphs were added to §355.723(d)(5) to reflect two services, employment assistance and dietary, provided in these programs that are not reflected in the current rule.

Section-by-Section Summary

The proposed repeal of §355.791 will allow for the development of a single reimbursement methodology for the HCS and TxHmL programs by incorporating TxHmL into the reimbursement methodology for HCS.

The proposed changes to §355.723 are as follows:

Revise subsection (a) to incorporate the TxHmL program.

Revise subsection (b) to incorporate the TxHmL program and to indicate that the TxHmL day habilitation rate will be equal to level of need five day habilitation rate. That rate will apply until the Department of Aging and Disability Services is able to distinguish TxHmL day habilitation levels of need in its billing system, at which time the rule will be amended again to show the TxHmL day habilitation rate will vary by consumer level of need.

Revise subsection (c) to incorporate the TxHmL program.

Revise subsection (d)(1) and (5), to incorporate the TxHmL program.

Revise subsection (d)(5)(A) to add the qualifier "in HCS" to the description of Supervised Living and Residential Support Services.

Revise subsection (d)(5)(B) to add the qualifier "in HCS and TxHmL" to the description of Day Habilitation.

Revise subsection (d)(5)(C) to add the qualifier "in HCS" to the description of Foster/Companion Care.

Revise subsection (d)(5)(D) to add the qualifier "in HCS" to the description of Supported Home Living and to add Community Support Services in TxHmL.

Revise subsection (d)(5)(E) to add the qualifier "in HCS and TxHmL" to the description of Respite.

Revise subsection (d)(5)(F) to add the qualifier "in HCS and TxHmL" to the description of Supported Employment.

Revise subsection (d)(5)(G) to add the qualifier "in HCS and TxHmL" to the description of Behavioral Support.

Revise subsection (d)(5)(H) to add the qualifier "in HCS and TxHmL" to the description of Physical Therapy, Occupational Therapy, Speech Therapy and Audiology.

Revise subsection (d)(5)(I) to add the qualifier "in HCS" to the description of Social Work.

Revise subsection (d)(5)(J) to add the qualifier "in HCS and TxHmL" to the description of Nursing.

Add new subsection (d)(5)(K) which indicates that projected weighted units of service for Employment Assistance equal projected Employment Assistance units of service times a weight of 0.25.

Add new subsection (d)(5)(L) which indicates that projected weighted units of service for Dietary equal projected Dietary units of service times a weight of 0.18.

Revise subsection (d)(6) to reflect the addition of subparagraphs (K) and (L) to subsection (d)(5).

Revise subsection (d)(9) to incorporate TxHmL.

Fiscal Note

Gordon Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amendment and repeal are in effect, there is no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small and Micro-business Impact Analysis

Carolyn Pratt, Director of Rate Analysis, has determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering the amendment and repeal. The implementation of the proposed rule amendment and repeal does not require any changes in practice or any additional cost to the contracted provider.

It is not anticipated that there will be any economic cost to persons who are required to comply with this amendment and repeal. The amendment and repeal will not affect local employment.

Public Benefit

Carolyn Pratt has also determined that for each of the first five years the amendment and repeal are in effect, the expected public benefit of the amendment and the repeal is that the HCS and TxHML reimbursement rules will be combined, thus eliminating duplication and possible confusion.

Regulatory Analysis

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

specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Pam McDonald, Director of Rate Analysis for Long Term Services and Supports, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax to (512) 491-1998; or by e-mail to pam.mcdonald@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

1 TAC §355.723

Statutory Authority

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

The amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.723. Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs [~~(HCS)~~].

(a) Prospective payment rates. HHSC sets payment rates to be paid prospectively to Home and Community-based Services (HCS) and Texas Home Living (TxHmL) [~~HCS~~] providers.

(b) Levels of need.

(1) Variable rates. Rates vary by level of need for the following services: Residential Support Services, Supervised Living, Foster/Companion Care, and HCS Day Habilitation [~~residential support, supervised living, HCS foster/companion care, and day habilitation~~].

(2) Non-variable rates. Rates do not vary by level of need for the following services: Supported Home Living, Community Support Services, Supported Employment, Employment Assistance, Respite, RN, LVN, Dietary, Behavioral Support, Physical Therapy, Occupational Therapy, Speech Therapy, Audiology, and Social Work. Rates for TxHmL Day Habilitation will be equal to HCS level of need five Day Habilitation rates [~~any other HCS service~~].

(c) Recommended rates. The recommended modeled rates are determined for each HCS and TxHmL service listed in subsection (b)(1) - (2) of this section by type and, for services listed in subsection (b)(1) of this section, by level of need to include the following cost components: direct care worker staffing costs (wages, benefits, modeled staffing ratios for direct care workers, direct care trainers and job coaches), other direct service staffing costs (wages for direct care supervisors, benefits, modeled staffing ratios); facility costs (for respite care only); room and board costs for overnight, out-of-home respite care; administration and operation costs; and professional consultation and program support costs. The determination of all components except for the direct care worker staffing costs component is based on cost reports submitted by HCS and TxHmL providers in accordance with §355.722 of this subchapter (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers). The determination of the direct care worker staffing costs component is calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(d) Administration and operation cost component. The administration and operation cost component included in the recommended rates [~~rate~~] described in subsection (c) of this section for each HCS and TxHmL service type is determined as follows.

(1) Step 1. Determine total projected administration and operation costs and projected units of service by service type using cost reports submitted by HCS and TxHmL providers in accordance with §355.722 of this subchapter.

(2) Step 2. Determine the foster/companion care coordinator component of the foster/companion care rate as follows. For fiscal years 2010 through 2013, this component will be modeled using the weighted average foster/companion care coordinator wage as reported on the most recently available, reliable audited HCS cost report database plus 10.25 percent for payroll taxes and benefits inflated to the rate period and a consumer to foster/companion care coordinator ratio of 1:15. For fiscal year 2014 and thereafter, this component will be determined by summing total reported foster/companion care coordinator wages and allocated payroll taxes and benefits from the most recently available audited cost report, inflating those costs to the rate period and dividing the resulting product by the total number of foster care units of service reported on that cost report.

(3) Step 3. Determine total foster/companion care coordinator dollars as follows. Multiply the foster/companion care coordinator component of the foster/companion care rate from paragraph (2) of this subsection by the total number of foster care units of service reported on the most recently available, reliable audited HCS cost report database.

(4) Step 4. Determine total projected administration and operation costs after offsetting total foster/companion care coordinator dollars as follows. Subtract the total foster/companion care coordinator dollars from paragraph (3) of this subsection from the total projected administration and operation costs from paragraph (1) of this subsection.

(5) Step 5. Determine projected weighted units of service for each HCS and TxHmL service type as follows:

(A) Supervised Living and Residential Support Services in HCS. Projected weighted units of service for Supervised Living and Residential Support Services equal projected Supervised Living and Residential Support units of service times a weight of 1.00;

(B) Day Habilitation in HCS and TxHmL. Projected weighted units of service for Day Habilitation equal projected Day Habilitation units of service times a weight of 0.25;

(C) Foster/Companion Care in HCS. Projected weighted units of service for Foster/Companion Care equal projected Foster/Companion Care units of service times a weight of 0.50;

(D) Supported Home Living in HCS and Community Support Services in TxHmL. Projected weighted units of service for Supported Home Living equal projected Supported Home Living units of service times a weight of 0.30;

(E) Respite in HCS and TxHmL. Projected weighted units of service for Respite equal projected Respite units of service times a weight of 0.20;

(F) Supported Employment in HCS and TxHmL. Projected weighted units of service for Supported Employment equal projected Supported Employment units of service times a weight of 0.25;

(G) Behavioral Support in HCS and TxHmL. Projected weighted units of service for Behavioral Support equal projected Behavioral Support units of service times a weight of 0.18;

(H) Physical Therapy, Occupational Therapy, Speech Therapy and Audiology in HCS and TxHmL. Projected weighted units of service for Physical Therapy, Occupational Therapy, Speech Therapy and Audiology equal projected Physical Therapy, Occupational Therapy, Speech Therapy and Audiology units of service times a weight of 0.18;

(I) Social Work in HCS. Projected weighted units of service for Social Work equal projected Social Work units of service times a weight of 0.18;

(J) Nursing in HCS and TxHmL. Projected weighted units of service for Nursing equal projected Nursing units of service times a weight of 0.18.

(K) Employment Assistance in HCS and TxHmL. Projected weighted units of service for Employment Assistance equal projected Employment Assistance units of service times a weight of 0.25.

(L) Dietary in HCS and TxHmL. Projected weighted units of service for Dietary equal projected Dietary units of service times a weight of 0.18.

(6) Step 6. Calculate total projected weighted units of service by summing the projected weighted units of service from paragraph (5)(A) - (L) [~~(J)~~] of this subsection.

(7) Step 7. Calculate the percent of total administration and operation costs to be allocated to the service type by dividing the projected weighted units for the service type from paragraph (5) of this subsection by the total projected weighted units of service from paragraph (6) of this subsection.

(8) Step 8. Calculate the total administration and operation cost to be allocated to that service type by multiplying the percent of total administration and operation costs allocated to the service type from paragraph (7) of this subsection by the total administration and operation costs after offsetting total foster/companion care coordinator dollars from paragraph (4) of this subsection.

(9) Step 9. Calculate the administration and operation cost component per unit of service for each HCS and TxHmL service type by dividing the total administration and operation cost to be allocated to that service type from paragraph (8) of this subsection by the projected units of service for that service type from paragraph (1) of this subsection.

(e) Refinement and adjustment. Refinement/adjustment of the cost components and model assumptions will be considered, as appropriate, by HHSC.

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 April 4, 2011.

TRD-201101311
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 15, 2011
For further information, please call: (512) 424-6900

♦ ♦ ♦

1 TAC §355.791

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

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

The repeal affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.791. Reimbursement Methodology for the Texas Home Living (TxHmL) Program.

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

Filed with the Office of the Secretary of State on April 4, 2011.

TRD-201101312
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 15, 2011
For further information, please call: (512) 424-6900

♦ ♦ ♦

1 TAC §355.746

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.746, concerning Reimbursement Methodology for Mental Retardation (MR) Service Coordination.

Background and Justification

The Centers for Medicare and Medicaid Services (CMS) informed HHSC that the current monthly unit of service for Mental Retardation Service Coordination was not acceptable and that it would need to be changed. HHSC proposes to amend §355.746 to implement a prospective uniform statewide reimbursement rate methodology by eliminating the monthly unit of service and replacing it with an encounter unit of service methodology.

The amendment defines two types of encounters. The first type of encounter is a monthly comprehensive face-to-face contact with the client and the second is a follow-up encounter. The follow-up encounter is a face-to-face, telephone, or telemedicine contact with either the client or collateral individual. The follow-up encounter is limited to three follow-up encounters per provider per calendar month for each comprehensive encounter that has occurred within the calendar month. CMS has indicated that an encounter unit of service is acceptable.

There is no fiscal impact to the State as a result of this rule proposal because the new encounter rates developed under this methodology will be modeled using the current expenditures for delivering this service with the goal of maintaining current expenditures. The providers of this service are Mental Retardation Authorities, which are governmental entities recognized by the State.

Section-by-Section Summary

Proposed §355.746(a)(2) adds language that describes the type of service provided and establishes the Department of Aging and Disability Services as the agency responsible for determining program eligibility. The amendment also removes information stated in agency program rules that are not pertinent to the reimbursement methodology.

Proposed §355.746(a)(3) adds a definition for "collateral" as used in this section.

Proposed §355.746(a)(4) removes language "A monthly face to face billable unit" and establishes two prospective statewide encounter rates (comprehensive and follow-up) in new subparagraphs (A) and (B).

The amendment removes the definition of reconciled rates from §355.746(a)(4).

Proposed §355.746(b) removes current methodology provisions referring to the unit of service being a monthly unit of service. Current subsection (c) becomes subsection (b) and defines the new rate methodology.

Proposed §355.746(b)(1) describes the reimbursement methodology for determining initial rates effective September 1, 2011, and eliminates language describing the rate methodology prior to September 1, 2011.

Proposed §355.746(b)(2) describes the reimbursement methodology for determining rates after September 1, 2011 and eliminates language regarding method for cost determination which is contained in the cost determination process rules that are referenced in the new subsection (c).

Proposed §355.746(c) describes the cost reporting process and references the cost determination process rules that govern cost reporting and adjustments to reported costs.

Subsections (d) - (f) are deleted to eliminate language regarding reporting of cost, desk reviews and field audits, and access to records, which are contained in the cost determination process rules that are referenced in the new subsection (c).

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect there is no fiscal impact to the state or local governments. There is no fiscal impact to the state government as a result of this rule proposal because the new encounter rates developed under this methodology will be modeled using the current expenditures for delivering this service with the goal of maintaining current expenditures.

Small and Micro-business Impact Analysis

Carolyn Pratt, Director of Rate Analysis, has determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering the proposed section. Even though providers will be required to alter their current billing practices as a result of this rule, providers should not lose funding as a result of this change. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Public Benefit

Ms. Pratt has also determined that for each of the first five years the amendment is in effect, the expected public benefit of the amendment is that the new reimbursement methodology for this service will be defined. The public will also benefit because the rule amendment will provide consistency in the cost reporting rules with other HHSC programs that submit cost reports.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Yvonne Moorad, Senior Rate Analyst, Acute Care Services, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax to (512) 491-1998; or by e-mail to Yvonne.Moorad@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

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

The amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.746. Reimbursement Methodology for Mental Retardation [(MR)] Service Coordination.

(a) Definitions. The following words and terms, when used in this section [shall] have the following meanings, unless the context clearly indicates otherwise.

(1) Allowable costs--Those expenses that are reasonable and necessary costs in the normal conduct of operations relating to case management services as defined in §355.102(f)(1) and (2) of this title (relating to General Principles of Allowable and Unallowable Costs).

(2) Provider--An entity delivering service coordination to Medicaid-enrolled individuals according to program rules established by Department of Aging and Disability Services (DADS). [The mental retardation authority (MRA) which, pursuant to Texas Health and Safety Code, §531.002(11), the Texas Health and Human Services Commission (HHSC) has delegated its authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of mental retardation services to persons with mental retardation in the most appropriate and available setting to meet individual needs in one or more local service areas.]

(3) Collateral--An actively involved person as defined in 40 TAC §2.553(1) (relating to Definitions).

(4) [(3)] Unit of Service--Two statewide encounter rates are established for Mental Retardation Service Coordination services. The encounter unit of service is established as follows: [A monthly face-to-face billable unit.]

(A) Comprehensive encounter is a face-to-face contact with the client based on an average time of 45 minutes per contact. The comprehensive encounter is limited to one billable encounter per client per calendar month.

(B) Follow-up encounter is a face-to-face, telephone, or telemedicine contact that involves interface with the client or collateral and is based on an average time of 15 minutes per contact. The follow-up encounter is limited to three follow-up encounters per provider per calendar month for each comprehensive encounter that has occurred within the calendar month. The follow-up encounter does not have to be provided to the client for whom the comprehensive encounter was provided.

[(4) Reconciled Rates--The allowable cost reconciled to the billable units.]

[(b) Reimbursement. Qualified providers are reimbursed a monthly uniform statewide rate for service coordination provided to Medicaid-eligible individuals.]

(b) [(c)] Rate methodology.

(1) Initial rates effective September 1, 2011. The initial rates will be determined by summing the total agency expenditures for each type of service coordination service for the most recent cost-settled fiscal year, and dividing that sum by the estimated total number of units of service by type of service for the fiscal year. The total cost to provide service coordination services includes both the interim rates paid and any adjustments made to the interim rates such as additional payments or recoupments. [Initial rate. The initial rate effective June 1, 2010, will be determined by analyzing the combined costs from two sources:]

[(A) the reconciled rates paid to providers for services delivered under the MR Service Coordination program prior to June 1, 2010; and]

[(B) the legislative appropriations designated to provide case management services for Home and Community-Based Services clients as detailed in Special Provisions Relating To All Health and Human Services Agencies, Section 48 Contingency Appropriation for the Reshaping of the System for Providing Services to Individuals with Developmental Disabilities.]

(2) Cost-report based rates. After the Health and Human Services Commission (HHSC) [Rates determined for effective dates after June 1, 2010. At such time as HHSC] determines that cost data collected as described in subsection (c) [(d)] of this section is reliable and sufficient to support development of a cost-report based rate, HHSC will develop statewide reimbursement rates using that [will be developed based on cost report] data to replace the initial rates as follows [submitted by providers in the following manner]:

(A) Project each [Each] provider's total allowable costs per type of service [are analyzed and projected] from the historical cost reporting period to the prospective reimbursement period using inflation factors according to §355.108 of this title (relating to Determination of Inflation Indices) to arrive at the projected cost per type of service.

(B) For each provider, divide the [Each provider's] projected cost per type of service, determined in [from] subparagraph (A) of this paragraph, [is divided] by the provider's total units of service per type of service delivered during the historical cost reporting period, to arrive at the provider's [determine the] projected cost per unit of service for each type of service; and [.]

(C) For each type of service: [The median provider cost per unit of service is then calculated as follows: The allowable costs per unit of service for each service for each contracted provider are arrayed from low to high. The units of service for each contracted provider in the array are summed until the median unit of service is reached. The corresponding expense to the median unit of service is the proposed rate.]

(i) Arrange all providers' projected cost per unit of service in an array from low to high, with the corresponding total number of units of service for each provider;

(ii) Sum the total number of units of service for each provider in the array progressively, from the lowest projected cost per unit to the highest, to create a running total;

(iii) Divide the total number of units of service by two;

(iv) Identify the value, from the running total sums calculated in clause (ii) of this subparagraph, that is closest to the result in clause (iii) of this subparagraph; and

(v) Identify the cost per unit of service that corresponds to the value identified in clause (iv) of this subparagraph, to arrive at the recommended rate for that service.

[(3) Rates are determined according to §355.702 of this title (relating to Method for Cost Determination). The Health and Human Services Commission (HHSC) may also adjust reimbursement if new legislation, regulations, or economic factors affect costs, as described in §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).]

(c) Reporting of costs. Service Coordination providers must submit cost report data according to HHSC's specifications.

(1) Exceptions. All Service Coordination providers must submit a cost report unless:

(A) the number of days between the date the first client received services and the fiscal year end is 30 days or fewer; or

(B) if circumstances beyond the control of the provider make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any governmental entity. To be excused from submitting a cost report under this subparagraph, the HHSC Rate Analysis Department must receive the request before the due date of the cost report.

(2) Additional requirements. In addition to following the requirements of this section, the provider must follow the cost reporting guidelines described in: §355.101 of this title (relating to Introduction); §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs); §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs); §355.104 of this title (relating to Revenues); §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures); §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports); §355.107 of this title (relating to Notification of Exclusions and Adjustments); §355.108 of this title (relating to Determination of Inflation Indices); §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs); §355.110 of this title (relating to Informal Reviews and Formal Appeals); and §355.111 of this title (relating to Administrative Contract Violation).

(3) Allowable costs. Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended rates.

(4) Unallowable costs. To ensure that the database reflects costs and other information that are necessary for the provision of services and is consistent with federal and state regulations, HHSC excludes from rate determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers. Individual provider cost reports may not be included in the database used for reimbursement determination if:

(A) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(B) an auditor determines that reported costs are not verifiable.

[~~(d) Reporting of costs. Each provider must submit financial and statistical information in a cost report. A survey may be developed and used to gather additional or specific information.~~]

[~~(1) Cost reporting guidelines Except for the provision defining the cost report year, Providers must follow the cost-reporting guidelines as specified in §355.702 of this title.~~]

[~~(2) Number of cost reports to be submitted. Contracted providers are required to submit one cost report per provider per federal fiscal year.~~]

[~~(3) Reporting and verification of allowable cost.~~]

[~~(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended rates. To ensure that the database reflects costs and other information which are necessary for the provision of services and is consistent with federal and state regulations, HHSC excludes from rate determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers.~~]

[~~(B) Individual provider cost reports may not be included in the database used for reimbursement determination if:~~]

[~~*(i)* there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or~~]

[~~*(ii)* an auditor determines that reported costs are not verifiable.~~]

[~~(4) Allowable and unallowable costs. Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title, (relating to Specifications for Allowable and Unallowable Costs).~~]

[~~(5) Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).~~]

[~~(e) Desk reviews and field audits. As specified in §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), HHSC reviews cost reports. Cost reports not completed according to instructions or rules will be corrected and resubmitted by the provider within the time frame prescribed by HHSC. HHSC may perform a sufficient number of audits each year to ensure the fiscal integrity of the rates. HHSC notifies providers of disallowances and adjustments to reported expenses made during desk reviews and on-site audits of cost reports according to §355.107 of this title (relating to Notification of Exclusions and Adjustments). If a provider disagrees with HHSC on cost report disallowances, it may request a review of the disallowances as specified in §355.110 of this title (relating to Informal Reviews and Formal Appeals).~~]

[~~(f) Access to records. The provider must allow HHSC access to any and all records necessary to verify information on the cost report in accordance with §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).~~]

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 April 4, 2011.

TRD-201101313
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 15, 2011
For further information, please call: (512) 424-6900

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.29

The Texas Funeral Service Commission (Commission) proposes an amendment to §203.29, concerning Funeral Establishment Names.

The amendment clarifies advertising media forms used by funeral establishments, crematories, commercial embalming establishments, and cemeteries.

O. C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Robbins further has determined that for each year of the first five-year period the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will eliminate false, misleading, or deceptive advertising. Mr. Robbins also has determined that there will be no effect on large, small or micro-businesses, that there is no anticipated economic costs to persons who are required to comply with the amendment as proposed and that there is no impact on local employment or economics.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to chet.robbins@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.29. Funeral Establishment Names.

(a) - (e) (No change.)

(f) No funeral establishment, commercial embalming establishment, crematory, or cemetery shall advertise in a manner which is false, misleading, or deceptive. [~~After November 15, 2011, each advertisement that offers the service of an commercial embalming establishment, funeral establishment, crematory, or cemetery in Texas and is found in a telephone directory, on a radio, on a television, on a domain site, e-mail directory, web site, or newspaper must clearly display the funeral establishment, commercial embalming establishment, cemetery, or crematory license number on all advertisements. The license number shall be preceded with the TFSC License #.~~]

~~[(g) No licensed entity shall directly advertise after November 15, 2011 on a web site, telephone directory, domain site, on a radio, on a television, e-mail directory, or newspaper with an establishment name without the establishment name and license number clearly listed. The license number shall be preceded with the TFSC License #.]~~

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 April 4, 2011.

TRD-201101318
O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: May 15, 2011
For further information, please call: (512) 936-2469

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 91. CANCER
SUBCHAPTER A. CANCER REGISTRY

25 TAC §§91.1 - 91.12

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§91.1 - 91.12, concerning the operation of the Texas Cancer Registry.

BACKGROUND AND PURPOSE

The amendments are necessary to maintain compliance with federal requirements for operation of state central cancer registries found in 42 U.S.C., §§280e - 280e-4, which allows the state to remain eligible for federal grants, and maintain compliance with Health and Safety Code, Chapter 82 (Texas Cancer Incidence Reporting Act). The amendments concern the reporting of cases of cancer for the recognition, prevention, cure or control of those diseases, and will facilitate participation in the national program of cancer registries.

The amendments will clarify reportable data items for clinical laboratories; specific reporting methodologies that apply to health care facilities, clinical laboratories and health care practitioners; and conditions under which the cancer registry will accept non-electronic reports of cancer. The amendments also update the agency address, and provide guidelines for conducting studies where cancer registry data are used to identify potential participants and patient contact is involved.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 91.1 - 91.12 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

Minor editorial changes to §§91.1 - 91.5 and §§91.7 - 91.10 correct formatting and enhance clarity in the rules.

Amendments to §91.4 provide clarification that clinical laboratories are not required to report data items they do not collect and includes a reference to the proposed language in §91.6 regarding conditions under which non-electronic reports of cancer will be accepted. Amendments to §91.6 provide clarification of the specific reporting methodologies that apply to health care facilities, clinical laboratories and health care practitioners and the conditions under which non-electronic reports of cancer will be accepted. Amendments to §91.11 correct the agency address. Amendments to §91.12 correct the agency address and establish guidelines for conducting studies where cancer registry data are used to identify potential participants and patient contact is involved.

FISCAL NOTE

Melanie A. Williams, Ph.D., Manager, Cancer Epidemiology and Surveillance Branch, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Dr. Williams has also determined that there will be no effect on small businesses or micro-businesses required to comply with

the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

PUBLIC BENEFIT

In addition, Dr. Williams has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to contribute significantly to the knowledge of cancer for use in reducing the cancer burden in Texas.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do 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, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to John Hopkins, Cancer Epidemiology and Surveillance Branch, Mail Code 1928, P.O. Box 149347, Austin, Texas 78714-9347, (512) 458-7523, or by email to John.Hopkins@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §82.006, which authorizes the department to adopt rules considered necessary to implement the Texas Cancer Incidence Reporting Act; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The amendments affect the Health and Safety Code, Chapters 82 and 1001; and Government Code, Chapter 531.

§91.1. Purpose.

This subchapter implements [~~These sections implement~~] the Texas Cancer Incidence Reporting Act, Health and Safety Code, Chapter 82. This legislation concerns [~~, concerning~~] the reporting of cases of cancer for the recognition, prevention, cure or control of those diseases, and to facilitate participation in the national program of cancer registries established by 42 United States Code, §§280e - [~~to~~] 280e-4. Nothing in this subchapter [~~these sections~~] shall preempt the authority of facilities or individuals providing diagnostic or treatment services to patients with cancer to maintain their own cancer registries.

§91.2. Definitions.

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

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

(4) Cancer Reporting Handbook [~~reporting handbook~~]--The branch's manual for cancer reporters that documents reporting procedures and format.

(5) - (14) (No change.)

§91.3. Who Reports and [~~,~~] Access to Records.

(a) - (e) (No change.)

§91.4. What to Report.

(a) Reportable conditions.

(1) The cases of cancer to be reported to the branch are as follows:

(A) all neoplasms with a behavior code of two or three in the most current edition of the International Classification on Diseases for Oncology (ICD-O) of the World Health Organization with the exception of those designated by the branch as non-reportable in the Cancer Reporting Handbook [~~cancer reporting handbook~~]; and

(B) (No change.)

(2) Codes and taxa of the most current edition of the International Classification of Diseases, Clinical Modification of the World Health Organization which correspond to the branch's reportable list are specified in the Cancer Reporting Handbook [~~cancer reporting handbook~~].

(b) Reportable information.

(1) Except as provided in paragraph (2) of this subsection and health care practitioners in §91.5(c) of this title (relating to When to Report), those [~~The~~] data required to be reported for each cancer case shall include:

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

(C) information on industrial and [~~or~~] occupational history, smoking status, height and weight to the extent such information is available from the medical record;

(D) diagnostic information including the cancer site and laterality, cell type, tumor behavior, markers, grade and size, stage of disease, date of diagnosis, diagnostic confirmation method, sequence number, and other primary tumors;

(E) (No change.)

(F) text information to support cancer diagnosis, stage and treatment codes[~~, unless another method acceptable to the branch is used to confirm these codes~~];

(G) - (H) (No change.)

(2) The department or its authorized representative may exempt a cancer reporter from providing specific reportable data items delineated in paragraph (1) of this subsection to the extent that those data to be exempted are not collected by the cancer reporter.

(3) [~~(2)~~] Except as provided in §91.6(b) of this title (relating to How to Report), each [~~Each~~] report shall:

(A) be electronically readable and contain all data items required in paragraph (1) of this subsection;

(B) be fully coded and in a format prescribed by the branch;

(C) meet all quality assurance standards utilized by the branch;

(D) in the case of individuals who have more than one form of cancer, be submitted separately for each primary cancer diagnosed;

(E) be submitted to the branch electronically; and

(F) be transmitted by secure means at all times to protect the confidentiality of the data.

§91.5. When to Report.

(a) All reports shall be submitted to the department within six months of the patient's admission, initial diagnosis, or treatment for cancer.

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

§91.6. How to Report.

[~~(a) Facilities with an annual caseload greater than 400 shall submit their reports of cancer via the Internet using TCR or other acceptable software assuring security of case information.~~]

(a) [~~(b)~~] Reports of cancer from health care facilities, clinical laboratories and health care practitioners [~~with an annual caseload less than 400~~] shall be submitted to the branch electronically using a secure electronic process as defined by the department. [~~using one of the following methods:~~]

[~~(1) three and one half inch disk;~~]

[~~(2) compact disc; or~~]

[~~(3) the Internet.~~]

(b) The Texas Cancer Registry may accept the submission of paper copies of medical records from a health care facility, pathology reports from a clinical laboratory and reports or subsets of reports from a health care practitioner under the following conditions.

(1) The department, or its authorized representative, shall determine that such paper submissions are more expedient than electronic reporting.

(2) The acceptance of paper submissions from a health care facility, clinical laboratory or health care practitioner shall be approved by the department or its authorized representative.

(3) The department, or its authorized representative, may approve acceptance of paper submissions from defined groups or types of health care facilities, clinical laboratories or health care practitioners.

(4) All records and reports provided to the Texas Cancer Registry pursuant to this subsection must be transmitted by secure means at all times to protect the confidentiality of the data.

§91.7. Where to Report.

Data reports should be submitted to the branch as specified in the Cancer Reporting Handbook [~~cancer reporting handbook~~].

§91.8. Compliance.

(a) Each health care facility, clinical laboratory, or health care practitioner that reports to the department, by methods specified in §§91.4 - 91.7 of this title (relating to Cancer Registry), is considered compliant.

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

§91.9. Confidentiality and Disclosure.

(a) Pursuant to the Act, Chapter 82, §82.009, all data obtained is for the confidential use of the department and the persons or [~~public or private~~] entities, public or private, that the department determines are necessary to carry out the intent of the Act.

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

§91.10. Quality Assurance.

The department shall cooperate and consult with persons required to comply with this chapter so that such persons may provide timely, complete, and accurate data. The department will provide:

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

§91.11. Requests for Statistical Cancer Data.

(a) Statistical cancer data previously analyzed and printed are available upon written or oral request to the branch. All other requests for statistical data shall be in writing and directed to: Cancer Epidemiology and Surveillance Branch, Mail Code 1928, Department of State Health Services, P.O. Box 149347 [~~1100 West 49th Street~~], Austin, Texas 78714-9347 [~~78756-3199~~].

(b) (No change.)

§91.12. Requests and Release of Personal Cancer Data.

(a) Data requests for research.

(1) Requests for personal cancer data shall be in writing and directed to: Department of State Health Services, Institutional Review Board (IRB), P.O. Box 149347 [~~1100 West 49th Street~~], Austin, Texas 78714-9347 [~~78756-3199~~].

(2) - (5) (No change.)

(b) (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 March 29, 2011.

TRD-201101224
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: May 15, 2011
For further information, please call: (512) 458-7111 x6972

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CHAPTER 289. RADIATION CONTROL

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §289.202 concerning standards for protection against radiation from radioactive materials, §289.203 concerning radiation notices, instructions, reports to workers, and inspection protocol, §289.252 concerning licensing of radioactive material, §289.253 concerning

radiation safety requirements for well logging service operations and tracer studies, §289.255 concerning radiation safety requirements and licensing and registration procedures for industrial radiography, §289.256 concerning medical and veterinary use of radioactive material, and §289.257 concerning packaging and transportation of radioactive material.

BACKGROUND AND PURPOSE

Numerous amendments to §§289.202, 289.203, 289.252, 289.255, and 289.256 are necessary to comply with compatibility requirements of the United States Nuclear Regulatory Commission (NRC). The amendments are the result of the NRC's adoption of requirements for: reports of leaking or contaminated sealed sources; provisions for an annual written report to each worker that meets a new reporting criteria which is dependent on the individual's occupational dose; additional financial assurance for decommissioning criteria for source material; change in replacement interval for personnel dosimeters other than film badges; and training requirements and determination of dosages of radioactive material for medical use. Other amendments are made to §§289.202, 289.203, 289.252, and 289.255 - 289.257 to clarify program policies and procedures and incorporate requirements of Health and Safety Code, Chapter 401. The amendments to §289.253 are necessary primarily to comply with the four-year rule review and correct minor grammatical, typographical, and unit of measure errors.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 289.202, 289.203, 289.252, 289.253, and 289.255 - 289.257 have been reviewed and the department has determined that the reasons for adopting these sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

Section 289.202(ee)(1) and (ff)(1)(B) updates the rule reference citations.

Concerning §289.202(ee)(4)(A)(ii), the figure regarding the removable external radioactive contamination wipe limits corrects the maximum permissible limits and the "µCi/cm^2" unit of measure is revised to read "pCi/cm^2" to simplify the listed numerical values. The related footnote for this table is also revised to reflect the change in the unit of measure.

In §289.202(nn)(1), the words "and include a unique identification of survey instrument(s)" are added to provide a more detailed documentation of survey records.

Concerning §289.202(xx)(1)(A), the words "except a patient administered radiation for purposes of medical diagnosis or therapy," are added to be consistent with language used in applicable sections of the chapter.

Section 289.202(bbb) is revised to include the words "the date of the test, model and serial number, if assigned, of the leaking source, the radionuclide and its estimated activity," to maintain rules that are compatible to the NRC and as an agreement state, Texas must adopt them.

The figure for the table of acceptable surface contamination limits in §289.202(ggg)(6) adds "Tritium" and the applicable limit values to the list to provide additional limits for this radionuclide other than those currently listed for any beta emitter.

Section 289.202(ggg)(8) and the related figure for the cumulative occupational exposure form changes the form name from "BRC Form 202-2" to "RC Form 202-2" to reflect the current Radiation Control program name and to be consistent with form nomenclature used throughout the chapter.

Concerning §289.202(ggg)(9) and the related figure for the occupational exposure form, "BRC Form 202-3" is changed to "RC Form 202-3" to reflect the current Radiation Control program name and to be consistent with form nomenclature used throughout the chapter.

The notification and reports to individuals requirements specified in §289.203(d)(2) add an additional worker's dose reporting criteria that is dependent of the individual's occupational dose exceeding 100 millirem (mrem) (1 millisievert (mSv)) total effective dose equivalent or 100 mrem (1 mSv) to any individual organ or tissue, to maintain rules that are compatible to the NRC. Subsequently, the figure referenced in §289.203(i), regarding the notice to employees RC Form 203-1, is revised to incorporate the additional worker's dose reporting criteria, to maintain consistency with the requirements in §289.203(d)(2). The notice to employees form also deletes the department's physical address to comply with department policy.

New §289.252(gg)(1)(D), regarding financial assurance and record keeping for decommissioning requirements, adds a provision for when radioactive material requested or authorized on the license is in quantities more than 100 millicuries (mCi) of source material in a readily dispersible form because as an agreement state, Texas must adopt rules compatible to the NRC.

To maintain rules that are compatible with the NRC, new §289.252(gg)(3)(D) adds a required amount of financial assurance for decommissioning that is determined by the quantity of material authorized by the license to be $225,000 for quantities of source material greater than 10 mCi but less than or equal to 100 mCi in a readily dispersible form.

New §289.252(ll) is added to clarify that persons who perform installation, repair, or maintenance of devices containing sealed sources of radioactive material shall apply for a specific license.

Section 289.253 is revised to correct minor grammatical, typographical, and unit of measure errors in §289.253(b), (c)(1), (l)(1)(C)(ii), (z)(1) and (2), (dd)(1)(A)(vii), and (dd)(1)(C)(v).

The requirements for qualifications of radiographic personnel in §289.255(e)(3)(A)(ii) are revised to clarify program policy relating to licensees and registrants which are no longer required to add qualified radiographer trainers to their specific license or certificate of registration. Language is added to clarify that qualified radiographer trainers shall be in possession of a valid trainer certification card.

Section 289.255(o)(2), relating to notification of incidents, is revised to clarify that each licensee or registrant shall make the initial notification report to the agency by telephone within 24 hours of when an event specified in §289.255(o)(2)(A) - (F) has occurred in addition to submitting a written report to the agency within 30 days.

Section 289.255(p)(2)(A) is revised to clarify that either a direct-reading pocket dosimeter, an electronic personal dosimeter, or an operable alarming ratemeter may be worn during industrial radiographic operations as long as the individual monitoring device meets the applicable requirements of §289.202(p)(3) or §289.231(s)(3).

To maintain rules that are compatible with the NRC, §289.255(p)(2)(I) is revised to differentiate that film badges shall be replaced at periods not to exceed one month and that other personnel dosimeters processed and evaluated by an accredited NVLAP processor shall be replaced at periods not to exceed three months.

Concerning new §289.255(p)(4)(E), language is added to require that an alarming ratemeter have an audible alarm sufficient to be heard by the individual wearing the device in a work environment or have other visual or physical notification of alarming conditions to provide adequate safety features for these devices in extreme work environments.

Section 289.255(u)(1)(B)(iv)(IV), regarding licensing requirements for industrial radiographic operations, changes the number of days that any licensee may conduct radiographic operations or storing radioactive material at any location not listed on the license to a period in excess of 180 days instead of 90 days. The equivalent change is made regarding when the licensee shall notify the agency prior to exceeding the 180 days instead of 90 days to conform to industry standards.

Section 289.256 is primarily revised to incorporate or modify training requirements that are designated as items of compatibility with the NRC and as an agreement state Texas must adopt them. The revisions are reflected in §289.256(a)(3); (c)(22); new (j)(2)(C) and (j)(3); new (l)(3); (x)(1), new (x)(2), (x)(2)(B)(iii), new (x)(3), and new (x)(4); (ee)(1); (ff)(1) and (2); (gg)(1)(A), (gg)(2), (gg)(3)(B) and new (C); (hh)(1) and (2), new (hh)(3) and (4), and deletion of current (hh)(3); (ii)(1), new (ii)(3) and (4); (jj)(1)(A) and (B), (jj)(1)(C)(ii) and new (jj)(1)(C)(iii); (kk)(1) and (kk)(2)(A) and (C); (nn)(2)(B) and (C); (oo)(1), (2), (3)(B), and new (oo)(3)(C); (pp)(1) and (2), (pp)(3)(B), and new (pp)(3)(C); (qq)(1), (2), (4)(B), and new (qq)(4)(C); (yy); (zz)(2)(B), (C), and (D); (aaa)(1) and (2)(C); and (ttt)(2)(A), (B), (C) and (D). The revisions do not create additional training requirements for licensees but only clarify existing requirements and correct grammatical errors.

New §289.256(b)(3) is added to clarify that a "covered entity" as defined in the Health Insurance Portability and Accountability Act (HIPAA) and its rules at 45 CFR §160.103, may be subject to privacy standards governing how information that identifies a patient can be used and disclosed and that failure to follow HIPAA requirements may result in the department making a referral of a potential violation to the United States Department of Health and Human Services.

Existing §289.256(c)(21) is deleted and renumbered as new §289.256(c)(20) to place this definition in alphabetical order.

New §289.256(i)(4) is added to require that a record be made to document the Radiation Safety Committee (RSC) meeting and that the record include the date, names of individuals in attendance, minutes of the meeting, and any actions taken by the RSC committee to provide a means for inspectors to verify compliance of §289.256(i)(3) relating to the duties and responsibilities of the RSC.

Concerning §289.256(yy), relating to therapy-related computer systems, adds "for manual brachytherapy" after the first "systems" to clarify that these requirements are specific to these types of therapy-related computer systems.

New §289.256(bbb)(2) is added to require that the licensee document that the service provider who is performing installation and source exchange of devices containing sealed source(s) of radioactive material in medical imaging equipment, has a specific license issued by the agency and that a record of the documentation be maintained for inspection by the agency.

Section 289.256(sss) adds "for photon-emitting remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units" after therapy-related computer systems to clarify that these requirements are specific to these types of therapy-related computer systems.

The figure for §289.256(www) relating to records/documents for agency inspection, updates the record keeping table to reflect changes made throughout the section.

Throughout §289.256 minor grammatical and typographical corrections are made and rule reference citations are corrected.

Throughout §289.257, rule references to §289.254 relating to licensing of radioactive waste processing and storage facilities and §289.260 relating to licensing of uranium recovery and byproduct material disposal facilities are deleted because the regulatory authority for licensing and inspection of low-level waste processing and uranium recovery and disposal was transferred from the department to the Texas Commission on Environmental Quality (TCEQ) as a result of Senate Bill 1604, 80th Legislative Session, 2007.

Concerning §289.257 in its entirety, references to the "BRC Forms" were changed to "RC Forms" to reflect the current Radiation Control Program name and to be consistent with form nomenclature used throughout the chapter.

Section 289.257(e)(1)(I) adds a requirement that each licensee who transports radioactive material outside the site of usage as specified in the agency license, transports on public highways, or delivers radioactive material to a carrier for transport shall comply with the requirements of Title 49, Code of Federal Regulations (CFR), §387.7 and §387.9, regarding financial responsibility to incorporate the requirements of Health and Safety Code, §401.052(b)(6). However, this new financial responsibility requirement will not generate additional costs to licensees because these shippers have already been carrying comparable financial liability insurance to comply with United States Department of Transportation rules.

In §289.257(e)(4), language is added to require that transporters of low-level radioactive waste (LLRW) to a Texas LLRW disposal site submit proof of financial responsibility required by Title 49, CFR, §387.7 and §387.9, to the agency's Radiation Safety Licensing Branch and receive approval of documentation from the agency prior to shipments, to ensure compliance with Health and Safety Code, §401.052(b)(6).

In §289.257(e)(5), language is added to clarify that the department will review and determine alternate routes for the transportation and routing of radioactive material in accordance with 49 CFR, §397.103, to maintain compliance with Health and Safety Code, §401.052.

Concerning §289.257(k)(2), the referenced standard unit of measure "(5 lb/in^2)" is revised to correct the omission of "f" in the measurement to maintain rules that are compatible to the NRC.

Existing §289.257(s) regarding inspections, is deleted because this requirement was removed from Health and Safety Code, §401.052, and therefore the agency is no longer required to perform inspections of each shipment of LLRW to a licensed land disposal facility in Texas. Subsequent subsections and related figures are renumbered and applicable rule reference citations

are updated throughout the section. Change is reflected in new §289.257(s) - (ff).

New §289.257(t), regarding quality assurance organization, adds the words "while the term 'licensee' is used in these criteria, the requirements are applicable to whatever design, fabricating, assembly, and testing of the package is accomplished with respect to a package before the time a package approval is issued" because as an agreement state Texas must adopt rules that are compatible to the NRC.

New §289.257(dd)(1)(B) concerning fees, deletes "compact waste disposal facility and remitted to the TCEQ" and replaces the words with "department" to clarify that the department shall collect the fees assessed for each shipper for shipments of LLRW originating in Texas or originating out-of-state being shipped to a licensed Texas LLRW disposal facility, as required by Health and Safety Code, §401.052(d)(2).

New §289.257(dd)(4), regarding fees, adds a definition of "shipper" to clarify that for purposes of this subsection, "shipper" means a person who generates LLRW and ships or arranges with others to ship the waste to a disposal site, in accordance with Health and Safety Code, §401.052(f).

New §289.257(ff)(6)(E) corrects "hydrogren-3" and removes "radium-226" to maintain rules that are compatible with the NRC.

Throughout §289.257 minor grammatical and typographical corrections are made and rule reference citations are corrected.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five-year period that §§289.202, 289.203, 289.252, 289.253, 289.255, and 289.256 are in effect, there will be no fiscal implications to the state or local governments as a result of enforcing and administering the sections as proposed.

However, Ms. Tennyson has determined that for each year of the first five years beginning in approximately 2012 that §289.257 is in effect, there will be fiscal implications to the state as a result of enforcing or administering the section as proposed. On or about December 2011, when the new Texas LLRW disposal facility is anticipated to begin operations, shippers will pay to the department the fees assessed for shipments of LLRW originating in Texas or originating out-of-state being shipped to a licensed Texas LLRW disposal facility at a cost of $10/cubic foot, in accordance with Health and Safety Code, §401.052(d)(1). The effect on state government will be a theoretical (but unrealized) increase in revenue to the department of approximately $17,044,070 for each year beginning when the site is operational, to be deposited to the credit of the radiation and perpetual care account and used exclusively by the radiation control program for emergency planning for and response to transportation accidents involving LLRW. However, per Health and Safety Code, §401.052(d)(4), there is a $500,000 cap on shipper fee collections; therefore, the estimated $17 million would not actually be collected. Fees collected could be in an amount greater than $500,000 that cannot be determined at this time because of unknown costs related to potential planning and response actions. In that case, that would cause the balance of the LLRW shipper fees collected to be reduced to $350,000 or less. The fee assessments would then be reinstituted to bring the balance of fees collected back to $500,000, per Health and Safety Code, §401.052(d)(4). The cost to the department of collecting the shipper fees will be minimal and will be done with existing staff.

The department provides the estimated increase in revenue based on the following assumptions: (1) Texas LLRW disposal facility is operational by December 2011; (2) estimated Texas Compact Waste Facility LLRW projections of 78,923 cubic feet per year and estimated Federal Waste Facility LLRW projections of 1,625,484 cubic feet per year; and (3) LLRW only from Texas and Vermont.

There will be no fiscal implications to local governments as a result of enforcing and administering §289.257 as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with §§289.202, 289.203, 289.252, 298.253, 289.255, and 289.256 as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. However, Ms. Tennyson has determined that there will be adverse economic impact on persons, small businesses or micro-businesses required to comply with existing §289.257 because of a LLRW shipping fee set by Health and Safety Code, §401.052(d)(1) in 1998 which is contingent upon the licensure, construction, and operation of a Texas LLRW disposal facility. That fee, already in place, will be collected for the first time in approximately December 2011. There will be no adverse economic impact on persons, small businesses or micro-businesses as a result of the proposed changes to §289.257. The new Texas LLRW disposal facility is anticipated to begin operations on or about December 2011, so shippers will begin to pay to the department in 2011 - 2012 the fees assessed for shipments of LLRW originating in Texas or originating out-of-state being shipped to a licensed Texas LLRW disposal facility at a cost of $10/cubic foot of shipped LLRW, in accordance with Health and Safety Code, §401.052. The assessed shipping fee will depend on: (1) quantity of LLRW shipped by each shipper; (2) when the $500,000 shipping fee cap is reached by the department and the shipping fee assessments are then suspended; and (3) when the shipping fee balance is reduced to $350,000 and the shipping fee assessments are then reinstituted by the department.

IMPACT ON LOCAL EMPLOYMENT

There is no anticipated negative impact on local employment.

REGULATORY FLEXIBILITY ANALYSIS

There are no adverse economic impacts on persons, small businesses or micro-businesses as a result of these proposed changes. A statutory LLRW shipping fee remains in effect since 1998. As a result of the statutory fee, persons, small businesses or micro-businesses will incur the shipper fee if they choose to ship LLRW to a licensed Texas LLRW disposal facility. If a licensee is authorized to store radioactive material on site for decay, then LLRW disposal shipping fee expenditures can be omitted if the licensee allows the decay of radionuclides with half-lives less than 120 days. For licensees authorized to possess a specified quantity of radionuclides with a half-life greater than 120 days and that are authorized to store radioactive material on site, then LLRW disposal shipping fee expenditures can be delayed until further action is taken by the licensee. Licensees also have the option of disposing waste

containing radionuclides with less than a 300-day half-life to a Type I municipal solid waste facility. In addition, a licensee can choose not to dispose of the LLRW and instead transfer it to a licensee that is authorized to dispose radioactive waste. For those who do ship LLRW and incur the shipping fees as of approximately 2012, the department has previously developed the shipping fee in accordance with Health and Safety Code, §401.052(d)(1). Consequently, any variances from the state legislation would not be consistent with the health, safety, and environmental and economic welfare of the state, and no alternative regulatory methods were considered when the shipping fee in §289.257(dd)(1) was adopted in March 1, 1998.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as the result of enforcing or administering these sections is to ensure continued protection of the public, workers, and the environment from unnecessary exposure to radiation by ensuring that rules are clear and specific.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do 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, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Barbara J. Taylor, Radiation Group, Policy/Standards/Quality Assurance Unit, Division of Regulatory Services, Environmental and Consumer Safety Section, Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6770, extension 2010, or by email to BarbaraJ.Taylor@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Radiation Control website (www.dshs.state.tx.us/radiation). Please contact Barbara J. Taylor at (512) 834-6770, extension 2010, or BarbaraJ.Taylor@dshs.state.tx.us if you have questions.

LEGAL CERTIFICATION

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

SUBCHAPTER D. GENERAL

25 TAC §289.202, §289.203

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §401.052, which allows the department to collect fees from shippers for shipments of low-level radioactive waste originating in Texas or out-of-state to a Texas low-level radioactive waste disposal facility; Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The amendments affect the Health and Safety Code, Chapters 401 and 1001; and Government Code, Chapter 531.

§289.202. Standards for Protection Against Radiation from Radioactive Materials.

(a) - (o) (No change.)

(p) General surveys and monitoring.

(1) Each licensee shall make, or cause to be made, surveys that:

(A) are necessary for the licensee to comply with this chapter [~~section~~]; and

(B) (No change.)

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

(q) - (dd) (No change.)

(ee) Procedures for receiving and opening packages.

(1) Each licensee who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as defined in §289.201(b) of this title and specified in §289.257(ff)(6) [~~§289.257(s)(1)~~] of this title (relating to Packaging and Transportation of Radioactive Material), shall make arrangements to receive:

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

(2) Each licensee shall:

(A) (No change.)

(B) monitor the external surfaces of a labeled package, labeled with a Radioactive White I, Yellow II, or Yellow III label as specified in DOT regulations 49 CFR §§172.403 and §§172.436-440, for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as defined in §289.201(b) of this title and specified in §289.257(ff)(6) [~~§289.257(s)(1)~~] of this title; and

(C) (No change.)

(3) (No change.)

(4) The licensee shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the agency when removable radioactive surface contamination or external

radiation levels exceed the limits established in subparagraphs (A) and (B) of this paragraph.

(A) Limits for removable radioactive surface contamination levels.

(i) (No change.)

(ii) Removable external radioactive contamination wipe limits are as follows.
Figure: 25 TAC §289.202(ee)(4)(A)(ii)
[~~Figure: 25 TAC §289.202(ee)(4)(A)(ii)~~]

(iii) (No change.)

(B) (No change.)

(5) - (6) (No change.)

(ff) General requirements for waste management.

(1) Unless otherwise exempted, a licensee shall discharge, treat, or decay licensed material or transfer waste for disposal only:

(A) (No change.)

(B) by decay in storage with prior approval from the agency, except as authorized in §289.256(ee) [~~§289.256(x)~~] of this title (relating to Medical and Veterinary Use of Radioactive Material);

(C) - (D) (No change.)

(2) - (6) (No change.)

(gg) - (mm) (No change.)

(nn) Records of surveys.

(1) Each licensee shall maintain records showing the results of surveys and calibrations required by subsections (p) and (ee)(2) of this section and include a unique identification of survey instrument(s). The licensee shall retain these records for three years after the record is made.

(2) (No change.)

(oo) - (ww) (No change.)

(xx) Notification of incidents.

(1) Notwithstanding other requirements for notification, each licensee shall immediately report each event involving a source of radiation possessed by the licensee that may have caused or threatens to cause:

(A) an individual, except a patient administered radiation for purposes of medical diagnosis or therapy, to receive:

(i) - (iii) (No change.)

(B) (No change.)

(2) - (8) (No change.)

(yy) - (aaa) (No change.)

(bbb) Reports of leaking or contaminated sealed sources. The licensee shall immediately notify the agency if the test for leakage or contamination required in accordance with §289.201(g) of this title indicates a sealed source is leaking or contaminated. A written report of a leaking or contaminated source shall be submitted to the agency within five days. The report shall include the equipment involved, the test results, the date of the test, model and serial number, if assigned, of the leaking source, the radionuclide and its estimated activity, and the corrective action taken.

(ccc) - (fff) (No change.)

(ggg) Appendices.

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

(6) Acceptable surface contamination limits.
Figure: 25 TAC §289.202(ggg)(6)
[~~Figure: 25 TAC §289.202(ggg)(6)~~]

(7) (No change.)

(8) Cumulative occupational exposure form. The following, RC Form 202-2 [~~BRC Form 202-2~~], is to be used to document cumulative occupational exposure history: (Please find RC Form 202-2 [~~BRC Form 202-2~~] at the end of this section.)
Figure: 25 TAC §289.202(ggg)(8)
[~~Figure: 25 TAC §289.202(ggg)(8)~~]

(9) Occupational exposure form. The following, RC Form 202-3 [~~BRC Form 202-3~~], is to be used to document occupational exposure record for a monitoring period: (Please find RC Form 202-3 [~~BRC Form 202-3~~] at the end of this section.)
Figure: 25 TAC §289.202(ggg)(9)
[~~Figure: 25 TAC §289.202(ggg)(9)~~]

(hhh) (No change.)

§289.203. Notices, Instructions, and Reports to Workers; Inspections.

(a) - (c) (No change.)

(d) Notifications and reports to individuals.

(1) (No change.)

(2) Each licensee or registrant shall provide an annual written report to advise each worker of the worker's dose, received in that monitoring year, as shown in records maintained by the licensee or registrant in accordance with §289.202(q), §289.202(rr) or §289.231(dd) of this title, as applicable, if: [~~the individual requests his or her annual dose report in writing.~~]

(A) the individual's occupational dose exceeds 100 mrem (1 mSv) total effective dose equivalent or 100 mrem (1 mSv) to any individual organ or tissue; or

(B) the individual requests his or her annual dose report in writing.

(3) - (5) (No change.)

(e) - (h) (No change.)

(i) Notice to employees. The following form, RC Form 203-1, or an equivalent as stated in subsection (b)(3) of this section, shall be posted.
Figure: 25 TAC §289.203(i)
[~~Figure: 25 TAC §289.203(i)~~]

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 April 1, 2011.

TRD-201101271
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: May 15, 2011
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER F. LICENSE REGULATIONS

25 TAC §§289.252, 289.253, 289.255 - 289.257

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §401.052, which allows the department to collect fees from shippers for shipments of low-level radioactive waste originating in Texas or out-of-state to a Texas low-level radioactive waste disposal facility; Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The amendments affect the Health and Safety Code, Chapters 401 and 1001; and Government Code, Chapter 531.

§289.252. Licensing of Radioactive Material.

(a) - (ff) (No change.)

(gg) Financial assurance and record keeping for decommissioning.

(1) The applicant for a specific license or renewal of a specific license, or holder of a specific license, authorizing the possession and use of radioactive material shall submit and receive written authorization for a decommissioning funding plan as described in paragraph (4) of this subsection in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license for the following situations:

(A) (No change.)

(B) when a combination of the unsealed radionuclides requested or authorized on the license, with a half-life greater than 120 days, results in the R of the radionuclides divided by 10^5 being greater than 1 (unity rule), where R is defined as the sum of the ratios of the quantity of each radionuclide to the applicable value in subsection (jj)(2) of this section; [~~or~~]

(C) when sealed sources or plated foils requested or authorized on the license, with a half-life greater than 120 days and in quantities exceeding 10^{12} times the applicable quantities set forth in subsection (jj)(2) of this section (or when a combination of isotopes is involved if R, as defined in this subsection, divided by 10^{12} is greater than 1), shall submit a decommissioning funding plan as described in paragraph (4) of this subsection; or [~~.~~]

(D) when radioactive material requested or authorized on the license is in quantities more than 100 mCi of source material in a readily dispersible form.

(2) (No change.)

(3) The required amount of financial assurance for decommissioning is determined by the quantity of material authorized by the license and is determined as follows:

(A) (No change.)

(B) $225,000 for quantities of material greater than 10^3 but less than or equal to 10^4 times the applicable quantities in subsection (jj)(2) of this section in unsealed form. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by 10^3 is greater than 1 but R divided by 10^4 if less than or equal to 1); [~~or~~]

(C) $113,000 for quantities of material greater than 10^{10} but less than or equal to 10^{12} times the applicable quantities in subsection (jj)(2) of this section in sealed sources or plated foils. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by 10^{10} is greater than 1, but R divided by 10^{12} is less than or equal to 1; or [~~.~~])

(D) $225,000 for quantities of source material greater than 10 mCi but less than or equal to 100 mCi in a readily dispersible form.

(4) - (8) (No change.)

(hh) - (kk) (No change.)

(ll) Specific licenses for installation, repair, or maintenance of devices containing sealed sources of radioactive material.

(1) In addition to the requirements in subsection (e) of this section, a specific license authorizing persons to perform installation, repair, or maintenance of devices containing sealed source(s) including source exchanges will be issued if the agency approves the information submitted by the applicant.

(2) Each installation, repair, or maintenance activity shall be documented and a record maintained for inspection by the agency for 5 years from the date of that service. The record shall include the date, description of the service, initial survey results, and name(s) of the individual(s) who performed the work.

(3) Installation, repair, maintenance, or source exchange activities shall be performed by a specifically licensed person unless otherwise authorized in accordance with subsection (v) of this section.

§289.253. Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies.

(a) (No change.)

(b) Scope. This section applies to all persons who use sources of radiation for well logging service operations, radioactive markers, mineral exploration and tracer studies. In addition to the requirements of this section, persons are subject to the requirements of §289.201 of this title (relating to General Provisions for Radioactive Material), §289.202 of this title (relating to Standards for Protection Against Radiation from Radioactive Materials [~~Material~~]), §289.203 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.205 of this title (relating to Hearing and Enforcement Procedures), §289.226 of this title (relating to Registration of Radiation Machine Use and Services), §289.229 of this title (relating to Radiation Safety Requirements for Accelerators, Therapeutic Radiation Machines, and Simulators), §289.231 of this title (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation), §289.252 of this title (relating to Licensing of Radioactive Material), and §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).

(c) Definitions. The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise.

(1) Energy compensation source (ECS)--A small sealed source with an activity not exceeding 100 microcuries [~~microcurie~~] (μCi) (3.7 megabecquerel (MBq)), used within a logging tool or other tool component [~~components~~], to provide a reference standard to maintain the tool's calibration when in use.

(2) - (8) (No change.)

(9) Radiation safety officer--An individual named by the licensee or registrant and listed on the license or certificate of registration who has a knowledge of, responsibility for, and authority to enforce appropriate radiation protection rules, standards, and practices on behalf of the licensee and/or registrant, [;] and who meets the requirements of subsection (r) of this section.

(10) - (24) (No change.)

(d) - (k) (No change.)

(l) Design and performance criteria for sealed sources used in well logging operations.

(1) Each sealed source used in well logging applications shall meet the following minimum criteria.

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

(C) The sealed source meets one of the following requirements:

(i) (No change.)

(ii) for a sealed source manufactured after July 14, 1989, the oil-well logging requirements from the American National Standards [Standard] Institute/Health Physics Society (ANSI/HPS) N43.6-1997, "Sealed Radioactive Sources-Classification;" or

(iii) (No change.)

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

(m) - (y) (No change.)

(z) Tritium neutron generator target source.

(1) Use of a tritium neutron generator target source, containing quantities not exceeding 30 curies (Ci) (1,110 GBq [MBq]) and in a well with a surface casing to protect fresh water aquifers, is subject to the requirements of this section, except subsections (d), (l), and (cc) of this section.

(2) Use of a tritium neutron generator target source, containing quantities exceeding 30 Ci (1,110 GBq [MBq]) or in a well without a surface casing to protect fresh water aquifers, is subject to the requirements of this section, except subsection (l) of this section.

(aa) - (cc) (No change.)

(dd) Appendices.

(1) Subjects to be included in training courses for well logging service operations and/or tracer studies are as follows:

(A) fundamentals of radiation safety that include:

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

(vii) discussion of ingestion, inhalation pathways; [.]

(B) (No change.)

(C) equipment to be used that specifies;

(i) - (iv) (No change.)

(v) maintenance of equipment; [.]

(D) - (G) (No change.)

(2) - (5) (No change.)

§289.255. Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography.

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

(e) Requirements for qualifications of radiographic personnel.

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

(3) Radiographer trainer.

(A) No licensee or registrant shall permit any individual to act as a radiographer trainer until:

(i) (No change.)

(ii) such individual is in receipt of a valid trainer certification card [named on the specific license or certificate of registration] issued by the agency and under which the individual is acting as a radiographer trainer; and

(iii) (No change.)

(B) (No change.)

(4) (No change.)

(f) - (n) (No change.)

(o) Notification of incidents.

(1) (No change.)

(2) In addition, whenever one of the following events occurs, each licensee or registrant shall make the initial notification report by telephone to the agency within 24 hours and submit a written report to the agency within 30 days [to the agency whenever one of the following events occurs]:

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

(3) (No change.)

(p) Individual monitoring.

(1) (No change.)

(2) During industrial radiographic operations, the following shall apply:

(A) No licensee or registrant shall permit an individual to act as a radiographer, radiographer trainer, or radiographer trainee unless each individual wears, on the trunk of the body at all times during radiographic operations:

(i) an individual monitoring device that meets the applicable requirements of §289.202(p)(3) of this title or §289.231(s)(3) of this title; and

(ii) a direct-reading pocket dosimeter, [or] an electronic personal dosimeter or an operable alarming ratemeter. [; and]

[(iii) an operable alarming ratemeter.]

(B) - (H) (No change.)

(I) Film badges shall be replaced at periods not to exceed one month and other personnel dosimeters processed and evaluated by an accredited National Voluntary Laboratory Accreditation Program (NVLAP) processor shall be replaced at periods not to exceed three months. [Individual monitoring devices shall be replaced at least monthly.] After replacement, each individual monitoring device shall be returned to the supplier for processing within 14 calendar days of the exchange date specified by the personnel monitoring supplier or as soon as practicable. In circumstances that make it impossible to return each individual monitoring device within 14 calendar days, such circumstances shall be documented and available for review by the agency.

(J) (No change.)

(3) (No change.)

(4) Each alarming ratemeter shall:

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

(C) require special means to change the preset alarm function; [and]

(D) be calibrated for correct response to radiation at intervals not to exceed one year; and [.]

(E) have an audible alarm sufficient to be heard by the individual wearing the alarming ratemeter in a work environment or have other visual or physical notification of alarming conditions.

(5) - (6) (No change.)

(q) - (t) (No change.)

(u) Radiation safety and licensing requirements for the use of sealed sources.

(1) Licensing requirements for industrial radiographic operations.

(A) (No change.)

(B) In addition to the licensing requirements in §289.252 of this title, an application for a license shall include the following information.

(i) - (iii) (No change.)

(iv) A list of permanent radiographic installations, descriptions of permanent storage and use sites, and the location(s) where all records required by this section and other sections of this chapter will be maintained. If records are to be maintained at a headquarters office in Texas and no use or storage is authorized for the site, this site will be designated as the main site. Radioactive material shall not be stored or used at a permanent use site unless such site is specifically authorized by the license. Any licensee conducting radiographic operations or storing radioactive material at any location not listed on the license for a period in excess of 180 [90] days in a calendar year, shall notify the agency prior to exceeding the 180 [90] days. A storage site is permanent if radioactive material is stored at that location and if any one or more of the following applies:

(I) - (III) (No change.)

(IV) the licensee conducts radiographic operations or stores radioactive material at any location not listed on the license for a period in excess of 180 [90] days in a calendar year.

(v) - (xii) (No change.)

(C) (No change.)

(2) - (13) (No change.)

(v) - (x) (No change.)

§289.256. Medical and Veterinary Use of Radioactive Material.

(a) Purpose.

(1) This section establishes requirements for the medical and veterinary use of radioactive material and for the issuance of specific licenses authorizing the medical and veterinary use of radioactive material. Unless otherwise exempted, no person shall receive, possess, use, transfer, own, or acquire radioactive material for medical or veterinary use except as authorized in a license issued in accordance with this section.

(2) A person who receives, possesses, uses, transfers, owns, or acquires radioactive material prior to receiving a license is subject to the requirements of this chapter.

(3) A specific license is not needed for a person who:

(A) receives, possesses, uses, or transfers radioactive material in accordance with the regulations in this chapter under the supervision of an authorized user as provided in subsection (s) of this section, unless prohibited by license condition; or

(B) prepares unsealed radioactive material for medical use in accordance with the regulations in this chapter under the supervision of an authorized nuclear pharmacist or authorized user as provided in subsection (s) of this section, unless prohibited by license condition.

(b) Scope.

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

(3) An entity that is a "covered entity" as that term is defined in HIPAA (the Health Insurance Portability and Accountability Act of 1996, 45 Code of Federal Regulations, Parts 160 and 164) may be subject to privacy standards governing how information that identifies a patient can be used and disclosed. Failure to follow HIPAA requirements may result in the department making a referral of a potential violation to the United States Department of Health and Human Services.

(c) Definitions. The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise.

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

(20) Permanent facility--A building or buildings that are identified on the license within the State of Texas and where radioactive material may be prepared, received, used, or stored. This may also include an area or areas where administrative activities related to the license are performed.

(21) [(20)] Preceptor--An individual who provides, directs, or verifies the training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, or a radiation safety officer.

[(21) Permanent facility--A building or buildings that are identified on the license within the state of Texas and where radioactive material may be prepared, received, used, or stored. This may also include an area or areas where administrative activities related to the license are performed.]

(22) Prescribed dosage--The specified activity or range of activity of unsealed radioactive material [a radiopharmaceutical] as documented in a written directive or in accordance with the directions of the authorized user for procedures in subsections (ff) and (hh) of this section.

(23) - (36) (No change.)

(d) - (g) (No change.)

(h) Training for radiation safety officer. Except as provided in subsection (l) of this section, the licensee shall require the individual fulfilling the responsibilities of an RSO in accordance with subsection (g) of this section for licenses for medical or veterinary use of radioactive material to be an individual who:

(1) is certified by a specialty board whose certification process has been recognized by the agency, the NRC, or an agreement state and who meets the requirements in paragraphs (5) and (6) [(4) and (5)] of this subsection. (The names of board certifications

that have been recognized by the agency, the NRC, an agreement state, or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation).

(A) (No change.)

(B) To have its certification process recognized, a specialty board shall require all candidates for certification to:

(i) (No change.)

(ii) have two years of full-time practical training and/or supervised experience in medical physics as follows:

(I) (No change.)

(II) in clinical nuclear medicine facilities providing diagnostic and/or therapeutic services under the direction of physicians who meet the requirements for authorized users in subsections (l), (jj), or (nn) of this section; and

(iii) (No change.)

(2) - (6) (No change.)

(i) Radiation safety committee (RSC). Licensees with broad scope authorization and licensees who are authorized for two or more different types of uses of radioactive material in accordance with subsections (kk), (rr), and (ddd) of this section, or two or more types of units under subsection (ddd) of this section shall establish an RSC to oversee all uses of radioactive material permitted by the license.

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

(4) Records documenting the RSC meetings shall be made and maintained for inspection by the agency in accordance with subsection (www) of this section. The record shall include the date, names of individuals in attendance, minutes of the meeting, and any actions taken.

(j) Training for an authorized medical physicist. Except as provided in subsection (l) of this section, the licensee shall require the authorized medical physicist to be an individual who:

(1) is certified by a specialty board whose certification process has been recognized by the agency, the NRC, an agreement state, or a licensing state and who meets the requirements in paragraphs (2)(C) and (3) [~~and (4)~~] of this subsection. (The names of board certifications that have been recognized by the agency, the NRC, an agreement state, or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation). To have its certification process recognized, a specialty board shall require all candidates for certification to meet the following:

(A) (No change.)

(B) complete two years of full-time practical training and/or supervised experience in medical physics as follows:

(i) (No change.)

(ii) in clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services under the direction of physicians who meet the requirements for authorized users in subsections (l), (zz) or (ttt) of this section; and

(C) (No change.)

(2) holds a post graduate degree and experience to include:

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

(C) [~~(3)~~] has obtained written attestation that the individual has satisfactorily completed the requirements in paragraph (3) of this subsection and paragraphs (1)(A) and (1)(B) or (2)(A) and (2)(B) [~~and (4)~~] of this subsection, and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation shall be signed by a preceptor authorized medical physicist who meets the requirements in subsection (l) of this section, this subsection, or equivalent NRC or agreement state requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

(3) [~~(4)~~] has training for the type(s) of use for which authorization is sought that includes hands-on device operation, safety procedures, clinical use, and the operation of a treatment planning system. This training requirement may be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the type(s) of use for which the individual is seeking authorization.

(k) (No change.)

(l) Training for experienced RSO, teletherapy or medical physicist, authorized medical physicist, authorized user, nuclear pharmacist, and authorized nuclear pharmacist.

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

(3) Individuals who need not comply with training requirements in this subsection may serve as preceptors for, and supervisors of, applicants seeking authorization on an agency license for the same uses for which these individuals are authorized.

(m) - (w) (No change.)

(x) Determination of dosages of unsealed radioactive material for medical use.

(1) Before medical use, the licensee shall determine and record the activity of each dosage. [~~perform the following:~~]

[~~(A) record the activity of each dosage; and~~]

[~~(B) determine the activity of each dosage using a dose calibrator, by direct measurement of radioactivity, or a decay correction, based on the activity or activity concentration determined by the following:~~]

(2) For a unit dosage, this determination shall be made by:

(A) direct measurement of radioactivity; or

(B) a decay correction, based on the activity or activity concentration determined by the following:

(i) a manufacturer or preparer licensed in accordance with §289.252(r) of this title, or under an equivalent NRC, agreement state, or licensing state license; [~~or~~]

(ii) an NRC or agreement state licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by the U.S. Food and Drug Administration (FDA); or [~~.~~]

(iii) a PET radioactive drug producer licensed in accordance with §289.252(kk) of this title or equivalent NRC or agreement state requirements.

(3) [~~(2)~~] For other than unit dosages, this determination shall be made by:

(A) direct measurement of radioactivity; [~~or~~]

(B) combination of [~~direct~~] measurement of radioactivity and mathematical calculations; or [~~.~~]

(C) combination of volumetric measurements and mathematical calculations, based on the measurement made by:

(i) a manufacturer or preparer licensed in accordance with §289.252(r) of this title, or under an equivalent NRC, agreement state, or licensing state license; or

(ii) a PET radioactive drug producer licensed in accordance with §289.252(kk) of this title or equivalent NRC or agreement state requirements.

(4) [~~(3)~~] Unless otherwise directed by the authorized user, a licensee shall not use a dosage if the dosage does not fall within the prescribed dosage range or if the dosage differs from the prescribed dosage by more than 20%.

[~~(4) A licensee restricted to only unit doses prepared in accordance with §289.252(r) of this title need not comply with the requirements in paragraph (1)(B) of this subsection, unless the administration time of the unit dose deviates from the nuclear pharmacy's pre-calibrated time by 15 minutes or more.~~]

(5) A licensee shall maintain a record of the dosage determination required by this subsection in accordance with subsection (www) of this section for inspection by the agency. The record shall contain the following:

(A) [~~radionuclide, generic name, trade name, or abbreviation of~~] the radiopharmaceutical;

(B) - (F) (No change.)

(y) - (dd) (No change.)

(ee) Decay-in-storage.

(1) The licensee may hold radioactive material with a physical half-life of less than or equal to 120 [~~65~~] days for decay-in-storage and dispose of it without regard to its radioactivity if the licensee does the following:

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

(2) (No change.)

(ff) Use of unsealed radioactive material for uptake, dilution, and excretion studies that do not require a written directive. Except for quantities that require a written directive in accordance with subsection (t) of this section, a licensee may use any unsealed radioactive material prepared for medical or veterinary use for uptake, dilution, or excretion studies that meets the following:

(1) is obtained from:

(A) a manufacturer or preparer licensed in accordance with §289.252 of this title or equivalent NRC, agreement state, or licensing state requirements; or

(B) a PET radioactive drug producer licensed in accordance with §289.252(kk) of this title or equivalent NRC, agreement state, or licensing state requirements; or

(2) excluding production of PET radionuclides, prepared by [~~is prepared by one of the following~~]:

(A) an authorized nuclear pharmacist; or

(B) a physician who is an authorized user and who meets the requirements specified in subsections (jj) or (nn) and (jj)(1)(C)(ii)(VII) of this section[~~, or prior to the effective date of this rule, meets the requirements of subsection (l)(2) of this section for imaging and localization studies and unsealed radioactive material requiring a written directive~~]; or

(C) an individual under the supervision, as specified in subsection (s) of this section, of the [~~an~~] authorized nuclear pharmacist or the physician who is an authorized user in subparagraphs (A) and (B) of this paragraph; or

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

(gg) Training for uptake, dilution, and excretion studies. Except as provided in subsection (l) of this section, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized in subsection (ff) of this section to be a physician who:

(1) is certified by a medical specialty board whose certification process has been recognized by the agency, the NRC or an agreement state and who meets the requirements in paragraph (3)(C) [~~(4)~~] of this subsection. (The names of board certifications that have been recognized by the agency, the NRC, an agreement state, or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation). To have its certification recognized, a specialty board shall require all candidates for certification to:

(A) complete 60 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies that includes the topics listed in paragraph (3)(A) and (B) [~~(3)~~] of this subsection; and

(B) (No change.)

(2) is an authorized user in accordance with subsections (jj) or (nn) of this section or equivalent NRC or agreement state requirements; or

(3) has completed 60 hours of training and experience, including a minimum of eight hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies. The training and experience shall include the following.

(A) (No change.)

(B) Work experience, under the supervision of an authorized user who meets the requirements of this subsection, subsections (l), (jj), or (nn) of this section, or equivalent NRC or agreement state requirements involving the following:

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

(C) [~~(4)~~] Written [~~has obtained written~~] attestation, signed by a preceptor authorized user who meets the requirements of this subsection, subsections (l), (jj), or (nn) of this section, or equivalent NRC or agreement state requirements, that the individual has satisfactorily completed the requirements of paragraph (1)(A) or (3) of this subsection and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in accordance with subsection (ff) of this section.

(hh) Use of unsealed radioactive material for imaging and localization studies that do not require a written directive. Except for quantities that require a written directive in accordance with subsection (t) of this section, a licensee may use any unsealed radioactive material prepared for medical or veterinary use for imaging and localization studies that meets the following:

(1) is obtained from:

(A) a manufacturer or preparer licensed in accordance with §289.252 of this title or equivalent NRC, agreement state, or licensing state requirements; or

(B) A PET radioactive drug producer licensed in accordance with §289.252(kk) of this title or equivalent NRC, agreement state, or licensing state requirements; or

(2) excluding production of PET radionuclides, prepared by [~~is prepared by one of the following~~]:

(A) (No change.)

(B) a physician who is an authorized user and who meets the requirements specified in subsections (jj) or (nn) and (jj)(1)(C)(ii)(VII) of this section[~~, or prior to the effective date of this rule, meets the requirements of subsection (l)(2) of this section for imaging and localization studies not requiring a written directive~~]; or

(C) an individual under the supervision, as specified in subsection (s) of this section, of an authorized nuclear pharmacist or an authorized user in subparagraphs (A) and (B) of this paragraph; or

(3) [~~(D)~~] is obtained from and prepared by an NRC, agreement state, or licensing state licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an IND protocol accepted by the FDA; or

(4) [~~(E)~~] is prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an IND protocol accepted by the FDA.

[~~(3) Any licensee who processes and prepares radiopharmaceuticals for human use shall do so according to instructions that are furnished by the manufacturer on the label attached to or in the FDA-accepted instructions in the leaflet or brochure that accompanies the generator or reagent kit or the rules of the practice of pharmacy, as promulgated by the Texas State Board of Pharmacy.~~]

(ii) Permissible molybdenum-99, strontium-82, and strontium-85 concentrations [~~concentration~~].

(1) The licensee may not administer to humans a radiopharmaceutical that contains: [~~containing~~]

(A) more than 0.15 µCi of molybdenum-99 per millicurie of technetium-99m (0.15 kilobecquerel of molybdenum-99 per megabecquerel of technetium-99m); or [~~.~~]

(B) more than 0.02 µCi of strontium-82 per mCi of rubidium-82 chloride (0.02 kilobecquerel of strontium-82 per megabecquerel of rubidium-82 chloride) injection; or

(C) more than 0.2 µCi of strontium-85 per mCi of rubidium-82 (0.2 kilobecquerel of strontium-85 per megabecquerel of rubidium-82 chloride) injection.

(2) (No change.)

(3) The licensee who uses a strontium-82/rubidium-82 generator for preparing a rubidium-82 radiopharmaceutical shall, before the first patient use of the day, measure the concentration of radionuclides strontium-82 and strontium-85 to demonstrate compliance with paragraph (1) of this subsection.

(4) [~~(3)~~] If the licensee is required to measure the molybdenum-99 or strontium-82 and strontium-85 concentrations [~~concentration~~], the licensee shall retain a record of each measurement in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following [~~for each measured elution of technetium-99m~~]:

(A) for each measured elution of technetium-99m:

(i) the ratio of the measures expressed as microcuries of molybdenum-99 per millicurie of technetium-99m (kilobecquerel of molybdenum-99 per megabecquerel of technetium-99m);

(ii) [~~(B)~~] time and date of the measurement; and

(iii) [~~(C)~~] name of the individual who made the measurement.

(B) for each measured elution of rubidium-82:

(i) the ratio of the measures expressed as µCi of strontium-82 per mCi of rubidium (kilobecquerel of strontium-82 per megabecquerel of rubidium-82);

(ii) the ratio of the measures expressed as µCi of strontium-85 per mCi of rubidium (kilobecquerel of strontium-85 per megabecquerel of rubidium-82);

(iii) time and date of the measurement; and

(iv) name of the individual who made the measurement.

(jj) Training for imaging and localization studies.

(1) Except as provided in subsection (l) of this section, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized in subsection (hh) of this section to be a physician who:

(A) is certified by a medical specialty board whose certification process has been recognized by the agency, the NRC or an agreement state and who meets the requirements of subparagraph (C)(iii) [~~(D)~~] of this paragraph. (The names of board certifications that have been recognized by the agency, the NRC, an agreement state, or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation). To have its certification process recognized, a specialty board shall require all candidates for certification to:

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

(B) is an authorized user in accordance with subsection (nn) of this section[~~;~~] and meets the requirements of subparagraph (C)(ii)(VII) of this paragraph or equivalent NRC or agreement state requirements; or

(C) has completed 700 hours of training and experience, including a minimum of 80 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for imaging and localization studies. The training and experience shall include the following.

(i) (No change.)

(ii) Work experience under the supervision of an authorized user who meets the requirements in subsection (l) of this section, this subsection, or subclause (VII) of this clause, and subsection (nn) of this section, or equivalent NRC or agreement state requirements involving the following:

(I) - (VII) (No change.)

(iii) [~~(D)~~] Written [~~has obtained written~~] attestation, signed by a preceptor authorized user who meets the requirements of subsection (l) of this section, this subsection or subparagraph (C)(ii)(VII) of this paragraph and subsection (nn) of this section or equivalent NRC or agreement state requirements, that the individual has satisfactorily completed the requirements of subparagraph (A)(i) or (C)(i) and (ii) [~~(A)(i) or (C)~~] of this paragraph and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in accordance with subsections (ff) and (hh) of this section.

(2) (No change.)

(kk) Use of unsealed radioactive material that requires a written directive. A licensee may use any unsealed radioactive material prepared for medical use that requires a written directive [~~in accordance with subsection (t) of this section~~] that meets the following:

(1) is obtained from:

(A) a manufacturer or preparer licensed in accordance with §289.252 of this title or equivalent NRC, agreement state, or licensing state requirements;

(B) A PET radioactive drug producer licensed in accordance with §289.252(kk) of this title or equivalent NRC or agreement state requirements; or

(2) excluding production of PET radionuclides, prepared by [~~is prepared by one of the following~~]:

(A) an authorized nuclear pharmacist; or

(B) (No change.)

(C) an individual under the supervision, as specified in subsection (s) of this section, of the [~~an~~] authorized nuclear pharmacist or the physician who is an authorized user in subparagraphs (A) and (B) of this paragraph; or

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

(ll) - (mm) (No change.)

(nn) Training for use of unsealed radioactive material that requires a written directive. Except as provided in subsection (l) of this section, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized in subsection (kk) of this section to be a physician who:

(1) (No change.)

(2) has completed 700 hours of training and experience, including a minimum of 200 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material requiring a written directive. The training and experience shall include the following.

(A) (No change.)

(B) Work experience, under the supervision of an authorized user who meets the requirements of subsection (l) of this section, this subsection or equivalent NRC or agreement state requirements. A supervising authorized user, who meets the requirements of this paragraph shall also have experience in administering dosages in the same dosage category or categories (for example, in accordance with clause (vi) of this subparagraph) as the individual requesting authorized user status. The work experience shall involve the following:

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

(C) Written [~~written~~] attestation that the individual has satisfactorily completed the requirements of paragraphs (1)(A) and (2)(B)(vi) or (2) of this subsection, and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in accordance with subsection (kk) of this section. The written attestation shall be signed by a preceptor authorized user who meets the requirements of subsection (l) of this section, this subsection or equivalent NRC or agreement state requirements. The preceptor authorized user who meets the requirements in paragraph (2) of this subsection shall have experience in administering dosages in the same dosage category or categories (for example, in accordance with paragraph (2)(B)(vi) of this subsection) as the individual requesting authorized user status.

(oo) Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 33 mCi (1.22 GBq). Except as provided in subsection (l) of this section, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 33 mCi (1.22 GBq) to be a physician who:

(1) is certified by a medical specialty board whose certification process includes all of the requirements of paragraph (3)(A) and (B) [~~paragraphs (3) and (4)~~] of this subsection and whose certification has been recognized by the agency, the NRC, an agreement state, or licensing state and who meets the requirements in paragraph (3)(C) of this subsection. (The names of board certifications which have been recognized by the agency, the NRC, agreement state or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation); or

(2) is an authorized user in accordance with subsection (nn) of this section for uses listed in subsection (nn)(2)(B)(vi)(I) or (II) of this section, or subsection (pp) of this section, or equivalent NRC or agreement state requirements; or

(3) has successfully completed 80 hours of classroom and laboratory training and work experience applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training and experience shall include the following.

(A) (No change.)

(B) Work experience, under the supervision of an authorized user who meets the requirements of subsection (l) of this section, this subsection, subsection (nn) or subsection (pp) of this section, or equivalent NRC or agreement state requirements. A supervising authorized user who meets the requirements in subsection (nn)(2) of this section, shall also have experience in administering dosages as specified in subsection (nn)(2)(B)(vi)(I) or (II) of this section. The work experience shall involve the following:

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

(C) [~~(4)~~] Written [~~has obtained written~~] attestation that the individual has satisfactorily completed the requirements of subparagraphs (A) and (B) of this paragraph [~~paragraph (3) of this section~~], and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in accordance with subsection (kk) of this section. The written attestation shall be signed by a preceptor authorized user who meets the requirements of subsection (l) of this section, this subsection, subsection (nn) or subsection (pp) of this section or equivalent NRC or agreement state requirements. A preceptor authorized user, who meets the requirements in subsection (nn)(2) of this section shall also have experience in administering dosages as specified in subsection (nn)(2)(B)(vi)(I) or (II) of this section.

(pp) Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 33 mCi (1.22 GBq). Except as provided in subsection (l) of this section, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 33 mCi (1.22 GBq) to be a physician who:

(1) is certified by a medical specialty board whose certification process includes all of the requirements in paragraph (3)(A) and (B) [~~(3)~~] of this subsection and whose certification has been recognized by the agency, the NRC, an agreement state, or licensing state and who meets the requirements of paragraph (3) [~~(4)~~] of this subsection. (The names of board certifications which have been recognized by the agency, the NRC, agreement state or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation);

(2) is an authorized user in accordance with subsection (nn) of this section or equivalent NRC or agreement state requirements for uses listed in subsection (nn)(2)(B)(vi)(II) of this section; or

(3) has training and experience including, successful completion of 80 hours of classroom and laboratory training applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training and experience shall include the following.

(A) (No change.)

(B) Work experience, under the supervision of an authorized user who meets the requirements of subsection (l) of this section, subsections (nn) or (pp) of this section or equivalent NRC or agreement state requirements. A supervising authorized user who meets the requirements of subsection (nn)(2) of this section, shall also have experience in administering dosages as specified in subsection (nn)(2)(B)(vi)(II) of this section. The work experience shall involve the following:

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

(C) [~~(4)~~] Written [~~has obtained written~~] attestation that the individual has satisfactorily completed the requirements of subparagraphs (A) and (B) of this paragraph [~~paragraph (3) of this subsection~~], and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in accordance with subsection (kk) of this section. The written attestation shall be signed by a preceptor authorized user who meets the requirements in subsection (l) of this section, this subsection or subsection (nn) of this section or equivalent NRC or agreement state requirements. The preceptor authorized user, who meets the requirements in subsection (nn)(2) of this section, shall also have experience in administering dosages as specified in subsection (nn)(2)(B)(vi)(II) of this section.

(qq) Training for the parenteral administration of unsealed radioactive material requiring a written directive. Except as provided in subsection (l) of this section, the licensee shall require an authorized user for the parenteral administration requiring a written directive to be a physician who:

(1) is an authorized user in accordance with subsection (nn) of this section for uses listed in subsection (nn)(2)(B)(vi)(III) or (IV) of this section or equivalent NRC or agreement state requirements; or

(2) is an authorized user under subsections (zz) or (ttt) of this section or equivalent NRC or agreement state requirements and who meets the requirements of paragraph (4) of this subsection; or

(3) (No change.)

(4) has successfully completed training and experience including 80 hours of classroom and laboratory training applicable to parenteral administrations requiring a written directive, of any beta emitting radionuclide or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. The training and experience shall include the following.

(A) (No change.)

(B) Work experience, under the supervision of an authorized user who meets the requirements of subsection (l) of this section, this subsection or subsection (nn) of this section or equivalent NRC or agreement state requirements in the parenteral administration, for which a written directive is required, of any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. A supervising authorized user who meets the requirements of subsection (nn) of this section, shall have experience in administering dosages as specified in subsection (nn)(2)(B)(vi)(III) and/or (IV) of this section. The work experience shall involve the following:

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

(C) [~~(5)~~] Written [~~has obtained written~~] attestation that the individual has satisfactorily completed the requirements of paragraphs (2) or (3) of this subsection, and has achieved a level of competency sufficient to function independently as an authorized user for the parenteral administration of unsealed radioactive materials requiring a written directive. The written attestation shall be signed by a preceptor authorized user who meets the requirements of subsection (l) of this section, this subsection or subsection (nn) of this section or equivalent NRC or agreement state requirements. A preceptor authorized user, who meets the requirements of subsection (nn) of this section shall have experience in administering dosages as specified in subsection (nn)(2)(B)(vi)(III) and/or (IV) of this section.

(rr) - (xx) (No change.)

(yy) Therapy-related computer systems for manual brachytherapy. The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally recognized bodies. At a minimum, the acceptance testing shall include, as applicable, verification of the following:

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

(zz) Training for use of manual brachytherapy sealed sources. Except as provided in subsection (l) of this section, the licensee shall require an authorized user of a manual brachytherapy source for the uses authorized in subsection (rr) of this section to be a physician who:

(1) (No change.)

(2) has completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachytherapy sources including the following:

(A) (No change.)

(B) 500 hours of work experience, under the supervision of an authorized user who meets the requirements of subsection (l) of this section, this subsection, or equivalent NRC or agreement state requirements at a medical institution, involving the following:

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

(C) Completion of [~~has completed~~] three years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements of subsection (l) of this section, this subsection, or equivalent NRC or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subparagraph (B) of this paragraph; and

(D) Written [~~has obtained written~~] attestation, signed by a preceptor authorized user who meets the requirements of subsection (l) of this section, this subsection, or equivalent NRC or agreement state requirements, that the individual has satisfactorily completed the requirements of paragraph (1)(A) of this subsection or subparagraphs (A) - (C) of this paragraph and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy for the medical uses authorized in accordance with subsection (rr) of this section.

(aaa) Training for ophthalmic use of strontium-90. Except as provided in subsection (l) of this section, the licensee shall require an authorized user of strontium-90 for ophthalmic radiotherapy to be a physician who:

(1) is an authorized user under subsection (zz) of this section or equivalent NRC or agreement state requirements; or

(2) has completed 24 hours of classroom and laboratory training applicable to the medical use of strontium-90 for ophthalmic radiotherapy. The training shall include the following.

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

(C) Written [~~has obtained written~~] attestation, signed by a preceptor authorized user who meets the requirements of subsection (l) of this section, this subsection or subsection (zz) of this section, or equivalent NRC or agreement state requirements, that the individual has satisfactorily completed the requirements of paragraphs (1) and (2) of this subsection and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.

(bbb) Use of sealed sources for diagnosis.

(1) The licensee shall use only sealed sources for diagnostic medical uses as approved in the Sealed Source and Device Registry.

(2) The licensee shall document that the service provider, who is performing installation and source exchange of devices containing sealed source(s) of radioactive material in medical imaging equipment, has a specific license issued by the agency in accordance with §289.252(ll) of this title. The documentation shall be maintained for inspection by the agency in accordance with subsection (www) of this section.

(ccc) - (rrr) (No change.)

(sss) Therapy-related computer systems for photon-emitting remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units. The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally recognized bodies. At a minimum, the acceptance testing shall include, as applicable, verification of the following:

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

(ttt) Training for use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units. Except as provided in subsection (l) of this section, the licensee shall require an authorized user of a sealed source for a use authorized in subsection (ddd) of this section to be a physician who:

(1) (No change.)

(2) has completed a structured educational program in basic radionuclide handling techniques applicable to the use of a sealed source in a therapeutic medical unit including the following:

(A) 200 hours of classroom and laboratory training in the following areas:

(i) - (iii) (No change.)

(iv) radiation biology. [~~; and~~]

(B) 500 hours of work experience, under the supervision of an authorized user who meets the requirements of subsection (l) of this section and this subsection or equivalent NRC or agreement state requirements at a medical institution involving the following:

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

(C) Completion of [~~has completed~~] three years of supervised clinical experience in radiation therapy, under an authorized user who meets the requirements of subsection (l) of this section, this subsection, or equivalent NRC or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subparagraph (B) of this paragraph; and

(D) Written [~~has obtained written~~] attestation that the individual has satisfactorily completed the requirements of paragraphs (1)(A) or (2), and (3) of this subsection, and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written attestation shall be signed by a preceptor authorized user who meets the requirements in subsection (l) of this section, this subsection, or equivalent NRC or agreement state requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and

(3) (No change.)

(uuu) - (vvv) (No change.)

(www) Records/documents for agency inspection. Each licensee shall maintain copies of the following records/documents at each authorized use site and make them available to the agency for inspection, upon reasonable notice.
Figure: 25 TAC §289.256(www)
[~~Figure: 25 TAC §289.256(www)~~]

§289.257. Packaging and Transportation of Radioactive Material.

(a) Purpose.

(1) (No change.)

(2) The packaging and transport of radioactive material are also subject to the requirements of §289.201 of this title (relating to General Provisions for Radioactive Material), §289.202 of this title (relating to Standards for Protection Against Radiation from Radioactive Materials), §289.203 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.205 of this title (relating to Hearing and Enforcement Procedures), §289.251 of this title (relating to Exemptions, General Licenses, and General License Acknowledgements), §289.252 of this title (relating to Licensing of Radioactive Material), and [~~§289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities),~~] §289.256 of this title (relating to Medical and Veterinary Use of Radioactive Material[~~, and §289.260 of this title (relating to Licensing of Uranium Recovery and Byproduct Material Disposal Facilities)~~] and to the regulations of other agencies (e.g., the United States Department of Transportation (DOT) and the United States Postal Service) having jurisdiction over means of transport. The requirements of this section are in addition to, and not in substitution for, other requirements.

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

(d) Definitions. The following words and terms when used in this section shall have the following meaning, unless the context clearly indicates otherwise. To ensure compatibility with international transportation standards, all limits in this section are given in terms of dual units: The International System of Units (SI) followed or preceded by

United States (U.S.) standard or customary units. The U.S. customary units are not exact equivalents, but are rounded to a convenient value, providing a functionally equivalent unit. For the purpose of this section, SI units shall be used.

(1) A_1--The maximum activity of special form radioactive material permitted in a Type A package. This value is either listed in Table 257-3 of subsection (ee)(6) [~~(ff)(6)~~] of this section, or may be derived in accordance with the procedure prescribed in subsection (ee) [~~(ff)~~] of this section.

(2) A_2--The maximum activity of radioactive material, other than special form, low specific activity (LSA) and surface contaminated object (SCO) material, permitted in a Type A package. This value is either listed in Table 257-3 of subsection (ee)(6) [~~(ff)(6)~~] of this section, or may be derived in accordance with the procedure prescribed in subsection (ee) [~~(ff)~~] of this section.

~~[(3) BRC Forms 540, 540A, 541, 541A, 542, and 542A--Official agency forms referenced in subsection (gg) of this section which includes the information required by DOT in Title 49, Code of Federal Regulations (CFR), Part 172. BRC Form 541B contains additional information for low-level radioactive waste (LLRW) shipments to a Texas LLRW disposal facility. Licensees need not use originals of these forms as long as any substitute forms are equivalent to the original documentation in respect to content, clarity, size, and location of information. Upon agreement between the shipper and consignee, BRC Forms 541 (and 541A and 541B) and BRC Forms 542 (and 542A) may be completed, transmitted, and stored in electronic media. The electronic media shall have the capability for producing legible, accurate, and complete records in the format of the uniform manifest.]~~

(3) [~~(4)~~] Carrier--A person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

(4) [~~(5)~~] Certificate holder--A person who has been issued a certificate of compliance or other package approval by the agency.

(5) [~~(6)~~] Certificate of compliance--The certificate issued by the NRC that approves the design of a package for the transportation of radioactive materials.

(6) [~~(7)~~] Chelating agent--Amine polycarboxylic acids (e.g., EDTA, DTPA), hydroxy-carboxylic acids, and polycarboxylic acids (e.g., citric acid, carbolic acid, and glucinic acid).

(7) [~~(8)~~] Chemical description--A description of the principal chemical characteristics of a LLRW.

(8) [~~(9)~~] Consignee--The designated receiver of the shipment of low-level radioactive waste.

(9) [~~(10)~~] Consignment--Each shipment of a package or groups of packages or load of radioactive material offered by a shipper for transport.

(10) [~~(11)~~] Containment system--The assembly of components of the packaging intended to retain the radioactive material during transport.

(11) [~~(12)~~] Conveyance--For transport on:

(A) public highway or rail by transport vehicle or large freight container;

(B) water by vessel, or any hold, compartment, or defined deck area of a vessel including any transport vehicle on board the vessel; and

(C) aircraft.

(12) [~~(13)~~] Criticality Safety Index (CSI)--The dimensionless number (rounded up to the next tenth) assigned to and placed on the label of a fissile material package, to designate the degree of control of accumulation of packages containing fissile material during transportation. Determination of the criticality safety index is described in subsection (i) of this section and Title 10, Code of Federal Regulations (CFR) [~~CFR~~], §71.59.

(13) [~~(14)~~] Decontamination facility--A facility operating in accordance with an NRC, agreement state, or agency license whose principal purpose is decontamination of equipment or materials to accomplish recycle, reuse, or other waste management objectives, and, for purposes of this section, is not considered to be a consignee for LLRW shipments.

(14) [~~(15)~~] Deuterium--For the purposes of this section, this means deuterium and any deuterium compound, including heavy water, in which the ratio of deuterium atoms to hydrogen atoms exceeds 1:5000.

(15) [~~(16)~~] Disposal container--A transport container principally used to confine LLRW during disposal operations at a land disposal facility (also see definition for high integrity container). Note that for some shipments, the disposal container may be the transport package.

(16) [~~(17)~~] Environmental Protection Agency (EPA) identification number--The number received by a transporter following application to the administrator of EPA as required by Title 40, CFR, Part 263.

(17) [~~(18)~~] Exclusive use--The sole use by a single consignor of a conveyance for which all initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee. The consignor and the carrier shall ensure that any loading or unloading is performed by personnel having radiological training and resources appropriate for safe handling of the consignment. The consignor shall issue specific instructions, in writing, for maintenance of exclusive use shipment controls, and include them with the shipping paper information provided to the carrier by the consignor.

(18) [~~(19)~~] Fissile material--The radionuclides plutonium-239, plutonium-241, uranium-233, uranium-235, or any combination of these radionuclides. Fissile material means the fissile nuclides themselves, not material containing fissile nuclides. Unirradiated natural uranium and depleted uranium, and natural uranium or depleted uranium that has been irradiated in thermal reactors only are not included in this definition. Agency jurisdiction extends only to special nuclear material in quantities not sufficient to form a "critical mass" as defined in §289.201(b) of this title. Certain exclusions from fissile material controls are provided in subsection (h) of this section.

(19) [~~(20)~~] Generator--A licensee operating in accordance with an NRC, agreement state, or agency license who:

(A) is a waste generator as defined in this section; or

(B) is the licensee to whom waste can be attributed within the context of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (e.g., waste generated as a result of decontamination or recycle activities).

(20) [~~(21)~~] Graphite--For the purposes of this section, this means graphite with a boron equivalent content of less than five parts per million and density greater than 1.5 grams per cubic centimeter.

(21) [~~(22)~~] High integrity container (HIC)--A container commonly designed to meet the structural stability requirements of

Title 10, CFR, §61.56, and to meet DOT requirements for a Type A package.

(22) [~~(23)~~] Industrial package (IP)--A packaging that, together with its low specific activity (LSA) material or surface contaminated object (SCO) contents, meets the requirements of Title 49, CFR, §173.410 and §173.411. Industrial packages are categorized in Title 49, CFR, §173.411 as either:

(A) Industrial package Type 1 (IP-1);

(B) Industrial package Type 2 (IP-2); or

(C) Industrial package Type 3 (IP-3).

(23) [~~(24)~~] Low-level radioactive waste (LLRW)--Radioactive material that meets the following criteria:

(A) LLRW is radioactive material that is:

(i) discarded or unwanted and is not exempt by rule adopted in accordance with the Texas Radiation Control Act (Act), Health and Safety Code, §401.106;

(ii) waste, as that term is defined in Title 10, CFR, §61.2; and

(iii) subject to:

(I) concentration limits established in Title 10, CFR, §61.55, or compatible rules adopted by the agency or the Texas Commission on Environmental Quality (TCEQ), as applicable; and

(II) disposal criteria established in Title 10, CFR, or established by the agency or TCEQ, as applicable.

(B) LLRW does not include:

(i) high-level radioactive waste as defined in Title 10, CFR, §60.2;

(ii) spent nuclear fuel as defined in Title 10, CFR, §72.3;

(iii) byproduct material defined in the Act, Health and Safety Code, §401.003(3)(B);

(iv) naturally occurring radioactive material (NORM) waste that is not oil and gas NORM waste;

(v) oil and gas NORM waste; or

(vi) transuranics greater than 100 nanocuries per gram.

(24) [~~(25)~~] Low specific activity (LSA) material--Radioactive material with limited specific activity which is nonfissile or is excepted in accordance with subsection (h) of this section, and which satisfies the following descriptions and limits set forth. Shielding materials surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents. LSA material shall be in one of the following three groups:

(A) LSA-I.

(i) Ores containing only naturally occurring radionuclides (e.g., uranium, thorium) and uranium or thorium concentrates of such ores which are not intended to be processed for the use of these radionuclides; or

(ii) Solid unirradiated natural uranium or depleted uranium or natural thorium or their solid or liquid compounds or mixtures; or

(iii) Radioactive material for which the A_2 value is unlimited; or

(iv) Other radioactive material (e.g.: mill tailings, contaminated earth, concrete, rubble, other debris, and activated material) in which the radioactivity is distributed throughout, and the estimated average specific activity does not exceed 30 times the value for exempt material activity concentration determined in accordance with subsection (ee) [~~(ff)~~] of this section.

(B) LSA-II.

(i) Water with tritium concentration up to 0.8 terabecquerel per liter (TBq/l) (20.0 curies per liter (Ci/l)); or

(ii) Other material in which the radioactivity is distributed throughout, and the average specific activity does not exceed 10^{-4} A_2/g for solids and gases, and 10^{-5} A_2/g for liquids.

(C) LSA-III. Solids (e.g., consolidated wastes, activated materials), excluding powders, that satisfy the requirements of Title 10, CFR, §71.77 in which:

(i) the radioactive material is distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.); and

(ii) the radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even with a loss of packaging, the loss of radioactive material per package by leaching, when placed in water for seven days, would not exceed 0.1 A_2; and

(iii) the average specific activity of the solid does not exceed 2×10^{-3} A_2/g.

(25) [~~(26)~~] Low toxicity alpha emitters--Natural uranium, depleted uranium, natural thorium; uranium-235, uranium-238, thorium-232, thorium-228 or thorium-230 when contained in ores or physical or chemical concentrates or tailings; or alpha emitters with a half-life of less than ten days.

(26) [~~(27)~~] Maximum normal operating pressure--The maximum gauge pressure that would develop in the containment system in a period of one year under the heat condition specified in Title 10, CFR, §71.71(c)(1), in the absence of venting, external cooling by an ancillary system, or operational controls during transport.

(27) [~~(28)~~] Natural thorium--Thorium with the naturally occurring distribution of thorium isotopes (essentially 100 weight percent thorium-232).

(28) [~~(29)~~] Normal form radioactive material--Radioactive material that has not been demonstrated to qualify as special form radioactive material.

(29) [~~(30)~~] Package--The packaging together with its radioactive contents as presented for transport.

(A) Fissile material package, Type AF package, Type BF package, Type B(U)F package, or Type B(M)F package--A fissile material packaging together with its fissile material contents.

(B) Type A package--A Type A packaging together with its radioactive contents. A Type A package is defined and shall comply with the DOT regulations in Title 49, CFR, Part 173.

(C) Type B package--A Type B packaging together with its radioactive contents. On approval by the NRC, a Type B package design is designated by NRC as B(U) unless the package has a maximum normal operating pressure of more than 700 kilopascals (kPa) 8 (100 pounds per square inch (lb/in^2)) gauge or a pressure relief device that would allow the release of radioactive material to the environment under the tests specified in Title 10, CFR, §71.73 (hypothet-

ical accident conditions), in which case it will receive a designation B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval of international shipments. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, see DOT regulations in Title 49, CFR, Part 173. A Type B package approved before September 6, 1983, was designated only as Type B. Limitations on its use are specified in Title 10, CFR, §71.19.

(30) [~~(31)~~] Packaging--The assembly of components necessary to ensure compliance with the packaging requirements of this section. It may consist of one or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks. The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

(31) [~~(32)~~] Physical description--The items called for on RC Form [~~BRC Form~~] 541 to describe a LLRW.

(32) RC Forms 540, 540A, 541, 541A, 542, and 542A--Official agency forms referenced in subsection (ff) of this section which includes the information required by DOT in Title 49, Code of Federal Regulations, Part 172. RC Form 541B contains additional information for LLRW shipments to a Texas LLRW disposal facility. Licensees need not use originals of these forms as long as any substitute forms are equivalent to the original documentation in respect to content, clarity, size, and location of information. Upon agreement between the shipper and consignee, RC Forms 541 (and 541A and 541B) and RC Forms 542 (and 542A) may be completed, transmitted, and stored in electronic media. The electronic media shall have the capability for producing legible, accurate, and complete records in the format of the uniform manifest.

(33) - (37) (No change.)

(38) Surface contaminated object (SCO)--A solid object that is not itself classed as radioactive material, but which has radioactive material distributed on any of its surfaces. A SCO shall be in one of the following two groups with surface activity not exceeding the following limits:

(A) SCO-I--A solid object on which:

(i) (No change.)

(ii) the fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 4 x 10^4 Bq/cm^2 (1 µCi/cm^2) for beta and gamma and low toxicity alpha emitters, or 4 x 10^3 Bq/cm^2 (10^{-2} µCi/cm^2) [~~(10^{-1} µCi/cm^2)~~] for all other alpha emitters; and

(iii) the non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 4 x 10^4 Bq/cm^2 (1 µCi/cm^2) for beta and gamma and low toxicity alpha emitters, or 4 x 10^3 Bq/cm^2 (10^{-2} µCi/cm^2) [~~(10^{-1} µCi/cm^2)~~] for all other alpha emitters.

(B) (No change.)

(39) Uniform Low-Level Radioactive Waste Manifest or uniform manifest--The combination of RC Forms [~~BRC Forms~~] 540, 541, and, if necessary, 542, and their respective continuation sheets as needed, or equivalent.

(40) - (42) (No change.)

(43) Waste description--The physical, chemical and radiological description of a LLRW as called for on RC Form [~~BRC Form~~] 541.

(44) - (46) (No change.)

(e) Transportation of radioactive material.

(1) Each licensee who transports radioactive material outside the site of usage as specified in the agency license, transports on public highways, or delivers radioactive material to a carrier for transport, shall comply with the applicable requirements of the DOT regulations in Title 49, CFR, Part 107, Parts 171 - 180, §387.7 and §387.9, [~~171 - 189~~] and Parts 390 - 397 appropriate to the mode of transport. The licensee shall particularly note DOT regulations in the following areas:

(A) - (H) (No change.)

(I) Financial Responsibility - Title 49, CFR, §387.7 and §387.9.

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

(4) Transporters of low-level radioactive waste to a Texas low-level radioactive waste disposal site shall submit proof of financial responsibility required by Title 49, CFR, §387.7 and §387.9, to the agency's Radiation Safety Licensing Branch and receive approval of this documentation from the agency prior to shipment.

(5) The agency shall review and determine alternate routes for the transportation and routing of radioactive material in accordance with 49 CFR, §397.103.

(f) Exemption for low-level radioactive materials.

(1) A licensee is exempt from all requirements of this section with respect to shipment or carriage of the following low-level materials:

(A) Natural material and ores containing naturally occurring radionuclides that are not intended to be processed for use of these radionuclides, provided the activity concentration of the material does not exceed 10 times the values specified in Table 257-4 of subsection (ee)(7) [~~(ff)(7)~~] of this section.

(B) Materials for which the activity concentration is not greater than the activity concentration values specified in Table 257-4 of subsection (ee)(7) [~~(ff)(7)~~] of this section, or for which the consignment activity is not greater than the limit for an exempt consignment found in Table 257-4 of subsection (ee)(7) [~~(ff)(7)~~] of this section.

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

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

(i) General license.

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

(3) DOT specification container.

(A) (No change.)

(B) This general license applies only to a licensee who:

(i) has a quality assurance program required by subsections (s), (t), and (u) [~~(t), (u), and (v)~~] of this section and Title 10, CFR, Part 71, Subpart H;

(ii) - *(iii)* (No change.)

(C) (No change.)

(4) - (6) (No change.)

(j) (No change.)

(k) Preliminary determinations. Before the first use of any packaging for the shipment of licensed material the licensee shall:

(1) (No change.)

(2) where the maximum normal operating pressure will exceed 35 kPa (5 lbf/in^2) [~~(5 lb/in^2)~~] gauge, test the containment system at an internal pressure at least 50 percent higher than the maximum normal operating pressure, to verify the capability of that system to maintain its structural integrity at that pressure; and

(3) (No change.)

(l) (No change.)

(m) Air transport of plutonium.

(1) Notwithstanding the provisions of any general licenses and notwithstanding any exemptions stated directly in this section or included indirectly by citation of Title 49, CFR, Chapter I, as may be applicable, the licensee shall assure that plutonium in any form, whether for import, export, or domestic shipment, is not transported by air or delivered to a carrier for air transport unless:

(A) (No change.)

(B) the plutonium is contained in a material in which the specific activity is less than or equal to the activity concentration values for plutonium specified in Table 257-4 of subsection (ee)(7) [~~(ff)(7)~~] of this section, and in which the radioactivity is essentially uniformly distributed; or

(C) - (D) (No change.)

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

(n) - (p) (No change.)

(q) Advance notification of transport of irradiated reactor fuel and certain radioactive waste.

(1) (No change.)

(2) Advance notification is required in accordance with this section for shipment of irradiated reactor fuel in quantities less than that subject to advance notification requirements of Title 10, CFR, §73.37. Advanced notification is also required under this subsection for shipments of radioactive material, other than irradiated fuel, meeting the following three conditions:

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

(C) the quantity of radioactive waste in a single package exceeds the least of the following:

(i) 3000 times the A_1 value of the radionuclides as specified in subsection (ee) [~~(ff)~~] of this section for special form radioactive material;

(ii) 3000 times the A_2 value of the radionuclides as specified in subsection (ee) [~~(ff)~~] of this section for normal form radioactive material; or

(iii) (No change.)

(3) - (6) (No change.)

(r) (No change.)

~~[(s) Inspections. Each shipment of LLRW to a licensed land disposal facility in Texas shall be inspected by the agency prior to shipment. The waste shipper shall notify the agency no less than 72 hours prior to the scheduled shipment of the intent to transport waste to the licensed land disposal facility.]~~

(s) [~~(t)~~] Quality assurance requirements.

(1) Purpose. This subsection describes quality assurance requirements applying to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, and modification of components of packaging that are important to safety.

(A) Quality Assurance comprises all those planned and systematic actions necessary to provide adequate confidence that a system or component will perform satisfactorily in service.

(B) Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component to predetermined requirements.

(C) The licensee [~~license~~], certificate holder, and applicant for a CoC are responsible for the following:

(i) the quality assurance requirements as they apply to design, fabrication, testing, and modification of packaging; and

(ii) the quality assurance provision which applies to its use of a packaging for the shipment of licensed material subject to this subpart.

(2) Establishment of program. Each licensee, certificate holder, and applicant for a CoC shall:

(A) Establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of this subsection, subsections (s) and (t) [~~(t) and (u)~~] of this section and Title 10, CFR, §§71.101 through 71.137 and satisfying any specific provisions that are applicable to the licensee's activities including procurement of packaging; and

(B) Execute the applicable criteria in a graded approach to an extent that is commensurate with the quality assurance requirement's importance to safety.

(3) Approval of program. Before the use of any package for the shipment of licensed material subject to this subsection, each licensee shall:

(A) obtain agency approval of its quality assurance program; and

(B) file a description of its quality assurance program, including a discussion of which requirements of this subsection and subsections (t) and (u) [~~(u) and (v)~~] are applicable and how they will be satisfied.

(4) Radiography containers. A program for transport container inspection and maintenance limited to radiographic exposure devices, source changers, or packages transporting these devices and meeting the requirements of §289.255(m) of this title, is deemed to satisfy the requirements of subsection (i)(1)(B) of this section and paragraph (2) of this subsection.

(t) [~~(u)~~] Quality assurance organization. The licensee, certificate holder, and applicant for a CoC shall (while the term "licensee" is used in these criteria, the requirements are applicable to whatever design, fabricating, assembly, and testing of the package is accomplished with respect to a package before the time a package approval is issued):

(1) be responsible for the establishment and execution of the quality assurance program. The licensee, certificate holder, and applicant for a CoC may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part of the quality assurance program, but shall retain responsibility for the program; and

(2) clearly establish and delineate, in writing, the authority and duties of persons and organizations performing activities affecting the functions of structures, systems, and components that are important

to safety. These activities include performing the functions associated with attaining quality objectives and the quality assurance functions.

(3) establish quality assurance functions as follows:

(A) assuring that an appropriate quality assurance program is established and effectively executed; and

(B) verifying, by procedures such as checking, auditing, and inspection, that activities affecting the functions that are important to safety have been correctly performed.

(4) assure that persons and organizations performing quality assurance functions have sufficient authority and organizational freedom to:

(A) identify quality problems;

(B) initiate, recommend, or provide solutions; and

(C) verify implementation of solutions.

(u) [~~(v)~~] Quality assurance program. A quality assurance program shall be maintained as follows:

(1) The licensee, certificate holder, and applicant for a CoC shall:

(A) establish, at the earliest practicable time consistent with the schedule for accomplishing the activities, a quality assurance program that complies with the requirements of this section and Title 10, CFR, §§71.101 through 71.137 [§§~~71.01 through 71.137~~];

(B) document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with those procedures throughout the period during which the packaging is used; and

(C) identify the material and components to be covered by the quality assurance program, the major organizations participating in the program, and the designated functions of these organizations.

(2) The licensee, certificate holder, and applicant for a CoC, through its quality assurance program, shall:

(A) provide control over activities affecting the quality of the identified materials and components to an extent consistent with their importance to safety, and as necessary to assure conformance to the approved design of each individual package used for the shipment of radioactive material;

(B) assure that activities affecting quality are accomplished under suitable controlled conditions which include:

(i) the use of appropriate equipment;

(ii) suitable environmental conditions for accomplishing the activity, such as adequate cleanliness; and

(iii) all prerequisites for the given activity have been satisfied; and

(C) take into account the need for special controls, processes, test equipment, tools, and skills to attain the required quality, and the need for verification of quality by inspection and test.

(3) The licensee, certificate holder, and applicant for a CoC shall base the requirements and procedures of its quality assurance program on the following considerations concerning the complexity and proposed use of the package and its components.

(A) The impact of malfunction or failure of the item to safety;

(B) The design and fabrication complexity or uniqueness of the item;

(C) The need for special controls and surveillance over processes and equipment;

(D) The degree to which functional compliance can be demonstrated by inspection or test; and

(E) The quality history and degree of standardization of the item.

(4) The licensee, certificate holder, and applicant for a CoC shall provide for indoctrination and training of personnel performing activities affecting quality, as necessary to assure that suitable proficiency is achieved and maintained.

(5) The licensee, certificate holder, and applicant for a CoC shall review the status and adequacy of the quality assurance program at established intervals. Management of other organizations participating in the quality assurance program shall review regularly the status and adequacy of that part of the quality assurance program they are executing.

(v) [~~(w)~~] Quality control program. Each shipper shall adopt a quality control program to include verification of the following to ensure that shipping containers are suitable for shipments to a licensed disposal facility:

(1) identification of appropriate container(s);

(2) container testing documentation is adequate;

(3) appropriate container used;

(4) container packaged appropriately;

(5) container labeled appropriately;

(6) manifest filled out appropriately; and

(7) documentation maintained of each step.

(w) [~~(x)~~] Handling, storage, and shipping control. The licensee, certificate holder, and applicant for a CoC shall establish measures to control, in accordance with instructions, the handling, storage, shipping, cleaning, and preservation of materials and equipment to be used in packaging to prevent damage or deterioration. When necessary for particular products, special protective environments, such as inert gas atmosphere, and specific moisture content and temperature levels must be specified and provided.

(x) [~~(y)~~] Inspection, test, and operating status. Measures to track inspection, test and operating status shall be established as follows.

(1) The licensee, certificate holder, and applicant for a CoC shall establish measures to indicate, by the use of markings such as stamps, tags, labels, routing cards, or other suitable means, the status of inspections and tests performed upon individual items of the packaging. These measures must provide for the identification of items that have satisfactorily passed required inspections and tests, where necessary to preclude inadvertent bypassing of the inspections and tests; and

(2) The licensee, shall establish measures to identify the operating status of components of the packaging, such as tagging valves and switches, to prevent inadvertent operation.

(y) [~~(z)~~] Nonconforming materials, parts, or components. The licensee, certificate holder, and applicant for a CoC shall establish measures to control materials, parts, or components that do not conform to the licensee's requirements to prevent their inadvertent use or installation. These measures must include the following, as appropriate;

(1) procedures for identification, documentation, segregation, disposition, and notification to affected organizations; and

(2) nonconforming items must be reviewed and accepted, rejected, repaired, or reworked in accordance with documented procedures.

(z) [~~(aa)~~] Corrective action. The licensee, certificate holder, and applicant for a CoC shall establish measures to assure that conditions adverse to quality, such as deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected.

(1) In the case of a significant condition adverse to quality, the measures must assure that the cause of the condition is determined and corrective action taken to preclude repetition.

(2) The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken must be documented and reported to appropriate levels of management.

(aa) [~~(bb)~~] Quality assurance records. The licensee, certificate holder, and applicant for a CoC shall maintain written records sufficient to describe the activities affecting quality for inspection by the agency for 3 years beyond the date when the licensee, certificate holder, and applicant for a CoC last engage in the activity for which the quality assurance program was developed. If any portion of the written procedures or instructions is superseded, the licensee, certificate holder, and applicant for a CoC shall retain the superseded material for 3 years after it is superseded. The records must include the following;

(1) instructions, procedures, and drawings to prescribe quality assurance activities closely related specifications such as required qualifications of personnel, procedures, and equipment.

(2) instructions or procedures which establish a records retention program that is consistent with applicable regulations and designates factors such as duration, location, and assigned responsibility.

(bb) [~~(cc)~~] Audits. The licensee, certificate holder, and applicant for a CoC shall carry out a comprehensive system of planned and periodic audits, to verify compliance with all aspects of the quality assurance program, and to determine the effectiveness of the program. The audit program shall include:

(1) performance in accordance with written procedures or checklists by appropriately trained personnel not having direct responsibilities in the area being audited;

(2) documented results that are reviewed by management having responsibility in the area audited; and

(3) follow-up action, including reaudit of deficient areas, shall be taken where indicated.

(cc) [~~(dd)~~] Transfer for disposal and manifests.

(1) The requirements of this section and subsection (ff) [~~(gg)~~] of this section are designed to:

(A) control transfers of LLRW by any waste generator, waste collector, or waste processor licensee, as defined in this section, who ships LLRW either directly, or indirectly through a waste collector or waste processor, to a licensed LLRW land disposal facility, as defined in §289.201(b) of this title;

(B) establish a manifest tracking system; and

(C) supplement existing requirements concerning transfers and recordkeeping for those wastes.

(2) Beginning March 1, 1998, all affected licensees shall use subsection (ff) [~~(gg)~~] of this section.

(3) Each shipment of LLRW intended for disposal at a licensed land disposal facility shall be accompanied by a shipment manifest in accordance with subsection (ff)(1) [~~(gg)(1)~~] of this section.

(4) Any licensee shipping LLRW intended for ultimate disposal at a licensed land disposal facility shall document the information required on the uniform manifest and transfer this recorded manifest information to the intended consignee in accordance with subsection (ff) [~~(gg)~~] of this section.

(5) Each shipment manifest shall include a certification by the waste generator as specified in subsection (ff)(10) [~~(gg)(10)~~] of this section, as appropriate.

(6) Each person involved in the transfer for disposal and disposal of LLRW, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in subsection (ff) [~~(gg)~~] of this section, as appropriate.

(7) Any licensee shipping LLRW to a licensed Texas LLRW disposal facility shall comply with the waste acceptance criteria in 30 Texas Administrative Code (TAC) Part 1, Chapter 336.

(dd) [~~(ee)~~] Fees.

(1) Each shipper shall be assessed a fee for shipments of LLRW originating in Texas or originating out-of-state being shipped to a licensed Texas LLRW disposal facility and these fees shall be:

(A) $10 per cubic foot of shipped LLRW;

(B) collected by the department [~~compact waste disposal facility and remitted to the TCEQ~~] and deposited to the credit of the radiation and perpetual care account; and

(C) used exclusively by the agency for emergency planning for and response to transportation accidents involving LLRW.

(2) Fee assessments in accordance with this section shall be suspended when the amount of fees collected reaches $500,000, except that if the balance of fees collected is reduced to $350,000 or less, the assessments shall be reinstituted to bring the balance of fees collected to $500,000.

(3) Money expended from the radiation and perpetual care account to respond to accidents involving LLRW shall be reimbursed to the radiation and perpetual care account by the responsible shipper or transporter according to rules adopted by the board.

(4) For purposes of this subsection, "shipper" means a person who generates low-level radioactive waste and ships or arranges with others to ship the waste to a disposal site.

(ee) [~~(ff)~~] Appendices for determination of A_1 and A_2.

(1) Values of A_1 and A_2. Values of A_1 and A_2 for individual radionuclides, which are the bases for many activity limits elsewhere in these rules are given in Table 257-3 of paragraph (6) of this subsection. The curie (Ci) values specified are obtained by converting from the terabecquerel (TBq) figure. The Terabecquerel values are the regulatory standard. The curie values are for information only and are not intended to be the regulatory standard. Where values of A_1 or A_2 are unlimited, it is for radiation control purposes only. For nuclear criticality safety, some materials are subject to controls placed on fissile material.

(2) Values of radionuclides not listed.

(A) For individual radionuclides whose identities are known, but are not listed in Table 257-3 of paragraph (6) of this subsection, the A_1 and A_2 values contained in Table 257-5 of paragraph (8) of this subsection may be used. Otherwise, the licensee shall obtain

prior NRC approval of the A_1 and A_2 values for radionuclides not listed in Table 257-3 of paragraph (6) of this subsection, before shipping the material.

(B) For individual radionuclides whose identities are known, but that are not listed in Table 257-4 of paragraph (7) of this subsection, the exempt material activity concentration and exempt consignment activity values contained in Table 257-5 of paragraph (8) of this subsection may be used. Otherwise, the licensee shall obtain prior approval of the exempt material activity concentration and exempt consignment activity values, for radionuclides not listed in Table 257-3 of paragraph (6) of this subsection, before shipping the material.

(C) The licensee shall submit requests for prior approval, described in subparagraphs (A) and (B) of this paragraph to the agency.

(3) Calculations of A_1 and A_2 for a radionuclide not in Table 257-3 of paragraph (6) of this subsection. In the calculations of A_1 and A_2 for a radionuclide not in Table 257-3 of paragraph (6) of this subsection, a single radioactive decay chain, in which radionuclides are present in their naturally occurring proportions, and in which no daughter radionuclide has a half-life either longer than ten days, or longer than that of the parent radionuclide, shall be considered as a single radionuclide, and the activity to be taken into account and the A_1 or A_2 value to be applied shall be those corresponding to the parent radionuclide of that chain. In the case of radioactive decay chains in which any daughter radionuclide has a half-life either longer than ten days, or greater than that of the parent radionuclide, the parent and those daughter radionuclides shall be considered as mixtures of different radionuclides.

(4) Determination for mixtures of radionuclides whose identities and respective activities are known. For mixtures of radionuclides whose identities and respective activities are known, the following conditions apply.

(A) For special form radioactive material, the maximum quantity transported in a Type A package is as follows:
Figure: 25 TAC §289.257(ee)(4)(A)
[~~Figure: 25 TAC §289.257(ff)(4)(A)~~]

(B) For normal form radioactive material, the maximum quantity transported in a Type A package is as follows:
Figure: 25 TAC §289.257(ee)(4)(B)
[~~Figure: 25 TAC §289.257(ff)(4)(B)~~]

(C) Alternatively, an A_1 value for mixtures of special form material may be determined as follows:
Figure: 25 TAC §289.257(ee)(4)(C)
[~~Figure: 25 TAC §289.257(ff)(4)(C)~~]

(D) An A_2 value for mixtures of normal form material may be determined as follows:
Figure: 25 TAC §289.257(ee)(4)(D)
[~~Figure: 25 TAC §289.257(ff)(4)(D)~~]

(E) The exempt activity concentration for mixtures of nuclides may be determined as follows:
Figure: 25 TAC §289.257(ee)(4)(E)
[~~Figure: 25 TAC §289.257(ff)(4)(E)~~]

(F) The activity limit for an exempt consignment for mixtures of radionuclides may be determined as follows:
Figure: 25 TAC §289.257(ee)(4)(F)
[~~Figure: 25 TAC §289.257(ff)(4)(F)~~]

(5) Determination when activities of some of the radionuclides are not known. When the identity of each radionuclide is known, but the individual activities of some of the radionuclides are not known, the radionuclides may be grouped and the lowest A_1 or A_2 value, as appropriate, for the radionuclides in each group may be used in applying the formulas in paragraph (4) of this subsection. Groups may be based on the total alpha activity and the total beta/gamma activity when these are known, using the lowest A_1 or A_2 values for the alpha emitters and beta/gamma emitters.

(6) A_1 and A_2 values for radionuclides. The following Table 257-3 contains A_1 and [~~an~~] A_2 values for radionuclides:
Figure: 25 TAC §289.257(ee)(6)
[~~Figure: 25 TAC §289.257(ff)(6)~~]

(7) Exempt material activity concentrations and exempt consignment activity limits for radionuclides. The following Table 257-4 contains exempt material activity concentrations and exempt consignment activity limits for radionuclides:
Figure: 25 TAC §289.257(ee)(7)
[~~Figure: 25 TAC §289.257(ff)(7)~~]

(8) General values for A_1 and A_2. The following Table 257-5 contains general values for A_1 and A_2:
Figure: 25 TAC §289.257(ee)(8)
[~~Figure: 25 TAC §289.257(ff)(8)~~]

(9) Activity-mass relationships for uranium. The following Table 257-6 contains activity-mass relationships for uranium:
Figure: 25 TAC §289.257(ee)(9)
[~~Figure: 25 TAC §289.257(ff)(9)~~]

(ff) [~~(gg)~~] Appendices for the requirements for transfers of LLRW intended for disposal at licensed land disposal facilities and manifests.

(1) Manifest. A waste generator, collector, or processor who transports, or offers for transportation, LLRW intended for ultimate disposal at a licensed LLRW land disposal facility shall prepare a manifest reflecting information requested on applicable RC Forms [~~BRC Forms~~] 540 (Uniform Low-Level Radioactive Waste Manifest (Shipping Paper)) and 541 (Uniform Low-Level Radioactive Waste Manifest (Container and Waste Description)) and, if necessary, on an applicable RC Form [~~BRC Form~~] 542 (Uniform Low-Level Radioactive Waste Manifest (Manifest Index and Regional Compact Tabulation)) or their equivalent. RC Forms [~~BRC Forms~~] 540 and 540A shall be completed and shall physically accompany the pertinent LLRW shipment. Upon agreement between shipper and consignee, RC Forms [~~BRC Forms~~] 541, 541A and 541B, and 542 and 542A may be completed, transmitted, and stored in electronic media with the capability for producing legible, accurate, and complete records on the respective forms. Licensees are not required by the agency to comply with the manifesting requirements of this section when they ship:

(A) LLRW for processing and expect its return (i.e., for storage in accordance with their license) prior to disposal at a licensed land disposal facility;

(B) LLRW that is being returned to the licensee who is the waste generator or generator, as defined in this section; or

(C) radioactively contaminated material to a waste processor that becomes the processor's residual waste.

(2) Form instructions. For guidance in completing these forms, refer to the instructions that accompany the forms. Copies of manifests required by this subsection may be legible carbon copies, photocopies, or computer printouts that reproduce the data in the format of the uniform manifest.

(3) Forms. RC Forms [~~BRC Forms~~] 540, 540A, 541, 541A, 541B, 542 and 542A, and the accompanying instructions, in hard copy, may be obtained from the agency.

(4) Information requirements of the DOT. This subsection includes information requirements of the DOT, as codified in Title 49, CFR, Part 172. Information on hazardous, medical, or other waste, required to meet EPA regulations, as codified in Title 40, CFR, Parts 259 and 261 or elsewhere, is not addressed in this section, and shall be provided on the required EPA forms. However, the required EPA forms shall accompany the uniform manifest required by this section.

(5) General information. The shipper of the LLRW, shall provide the following information on the uniform manifest:

(A) the name, facility address, and telephone number of the licensee shipping the waste;

(B) an explicit declaration indicating whether the shipper is acting as a waste generator, collector, processor, or a combination of these identifiers for purposes of the manifested shipment; and

(C) the name, address, and telephone number, or the name and EPA identification number for the carrier transporting the waste.

(6) Shipment information. The shipper of the LLRW shall provide the following information regarding the waste shipment on the uniform manifest:

(A) the date of the waste shipment;

(B) the total number of packages/disposal containers;

(C) the total disposal volume and disposal weight in the shipment;

(D) the total radionuclide activity in the shipment;

(E) the activity of each of the radionuclides hydrogen-3 [~~hydrogren-3~~], carbon-14, technetium-99, and iodine-129 [~~, radium-226~~] contained in the shipment; and

(F) the total masses of uranium-233, uranium-235, and plutonium in special nuclear material, and the total mass of uranium and thorium in source material.

(7) Disposal container and waste information. The shipper of the LLRW shall provide the following information on the uniform manifest regarding the waste and each disposal container of waste in the shipment:

(A) an alphabetic or numeric identification that uniquely identifies each disposal container in the shipment;

(B) a physical description of the disposal container, including the manufacturer and model of any high integrity container;

(C) the volume displaced by the disposal container;

(D) the gross weight of the disposal container, including the waste;

(E) for waste consigned to a disposal facility, the maximum radiation level at the surface of each disposal container;

(F) a physical and chemical description of the waste;

(G) the total weight percentage of chelating agent for any waste containing more than 0.1% chelating agent by weight, plus the identity of the principal chelating agent;

(H) the approximate volume of waste within a container;

(I) the sorbing or solidification media, if any, and the identity of the solidification media vendor and brand name;

(J) the identities and activities of individual radionuclides contained in each container, the masses of uranium-233, uranium-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material. For discrete waste types (i.e., activated materials, contaminated equipment, mechanical filters, sealed source/devices, and wastes in solidification/stabilization media), the identities and activities of individual radionuclides associated with or contained on these waste types within a disposal container shall be reported;

(K) the total radioactivity within each container; and

(L) for wastes consigned to a disposal facility, the classification of the waste in accordance with §289.202(ggg)(4)(A) of this title. Waste not meeting the structural stability requirements of §289.202(ggg)(4)(B)(ii) of this title shall be identified.

(8) Uncontainerized waste information. The shipper of the LLRW shall provide the following information on the uniform manifest regarding a waste shipment delivered without a disposal container:

(A) the approximate volume and weight of the waste;

(B) a physical and chemical description of the waste;

(C) the total weight percentage of chelating agent if the chelating agent exceeds 0.1% by weight, plus the identity of the principal chelating agent;

(D) for waste consigned to a disposal facility, the classification of the waste in accordance with §289.202(ggg)(4)(A) of this title. Waste not meeting the structural stability requirements of §289.202(ggg)(4)(B)(ii) of this title shall be identified;

(E) the identities and activities of individual radionuclides contained in the waste, the masses of uranium-233, uranium-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material; and

(F) for wastes consigned to a disposal facility, the maximum radiation levels at the surface of the waste.

(9) Multi-generator disposal container information. This paragraph applies to disposal containers enclosing mixtures of waste originating from different generators. (Note: The origin of the LLRW resulting from a processor's activities may be attributable to one or more generators (including waste generators) as defined in this section). It also applies to mixtures of wastes shipped in an uncontainerized form, for which portions of the mixture within the shipment originate from different generators.

(A) For homogeneous mixtures of waste, such as incinerator ash, provide the waste description applicable to the mixture and the volume of the waste attributed to each generator.

(B) For heterogeneous mixtures of waste, such as the combined products from a large compactor, identify each generator contributing waste to the disposal container, and, for discrete waste types (i.e., activated materials, contaminated equipment, mechanical filters, sealed source/devices, and wastes in solidification/stabilization media), the identities and activities of individual radionuclides contained on these waste types within the disposal container. For each generator, provide the following:

(i) the volume of waste within the disposal container;

(ii) a physical and chemical description of the waste, including the solidification agent, if any;

(iii) the total weight percentage of chelating agents for any disposal container containing more than 0.1% chelating agent by weight, plus the identity of the principal chelating agent;

(iv) the sorbing or solidification media, if any, and the identity of the solidification media vendor and brand name if the media is claimed to meet stability requirements in §289.202(ggg)(4)(B)(ii) of this title; and

(v) radionuclide identities and activities contained in the waste, the masses of uranium-233, uranium-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material if contained in the waste.

(10) Certification. An authorized representative of the waste generator, processor, or collector shall certify by signing and dating the shipment manifest that the transported materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the DOT and the agency. A collector in signing the certification is certifying that nothing has been done to the collected waste that would invalidate the waste generator's certification.

(11) Control and tracking.

(A) Any licensee who transfers LLRW to a land disposal facility or a licensed waste collector shall comply with the requirements in clauses (i) - (ix) of this subparagraph. Any licensee who transfers waste to a licensed waste processor for waste treatment or repackaging shall comply with the requirements of clauses (iv) - (ix) of this subparagraph. A licensee shall:

(i) prepare all wastes so that the waste is classified according to §289.202(ggg)(4)(A) of this title and meets the waste characteristic requirements in §289.202(ggg)(4)(B) of this title;

(ii) label each disposal container (or transport package if potential radiation hazards preclude labeling of the individual disposal container) of waste to identify whether it is Class A waste, Class B waste, Class C waste, or greater than Class C waste, in accordance with §289.202(ggg)(4)(A) of this title;

(iii) conduct a quality assurance program to assure compliance with §289.202(ggg)(4)(A) and (B) of this title;

(iv) prepare the uniform manifest as required by this subsection;

(v) forward a copy or electronically transfer the uniform manifest to the intended consignee so that either:

(I) receipt of the manifest precedes the LLRW shipment; and

(II) the manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both subclauses (I) and (II) of this clause are also acceptable;

(vi) include the uniform manifest with the shipment regardless of the option chosen in clause (v) of this subparagraph;

(vii) receive acknowledgement of the receipt of the shipment in the form of a signed copy of the uniform manifest;

(viii) retain a copy of or electronically store the uniform manifest and documentation of acknowledgement of receipt as the record of transfer of radioactive material as required by §289.251 of this title and [,] §289.252 of this title[, ~~and §289.254 of this title~~]; and

(ix) for any shipments or any part of a shipment for which acknowledgement of receipt has not been received within the times set forth in this subsection, conduct an investigation in accordance with subparagraph (D) of this paragraph.

(B) Any waste collector licensee who handles only prepackaged waste shall:

(i) acknowledge receipt of the waste from the shipper within one week of receipt by returning a signed copy of the uniform manifest;

(ii) prepare a new uniform manifest to reflect consolidated shipments that meet the requirements of this subsection. The waste collector shall ensure that, for each container of waste in the shipment, the uniform manifest identifies the generator of that container of waste;

(iii) forward a copy or electronically transfer the uniform manifest to the intended consignee so that either:

(I) receipt of the uniform manifest precedes the LLRW shipment; or

(II) the uniform manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both subclauses (I) and (II) of this clause are also acceptable;

(iv) include the uniform manifest with the shipment regardless of the option chosen in clause (iii) of this subparagraph;

(v) receive acknowledgement of the receipt of the shipment in the form of a signed copy of the uniform manifest;

(vi) retain a copy of or electronically store the uniform manifest and documentation of acknowledgement of receipt as the record of transfer of radioactive material as required by §289.251 of this title and [,] §289.252 of this title[, ~~and §289.254 of this title~~];

(vii) for any shipments or any part of a shipment for which acknowledgement of receipt has not been received within the times set forth in accordance with this clause, conduct an investigation in accordance with subparagraph (D) of this paragraph; and

(viii) notify the shipper and the agency when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance uniform manifest, unless notified by the shipper that the shipment has been cancelled.

(C) Any licensed waste processor who treats or repackages waste shall:

(i) acknowledge receipt of the waste from the shipper within one week of receipt by returning a signed copy of the uniform manifest;

(ii) prepare a new uniform manifest that meets the requirements of this subsection. Preparation of the new uniform manifest reflects that the processor is responsible for meeting these requirements. For each container of waste in the shipment, the manifest shall identify the waste generators, the preprocessed waste volume, and the other information as required in clause (i) of this subparagraph;

(iii) prepare all wastes so that the waste is classified according to §289.202(ggg)(4)(A) of this title and meets the waste characteristics requirements in §289.202(ggg)(4)(B) of this title;

(iv) label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste, in accordance with §289.202(ggg)(4)(A) and (C) of this title;

(v) conduct a quality assurance program to assure compliance with §289.202(ggg)(4)(A) and (B) of this title;

(vi) forward a copy or electronically transfer the uniform manifest to the intended consignee so that either:

(I) receipt of the uniform manifest precedes the LLRW shipment; or

(II) the uniform manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both subclause (I) of this clause and this subclause is also acceptable;

(vii) include the uniform manifest with the shipment regardless of the option chosen in clause (vi) of this subparagraph;

(viii) receive acknowledgement of the receipt of the shipment in the form of a signed copy of the uniform manifest;

(ix) retain a copy of or electronically store the uniform manifest and documentation of acknowledgement of receipt as the record of transfer of radioactive material as required by §289.251 of this title and [,] §289.252 of this title[, ~~and §289.254 of this title~~];

(x) for any shipment or any part of a shipment for which acknowledgement of receipt has not been received within the times set forth in accordance with this clause, conduct an investigation in accordance with clause (v) of this subparagraph; and

(xi) notify the shipper and the agency when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance uniform manifest, unless notified by the shipper that the shipment has been cancelled.

(D) Any shipment or part of a shipment for which acknowledgement is not received within the times set forth in accordance with this section shall undergo the following:

(i) be investigated by the shipper if the shipper has not received notification or receipt within 20 days after transfer; and

(ii) be traced and reported. The investigation shall include tracing the shipment and filing a report with the agency. Each licensee who conducts a trace investigation shall file a written report with the agency within two weeks of completion of the investigation.

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 April 1, 2011.

TRD-201101272
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: May 15, 2011
For further information, please call: (512) 458-7111 x6972

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES

SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.25

The Texas Department of Public Safety (the department) proposes amendments to §15.25, concerning Address. These amendments are made pursuant to Texas Transportation Code, §521.060 which requires the department to establish a system for identifying unique addresses that are submitted in license or certificate applications in a frequency or number that, in the department's determination, casts doubt on whether the addresses are actual addresses where the applicant resides. The amendments to this rule establish a process which further minimizes the potential for fraudulent driver license and identification card issuance through residential address review.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be the establishment of a process to verify residential addresses for driver license and identification card issuance. This process further enhances the security and identity feature of state-issued driver licenses and identification cards, and addresses issues of fraud and misrepresentation in the application process.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Written comments on this proposal may be submitted to Ron Coleman, Program Administrator, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to ron.coleman@txdps.state.tx.us within thirty (30) days of publication of this proposal in the *Texas Register.*

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.060.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.060 are affected by this proposal.

§15.25. Address.

The address requirement for a driver license and identification certificate is:

(1) - (7) (No change.)

(8) The department shall conduct an audit of driver license and identification certificate address information provided by driver license customers. This audit shall consist of:

(A) Validation that the addresses being reviewed are residential addresses, and/or;

(B) To determine if the same address has been provided by ten (10) or more driver license or identification certificate holders.

(9) The department may require each driver license or identification certificate holder whose address of record is being audited to present documentation required by §15.49 of this title (relating to Proof of Domicile) and §16.15 of this title (relating to Proof of Domicile) to demonstrate the holder resides at the address of record. An acceptable list of documentation may be found in §15.49 and §16.15.

(10) The department shall cancel any driver license or identification certificate issued to a person who does not prove that he/she resides at the address on record.

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 March 30, 2011.

TRD-201101245
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: May 15, 2011
For further information, please call: (512) 424-5848

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 10. ETHICAL CONDUCT BY ENTITIES DOING BUSINESS WITH THE DEPARTMENT

SUBCHAPTER B. OTHER ENTITIES' INTERNAL ETHICS AND COMPLIANCE PROCEDURES

43 TAC §10.51

The Texas Department of Transportation (department) proposes amendments to §10.51, concerning Internal Ethics and Compliance Program.

EXPLANATION OF PROPOSED AMENDMENTS

Amendments to §10.51 clarify that the governing body of an entity shall be required to have periodic training in ethics and in the entity's compliance program, along with employees of the entity. Additionally, use of the term "organization" has been changed to "entity" throughout the section for consistency with the U.S. Sentencing Commission Guidelines.

The amendments add language to §10.51(b)(3) to clarify that an entity's governing board, if it has one, must be trained in ethics and compliance. The amendments delete §10.51(b)(4) because the clarification of §10.51(b)(3) causes §10.51(b)(4) to be redundant. Paragraphs §10.51(b)(5) - (9) are renumbered accordingly. Finally, the amendments replace the word "organization" with the word "entity" throughout the section.

FISCAL NOTE

James Bass, 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.

Steve Simmons, Deputy Executive Director, 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. Simmons 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 or administering the amendments will be a clearer understanding of the requirements of entities to provide training in ethics and compliance for their governing boards and employees. There are no anticipated economic costs for persons required to comply with the section as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §10.51 may be submitted to Steve Simmons, Deputy Executive Director, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on May 16, 2011.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

§10.51. Internal Ethics and Compliance Program.

(a) Various sections of this title require an entity to adopt and enforce an internal ethics and compliance program. To comply with that requirement, the entity must certify to the department that the entity:

(1) has adopted an internal ethics and compliance program that:

(A) is designed to detect and prevent violations of the law, including regulations, and ethical standards applicable to the entity or its officers or employees; and

(B) satisfies all requirements of this section; and

(2) enforces compliance with its internal ethics and compliance program.

(b) An entity's internal ethics and compliance program must be in writing and must provide compliance standards and procedures that the entity's employees and agents are expected to follow. At a minimum, the program must provide that:

(1) high-level personnel are responsible for oversight of compliance with the standards and procedures;

(2) appropriate care is being taken to avoid the delegation of substantial discretionary authority to individuals whom the entity [~~organization~~] knows, or should know, have a propensity to engage in illegal activities;

(3) compliance standards and procedures are effectively communicated to all of the entity's [~~organization's~~] employees, including members of the governing board if the entity has a governing board, by requiring them to participate in periodic training in ethics and in [~~and disseminating to them information that explains, in understandable language,~~] the requirements of the program;

[~~(4) the governing body or individuals of the organization have periodic training in ethics and in the compliance program;~~]

(4) [~~(5)~~] compliance standards and procedures are effectively communicated to all of the entity's [~~organization's~~] agents;

(5) [~~(6)~~] reasonable steps are being taken to achieve compliance with the compliance standards and procedures by:

(A) using monitoring and auditing systems that are designed to reasonably detect noncompliance; and

(B) providing and publicizing a system for the entity's [~~organization's~~] employees and agents to report suspected noncompliance without fear of retaliation;

(6) [~~(7)~~] consistent enforcement of compliance standards and procedures is administered through appropriate disciplinary mechanisms;

(7) [~~(8)~~] reasonable steps are being taken to respond appropriately to detected offenses and to prevent future similar offenses; and

(8) [~~(9)~~] the entity [~~organization~~] has a written employee code of conduct that, at a minimum, addresses:

(A) record retention;

(B) fraud;

(C) equal opportunity employment;

(D) sexual harassment and sexual misconduct;

(E) conflicts of interest;

(F) personal use of the entity's [~~organization's~~] property; and

(G) gifts and honoraria.

(c) The department may, at its discretion, request that the entity provide the department with written evidence of the entity's internal ethics and compliance program.

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

Filed with the Office of the Secretary of State on April 1, 2011.

TRD-201101262
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: May 15, 2011
For further information, please call: (512) 463-8683

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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 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8064

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §355.8064, concerning Reimbursement Adjustment for Hospitals Providing Inpatient Services to Supplemental Security Income (SSI) and SSI-Related Clients, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 480) and will not be republished.

Background and Justification

The amendment is adopted to update obsolete references to §355.8063, Reimbursement Methodology for Inpatient Hospital Services, which was repealed in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6513). The references are updated to refer to the new rules at §355.8052, which governs inpatient hospital reimbursement, and §355.8054, which governs children's hospital reimbursement. Additionally, the amendment clarifies that the discount related to SSI and SSI-related clients in certain areas of the state is applied to the hospital reimbursement amount and removes the word "rates" to avoid any confusion in the application of the reduction.

Comments

The 30-day comment period ended March 7, 2011. During this period, HHSC received no comments regarding the amended rule.

Statutory Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021, and Texas Government Code §31.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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 April 4, 2011.

TRD-201101274
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: February 4, 2011
For further information, please call: (512) 424-6900

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

1 TAC §355.8445

The Texas Health and Human Services Commission (HHSC) adopts new §355.8445, concerning Reimbursement for Environmental Lead Investigations, without changes to the proposed text as published in the February 11, 2011, issue of the *Texas Register* (36 TexReg 697) and will not be republished.

Background and Justification

The adopted new rule is the result of a new medical policy adding environmental lead investigations as a benefit for Medicaid clients under age 21. Prior to the creation of this new Medicaid benefit, state employees at the Department of State Health Services (DSHS) who were certified lead assessors were providing this service as necessary without the benefit of obtaining federal Medicaid matching funds for the cost of providing this service. The implementation of the new benefit allows DSHS employees and employees of local health departments who are certified lead assessors to bill Medicaid directly for providing this service, and allows the state to obtain federal Medicaid matching funds for the cost of each environmental lead investigation.

Comments

The 30-day comment period ended March 13, 2011. During this period, HHSC received no comments regarding the new rule.

Legal Authority

The new rule is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal

medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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 March 30, 2011.

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Steve Aragon
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Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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CHAPTER 372. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAMS
SUBCHAPTER B. ELIGIBILITY
DIVISION 9. CRIMINAL ACTIVITY

1 TAC §372.501

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §372.501, concerning disqualifications due to criminal activity, without changes to the proposed text as published in the January 21, 2011, issue of the *Texas Register* (36 TexReg 192) and, therefore, the section will not be republished.

Background and Justification

The amendment is adopted to correct an error in the section. The rule currently states that a person is disqualified from both Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP) benefits if the person is convicted of a felony drug offense committed on or after April 1, 2002. However, in accordance with federal law (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)), HHSC disqualifies a person from SNAP benefits if the person is convicted of a felony drug offense committed after August 22, 1996.

Disqualification from TANF for a felony drug offense has a different implementation date than disqualification from SNAP for the same offense, because HHSC operated under a waiver of this provision for the TANF program from 1996 until 2002. HHSC was not required to implement the penalty imposed by PRWORA until April 1, 2002.

The adoption will bring the section in line with current policy and federal law.

Comments

HHSC received no comments regarding adoption of the amendment, including at a public hearing held in Austin on February 7, 2011.

Legal Authority

The amendment is adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; Texas Government Code, §31.001, which authorizes HHSC to administer financial assistance programs (TANF); and Texas Government Code, §33.006, which authorizes HHSC to administer the food stamp program (SNAP).

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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Steve Aragon
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Proposal publication date: January 21, 2011
For further information, please call: (512) 424-6900

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TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT
SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.305

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.305, relating to "Lotto Texas" On-Line Game Rule, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 485).

The purpose of the amendments is to transition from the "annuitized payment" option to the "cash value" option as the default jackpot payment option at all retailer sales terminals and player self-service sales terminals. This transition will be synchronized with the transition from old retailer and self-service terminals to new retailer and self-service terminals.

A public comment hearing was held on Wednesday, February 16, 2011, at 2:00 p.m. No members of the public were present at the hearing. The Commission received no written comments from any individuals, groups, or associations during the public comment period.

The amendments are adopted under Government Code, §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of 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 April 4, 2011.

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For further information, please call: (512) 344-5275

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16 TAC §401.315

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.315, relating to "Mega Millions" On-Line Game Rule, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 488).

The purposes of the amendments are to transition from the "annuitized payment" option to the "cash value" option as the default jackpot payment option at all retailer sales terminals and player self-service sales terminals. This transition will be synchronized with the transition of equipment from old retailer and self-service terminals to new retailer and self-service terminals. The further purposes are to reflect in the Texas Lottery Commission Mega Millions rule changes made to the Mega Millions Group rule to identify Megaplier as an add-on game; identify Megaplier special promotions and to describe how the promotions will affect the different prize tiers; and to identify how the Megaplier prizes will be affected if the Mega Millions cap is reached and the prizes become pari-mutuel prizes.

A public comment hearing was held on Wednesday, February 16, 2011, at 2:00 p.m. No members of the public were present at the hearing. The Commission received no written comments from any individuals, groups, or associations during the public comment period.

The amendments are adopted under Government Code, §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of 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.

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For further information, please call: (512) 344-5275

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16 TAC §401.317

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.317, relating to "Powerball®" On-Line Game Rule, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 492).

The purpose of the amendments is to transition from the "annuitized payment" option to the "cash value" option as the default jackpot payment option at all retailer sales terminals and player self-service sales terminals. This transition will be synchronized with the transition from old retailer and self-service terminals to new retailer and self-service terminals.

A public comment hearing was held on Wednesday, February 16, 2011, at 2:00 p.m. No members of the public were present at the hearing. The Commission received no written comments from any individuals, groups, or associations during the public comment period.

The amendments are adopted under Government Code, §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of 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.

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SUBCHAPTER E. RETAILER RULES

16 TAC §401.372

The Texas Lottery Commission (Commission) adopts new 16 TAC §401.372, relating to Display of License, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 497).

The purpose of the adopted new rule is to comply with Government Code, §466.157, which requires the Commission to prescribe by rule the criteria for the display of the license in the place of business at which the sales agents sell lottery products.

A public comment hearing was held on Wednesday, February 16, 2011, at 2:00 p.m. No members of the public were present at the hearing. The Commission received no written comments from any individuals, groups, or associations during the public comment period.

The new rule is adopted under Government Code, §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of 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.

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CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES
SUBCHAPTER B. CONDUCT OF BINGO

16 TAC §402.203

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.203, relating to Unit Accounting, with changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 497). Specifically, in the adopted version of the rule, in subsection (d)(4), "10 workdays" is changed to "15 calendar" days for consistency with other provisions in Chapter 402, Charitable Bingo Administrative Rules. Additionally, "or was" is deleted from subsection (d)(4) and subsection (d)(5) is added to clarify the designated agent's responsibility to provide records when a licensed authorized organization separates from a unit.

The purpose of the amendments is to clarify the requirements, process, and timelines a licensed authorized organization must follow related to expending net proceeds in its bingo account when joining an accounting unit. Specifically, the amendments: (1) add new subsection (d)(4) and (5) regarding designated agents; (2) add a new subsection (i)(2) regarding the proper disbursement of remaining net proceeds; and (3) add a new subsection (i)(6) regarding reporting the final disposition of all proceeds in its bingo account.

A public comment hearing was held on Wednesday, February 16, 2011 at 10:00 a.m. One individual representing River City Bingo Charities and Texas VFW Posts was present at the hearing and commented generally in favor of amendments. The Commission received no written comments on the amendments during the public comment period.

Comment: Regarding subsection (d)(4) concerning the designated agent making available all unit accounting records, the only concern is for how long would that agent have to make those records available to a member who was or to an organization who was a member of the unit? Generally speaking, you have a requirement in your rules of the agency or charities keeping records for four years.

Agency Response: The agency agrees and has added paragraph (5) to subsection (d) to limit the requirement for making records available to four years. There is no requirement that the designated agent make copies of records for a member or former member.

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

The amendments implement Occupations Code, Chapter 2001.

§402.203. Unit Accounting.

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

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

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

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

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

(d) Unit Representation.

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

(2) It is the responsibility of the unit members to ensure that the unit's designated agent is knowledgeable of and able to provide information to the Commission on:

(A) the unit agreement or trust agreement;

(B) submission of all required forms;

(C) unit Quarterly Report; and

(D) unit's bingo records.

(3) A unit must complete a form prescribed by the Commission to designate an authorized representative.

(4) The designated agent will make available all unit accounting records to any member of a licensed authorized organization whose organization is a member of the accounting unit within 15 calendar days of the request.

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

(e) Unit's Use of Proceeds.

(1) All distributions of net proceeds of the unit shall be paid from the unit's bingo account to the account designated by the unit member. Each unit member is required to maintain adequate records establishing that the use of such net proceeds is in accordance with Occupations Code §2001.454.

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

(3) All funds disbursed to a unit member shall be used in accordance with Occupations Code, §2001.454 and this chapter.

(f) Unit Transactions.

(1) Upon prior written consent by the Commission:

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

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

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

(D) Prior written consent from the Commission is required for the sale or transfer of bingo supplies as described above with the exception of bingo cards and pull tab bingo tickets transferred at the time a licensed authorized organization initially joins a unit. Within twenty-five (25) calendar days of initially joining a unit, the licensed authorized organization shall notify the Commission on a form prescribed by the Commission of the inventory transferred to the unit.

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

(g) Unit Recordkeeping.

(1) Each unit must file a quarterly report, on a form prescribed by the Commission and maintain records to substantiate the contents of the report.

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

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

(h) Unit Bingo Account.

(1) The unit must establish and maintain one checking account designated as the "bingo account."

(2) A unit bingo account must adhere to the same provisions of a licensed authorized organization's bingo account as required in the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(3) Except for the transfer of funds to the unit account by new members or funds transferred in accordance with §402.202 of this chapter (relating to Transfer of Funds), only the following may be deposited into the bingo account:

(A) proceeds from the conduct of bingo; and

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

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

(5) All taxes on rental income and all prize fees must be paid from the unit bingo account.

(6) The face of the checks for a unit bingo account must list the name of the unit, the words "Bingo Account", and the unit's identification number.

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

(1) A licensed authorized organization joining a unit may transfer funds from its previous bingo account into the unit bingo account at the time the unit is formed or at the time of joining an existing unit and within 60 days thereafter. Any additional funds transferred to the unit bingo account must comply with §402.202 of this chapter. At no time, can funds that have been previously reported on a bingo quarterly report as charitable distributions be transferred to the unit account.

(2) All net proceeds remaining in the organization's former bingo account at the time it joins a unit must be disbursed by the organization for its charitable purpose by the last day of the quarter following the date the organization joined the unit or transferred to the unit bingo account in accordance with paragraph (1) of this subsection. At no time can funds that are required by Occupations Code, §2001.457 to be distributed for the charitable purpose of the organization be transferred to the unit bingo account.

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

(4) If a unit member does not have sufficient funds to cover outstanding bingo expenses or the amount required to join the unit, the unit member's portion of the charitable distribution may be reduced until these obligations have been satisfied. This business practice may be used provided that the exact terms are reflected in the unit agreement, a copy of the unit agreement is provided to the Charitable Bingo Operations Division, and the unit meets the charitable distribution requirement.

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

(6) An organization that is required to file a Texas Bingo Quarterly Report for a period prior to joining an accounting unit must file a form prescribed by the Commission reporting a final disposition of all proceeds in its bingo account for the quarter following the quarter it was last required to file a Texas Bingo Quarterly Report apart from the unit. The form must be submitted with the unit's "Texas Bingo Quarterly Report" for that quarter and would be subject to all "Texas Bingo Quarterly Report" filing deadlines, requirements and penalties.

(j) Distribution of Funds Upon Withdrawal or Dissolution.

(1) If, upon leaving a unit, an organization receives a distribution of funds from the unit's bingo account, the unit must classify the distribution as a charitable distribution.

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

(k) Responsibilities of Unit Members.

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

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

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

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

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

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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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5012

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16 TAC §402.205

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.205, relating to Unit Agreements, with changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 499).

The purpose of the amendments is to delete language that is duplicated in 16 TAC §402.100 and to add language that requires an accounting unit to notify the Commission of a change in unit membership prior to the date the unit membership changes. Specifically, the amendments: (1) delete definitions for "Act" and "Rules"; (2) add a new subsection (d) regarding notification requirements when there is a change in unit members and the amended unit agreement; and (3) at newly relettered subsection (q), the language "Apart from a change in unit membership, any" has been added.

A public comment hearing was held on Wednesday, February 16, 2011 at 10:00 a.m. One individual representing River City Bingo Charities and Texas VFW Posts was present at the hearing and commented generally in favor of the amendments. The Commission received no written comments on the amendments during the public comment period.

Comment: At subsection (d), the unit must notify the Commission of a change in unit membership on a Commission-prescribed form seven calendar days prior to the date. Occasionally there is a last-minute change and occasionally an organization may not know of a change within that seven-day period. If, for example, a small organization had a huge change in membership and said, "We're out of bingo," and if they were outside the seven-day time period, there is a violation. And I don't think that is what your intent is. Moreover, my experience has been in the past that after changes occur, that is when the light clicks on for the agent or for the representative to notify the Commission. Why not make the notification when the membership changes? We understand from an audit perspective the Commission has to know who is in the unit, but whether they know seven days before the membership change or a few days after, it seems to us that it's sort of irrelevant.

Agency Response: The agency disagrees. Receiving the notification seven days before a change enables the agency to more efficiently and effectively maintain its records and issue appropriate notifications and reports. Accurate records are necessary for monitoring compliance with license provisions. The intent is to require notification of changes to the organizations operating as a unit under Occupations Code, Chapter 2001, Subchapter I-1 relating to unit accounting. This rule is not intended to require notification of membership changes within a licensed authorized organization.

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

The amendments implement Occupations Code, Chapter 2001.

§402.205. Unit Agreements.

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

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

(c) A unit must notify the Commission on a Commission-prescribed form and submit a copy of the executed unit agreement to the Commission prior to operating as a unit.

(d) A unit must notify the Commission of a change in unit membership on a Commission-prescribed form seven calendar days prior to the date the unit membership changes. A copy of the executed amendment to the unit agreement, in accordance with subsection (q) of this section, must be submitted to the Commission within twenty-five calendar days of the effective date of the change.

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

(1) A designated agent for a unit must complete training required under §2001.107 of the Act every two years on behalf of either the unit or a licensed authorized organization.

(A) If a new designated agent has not completed required training in the past two years, the designated agent must complete a training class within forty-five calendar days of when the unit agreement or amendment to a unit agreement naming the designated agent was signed.

(B) If the designated agent has not completed required training at the time of a unit's notification of a new designated agent, the designated agent must provide written notice to the Commission upon completion of the training.

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

(3) A designated agent must provide personal information requested by the Commission on a Commission-prescribed form so that the Commission may conduct a background investigation to determine if the designated agent is an owner, officer or director of a licensed commercial lessor, employed by a commercial lessor or related to a

licensed commercial lessor within the second degree by consanguinity or affinity.

(f) The unit member's taxpayer name and number on the unit agreement must match:

(1) the name on the organization's organizing instrument or the name of the organization as stated on its license to conduct bingo; and

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

(g) A unit with a unit agreement specifying that a member withdrawing from the unit is entitled to a share of the inventory or payment for the member's share of the inventory must notify the Commission of the method of distribution within twenty-five calendar days of the distribution to the withdrawing member. The notification must contain the amount of payment or the complete list of inventory transferred.

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

(i) For a dissolved unit, the last trustee or member of a unit at the time of dissolution must notify the Commission within twenty-five calendar days of any change in the street address of the unit's records during the required four year retention period.

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

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

(l) The method a unit uses to apportion net proceeds of the bingo operations among the members of the unit must be consistent with the method a unit uses to ensure compliance with the required disbursements to charity.

(m) A unit agreement must indicate the length of time allowed for the distribution of funds, records, and inventory and allocation of authorized expenses and liabilities on dissolution or withdrawal of one or more members of the unit.

(n) Prior to joining a unit, a licensed authorized organization must provide written notice to the Commission stating whether it will be transferring inventory to the unit.

(o) An organization joining a unit and possessing inventory must provide to the Commission a complete list of the inventory it has transferred to the unit within twenty-five calendar days of joining the unit. It is the responsibility of the organization to ensure that the Commission timely receives the inventory list.

(p) A written inventory of bingo equipment and supplies must include the following:
Figure: 16 TAC §402.205(p)

(q) Apart from a change in unit membership, any amendment to any of the contents of a unit agreement requires the unit to submit a form prescribed by the Commission and a copy of the executed amendment to the unit agreement within twenty-five calendar days of the effective date of the change.

(r) Notification of an amendment to a unit agreement must contain:

(1) name of the unit;

(2) effective date of the change;

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

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

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

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

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

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

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 E. BOOKS AND RECORDS

16 TAC §402.501

The Texas Lottery Commission (Commission) adopts the repeal of 16 TAC §402.501, relating to Distribution of Proceeds for Charitable Purposes, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 500).

The purpose of the repeal of the entire administrative rule is to remove the requirement to distribute net proceeds based on a formula which is no longer in effect because of changes to Texas Occupations Code Chapter 2001 brought about by House Bill 1474 of the 81st Session.

A public comment hearing was held on Wednesday, February 16, 2011 at 10:00 a.m. One individual representing River City Bingo Charities and Texas VFW Posts was present at the hearing and commented in favor of the repeal. The Commission received no written comments on the repeal during the public comment period.

The repeal is adopted under Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The repeal implements Texas Occupations Code, Chapter 2001.

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 April 4, 2011.

TRD-201101277
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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Proposal publication date: February 4, 2011
For further information, please call: (512) 344-5012

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16 TAC §402.501

The Texas Lottery Commission (Commission) adopts new 16 TAC §402.501, relating to Charitable Use of Net Proceeds, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 501).

The purpose of the new rule is to clarify Texas Occupations Code §2001.454 related to a licensed authorized organization's use of net proceeds for charitable purposes. Specifically, the new rule: (1) at subsection (a) sets forth that net proceeds of conducting bingo and any rental of a premises for same shall be devoted to the exempt purpose under which an organization qualifies as a nonprofit or otherwise authorized organization; (2) at subsection (b) sets forth the circumstances where a licensed authorized organization may not use net proceeds; (3) at subsection (c) addresses donation of funds; and (4) at subsection (d) addresses documentation to substantiate use of proceeds.

A public comment hearing was held on Wednesday, February 16, 2011 at 10:00 a.m. One individual representing River City Bingo Charities and Texas VFW Posts was present at the hearing and commented generally in favor of the new rule. The Commission also received written comments on the new rule from one individual during the public comment period.

Comment: At subsection (b), the provision says "...other than as reasonable compensation for services rendered or if a cause or deed consistent with its charitable purpose." There is a body of practice at the agency as to what "reasonable compensation" means. And we encourage the Commission's continued use of that practice.

Agency Response: The intent is not to change the practice.

Comment: The report for charitable contributions made and individually listed should be re-instituted as an additional report item with submission of the Quarterly reports. This could be done electronically and serve as means to keep honest men and women honest.

Agency Response: The comment does not pertain to this rule. The change referred to was an amendment to 16 TAC §402.600.

Comment: Additional blocks should be added on the quarterly report to comply with 16 TAC §402.502(6)(B) for actual utility bill costs per item prorated or not.

Agency Response: The comment does not pertain to this rule. 16 TAC §402.600 relates to bingo reports.

The new rule is adopted under Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The new rule implements Occupations Code, Chapter 2001.

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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16 TAC §402.502

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.502, relating to Charitable Use of Proceeds, with changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 501). In the adopted version of the rule, changes are made for clarification. "[I]ncluding use of proceeds accounts" is deleted in subsection (c)(4), and the phrase "is discussed" is added to subsection (c)(8).

The purpose of the amendments is to specify what documents and records must be maintained by a licensed authorized organization to validate the use of net proceeds for its charitable purposes. Specifically, the amendments: (1) change the name of the rule from "Charitable Use of Proceeds" to "Charitable Use of Net Proceeds Recordkeeping"; (2) change subsection (a)(1) to read, "a copy of the organization's organizing documents"; (3) delete subsection (a)(2); add a new subsection (a)(3) regarding IRS Form 990; (4) delete subsection (b); add a new paragraph (1) to newly relettered subsection (c) with regard to documentation for all proceeds used for charitable purposes; (5) delete the existing subsection (d)(2); (6) add new paragraphs (3) through (10) to newly relettered subsection (c) with regard to account documentation; (7) add new paragraph (11) to newly relettered subsection (c) with regard to reimbursement records; and (8) delete existing subsections (d)(4), (e), and (f)."

A public comment hearing was held on Wednesday, February 16, 2011 at 10:00 a.m. One individual representing River City Bingo Charities and Texas VFW Posts was present at the hearing and commented generally in favor of the amendments. The Commission received written comments on the proposed amendments during the public comment period.

Comment: We support the simplification of what recordkeeping is required. Our understanding is that standard that is embodied in subsection (a) primarily has been the standard that has been used in the last several years, and we salute that.

Agency Response: The agency concurs.

Comment: Subsection (c)(1), recordkeeping, puts in writing, what the standard, as we understand it, has been at the Commission

Agency Response: The agency concurs.

Comment: Under Subparagraph (c)(4), there is a phrase, "including use of proceeds accounts." There are some charitable organizations who have no idea what that means and hope it doesn't mean they have to establish a new account. They understand, as the case has been for many years, that they must maintain records including, as the rule states, bank statements, canceled checks and deposit slips, or images of them, and bank reconciliations for all accounts to which it deposits the charitable proceeds from the proceeds of bingo, but some organizations have no idea what "including use of proceeds accounts" is. It may be that some organizations have a specific account called that, use of bingo proceeds, but many organizations will not. And to the extent that this requires them to keep a new account, they do not think it is necessary.

Agency Response: The agency agrees and has deleted the phrase "including use of proceeds accounts".

Comment: We agree with the new language in subsection (c)(5). Again, that has generally been the standard the agency has employed for several years, just putting it formally in writing. And the same is true for subsection (c)(6).

Agency Response: The agency concurs.

Comment: Subparagraph (c)(8), "...the organization must maintain minutes of any meeting where the use of bingo proceeds or other activities related to the conduct of bingo," and it stops. I'm assuming it is meant is discussed or decided.

Agency Response: The agency agrees and has added "is discussed" to (c)(8).

Comment: One of the things--assuming that's what is intended by that, it may be that in the case of the charities at River City Bingo, I happen to know that the ARC of the Capital Area generally has in its meeting minutes a discussion of, "The agency received $7,000 in the last month"--we do it on a monthly basis, our distributions at River City Bingo here in Austin, Texas--"We received $7,000," but there may not necessarily be a meeting minute where they vote to appropriate that $7,000. And the reason is because they adopted a budget at the beginning of the year. And within that budget, there is a determination that they're going to use bingo funds to fund certain activities. So, I do not think it is intended that you have to--what the minutes have to say, have to discuss. If it is, then we would oppose that standard.

Agency Response: The agency is requiring copies of meeting minutes where the use of bingo proceeds is discussed, but is not requiring any particular meeting or meeting agenda.

Comment: The report for charitable contributions made and individually listed should be re-instituted as an additional report item with submission of the Quarterly reports. This could be done electronically and serve as means to keep honest men and women honest.

Agency Response: The comment does not pertain to this rule. The change referred to was an amendment to 16 TAC §402.600.

Comment: Additional blocks should be added on the quarterly report to comply with 16 TAC §402.502(6)(B) for actual utility bill costs per item prorated or not.

Agency Response: The comment does not pertain to this rule. 16 TAC §402.600 relates to bingo reports.

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

The amendments implement Texas Occupations Code, Chapter 2001.

§402.502. Charitable Use of Net Proceeds Recordkeeping.

(a) An organization must maintain and upon request make available to a representative of the Commission or designee:

(1) a copy of the organization's organizing documents;

(2) other enabling documents, any amendments and any adopted bylaws which provide in writing the specific cause, deed or activity that is consistent with the organization's purposes and objectives for which bingo net proceeds will be used; and

(3) a copy of the applicant organization's four most recently filed Internal Revenue Service Form 990, if applicable.

(b) The Commission may request supplemental information from an organization in order to substantiate compliance with the Bingo Enabling Act, §2001.454.

(c) Record Keeping:

(1) In accordance with the Bingo Enabling Act, the licensed authorized organization must have documentation for all proceeds used for charitable purposes to substantiate the use of the funds for purposes consistent with the exempt purposes of the licensed authorized organization.

(2) All distributions for charitable purposes must be made from the bingo checking account. A distribution made from the bingo checking account into another account maintained by the organization must be substantiated with documentation and used for a cause, deed, or activity dedicated to the charitable purposes of the organization consistent with the 26 U.S.C. §501 tax exemption of the organization or the purposes or objective for which the organization qualifies as an authorized organization.

(3) Accounting units must make distributions for charitable purposes from the unit bingo checking account to the unit member. The unit member must maintain sufficient documentation to verify the disbursed funds were used for its charitable purposes.

(4) A licensed authorized organization must maintain bank statements, canceled checks and deposits slips or images of them, and bank reconciliations for all accounts to which it deposits charitable distributions from the proceeds of bingo.

(5) A licensed authorized organization must maintain documentation for all charitable distributions made to individuals or other organizations. These include:

(A) the complete name, address, phone number, and contact person for the individual or organization receiving the donation; and

(B) an invoice, receipt, thank you note, or other written acknowledgement of the distribution including the date and amount of the donation.

(6) A licensed authorized organization must maintain documentation for all charitable distributions used for its exempt purposes. Documentation includes:

(A) invoices, receipts, or other proof of payment for actual expenses incurred for these purposes; and

(B) calendars, floor plans, or other information used to pro-rate any expenses where only a portion of the expense is considered a legitimate exempt use of charitable distributions.

(7) A licensed authorized organization must maintain documentation for all charitable distributions as to how the use of the funds relates to the cause, deed, or activity dedicated to the charitable purposes of the organization consistent with the 26 U.S.C. §501 tax exemption of the organization or the purposes or objective for which the organization qualifies as an authorized organization.

(8) A licensed authorized organization must maintain minutes of any meeting where the use of bingo proceeds or other activities related to the conduct of bingo is discussed.

(9) An organization transferring funds to its bingo account in accordance with §2001.451 of the Act must maintain documentation showing that the transferred funds were not originally bingo proceeds.

(10) A licensed authorized organization must maintain for four years records to substantiate the use of net proceeds.

(11) Reimbursement or direct payment for member or employee travel expenses will only be considered as used for the charitable purposes of the organization if the following records are provided to the Commission upon request:

(A) the itinerary of a seminar, convention, or retreat showing that the purpose of the seminar, convention, or retreat was primarily to discuss the charitable functions and purposes consistent with the 26 U.S.C. §501 tax exemption of the organization or the purposes or objective for which the organization qualifies as an authorized organization; and

(B) the original or true and correct copies of receipts and cancelled checks showing the date and amount of the contribution for actual out-of-pocket reasonable or necessary expenses such as hotel, airline tickets, meals, etc., and the corresponding request for payment or reimbursement maintained by the organization.

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

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SUBCHAPTER F. PAYMENT OF TAXES, PRIZE FEES AND BONDS

16 TAC §402.604

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.604, relating to Delinquent Purchaser, without changes to the proposed text as published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 503).

The purpose of the amendments is to clearly set forth for licensees the process and timelines to follow related to payments for the sale or lease of bingo supplies and equipment made by licensed authorized organizations on the delinquent purchaser list. Specifically, the amendments: (1) add new language to subsection (f) regarding the Delinquent Purchaser List; and (2) add new paragraphs (1) - (4) to subsection (f) regarding immediate payment, deposit requirements, adequate funds, and deactivation requirements.

A public comment hearing was held on Wednesday, February 16, 2011 at 10:00 a.m. One individual representing River City Bingo Charities and Texas VFW Posts was present at the hearing and commented in favor of the amendments. The Commission received no written comments on the proposed amendments during the public comment period.

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

The amendments implement Occupations Code, Chapter 2001.

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 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.6

The Texas Funeral Service Commission (commission) adopts an amendment to §203.6, concerning Provisional Licensees, without changes to the proposed text as published in the January 7, 2011, issue of the *Texas Register* (36 TexReg 13) and will not be republished.

The amendment is adopted to allow for additional professionally prepared examinations without restrictions.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201101288
O. C. "Chet" Robbins
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Texas Funeral Service Commission
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Proposal publication date: January 7, 2011
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22 TAC §203.30

The Texas Funeral Service Commission (commission) adopts an amendment to §203.30, concerning Continuing Education, with changes to the proposed text as published in the January 7, 2011, issue of the *Texas Register* (36 TexReg 13) and will be republished.

The amendment is adopted to eliminate the time-consuming paperwork and increase the efficiency on the part of persons who supervise continuing education.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.30. Continuing Education.

(a) Purpose. Each person holding an active license and practicing as a funeral director or embalmer in this state is required to participate in continuing education as a condition of license renewal.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Approved provider--Any person or organization conducting or sponsoring a specific program of instruction that has been approved by the commission.

(2) Approved program--A continuing education program activity that has been approved by the commission. The program shall contribute to the advancement, extension, and enhancement of the professional skills and knowledge of the licensee in the practice of funeral directing and embalming by providing information relative to the funeral service industry and be open to all licensees.

(3) Hour of continuing education--A 50 minute clock hour completed by a licensee in attendance at an approved continuing education program.

(c) Types of acceptable continuing education. Acceptable sources of continuing education are institutes, seminars, workshops, conferences, independent study programs, college academic or continuing education courses which are related to or enhance the practice of funeral directing or embalming and are offered or sponsored by an approved provider and open to all licensees.

(d) Approval of continuing education.

(1) A person or entity seeking approval as a continuing education provider shall file a completed application on a form provided by the commission and include the continuing education provider fee and the fee for each course submitted. Governmental agencies are exempt from paying this fee.

(2) National or state funeral industry professional organizations may apply for approval of seminars or other courses of study given during a convention.

(3) An application for approval must be accompanied by a syllabus for each course submitted which specifies the course objectives, course content and teaching methods to be used, and the number of credit hours each course is requesting to be granted, and a brief resume or description of the instructor and the instructor's qualifications.

(4) A provider is not approved until the executive director communicates in writing that the application has been accepted and issues a Provider Number for the provider and a course number for each course offered under that Provider Number. The commission may refuse to approve a provider's application for any valid reason, as determined by the commission.

(5) A Provider Number and course number are valid for one year, expiring on December 31st of each year, regardless of when the number was granted.

(e) Responsibilities of approved providers.

(1) The provider shall verify attendance at each program and provide a certificate of attendance to each attendee. The certificate of attendance shall contain:

(A) the name of the provider and approval number;

(B) the name of the participant;

(C) the title of the course or program, including the course or program number;

(D) the number of credit hours given;

(E) the date and place the course was held;

(F) the signature of the provider or provider's representative; and

(G) the signature of each attendee.

(2) The provider shall maintain the attendance records for a minimum of two years on each course provided.

(3) The provider shall provide a mechanism for evaluation of the program by the participants, to be completed on-site or at the time the program concludes. A copy of the evaluations and/or attendance roster shall be submitted to the commission upon request. Providers shall keep evaluations for two years after the course is presented.

(4) The provider shall provide a syllabus of each course offered, which may include a copy of any video offered for home study.

(5) The provider shall be responsible for ensuring that no licensee receives continuing education credit for time not actually spent attending the program.

(6) Commission staff may monitor any continuing education with or without prior notice.

(f) Credit hours required.

(1) Licensed funeral directors and embalmers who actively practice in this state are required to obtain 16 hours of continuing education every two year renewal period. A licensee may receive credit for a course only once during a renewal period.

(2) The following are mandatory continuing education hours and subjects for each renewal period:

(A) Ethics--2 credit hours--this course must at least cover principals of right and wrong, the philosophy of morals, and standards of professional behavior.

(B) Law Updates--2 credit hours--this course must at least cover the most current versions of Texas Occupations Code Chapter 651, and Chapters 201 and 203 of this title.

(C) Vital Statistics Requirements and Regulations--2 credit hours--this course must at least cover Texas Health and Safety Code Chapters 193, 711 - 715 and 25 TAC Chapter 181.

(g) Credit hour eligibility. The commission will grant the following credit hours toward the continuing education requirements for license renewal.

(1) One credit hour is given for each hour of participation, except in accredited college courses taken for school credit. Such college courses will be evaluated by the executive director on an individual basis for a certification fee set by the commission. College hour credit does not count toward the mandatory hours and subjects described in subsection (f)(2) of this section.

(2) A person is eligible for a maximum of 5 credit hours per renewal period for provisional licensee supervision, regardless of the number of provisionals supervised.

(3) A presenter or instructor of approved continuing education is eligible for a maximum of 5 credit hours per renewal period for instruction, regardless of the number of times the course is presented.

(4) All required hours may be obtained through independent study, including home study or Internet presentation with a maximum of 3 hours credit per course.

(5) A person is eligible for a maximum of 4 credit hours per renewal period for attendance at commission meetings, provided the licensee signs in and out and is present during this period of time.

(6) A licensee may carry over to the next renewal period up to 10 credit hours earned in excess of the continuing education renewal requirements, except for those courses listed in subsection (f)(2) of this section.

(7) It is the responsibility of the licensee to track the number of hours accumulated during a licensing period.

(8) When excessive hours are to be carried over to the next licensing period, the licensee must request and obtain permission in writing to carry over continuing education hours. This request will be kept in the permanent licensing file of the individual.

(h) Exemptions, waivers, reactivation, and conversion.

(1) An individual newly licensed by examination whose initial renewal date is 12 months or less following original licensure is not required to obtain continuing education hours prior to renewal of the license. An individual newly licensed by examination whose initial renewal date is more than 12 months following original licensure is required to complete the hours of the three mandatory courses described in subsection (f)(2) of this section.

(2) Individuals licensed in Texas, but not practicing in the state, are required to obtain the 6 mandatory hours of continuing education set forth in this section. Any individual who returns to practice in this state shall, before the next license renewal period, meet the continuing education requirements before resuming any funeral directing and/or embalming activities in the state.

(3) Persons in a "Retired, Inactive" status are exempt from the continuing education requirements.

(4) Persons in a "Retired, Active" status are required to obtain 10 hours of continuing education, including the mandatory hours and subjects of subsection (f)(2) of this section.

(5) Persons converting from a "Retired, Inactive" status to a "Retired, Active" status shall obtain the continuing education hours required in paragraph (4) of this subsection.

(6) Persons in an active military status are eligible for exemption from the continuing education requirements, upon request. A copy of the active duty orders must be included in the request. Upon release from active duty and return to residency in the state, the individual shall meet the continuing education requirements before the next renewal period after the release and return.

(7) The executive director may authorize full or partial hardship exemptions from the requirements of this section based on personal or family circumstances and may require documentation of such circumstances.

(A) The hardship request must be submitted in writing at least 30 days prior to the expiration of the license.

(B) Hardship exemptions will not be granted for consecutive licensing periods.

(i) Failure to comply.

(1) The commission will not renew the license of an individual who fails to obtain the continuing education requirements of this section, except as provided by paragraph (2) of this subsection.

(2) A $300 noncompliance fee must be paid before a license is subject to renewal if the individual has not obtained the required continuing education.

(A) The $300 noncompliance fee may only be used in lieu of obtaining the required continuing education for every other biennial renewal period.

(B) The noncompliance penalty fee and allowance for every other renewal period does not eliminate the necessity of obtaining continuing education hours in the mandatory courses listed in subsection (f)(2) of this section.

(C) The mandatory courses must be taken before the license expiration. If the mandatory courses do not total 16 hours, the noncompliance fee of $300 is due upon application for renewal.

(j) Any licensee receiving continuing education in a fraudulent manner shall be required to obtain all continuing education on site for two consecutive renewal periods.

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 April 4, 2011.

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O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
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For further information, please call: (512) 936-2469

22 TAC §203.33

The Texas Funeral Service Commission (commission) adopts an amendment to §203.33, concerning Consequences of Criminal Conviction, with changes to the proposed text as published in the January 7, 2011, issue of the *Texas Register* (36 TexReg 14) and will be republished.

The amendment is adopted to address licensees with criminal convictions resulting in incarceration.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.33. Consequences of Criminal Conviction.

(a) The commission may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of an occupation required to be licensed by Texas Occupations Code, Chapter 651 (Chapter 651).

(b) The commission shall revoke the license of a person who is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(c) A person in prison is ineligible for licensure.

(d) The commission shall revoke the license of a person for any felony conviction which results in incarceration.

(e) The commission shall consider the following factors in determining whether a criminal conviction directly relates to an occupation required to be licensed by Chapter 651:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

(f) If a person has been convicted of a crime, the commission shall consider the following in determining a person's fitness to perform the duties and discharge the responsibilities of a Chapter 651 occupation:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) letters of recommendation from:

(A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff or chief of police in the community where the person resides; and

(C) any other person in contact with the convicted person; and

(7) evidence that the applicant has:

(A) maintained a record of steady employment;

(B) supported the applicant's dependents;

(C) maintained a record of good conduct; and

(D) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

(g) The following are related to the occupations of funeral directing or embalming because they are classified as Class B misdemeanors by Texas Occupations Code, §651.602:

(1) acting or holding oneself out as a funeral director, embalmer, or provisional license holder without being licensed under this chapter;

(2) making a first call in a manner that violates Texas Occupations Code, §651.401;

(3) engaging in a funeral practice that violates Chapter 651 or a rule adopted under Chapter 651; or

(4) violating Chapter 154, Texas Finance Code, or a rule adopted under that chapter, regardless of whether the Texas Department of Banking or another governmental agency takes action relating to the violation.

(h) The commission of acts within the definition of Abuse of Corpse, Penal Code, §42.08, is related to the Chapter 651 occupations because those acts indicate a lack of respect for the dead.

(i) The crimes listed in paragraphs (1) - (3) of this subsection relate to the Chapter 651 occupations because the commission of each reflects a lack of respect for human life and dignity or a lack of fitness to practice the occupations.

(1) a misdemeanor or felony offense involving:

(A) murder;

(B) assault;

(C) burglary;

(D) robbery;

(E) theft;

(F) sexual assault;

(G) injury to a child;

(H) injury to an elderly person;

(I) child abuse or neglect;

(J) tampering with a governmental record;

(K) forgery;

(L) perjury;

(M) bribery;

(N) harassment;

(O) insurance claim fraud; or

(P) mail fraud;

(2) delivery, possession, manufacture, or use of or the dispensing or prescribing a controlled substance, dangerous drug, or narcotic; or

(3) violations of the Penal Code, Titles 4, 5, 7, 9, and 10, which indicate an inability or tendency for the person to be unable to perform as a licensee or to be unfit for licensure or registration if action or inaction by the commission will protect the public health, safety, and welfare.

(j) An applicant for licensure shall disclose in writing to the commission any conviction against him or her at the time of application. A current licensee shall disclose in writing to the commission any conviction at the time of renewal or no later than 30 days after judgment in the trial court, whichever date is earlier.

(k) Upon notification of a conviction, the commission shall provide a copy of this section to the person and request that the person respond by filing information demonstrating why the commission should not deny the application or take disciplinary action against the person, if already licensed or registered. The response must be filed with the commission within 21 days of the date of receipt of notice from the commission. An applicant for licensure is responsible for filing documentation that will allow the commission to conduct an analysis under subsection (f) of this section.

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 §203.38

The Texas Funeral Service Commission (commission) adopts an amendment to §203.38, concerning Reinstatement of Funeral Director and/or Embalmer Licenses, with changes to the proposed text as published in the January 7, 2011, issue of the *Texas Register* (36 TexReg 15) and will be republished.

The amendment is adopted to allow the commission to reinstate a license and include an agreed order.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.38. Reinstatement of Funeral Director and/or Embalmer Licenses.

(a) A person whose license to practice funeral directing and/or embalming has been cancelled or revoked may, after five (5) years from the effective date of such cancellation or revocation, petition the Board for reinstatement of the license, unless another time is provided in the cancellation or revocation order. This rule does not apply to licensees who let their licenses lapse for non-payment of renewal fees.

(b) The petition shall be in writing and in the form prescribed by the Commission or Board.

(c) The Commission or Board may grant or deny the petition. If the petition is denied by the Commission or Board, a subsequent petition may not be considered by the Commission or Board until twelve (12) months have lapsed from the date of denial of the previous petition.

(d) The petitioner or his legal representative shall appear before the Commission or Board to present the request for reinstatement of the license.

(e) The petitioner shall have the burden of showing good cause why the license should be reinstated.

(f) In considering a petition for reinstatement, the Commission or Board may consider the petitioner's:

(1) moral character;

(2) employment history;

(3) status of financial support to his family;

(4) participation in continuing education programs or other methods of staying current with the practice of funeral directing and/or embalming;

(5) criminal history record, including felonies or misdemeanors relating to the practice of funeral directing, embalming and/or moral turpitude;

(6) offers of employment as a funeral director and/or embalmer;

(7) involvement in public service activities in the community;

(8) compliance with the provisions of the Commission or Board order revoking or canceling the petitioner's license;

(9) compliance with provisions of the Funeral Directing and/or Embalming Act regarding unauthorized practice;

(10) history of acts or actions by any other state and federal regulatory agencies; and

(11) any physical, chemical, emotional, or mental impairment.

(g) In considering a petition, the Commission or Board may also consider:

(1) the gravity of the offense for which the petitioner's license was cancelled or revoked;

(2) the length of time since the petitioner's license was cancelled or revoked as a factor in determining whether the time period has been sufficient for the petitioner to have rehabilitated himself to be able to practice funeral directing or embalming in a manner consistent with the public health, safety and welfare;

(3) whether the license was submitted voluntarily for cancellation or revocation at the request of the licensee; and

(4) other rehabilitative actions taken by the petitioner.

(h) If the Commission or Board grants the petition for reinstatement, the petitioner must successfully complete the Texas State Mortuary Law Exam during the regularly scheduled examination times.

The Commission or Board may also require the petitioner to complete additional training to assure the petitioner's competency to practice funeral directing and/or embalming. With an agreed order, the commission may probate the license not less than two (2) years.

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 April 4, 2011.

TRD-201101289
O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Effective date: April 24, 2011
Proposal publication date: January 7, 2011
For further information, please call: (512) 936-2469

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PART 11. TEXAS BOARD OF NURSING

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.33

Introduction. The Texas Board of Nursing (Board) adopts amendments to §213.33 (relating to Factors Considered for Imposition of Penalties/Sanctions) without changes to the proposed text as published in the February 25, 2011, issue of the *Texas Register* (36 TexReg 1221) and will not be republished.

Reasoned Justification. These amendments are adopted under the Occupations Code §§301.452, 301.453, and 301.151 and formalize the Board's historical practice regarding default cases.

The Board is charged with protecting the health and safety of the public. One way in which the Board fulfills this obligation is by regulating the conduct of its licensees. When a licensee commits a violation of the Nursing Practice Act (Occupations Code Chapter 301), the Board is authorized to take disciplinary action against the licensee. The goal of the disciplinary action is to identify the unsafe, incompetent, or illegal conduct of the licensee and effectuate its remediation. This goal, however, is obviated in default cases. A default case occurs when a licensee, despite being sent proper notice, fails to appear for a formal administrative hearing at the State Office of Administrative Hearings (SOAH). Historically, the Board has revoked the licensee's nursing license in such cases.

At the outset, a licensee has several opportunities to settle a disciplinary matter informally with the Board before it is set for a formal administrative hearing at SOAH. For example, when the Board receives a complaint against a licensee, the Board informs the licensee of the complaint, and the licensee is afforded an opportunity to respond to the allegations. If the complaint is substantiated, the licensee is offered a proposed disciplinary order in an effort to resolve the matter informally. The licensee may accept the proposed order, request changes to the proposed order, or decline the proposed order. The licensee may also request to attend an informal settlement conference at the Board's offices in order to discuss the underlying allegations or the proposed order in greater detail. All licensees are entitled to retain legal counsel at any time during the disciplinary process and to examine evidence collected by the Board. Once all reasonable efforts towards resolving the matter informally have been exhausted; the matter is scheduled for a formal administrative hearing at SOAH. If a licensee purposefully ceases communication with the Board, however, the matter is scheduled for a formal administrative hearing at SOAH without further attempts at resolving the matter informally.

In some instances, a licensee will respond to the initial allegations filed against him/her, but will then cease further communication with the Board. For example, the licensee may stop returning phone calls from Board Staff or may refuse certified mailings from the Board. Although the licensee has been made aware of the pending allegations against him/her and the Board's ongoing investigation, the licensee chooses to ignore the resolution of the matter. As a result, the Board has no choice but to set the matter for resolution through a formal administrative hearing at SOAH. The Board sends a written notice of the scheduled administrative hearing to the licensee. However, the licensee typically ignores or rejects this mailing and fails to appear for the scheduled administrative hearing. The Board then revokes the licensee's nursing license.

The goal of a disciplinary action is to effectuate the successful remediation of the unsafe, incompetent, or illegal conduct of a licensee. In order to accomplish this, a licensee must first acknowledge that his/her conduct is a violation of the Nursing Practice Act. The licensee must then be willing to comply with the Board's requirements for the remediation of the conduct. Depending upon the nature of the licensee's conduct, the Board may require the licensee to complete remedial education courses, to undergo random drug screening, or to participate in therapy. The Board may also require the licensee to be supervised or periodically evaluated by his/her employer. In order for the remediation to be successful, the licensee must understand the Board's requirements and be willing to comply with them. This cannot occur in a default case.

Once a licensee stops responding to the Board's efforts to resolve a disciplinary matter, few options remain for assuring the remediation of the licensee's conduct. Because the licensee refuses to communicate with the Board, the licensee cannot accept responsibility for his/her conduct or the Board's requirements for the remediation of such conduct. As a result, the Board cannot be assured that the licensee's conduct will be successfully remediated, and the licensee remains a risk to the public health and safety. This concern, however, is alleviated if the individual's nursing license is revoked. Once revoked, the individual cannot continue to practice nursing, and the risk to the public health and safety is significantly reduced, if not eliminated altogether. Further, if the licensee wishes to have his/her nursing license reinstated, the licensee must reestablish communication with the Board. Once communication is reestablished, the Board can address its requirements for reinstating the licensee's nursing license, the licensee's underlying conduct, and any requirements for the successful remediation of the conduct.

The revocation of a licensee's nursing license in a default case also enables the Board to resolve disciplinary cases in a more efficient manner, as it eliminates the need to initiate repetitive disciplinary proceedings against the same licensee for noncompliance with a prior Board order. A licensee is subject to disciplinary action under the Nursing Practice Act for noncompliance with the terms of a prior Board order. A licensee who has repeatedly ignored or rejected mailings from the Board and who fails to appear for a scheduled administrative hearing at SOAH is unlikely to successfully complete the requirements of a Board order, as the licensee would not be aware that the order was

ever issued. When the licensee fails to comply with the terms of the Board order, the Board is forced to initiate repetitive disciplinary proceedings against the licensee for noncompliance with the Board order. This begins a cycle of noncompliance, wherein escalating disciplinary orders are issued for the licensee's noncompliance, until the licensee's noncompliance ultimately results in the revocation of his/her nursing license. The initial revocation of the licensee's nursing license eliminates this unnecessary redundancy and conserves state resources. Further, the licensee may apply for reinstatement of his/her nursing license, at which time the Board may address the licensee's underlying conduct and the requirements for the successful remediation of the conduct.

How the Section Will Function. Adopted §213.33(m) provides that, notwithstanding any other provision, a person's failure to appear in person or by attorney on the day and at the time set for hearing in a contested case shall entitle the Board to revoke the person's license.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Occupations Code §§301.452, 301.453, and 301.151.

Section 301.452(a) defines "intemperate use" as including practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) states that a person is subject to denial of a license or to disciplinary action under Subchapter J for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; (ix) intemperate use of alcohol or drugs that the board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.452(d) states that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board under §301.452 is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.453(a) states that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including: (A) limiting to or excluding from the person's practice one or more specified activities of nursing; or (B) stipulating periodic board review; (v) suspension of the person's license; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) states that, in addition to or instead of an action under §301.453(a), the Board, by order, may require the person to: (i) submit to care, counseling, or treatment by a health provider designated by the board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the board, including a program of remedial education; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; or (iv) perform public service the Board considers appropriate.

Section 301.453(c) states that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

Section 301.453(d) states that, if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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 March 29, 2011.

TRD-201101225
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Effective date: April 18, 2011
Proposal publication date: February 25, 2011
For further information, please call: (512) 305-6822

PART 36. COUNCIL ON SEX OFFENDER TREATMENT

CHAPTER 810. COUNCIL ON SEX OFFENDER TREATMENT

The Council on Sex Offender Treatment (council) adopts amendments to §§810.1 - 810.5, 810.8, 810.9, 810.31 - 810.34, 810.61 - 810.68, 810.91, 810.92, 810.121, and 810.122; the repeal of §§810.6, 810.151 - 810.153, 810.181 - 810.183, 810.211, 810.241, 810.242, and 810.271 - 810.275; and new §§810.151 - 810.153, 810.211, 810.241, 810.242, 810.271 - 810.273, 810.281 - 810.283, and 810.301 - 810.308, concerning the licensing of sex offender treatment providers, the civil commitment of sexually violent predators, and early termination for certain persons' obligation to register. The amendments to §§810.66, 810.92, and 810.302 are adopted with changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11492). Amendments to §§810.1 - 810.5, 810.8, 810.9, 810.31 - 810.34, 810.61 - 810.65, 810.67, 810.68, 810.91, 810.121, and 810.122; the repeal of §§810.6, 810.151 - 810.153, 810.181 - 810.183, 810.211, 810.241, 810.242, 810.271 - 810.275; and new §§810.151 - 810.153, 810.211, 810.241, 810.242, 810.271 - 810.273, 810.281 - 810.283, and 810.301, and 810.303 - 810.308 are adopted without changes, and the sections will not be republished.

BACKGROUND AND PURPOSE

The new sections are due to the statutory changes made during the 79th Legislative Session, 2005, by the passage of House Bill 2036 and is codified in the Texas Occupations Code, Chapter 110. The legislation requires that the council by rule set licensure requirements and standards for those individuals who provide sex offender treatment in this state.

Texas Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Texas Government Code, Chapter 2001 (Administrative Procedure Act). Sections 810.1 - 810.6, 810.8, 810.9, 810.31 - 810.34, 810.61 - 810.68, 810.91, 810.92, 810.121, 810.122, 810.151 - 810.153, 810.181 - 810.183, 810.211, 810.241, 810.242, and 810.271 - 810.275 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. As a result of this four-year review of agency rules, §§810.1 - 810.5, 810.8, 810.9, 810.31 - 810.34, 810.61 - 810.68, 810.91, 810.92, 810.121 and 810.122 are being amended, and §§810.6, 810.151 - 810.153, 810.181 - 810.183, 810.211, 810.241, 810.242, and 810.271 - 810.275 are being repealed and replaced with new §§810.151 - 810.153, 810.211, 810.241, 810.242, 810.271 - 810.273, 810.281 - 810.283, and 810.301 - 810.308. The revisions will provide clarification to the rules and statutory changes.

SECTION BY SECTION SUMMARY

Section 810.1 provides a grammatical change. Section 810.2 adds new definitions for non-deceptive polygraph examination result, safety plan, and clarifies the definitions for polygraph examiner and successful completion of sex offender specific treatment. Section 810.3 deletes the four-year exemption for licensure, clarifies licensure, adds new sections regarding criminal history, inactive status, and active military. Section 810.4 provides clarification to continuing education hours and timeframes. New §810.5 provides licensing fees. Section 810.8 provides a grammatical change. Section 810.9 provides clarification regarding complaints, disciplinary actions, and administrative hearings and the timeframe in processing a complaint.

Sections 810.31, 810.32, and 810.34 provide grammatical changes. Section 810.33 provides for the destruction of adjudication information by the council and submission of fingerprints.

Section 810.61 provides a grammatical change. Section 810.62 provides clarification of the professional obligations required by licensees. Section 810.63 provides clarification of the professional and legal obligations required by licensees in the assessment of a sex offender or juvenile with sexual behavior problems. Section 810.64 provides clarification of the professional and legal obligations required by licensees in the assessment and treatment of adult sex offenders. Section 810.65 provides clarification of the professional and legal obligations required by licensees in the assessment of juveniles with sexual behavior problems. Section 810.66 provides clarification of the professional and legal obligations required by licensees regarding female sex offenders. Section 810.67 provides clarification of the professional and legal obligations required by licensees regarding the assessment and treatment of developmentally delayed clients. Section 810.68 provides grammatical changes and shall subscribe and adhere to various tenets as they relate to pertinent issues to be addressed in treatment.

Section 810.91 provides grammatical changes for licensees with general guidance regarding their ethical obligations. Section 810.92 adds that licensees may terminate services and facilitate a transfer of a client from treatment based on a complaint against the licensee concerning enforcement of the ethical obligations of all licensees. Also, licensees shall not contract or subcontract for work concerning client relationships. Information concerning confidentially of client records was revised.

Section 810.121 provides clarification regarding the history concerning the civil commitment. Section 810.122 provides for various definitional changes involving the civil commitment program. The definitions of child safety zone, civil commitment, civil commitment treatment provider, global positioning satellite (GPS) tracking, penile plethysmograph (PPG), polygraph examination (Clinical), polygraph examiner, repeat sexually violent offender, residential facility, supervision, treatment, and GPS requirements have been deleted. The definitions of civil commitment case manager, predatory act, sexually violent offense, and sexually violent predator were amended.

New §810.151 provides the council with authority to employ program specialists to assist in the civil commitment program. New §810.152 provides that the case manager may be a recipient of information from the council relating to a sexually violent predator (SVP). New §810.153 provides clarification regarding standards of care provided to the SVP.

New §810.211 provides that a SVP shall receive a biennial examination and the requirements of the report.

New §810.241 and §810.242 provides for the case manager to authorize release and provide written notice to the SVP.

New §810.271 clarifies that the council shall provide all relevant information to the program specialist and/or case manager. New §810.272 provides duties and responsibilities of the council regarding the multidisciplinary team. New §810.273 clarifies the cost of the tracking service and transfer of money.

New §§810.281 - 810.283 clarify the authority of the council to obtain a criminal history on potential employees, access to the records, and destruction of the criminal history record.

New §810.301 clarifies the provisions and construction regarding deregistration of individuals on the public registry. New §810.302 adds new definitions concerning deregistration.

New §810.303 provides clarification regarding the council's responsibilities and guidelines regarding deregistration. New §810.304 and §810.305 provide clarification regarding the council's responsibility regarding the eligibility and evaluation criteria for deregistration. New §810.306 and §810.307 provide clarification regarding the evaluation specialist and the methodology regarding the evaluation. New §810.308 provides clarification regarding the evaluation protocol and quality assurance regarding the evaluation.

SUMMARY OF COMMENTS

The following comments were received concerning the proposed rules during the comment period. Following each comment is the council's response and any resulting changes.

Comment: Concerning §810.66(5) regarding group treatment of female offenders shall not be conducted with male sex offenders.

Response: The council agreed to a modification of §810.66(5) and added the following language "unless approval is obtained in writing by the council."

Comment: Concerning §§810.301 - 810.308 regarding the early termination of the obligation to register as a sex offender, the commenter requested clarification that the section only applied to adults.

Response: The council disagreed with the comment because the Code of Criminal Procedures, §62.401, applies to adult sex offenders and Code of Criminal Procedures, §62.301, provides the clarification for juveniles. No changes were made to the sections.

Comment: Concerning §810.64(d)(12), a commenter noted that the paragraph was in conflict with §810.92(a)(2).

Response: The council agreed with the comment and modified §810.92 by deleting subsection (a)(2), and renumbered the remaining paragraphs.

Section 810.302(7) was amended to include the word "be" to state "...registrant being required to be listed..." for clarity.

SUBCHAPTER A. LICENSED SEX OFFENDER TREATMENT PROVIDERS

22 TAC §§810.1 - 810.5, 810.8, 810.9

STATUTORY AUTHORITY

The amendments are authorized under Texas Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter; and Texas Occupations Code, §110.159(a)(1), which requires the council to charge and collect reasonable fees in amounts necessary to cover the costs of administering this chapter; and Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter. Review of the sections implements Texas Government Code, §2001.039.

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 April 4, 2011.

TRD-201101294
Liles Arnold
Chair
Council on Sex Offender Treatment
Effective date: April 24, 2011
Proposal publication date: December 24, 2010
For further information, please call: (512) 458-7111 x6972

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22 TAC §810.6

STATUTORY AUTHORITY

The repeal is authorized under Texas Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter; and Texas Occupations Code, §110.159(a)(1), which requires the council to charge and collect reasonable fees in amounts necessary to cover the costs of administering this chapter; and Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter. Review of the section implements Texas Government Code, §2001.039.

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 B. CRIMINAL BACKGROUND CHECK

22 TAC §§810.31 - 810.34

STATUTORY AUTHORITY

The amendments are authorized under Texas Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter; and Texas Occupations Code, §110.159(a)(1), which requires the council to charge and collect reasonable fees in amounts necessary to cover the costs of administering this chapter; and Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter. Review of the sections implements Texas Government Code, §2001.039.

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 C. STANDARDS OF PRACTICE

22 TAC §§810.61 - 810.68

STATUTORY AUTHORITY

The amendments are authorized under Texas Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter; and Texas Occupations Code, §110.159(a)(1), which requires the council to charge and collect reasonable fees in amounts necessary to cover the costs of administering this chapter; and Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter. Review of the sections implements Texas Government Code, §2001.039.

§810.66. Standards for Adult Female Sex Offenders.

Licensees shall subscribe and adhere to the following tenets regarding female sex offenders:

(1) The treatment of female sex offenders shall balance treatment issues with offender accountability to the victims and the community at large.

(2) Licensees shall recognize the female sex offenders may experience deviant sexual arousal that can lead to sexual abuse and that female sex offenders may experience sexual pleasure from the offending behavior.

(3) Female sex offenders shall be assessed for deviant sexual interest and arousal using appropriate measures.

(4) Licensees shall communicate and exchange information with the Department of Family Protective Services-Child Protective Services, Child Care Licensing, and with appropriate agencies regarding the safety of a child or children in the primary residence in which a sex offender resides.

(5) Group treatment of female sex offenders shall not be conducted with male sex offenders due to issues related to past victimization, stereotypical gender roles, experiences with domestic violence, and differential patterns in relating to others within the context of treatment, unless approval is obtained in writing by the council.

(6) Treatment of female sex offenders shall be responsive to any abuse history as with males and responsive to gender issues.

(7) In assessing and treating female sex offenders, licensees shall refer to the appropriate rules in §§810.62, 810.63, 810.64, and 810.68 of this title (relating to Standards of Practice).

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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Liles Arnold
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Council on Sex Offender Treatment
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For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER D. CODE OF PROFESSIONAL ETHICS

22 TAC §810.91, §810.92

STATUTORY AUTHORITY

The amendments are authorized under Texas Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter; and Texas Occupations Code, §110.159(a)(1), which requires the council to charge and collect reasonable fees in amounts necessary to cover the costs of administering this chapter; and Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter. Review of the sections implements Texas Government Code, §2001.039.

§810.92. Code of Ethics.

(a) Professional Conduct. Licensees shall:

(1) not discriminate against clients or withhold professional services to anyone, regardless of age, race, national origin, religion, sex, disability, political affiliation, social or economic status, sexual orientation, or proscribed by law. A licensee shall not allow personal feelings related to a client's alleged or actual crimes or behavior to interfere with professional judgment and objectivity;

(2) make an appropriate referral when a licensee cannot offer services to a client. Each licensee shall facilitate follow-up services for clients who transition from one program or one jurisdiction to another which includes a written summary of the assessment of risk, offending pattern, level of participation, relevant problems and treatment needs, client strengths and needs, support group, and recommendations;

(3) perform their professional duties with the highest level of integrity and appropriate confidentiality within the scope of their statutory responsibilities;

(4) not hesitate to seek assistance from other professional disciplines when circumstances dictate;

(5) report unethical, incompetent, or dishonorable practices to the council;

(6) refrain from using his or her professional relationship, to further personal, religious, political, or economic interests, other than customary professional fees;

(7) have an obligation to engage in continuing education and professional growth;

(8) refrain from diagnosing, treating, or making recommendations outside the scope of the licensee's competence;

(9) be knowledgeable of legal statutes and scientific data relevant to the assessment and treatment of clients; and

(10) display or provide in writing the address and telephone number of the council in all sites where sex offender treatment services are provided for the purpose of directing complaints to the council.

(b) Client Relationships. Licensees shall:

(1) treat all clients with dignity and respect and shall not exaggerate the efficacy of treatment services that cannot be supported by empirical literature;

(2) recognize the importance pertaining to financial matters with clientele. Arrangements for payments should be settled at the beginning of an assessment or a therapeutic relationship;

(3) not engage in dual relationships with clients or former clients. Examples of dual relationships include, but are not limited to, the following: treatment of family members, close friends, employees, supervisors, supervisees, personal contacts outside the scope of treatment, contracting or subcontracting for work, and relationships outside of treatment such as business or social;

(4) not engage in sexual harassment and/or a sexual or intimate relationship with any client who is receiving or has received professional services, regardless of whether payment for the services was involved. Licensees shall not engage in sexual intimacy with a client's or former client's family members;

(5) if services must be withdrawn, give consideration to all factors in the situation in order to minimize possible effects on the client;

(6) notify the appropriate supervising agency or court if the licensee anticipates the termination or disruption of services to a client and provide for transfer, referral, or continuation of service in keeping with the client's needs, preferences, and supervision requirements;

(7) terminate a professional counseling relationship when it is reasonably clear that the client is not benefiting from treatment unless the agency is mandated to render services. When treatment is still indicated, the licensee shall take reasonable steps to facilitate the transfer to an appropriate referral source. All clients on supervision shall be referred back to the criminal justice department or to the juvenile justice system;

(8) serve clients of a colleague during a temporary absence or emergency with the same consideration of that afforded any client;

(9) not engage in any action in their professional role which violates or diminishes the legal and civil rights of clients or victims who may be affected by their actions;

(10) not give or accept a gift from a client or a relative of a client, enter into a barter for services, or borrow or lend money or items of value to clients or relatives of clients or accept payment in the form of services rendered by a client; and

(11) not knowingly offer or provide counseling, treatment, or other professional interventions to an individual concurrently receiving sex offender treatment from another licensed sex offender treatment provider except with that provider's knowledge and approval. If a licensee learns of such concurrent counseling, treatment, or other professional interventions, the licensee shall take immediate and reasonable action to inform the other mental health service provider.

(c) Confidentiality. Licensees shall:

(1) maintain records on each client for a period of no less than 10 years after the last date of service to the client. Client records shall include, at a minimum, client demographic information; release of confidential information signed by the client which clearly describes limits of confidentiality; test results from evaluations conducted by licensee, including test protocols; and monthly treatment reports which detail client attendance, treatment progress, and problematic behaviors which may contribute to risk for reoffense. Licensees shall maintain and store records on each client to ensure safety and confidentiality in accordance with the highest professional and legal standards including but not limited to HIPAA, the Texas Health and Safety Code, Chapter 611, and laws pertaining to victims rights (Federal Justice for All Act and Texas Code of Criminal Procedure, Chapter 56); licensees shall maintain the confidentiality of victims and shall not provide victim information to clients or others not specified in Occupations Code, Chapter 109 (§109.051 and §109.052);

(2) be responsible for informing clients of the exceptions to confidentiality. Clients shall be informed of any circumstances which may prompt an exception to the agreed upon confidentiality;

(3) understand that clients have the right to refuse to participate in or attend treatment and licensees shall inform the client of the potential consequences of such a decision;

(4) clearly communicate to the client any conflicts of interest or dual relationships which affect the licensee's current relationship with a client;

(5) obtain written permission and informed consent from the client before any data may be divulged to third parties;

(6) respond to an inquiry for information with a written release by the client with only data germane to the purpose of the inquiry. Every effort shall be made to avoid an undue invasion of privacy for the client;

(7) not communicate information to persons outside the containment model without the written consent of the client unless there exists a clear and immediate danger to a person from the client; and

(8) be knowledgeable of all statutes which govern the conduct of licensee's professional practice and the duty to report suspected abuse or neglect to law enforcement (for example: Family Code, §261.101 at et. seq.).

(d) Assessments. Licensees shall:

(1) not provide an assessment or re-assessment for the purpose of determining if an individual is guilty or innocent of a specific sexual crime. Psychological profiles shall not be used to prove or disprove an individual's propensity to act in a sexually deviant manner or an individual's guilt or innocence. Physiological methods or sexual arousal and preference assessments shall not be used to prove an individual's guilt or innocence of a specific sex crime;

(2) recognize, and when providing expert testimony, acknowledge that there is no known psychological or physiological test, profile, assessment procedure, or combination of such tools that prove or disprove whether the client has committed a specific sexual crime;

(3) make every effort possible to promote the client's nonoffending behavior and act in the best interest of the client, as long as others are not placed in an identifiable risk;

(4) guard against the misuse of assessment data;

(5) and respect a client's right to know the results, the interpretations made, and the basis for the conclusions and recommendations drawn from such assessments;

(6) respect the right of a client to have a complete explanation, in language which the client is able to understand, the nature and purpose of the methodologies, and any foreseeable effects of the assessment unless the client agrees to an exception in advance;

(7) obtain informed written consent from a client prior to conducting a physiological assessment or engaging in treatment unless mandated by court order;

(8) safeguard sexual arousal assessment testing and treatment materials. Each licensee shall recognize the sensitivity of this material and use it only for the purpose for which it is intended in a controlled phallometric assessment. Licensees shall not release assessment or treatment materials to persons not involved in the management or containment of the client who lack proper training and credentials, or who would misinterpret or improperly use such stimulus materials;

(9) have specific training in the administration and evaluation of any assessment tool that is utilized. Licensees shall not release assessment raw data to any person not qualified to interpret the data;

(10) Licensees shall recognize that any decision regarding refusal to release records or information shall be subject to the applicable state law;

(11) be informed of the client's rights, including the client's right to confidentiality;

(12) not determine a person's degree of sexual dangerousness, suitability for treatment, or other forensic referral question based solely by one assessment instrument. Assessment data shall be properly integrated within a comprehensive assessment, the components of which are determined by a person who has specific training and expertise in making such assessments;

(13) indicate any reservations in reporting assessment results that may exist regarding validity or reliability because of the circumstances of the assessment or the absence of comparative norms for the person being tested. Each licensee shall make an attempt to ensure that assessment results and interpretations are not misunderstood or misused by others. Proper qualifications shall be made with regard to prediction and to the generalized ability of data issued in order to not mislead the consumer of the report;

(14) understand it is ethical to address an issue regarding the probability of a client committing certain criminal acts within a certain period of time; it is unethical for a licensee to state that an individual is not at risk to reoffend sexually;

(15) if a licensee decides that it is appropriate to offer a prediction of criminal behavior on the basis of a comprehensive assessment in a given case, the licensee shall specify clearly:

(A) the acts being predicted and supportive research;

(B) the estimated probability that these acts will occur during a given period of time; and

(C) the facts and data on which these empirical predictions are based; and

(16) be educated and familiar with the assessment or treatment procedures and data used by another licensee before providing any public comment or testimony pertaining to the validity, reliability, or accuracy of such information.

(e) Professional Relationships.

(1) Each licensee shall act with proper regard for the needs, special competencies, and perspectives of colleagues who assess, treat, and manage sex offenders and other mental health professionals.

(2) Each licensee is encouraged to affiliate with professional groups, organizations, or agencies working in the field of sex offender assessment and treatment.

(f) Research and Publications.

(1) Licensees shall be obligated to protect the safety of the licensee's research subjects. Provisions of the human subjects experimental policy shall prevail as specified by the current United States Department of Health and Human Services guidelines.

(2) Licensees shall evaluate the ethical implications of possible research and ensure that ethical practices are enforced in conducting such research.

(3) The practice of informed consent prevails. A research participant shall have the freedom to decline to participate in or withdraw from a research project at any time without any prejudicial consequences.

(4) The research subject shall be protected from physical and mental discomfort, harm, and danger that may result from research procedures.

(5) Publication credit shall be assigned to those who have contributed to a publication in proportion to their contribution, and in accordance with customary publication practices.

(g) Public Information and Advertising. All professional presentations to the public shall be governed by the following standards on public information and advertising. Licensees shall:

(1) have a responsibility to the public to engage in appropriate informational activities and to avoid misrepresentation or misleading statements. Advertisements and public communications shall be formulated to convey accurate information. Self-praising and testimonials shall be avoided;

(2) not establish licensee-client relationships as the result of pressure, deception, or exploitation of the vulnerability of clients;

(3) not make any representations that the licensee is a partner or associate of any agency or firm if the licensee is, in fact, not acting in that capacity (for example: a person engaged in private practice who is also employed at a state hospital should clearly communicate to a prospective client in private practice that he is not acting on behalf of a state hospital);

(4) be truthful in the representation of the licensee's professional background, training, and status. Each licensee shall indicate any limitations in his or her practice;

(5) not represent their affiliation with any organization or agency in a manner, which falsely implies sponsorship or certification by that organization; and

(6) not knowingly make a representation about the licensee's ability, background, or experience, or about that of a partner or associate, or about a fee or any other aspect of a proposed professional engagement that is false, fraudulent, misleading, or deceptive. A false, fraudulent, misleading, or deceptive statement or claim is defined as a statement or claim which:

(A) contains a material misrepresentation of fact;

(B) omits any material or statement of fact which is necessary to make the statement, in light of all circumstances, not misleading; or

(C) is intended or likely to create an unjustified expectation concerning the licensee, or treatment services.

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 April 4, 2011.

TRD-201101298

Liles Arnold
Chair
Council on Sex Offender Treatment
Effective date: April 24, 2011
Proposal publication date: December 24, 2010
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER E. CIVIL COMMITMENT GENERAL PROVISIONS

22 TAC §810.121, §810.122

STATUTORY AUTHORITY

The amendments are authorized under Texas Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter; and Texas Occupations Code, §110.159(a)(1), which requires the council to charge and collect reasonable fees in amounts necessary to cover the costs of administering this chapter; and Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter. Review of the sections implements Texas Government Code, §2001.039.

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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Chair
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SUBCHAPTER F. CIVIL COMMITMENT

22 TAC §§810.151 - 810.153

STATUTORY AUTHORITY

The repeals are authorized under Texas Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter; and Texas Occupations Code, §110.159(a)(1), which requires the council to charge and collect reasonable fees in amounts necessary to cover the costs of administering this chapter; and Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter. Review of the sections implements Texas Government Code, §2001.039.

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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Chair
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22 TAC §§810.151 - 810.153

STATUTORY AUTHORITY

The new sections are authorized under Texas Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter; and Texas Occupations Code, §110.159(a)(1), which requires the council to charge and collect reasonable fees in amounts necessary to cover the costs of administering this chapter; and Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter. Review of the sections implements Texas Government Code, §2001.039.

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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Liles Arnold
Chair
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SUBCHAPTER G. CIVIL COMMITMENT PROGRAM SPECIALIST AND/OR CASE MANAGER AND TREATMENT PROVIDER DUTIES AND RESPONSIBILITIES

22 TAC §§810.181 - 810.183

STATUTORY AUTHORITY

The repeals are authorized under Texas Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter; and Texas Occupations Code, §110.159(a)(1), which requires the council to charge and collect reasonable fees in amounts necessary to cover the costs of administering this chapter; and Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter. Review of the sections implements Texas Government Code, §2001.039.

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-201101302

Liles Arnold
Chair
Council on Sex Offender Treatment
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For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER H. CIVIL COMMITMENT REVIEW

22 TAC §810.211

STATUTORY AUTHORITY

The repeal is authorized under Texas Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter; and Texas Occupations Code, §110.159(a)(1), which requires the council to charge and collect reasonable fees in amounts necessary to cover the costs of administering this chapter; and Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter. Review of the section implements Texas Government Code, §2001.039.

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 April 4, 2011.

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Liles Arnold
Chair
Council on Sex Offender Treatment
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For further information, please call: (512) 458-7111 x6972

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22 TAC §810.211

STATUTORY AUTHORITY

The new section is authorized under Texas Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter; and Texas Occupations Code, §110.159(a)(1), which requires the council to charge and collect reasonable fees in amounts necessary to cover the costs of administering this chapter; and Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter. Review of the section implements Texas Government Code, §2001.039.

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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Liles Arnold
Chair
Council on Sex Offender Treatment
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For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER I. PETITION FOR RELEASE

22 TAC §810.241, §810.242

STATUTORY AUTHORITY

The repeals are authorized under Texas Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter; and Texas Occupations Code, §110.159(a)(1), which requires the council to charge and collect reasonable fees in amounts necessary to cover the costs of administering this chapter; and Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter. Review of the sections implements Texas Government Code, §2001.039.

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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Liles Arnold
Chair
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For further information, please call: (512) 458-7111 x6972

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22 TAC §810.241, §810.242

STATUTORY AUTHORITY

The new sections are authorized under Texas Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter; and Texas Occupations Code, §110.159(a)(1), which requires the council to charge and collect reasonable fees in amounts necessary to cover the costs of administering this chapter; and Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter. Review of the sections implements Texas Government Code, §2001.039.

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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Liles Arnold
Chair
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For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER J. MISCELLANEOUS PROVISIONS

22 TAC §§810.271 - 810.275

STATUTORY AUTHORITY

The repeals are authorized under Texas Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter; and Texas Occupations Code, §110.159(a)(1), which requires the council to charge and collect reasonable fees in amounts necessary to cover the costs of administering this chapter; and Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter. Review of the sections implements Texas Government Code, §2001.039.

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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Liles Arnold
Chair
Council on Sex Offender Treatment
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22 TAC §§810.271 - 810.273

STATUTORY AUTHORITY

The new sections are authorized under Texas Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter; and Texas Occupations Code, §110.159(a)(1), which requires the council to charge and collect reasonable fees in amounts necessary to cover the costs of administering this chapter; and Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter. Review of the sections implements Texas Government Code, §2001.039.

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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Liles Arnold
Chair
Council on Sex Offender Treatment
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For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER K. CRIMINAL BACKGROUND CHECK OF POTENTIAL EMPLOYEES

22 TAC §§810.281 - 810.283

STATUTORY AUTHORITY

The new sections are authorized under Texas Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter; and Texas Occupations Code, §110.159(a)(1), which requires the council to charge and collect reasonable fees in amounts necessary to cover the costs of administering this chapter; and Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter. Review of the sections implements Texas Government Code, §2001.039.

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-201101316
Liles Arnold
Chair
Council on Sex Offender Treatment
Effective date: April 24, 2011
Proposal publication date: December 24, 2010
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER L. EARLY TERMINATION FOR CERTAIN PERSONS' OBLIGATION TO REGISTER

22 TAC §§810.301 - 810.308

STATUTORY AUTHORITY

The new sections are authorized under Texas Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter; and Texas Occupations Code, §110.159(a)(1), which requires the council to charge and collect reasonable fees in amounts necessary to cover the costs of administering this chapter; and Texas Health and Safety Code, §841.141, which provides the council with the authority to adopt rules consistent with the purposes of the chapter. Review of the sections implements Texas Government Code, §2001.039.

§810.302. Definitions.

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

(1) Act--Code of Criminal Procedure, §62.401 et. seq. Termination of Certain Persons' Obligation to Register.

(2) Contact with Registrant: Clinical Interview--Face to face interview between the Licensed Sex Offender Treatment Provider and the Registrant.

(3) Deregistration--The early termination of an individual's obligation to register.

(4) Deregistration Candidate--An individual required to register who is undergoing a deregistration evaluation.

(5) Deregistration Criteria--The criteria established by the council to determine if a registrant is eligible for early termination of the obligation to register.

(6) Evaluation Specialist--A licensed sex offender treatment provider who is approved by the council to conduct deregistration evaluations.

(7) Instant Offense--The sexual offense that resulted in the registrant being required to be listed or included on the sex offender registry.

(8) Public Registry--The public registry of sex offenders in the State of Texas which is maintained by the Texas Department of Public Safety.

(9) Registrant--An individual who is required under Code of Criminal Procedure, Chapter 62, in the State of Texas.

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 April 4, 2011.

TRD-201101317
Liles Arnold
Chair
Council on Sex Offender Treatment
Effective date: April 24, 2011
Proposal publication date: December 24, 2010
For further information, please call: (512) 458-7111 x6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

28 TAC §7.67

The Commissioner of Insurance adopts the repeal of §7.67, concerning the requirements for filing the 2004 quarterly and annual statements, other reporting forms, and electronic data filings with the Texas Department of Insurance (Department) and the National Association of Insurance Commissioners (NAIC). The repeal is adopted without changes to the proposal published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 510).

REASONED JUSTIFICATION. The repeal of the obsolete section is necessary to permit the simultaneous adoption of new §7.67, concerning filing requirements for the 2010 annual statements, the 2011 quarterly statements, other reporting forms, and electronic data filings with the Department and the NAIC. The 2004 reporting forms and other forms required to be filed under the repealed section have been filed and the due dates for filing the 2004 annual statements, 2004 quarterly statements, and other reports have passed. Therefore, the repealed section is no longer necessary. In conjunction with this adoption, the adoption of new §7.67 is also published in this issue of the *Texas Register.*

HOW THE SECTION WILL FUNCTION. The adoption of the repeal will result in the removal of an obsolete provision from the Texas Administrative Code and permit the adoption of new §7.67. Adopted new §7.67 specifies the requirements for filing the 2010 annual statements, the 2011 quarterly statements, other reporting forms, and electronic data filings with the Department and the NAIC.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Department did not receive any comments on the published proposal.

STATUTORY AUTHORITY. The repeal of the section is adopted under the Insurance Code §§801.001 - 802.003, 802.051 - 802.056, and 36.001. Sections 802.001 - 802.003 and 802.051 - 802.056 authorize the Commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business and require certain insurers to make filings with the National Association of Insurance Commissioners. Section 36.001 provides that the Commissioner of Insurance may 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.

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 March 31, 2011.

TRD-201101261
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: April 20, 2011
Proposal publication date: February 4, 2011
For further information, please call: (512) 463-6327

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28 TAC §7.67

The Commissioner of Insurance adopts new §7.67, concerning requirements for the filing of the 2010 annual statements, the 2011 quarterly statements, other reporting forms, and electronic data filings with the Texas Department of Insurance (Department) and the National Association of Insurance Commissioners (NAIC). The new section is adopted with changes to the proposed text published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 511).

REASONED JUSTIFICATION. The new section is necessary to specify the filing requirements for insurers and other regulated entities for the 2010 annual statement, the 2011 quarterly statements, other reporting forms, and electronic data filings, with the Department and the NAIC. The requirements are applicable to insurance companies, health maintenance organizations (HMOs), nonprofit legal service corporations, the Texas Health Insurance Risk Pool, the Texas FAIR Plan Association, and the Texas Windstorm Insurance Association (TWIA). These insurance companies, HMOs, and other regulated entities are referred to collectively as "carriers" in this adoption.

The carriers will file the annual and quarterly statements and other reporting forms with the Department and/or the NAIC as directed in the adopted requirements. The reporting forms include the (i) 2010 annual statement blanks; (ii) 2011 quarterly statement blanks; (iii) Schedule SIS; (iv) management discussion and analysis; (v) supplemental compensation exhibit; (vi) overhead assessment exemption form for insurance company examina-

tion expenses; (vii) analysis of surplus; (viii) separate accounts; (ix) supplemental information for county mutual insurance companies and HMOs; (x) release of contributions; (xi) reserve summary; (xii) inventory of insurance in force; and (xiii) summary of insurance in force. The carriers will use these forms to report their year-end 2010 and the first three quarters of the 2011 calendar year financial condition and business operations and activities. The information provided by the completion of the forms is necessary to allow the Department to monitor the solvency, business activities, and statutory compliance of the carriers. The new section adopts by reference the NAIC 2010 annual statement blanks, the NAIC 2011 quarterly statement blanks, related instructions, and other reporting forms and instructions for reporting the financial condition, business operations and activities of the carriers. The new section also requires the carriers to file such annual and quarterly statements and other reporting forms with the Department and/or the NAIC as directed. Specifically, new §7.67(e)(1)(M) clarifies the requirements for property and casualty carriers to file the management discussion and analysis on or before April 1, 2011.

The forms and instructions are available for inspection in the office of the Financial Analysis Division of the Texas Department of Insurance, William P. Hobby Jr. State Office Building, 333 Guadalupe, Tower Number III, Third Floor, Austin, Texas. The NAIC forms and instructions may also be reviewed at www.naic.org.

Also, new §7.67(e)(1)(N) and (O) and (e)(4) clarify and modify the filings requirements for the Texas FAIR Plan Association and the TWIA. New §7.67(e)(1)(N) and (e)(4) add requirements for the TWIA to (i) submit the annual and quarterly financial statements to the Department that are prepared in accordance with generally accepted accounting principles (GAAP) as prescribed or modified by the Governmental Accounting Standards Board (GASB) or its successors; (ii) submit the annual and quarterly financial statements and various supplementals electronically to the NAIC prepared in accordance with statutory accounting principles (SAP); (iii) provide an actuarial opinion to the Department and electronically to the NAIC on or before March 1, 2011, on the reasonableness of its reserves; and (iv) submit to the Department an Actuarial Opinion Summary prepared in accordance with §7.9 of this subchapter (relating to Examination of Actuarial Opinion for Property and Casualty Insurers), on or before March 15, 2011. These new requirements are necessary to (i) enhance the Department's ability to exercise regulatory oversight of the TWIA as required by the Insurance Code Chapter 2210; (ii) better assure the availability of TWIA insurance coverage for all eligible persons and properties; and (iii) enhance the TWIA's and the Department's ability to comply with the annual financial report requirements administered by the Texas Comptroller of Public Accounts (Comptroller), relating to the TWIA being deemed a component unit of a statewide reporting entity. The Actuarial Opinion Summary is necessary to facilitate the examination of the actuarial opinion submitted with the TWIA's annual statement.

In accordance with the Government Code §2101.011(d) and GASB Nos. 14 and 39, the TWIA has been deemed to be a component unit of a statewide reporting entity for purposes of the annual financial report requirements beginning year-end December 31, 2010. The Comptroller, pursuant to §2101.011(d), has informed the Department that pursuant to the Government Code and the GASB the TWIA is required to provide financial statements for calendar year 2010 prepared in accordance with GAAP as prescribed or modified by the GASB or its successor. Based upon information provided by the Comptroller, the Department anticipates the Comptroller will require the TWIA's GAAP-based annual financial statements prepared for the year ending December 31, 2010, for inclusion in the comprehensive annual financial report for the state of Texas for the fiscal year ending August 31, 2011, as prescribed under the Government Code §403.013.

The requirement for quarterly financial statements to the Department that are prepared in accordance with GAAP as prescribed or modified by the GASB or its successors will provide the Commissioner and the Department with additional tools to fulfill their responsibilities under the Insurance Code Chapter 2210. Under the Insurance Code §2210.008 and §2210.152(2)(G) the Commissioner may adopt rules that are reasonable and necessary to implement the Insurance Code Chapter 2210. The TWIA's board of directors is responsible and accountable to the Commissioner under the Insurance Code §2210.102. The quarterly 2011 GAAP statements will assist the Department in reviewing, analyzing, examining, and evaluating the economic condition and operations of the TWIA throughout the entire calendar year period on a GAAP basis. These additional annual and quarterly reporting requirements would be in addition to the existing requirements to submit annual and quarterly financial statements to the Department prepared in accordance with SAP.

Also, new §7.67(e)(4) adds new electronic filing requirements for the Texas FAIR Plan Association and the TWIA, which are in addition to the paper copy filings of these documents required under new §7.67(e)(1)(N). Under new §7.67(e)(4), the Texas FAIR Plan Association and the TWIA are required to file their respective 2010 Property and Casualty Annual Statements, 2011 Property and Quarterly Statements, and all annual and quarterly supplemental electronic filings together with the related PDF filings (except for electronic Supplemental Compensation Exhibit) with the NAIC in electronic and PDF format in accordance with the NAIC data specifications. The due date for filing the paper and electronic 2010 Property and Casualty Annual Statement, Statement of Actuarial Opinion, and annual supplemental filings is on or before March 1, 2011, for the TWIA and on or before March 31, 2011, for the FAIR Plan Association. The due dates for filing the 2011 Property and Casualty Quarterly Statements are on or before May 15, August 15, and November 15, 2011, respectively, for both the Texas FAIR Plan Association and the TWIA.

The new section also defines terms relevant to the statement blanks and reporting forms and provides the dates by which certain reports are to be filed. Subsection (a) explains the purpose and scope of the section and adopts by reference the forms described in the section. Subsection (b) provides that the term "Texas Edition" refers to the blanks and forms promulgated by the Commissioner. Subsection (c) specifies the hierarchy of laws in the event of a conflict between the Insurance Code, this new section, and other Department regulations and the NAIC instructions specified in the new section. Subsections (d) - (l) describe the forms, instructions and filing requirements for the various types of insurers and other regulated entities. Subsection (m) provides that the Department may request financial reports other than those specified in this section.

Simultaneously with the adoption of this new section, the Department is adopting the repeal of existing §7.67, which is also published in this issue of the *Texas Register.*

In response to comments received on the published proposal, the Department has made nonsubstantive changes to the proposed text as published. Additionally, this adoption includes clar-

ification changes to several proposed provisions to make various due dates consistent with applicable provisions of the Texas Insurance Code. Further, this adoption includes a new subsection (n) to provide that in any event, insurers and other regulated entities subject to this section shall file their 2010 annual financial statements and related annual hard copy and electronic filings with the department and the NAIC, as applicable, not later than five days after the effective date of this section. None of these changes, however, materially alter issues raised in the proposed rule, introduce new subject matter, or affect persons other than those previously on notice. The following changes are made to the proposed text. In response to the comments, changes have been made to the proposed text in §7.67(e)(1)(O)(i), (iii), (iv), and (vi) and (e)(4)(A) and (D) to clarify that the Texas FAIR Plan Association shall file with the Department its 2010 annual statement filings and 2010 actuarial opinion not later than March 31, 2011, and its actuarial opinion summary not later than April 15, 2011, or in any event, not later than five days after the effective date of this section. These changes are made in response to a commenter stating that historically, the Texas FAIR Plan Association has filed its annual statement by March 31 each year and not by March 1, and requesting clarification about the annual filing dates. The commenter also noted that certain work was being performed by the FAIR Plan's independent certified public accountant that could be completed by March 31, but that it would be problematic to complete this work by March 1.

HOW THE SECTION WILL FUNCTION.

§7.67(a). Scope. Section 7.67(a) provides that the purpose of the section is to specify the requirements for insurers and other regulated entities (carriers) for filing the 2010 annual statement, the 2011 quarterly statements, other reporting forms, and electronic data filings with the Department and the NAIC. Carriers are required to submit the filings in order to report information concerning their financial condition and business operations. Section 7.67(a) specifies the carriers to which the section applies. Section 7.67(a) also addresses the necessary reporting forms, including (i) the adoption by reference of the 2010 annual statement blanks, the 2011 quarterly statement blanks, and the related instruction manuals published by the NAIC, and other supplemental reporting forms specified in the section; (ii) how the forms may be obtained; and (iii) how the forms can be filed.

§7.67(b). Definition. Section 7.67(b) provides that the term "Texas Edition" refers to the blanks and forms promulgated by the Commissioner.

§7.67(c). Conflicts with other laws. Section 7.67(c) specifies the hierarchy in the applicability of laws in the event of a conflict between the Insurance Code, this new section, other Department regulations, and the NAIC instructions specified in the new section.

§7.67(d) - (l). Filing requirements for the various types of carriers. Section 7.67(d) - (l) specify the forms, instructions and filing requirements for the various types of carriers: subsection (d): life; life and accident; life and health; accident; accident and health; mutual life; or life, accident and health insurance company; stipulated premium company; group hospital service corporation, and the Texas Health Insurance Risk Pool; subsection (e): fire; fire and marine; general casualty; fire and casualty; or U.S. branch of an alien insurer; county mutual insurance company; mutual insurance company other than life; Lloyd's plan; reciprocal or inter insurance exchange; domestic risk retention group; life insurance company that is licensed to write workers' compensation; any farm mutual insurance company that filed a property and casualty annual statement for the 2009 calendar year or had gross written premiums in 2010 in excess of $6 million; domestic joint underwriting association; the Texas Mutual Insurance Company; the Texas Windstorm Insurance Association; and the Texas FAIR Plan Association; subsection (f): fraternal benefit societies; subsection (g): title insurers; subsection (h): health maintenance organizations; subsection (i): farm mutual insurers not subject to the provisions of §7.67(e); subsection (j): statewide mutual assessment associations, local mutual aid associations, mutual burial associations, and exempt associations; subsection (k): nonprofit legal service corporations; and subsection (l): Mexican casualty insurance companies licensed under the Insurance Code Chapter 984.

§7.67(m). Other financial reports. Section 7.67(m) provides that the Department may request financial reports other than those specified in the section.

§7.67(n). Filing requirements supplemental to the §7.67(d) - (l) filing requirements. Section 7.67(n) provides that in any event, insurers and other regulated entities subject to this section shall file their 2010 annual financial statements and related annual hard copy and electronic filings with the department and the NAIC, as applicable, not later than five days after the effective date of this section.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

§7.67(e)(1)(O)(i), (iii) and (iv) and (e)(4)(A) and (D)

Comment: One commenter states that historically, the Texas FAIR Plan Association has filed its annual statement by March 31 each year and not by March 1, and requesting clarification about the annual filing dates. The commenter also notes that certain work was being performed by the Texas FAIR Plan Association's independent certified public accountant that could be completed by March 31, but that it would be problematic to complete this work by March 1.

Agency Response: In response to the comment, the Department has clarified §7.67(e)(1)(O)(i), (iii), and (iv) and (e)(4)(A) and (D) as adopted to provide that at least for filings to be made in calendar year 2011, the Texas FAIR Plan Association shall file with the Department its 2010 annual statement filings and 2010 actuarial opinion not later than March 31, 2011, and its actuarial opinion summary not later than April 15, 2011.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTION.

Neither for nor against, with recommended changes: Texas FAIR Plan Association.

STATUTORY AUTHORITY. The new section is adopted under the following provisions of the Insurance Code. Sections 802.001 - 802.003 and 802.051 - 802.056 authorize the Commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business, and require certain insurers to make filings with the National Association of Insurance Commissioners. Chapters 2201, 2210, and 2211 and §§841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403 - 885.406, 886.107, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.004, 982.251 - 982.254, 982.101, 982.103, 984.101 - 984.103,

984.153, 984.201, 984.202, 1301.009, 1506.057, 1506.058, 2210.008, 2210.101, 2210.102, 2210.152, 2211.058, 2551.001, and 2551.152 require the filing of financial reports and other information by insurers and other regulated entities and provide specific rulemaking or regulatory authority to the Commissioner relating to those insurers and other regulated entities.

Sections 982.001, 982.002, 982.004, 982.052, 982.102 - 982.104, 982.106, 982.108, 982.110 - 982.112, 982.201 - 982.204, 982.251 - 982.255, and 982.302 - 982.306 provide the conditions under which foreign and alien insurers are permitted to do business in this state and require foreign and alien insurers to comply with the provisions of the Insurance Code. Sections 844.001 - 844.005, 844.051 - 844.054, and 844.101 specify statutory requirements relating to nonprofit health corporations and authorize the Commissioner to adopt rules to implement the regulation of nonprofit health corporations holding a certificate of authority under the Insurance Code, Title 2, Chapter 844.

Section 2210.008 authorizes the Commissioner to adopt rules in the manner prescribed in the Insurance Code, Chapter 36, Subchapter A, as reasonable and necessary to implement Chapter 2210. Section 2210.101 provides that the board of directors of the Texas Windstorm Insurance Association is responsible and accountable to the Commissioner. Section 2210.102 requires the Commissioner to appoint the board of directors of the Texas Windstorm Insurance Association. Section 2210.152 requires the plan of operation for the Texas Windstorm Insurance Association to provide for the efficient, economical, fair, and nondiscriminatory administration of the Association, and to include provisions as considered necessary by the Department to implement the purposes of Chapter 2210.

Section 2211.057 charges the Commissioner with the authority to supervise the Texas FAIR Plan Association and the inspection bureau. Section 2211.057(1) grants the Commissioner the power to examine the operations of the Texas FAIR Plan Association and the inspection bureau through free access to all books, records, files, papers, and documents related to the operation of the Texas FAIR Plan Association and the inspection bureau. Section 2211.057(4) grants the Commissioner the power to require reports from the Texas FAIR Plan Association concerning the risks the Texas FAIR Plan Association insurers under Chapter 2211 as the Commissioner considers necessary.

Section 421.001 requires insurers to establish adequate reserves and provides for the adoption of each current formula for establishing reserves applicable to each line of insurance. Section 32.041 requires the Department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements. Section 36.001 provides that the Commissioner of Insurance may 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.

§7.67. Requirements for Filing the 2010 Annual Statements, the 2011 Quarterly Statements, Other Reporting Forms, and Electronic Data Filings with the Texas Department of Insurance and the NAIC.

(a) Scope. This section specifies the requirements for insurers and other regulated entities for filing the 2010 annual statement, the 2011 quarterly statements, other reporting forms, and electronic data filings with the department and the National Association of Insurance Commissioners (NAIC) necessary to report information concerning the financial condition and business operations and activities of insurers. This section applies to all insurers and certain other regulated entities authorized to do the business of insurance in this state and includes, but is not limited to, life insurers; accident insurers; life and accident insurers; life and health insurers; accident and health insurers; life, accident and health insurers; mutual life insurers; stipulated premium insurers; group hospital service corporations; fire insurers; fire and marine insurers; U.S. branches of alien insurers; Mexican casualty insurers; general casualty insurers; fire and casualty insurers; mutual insurers other than life; statewide mutual assessment companies; local mutual aid associations; mutual burial associations; exempt associations; county mutual insurers; Lloyd's plans; reciprocal and inter-insurance exchanges; domestic risk retention groups; domestic joint underwriting associations; title insurers; fraternal benefit societies; farm mutual insurers; health maintenance organizations; nonprofit health corporations; nonprofit legal services corporations; the Texas Health Insurance Risk Pool; the Texas Mutual Insurance Company; the Texas Windstorm Insurance Association; and the Texas FAIR Plan Association. The commissioner adopts by reference the 2010 annual statement blanks, the 2011 quarterly statement blanks, and the related instruction manuals published by the NAIC, and other supplemental reporting forms specified in this section. The forms are available from the Texas Department of Insurance, Financial Analysis Division, Mail Code 303-1A, P.O. Box 149104, Austin, Texas 78714-9104. The NAIC annual and quarterly statement blanks and other NAIC supplemental reporting forms can be printed or filed electronically using annual statement software available from vendors. Insurers and other regulated entities shall properly report to the department and the NAIC by completing, in accordance with applicable instructions, the appropriate paper copy annual and quarterly statement blanks, other reporting forms, and electronic data filings.

(b) Definition. In this section "Texas Edition" refers to the blanks and forms promulgated by the commissioner.

(c) Conflicts with Other Laws. In the event of a conflict between the Insurance Code, any currently existing department rule, form, instructions, or any specific requirement of this section and the NAIC instructions listed in this section, the Insurance Code, the department rule, form, instruction, or the specific requirements of this section shall take precedence and in all respects control.

(d) Filing Requirements for Life, Accident and Health Insurers. Each life; life and accident; life and health; accident; accident and health; mutual life; or life, accident and health insurance company; stipulated premium company; group hospital service corporation; and the Texas Health Insurance Risk Pool shall complete and file the blanks, forms, or electronic data filings as directed in this subsection. This subsection does not apply to entities licensed as health maintenance organizations under the Insurance Code Chapter 843. Insurers specified in this subsection and engaged in business authorized under the Insurance Code Chapter 843 may have additional reporting requirements under subsection (h) of this section. Insurers described under this subsection may elect to file on the 2010 Health Annual Statement for year-end 2010, and on the 2011 Health Quarterly Statement for the three quarters of 2011, if the insurer passes the Health Statement Test as outlined in the "2010 Annual Statement, Health Instructions." If a reporting entity qualifies under this subsection to use the 2010 Health Annual Statement, it must continue to use that annual statement for a minimum of three years or obtain written approval from the department to change to another type of annual statement. Insurers filing the 2010 Life, Accident and Health Annual Statement, the 2011 Life, Accident and Health Quarterly Statements, and the supplemental forms and reports identified in these subsections shall complete filings in accordance with the "2010 Annual Statement Instructions, Life, Accident and Health," and the "2011 Quarterly Statement Instructions, Life, Accident and Health," as applicable. Life insurers meeting the test set forth in this subsection to file the 2010 Health Annual Statement and the supplemental forms and reports identified in these subsections shall complete filings in accordance with the "2010 Annual Statement In-

structions, Health," and the "2011 Quarterly Statement Instructions, Health," as applicable. The electronic filings of these forms or reports with the NAIC shall be in accordance with the NAIC data specifications and instructions for electronic filing and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) domestic insurer reports and forms in paper copy to be filed only with the department as follows:

(A) 2010 Life, Accident and Health Annual Statement, including the printed investment schedule detail, due on or before March 1, 2011, in accordance with the provisions of the Texas Insurance Code applicable to the type of insurer described under this subsection (stipulated premium companies not subject to the Insurance Code §884.406, April 1, 2011);

(B) 2010 Life, Accident and Health Annual Statement of the Separate Accounts for the 2010 calendar year (required of companies maintaining separate accounts), due on or before March 1, 2011, in accordance with the provisions of the Texas Insurance Code applicable to the type of insurer described under this subsection;

(C) 2010 Life, Accident and Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2011. A Texas stipulated premium company, unless specifically requested to do so by the department, is not required to file quarterly data filings with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than $1 million; and

(iii) it had a profit from operations in the prior two calendar years;

(D) 2010 Health Annual Statement, including the printed investment schedule detail, due on or before March 1, 2011, in accordance with the provisions of the Texas Insurance Code applicable to the type of insurer described under this subsection, if the company qualifies as described in this subsection;

(E) 2011 Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2011 if the company qualifies as described in this subsection;

(F) all the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions;

(G) Management's Discussion and Analysis, due on or before April 1, 2011;

(H) Statement of Actuarial Opinion, due on or before March 1, 2011, in accordance with the Insurance Code §802.002 and other provisions of the Texas Insurance Code applicable to the type of insurer described under this subsection (stipulated premium companies not subject to the Insurance Code §884.406, April 1, 2011). The actuarial opinion shall be prepared in accordance with paragraph (4) of this subsection;

(I) Schedule SIS, due on or before March 1, 2011, in accordance with the provisions of the Texas Insurance Code applicable to the type of insurer described under this subsection. This filing is also required if filing a Health Annual Statement, as applicable;

(J) Supplemental Compensation Exhibit, due on or before March 1, 2011, in accordance with the provisions of the Texas Insurance Code applicable to the type of insurer described under this subsection (stipulated premium companies not subject to the Insurance Code §884.406, April 1, 2011). This filing is also required if filing a Health Annual Statement, as applicable;

(K) The Texas Health Insurance Risk Pool shall file the 2010 Health Annual Statement, and the 2011 Quarterly Statements as follows:

(i) 2010 Health Annual Statement with only pages 1 - 6, and Schedule E Part 1, Part 2, and Part 3 to be completed and filed on or before March 1, 2011, in accordance with the Insurance Code Chapter 1506;

(ii) 2011 Health Quarterly Statements, with only pages 1 - 6, Schedule E, Part 1 - Cash, and Part 2 - Cash Equivalents to be completed and filed on or before May 15, August 15, and November 15, 2011; and

(iii) The Texas Health Insurance Risk Pool is not required to file any reports, diskettes, or electronic data filings with the NAIC;

(L) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2011, in accordance with the provisions of the Texas Insurance Code applicable to the type of insurer described under this subsection (stipulated premium companies not subject to the Insurance Code §884.406, April 1, 2011). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed; and

(M) Analysis of Surplus (Texas Edition) for life, accident and health insurers, due on or before March 1, 2011, in accordance with the provisions of the Texas Insurance Code applicable to the type of insurer described under this subsection (stipulated premium companies not subject to the Insurance Code §884.406, April 1, 2011).

(2) Foreign companies filing only electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(3) Electronic filings with the NAIC by domestic and foreign insurers:

(A) 2010 Life, Accident and Health Annual Statement electronic filing and PDF filing, due on or before March 1, 2011, in accordance with the Insurance Code Chapter 802, Subchapter B, and other provisions of the Texas Insurance Code applicable to the type of insurer described under this subsection (stipulated premium companies not subject to the Insurance Code §884.406, April 1, 2011);

(B) 2010 Life, Accident and Health Annual Statement of the Separate Accounts electronic filing and PDF filing, due on or before March 1, 2011, in accordance with the Insurance Code Chapter 802, Subchapter B, and other provisions of the Texas Insurance Code applicable to the type of insurer described under this subsection;

(C) 2011 Life, Accident and Health Quarterly Statement electronic filings and PDF filings, due on or before May 15, August 15, and November 15, 2011. A Texas stipulated premium company, unless specifically requested to do so by the department, is not required to file quarterly electronic data filings with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than $1 million; and

(iii) it had a profit from operations in the prior two calendar years;

(D) all annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are filed by domestic insurers only with the department in paper copy) due on the dates specified in the forms and instructions; and

(E) Statement of Actuarial Opinion, due on or before March 1, 2011, in accordance with the Insurance Code §802.002, and other provisions of the Texas Insurance Code applicable to the type of insurer described under this subsection (stipulated premium companies not subject to the Insurance Code §884.406, April 1, 2011). The actuarial opinion shall be prepared in accordance with paragraph (4) of this subsection.

(4) Statement of Actuarial Opinion required by paragraphs (1)(H) and (3)(E) of this subsection shall be prepared in accordance with the following:

(A) For companies filing the 2010 Life, Accident and Health Annual Statement, the Statement of Actuarial Opinion, attached to the 2010 Life, Accident and Health Annual Statement, must follow the applicable provisions of §§3.1601 - 3.1608 of this title (relating to Actuarial Opinion and Memorandum Regulation), except for companies exempted from the asset adequacy analysis pursuant to §3.1608 of this title. For those companies exempted from the asset adequacy analysis pursuant to §3.1608 of this title, the format provided by instructions 1 - 12 of the "2010 Annual Statement Instructions, Life, Accident and Health," must be followed.

(B) For companies filing the 2010 Health Annual Statement, the Statement of Actuarial Opinion, attached to the 2010 Health Annual Statement, must follow the "2010 Annual Statement Instructions, Health." In addition, for those companies not exempted from the asset adequacy analysis pursuant to §3.1608 of this title, the Statement of Actuarial Opinion must follow the applicable provisions of §§3.1601 - 3.1608 of this title that are not covered in the "2010 Annual Statement Instructions, Health," including those provisions relating to asset adequacy analysis.

(C) Any company required by §3.4505(b)(3)(G) of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves) to opine on the application of X factors, shall attach this opinion to the 2010 Life, Accident and Health Annual Statement or the 2010 Health Annual Statement, as applicable.

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for life, accident and health insurers with the department, on or before March 1, 2011, in accordance with provisions of the Texas Insurance Code applicable to the type of insurer described under this subsection.

(e) Requirements for Property and Casualty Insurers. Each fire; fire and marine; general casualty; fire and casualty; or U.S. branch of an alien insurer; county mutual insurance company; mutual insurance company other than life; Lloyd's plan; reciprocal or inter insurance exchange; domestic risk retention group; life insurance company that is licensed to write workers' compensation; any farm mutual insurance company that filed a property and casualty annual statement for the 2009 calendar year or had gross written premiums in 2010 in excess of $6 million; domestic joint underwriting association; the Texas Mutual Insurance Company; the Texas Windstorm Insurance Association; and the Texas FAIR Plan Association shall complete and file the following blanks, forms, and diskettes or electronic data filings as described in this subsection. The forms and reports identified in this subsection shall be completed in accordance with the "2010 Annual Statement Instructions, Property and Casualty," and the "2011 Quarterly Statement Instructions, Property and Casualty," as applicable. The electronic filings with the NAIC shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing, as applicable. The filings for insurers described in this subsection are as follows:

(1) domestic insurer reports and forms in paper copy to be filed only with the department as follows:

(A) 2010 Property and Casualty Annual Statement, due on or before March 1, 2011, in accordance with the provisions of the Texas Insurance Code applicable to the type of property and casualty insurer, including the printed investment schedule detail;

(B) 2011 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2011;

(C) 2010 Combined Property/Casualty Annual Statement, due on or before May 1, 2011. This statement is required only for those affiliated insurers that wrote more than $35 million in direct premiums as a group in calendar year 2010, as disclosed in Schedule T of the Annual Statement(s);

(D) all the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions;

(E) Statement of Actuarial Opinion, due on or before March 1, 2011, in accordance with the Insurance Code §802.002, and other provisions of the Texas Insurance Code applicable to the type of property and casualty insurer, and prepared in accordance with the "2010 Annual Statement Instructions, Property and Casualty;"

(F) Schedule SIS, due on or before March 1, 2011, in accordance with the provisions of the Texas Insurance Code applicable to the type of property and casualty insurer;

(G) Supplemental Compensation Exhibit, due on or before March 1, 2011, in accordance with the provisions of the Texas Insurance Code applicable to the type of property and casualty insurer;

(H) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2011, in accordance with the provisions of the Texas Insurance Code applicable to the type of property and casualty insurer. This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed;

(I) Texas Supplement for County Mutuals (Texas Edition) (required of Texas county mutual insurance companies only), due on or before March 1, 2011, in accordance with the Insurance Code Chapter 912;

(J) Texas Supplemental "A" for County Mutuals (Texas Edition) (required of Texas county mutual insurance companies only), due on or before March 1, 2011, in accordance with the Insurance Code Chapter 912;

(K) Analysis of Surplus (Texas Edition) for property and casualty insurers except Texas county mutual insurance companies, due on or before March 1, 2011, in accordance with the provisions of the Texas Insurance Code applicable to the type of property and casualty insurer;

(L) Actuarial Opinion Summary prepared in accordance with §7.9 of this subchapter (relating to Examination of Actuarial Opinion for Property and Casualty Insurers);

(M) Management's Discussion and Analysis, due on or before April 1, 2011;

(N) The Texas Windstorm Insurance Association shall complete and file the following:

(i) 2010 Property and Casualty Annual Statement, due on or before March 1, 2011, in accordance with the Insurance Code Chapter 2210;

(ii) annual financial statements for year-end 2010 prepared in accordance with generally accepted accounting principles as prescribed or modified by the Governmental Accounting Standards Board or its successor, and in compliance with the Government Code §2101.011(d) and any related regulations, guidelines, procedures, or reporting requirements prescribed by the Comptroller of Public Accounts, due on or before March, 1, 2011, in accordance with the Insurance Code Chapter 2210;

(iii) quarterly financial statements for the first three quarters of calendar year 2011 prepared in accordance with generally accepted accounting principles as prescribed or modified by the Governmental Accounting Standards Board or its successor, due on or before May 15, August 15, and November 15, 2011;

(iv) 2011 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2011;

(v) Statement of Actuarial Opinion, due on or before March 1, 2011, in accordance with the Insurance Code §802.002 and Chapter 2210, and prepared in accordance with the "2010 Annual Statement Instructions, Property and Casualty;"

(vi) Actuarial Opinion Summary prepared in accordance with §7.9 of this subchapter;

(vii) Management's Discussion and Analysis, due on or before April 1, 2011;

(viii) Supplemental Compensation Exhibit, due on or before March 1, 2011, in accordance with the Insurance Code Chapter 2210; and

(ix) all the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions, as applicable.

(O) Notwithstanding §5.9927 of this title (relating to Annual and Quarterly Financial Statements), the Texas FAIR Plan Association shall complete and file the following:

(i) 2010 Property and Casualty Annual Statement, due on or before March 31, 2011, in accordance with the Insurance Code Chapter 2211;

(ii) 2011 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2011;

(iii) Statement of Actuarial Opinion, due on or before March 31, 2011, in accordance with the Insurance Code §802.002 and Chapter 2210, and prepared in accordance with the "2010 Annual Statement Instructions, Property and Casualty;"

(iv) Actuarial Opinion Summary prepared in accordance with §7.9 of this subchapter, due on or before April 15, 2011;

(v) Management's Discussion and Analysis, due on or before April 1, 2011;

(vi) Supplemental Compensation Exhibit, due on or before March 31, 2011; and

(vii) all the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions, as applicable.

(2) Foreign property and casualty insurers filing only electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(3) Electronic filings by domestic and foreign insurers, except Texas Windstorm Insurance Association and the Texas FAIR Plan Association, to be filed with the NAIC:

(A) 2010 Property and Casualty Annual Statement electronic filing and PDF filing, due on or before March 1, 2011, in accordance with the Insurance Chapter 802, Subchapter B and other provisions of the Texas Insurance Code applicable to the type of property and casualty insurer;

(B) 2011 Property and Casualty Quarterly Statement electronic filings and PDF filings, due on or before May 15, August 15, and November 15, 2011;

(C) all annual and quarterly supplemental electronic filings together with the related PDF filings (except for electronic Schedule SIS and Supplemental Compensation Exhibit, required of domestic insurers only) due on the dates specified in the forms and instructions;

(D) electronic combined insurance exhibit, due on or before May 1, 2011;

(E) combined annual statement electronic filing and PDF filing, due on or before May 1, 2011; and

(F) Statement of Actuarial Opinion, due on or before March 1, 2011, in accordance with the Insurance §802.002 and other provisions of the Texas Insurance Code applicable to the type of property and casualty insurer, and prepared in accordance with the "2010 Annual Statement Instructions, Property and Casualty."

(4) Notwithstanding §5.9927 of this title, electronic filings by the Texas Windstorm Insurance Association and the Texas FAIR Plan Association to be filed with the NAIC:

(A) 2010 Property and Casualty Annual Statement electronic filing and PDF filing, due on or before March 1, 2011, for the Texas Windstorm Insurance Association, in accordance with the Insurance Code Chapter 802, Subchapter B and Chapter 2210; and due on or before March 31, 2011, for the Texas FAIR Plan Association, in accordance with the Insurance Code Chapter 802, Subchapter B and Chapter 2211;

(B) 2011 Property and Casualty Quarterly Statement electronic filings and PDF filings, due on or before May 15, August 15, and November 15, 2011;

(C) all annual and quarterly supplemental electronic filings together with the related PDF filings (except for electronic Supplemental Compensation Exhibit) due on the dates specified in the forms and instructions, as applicable; and

(D) Statement of Actuarial Opinion, due on or before March 1, 2011, for the Texas Windstorm Insurance Association, in accordance with the Insurance Code §802.002 and Chapter 2210; and due on or before March 31, 2011, for the Texas FAIR Plan Association, in accordance with the Insurance §802.002 and Chapter 2211 and prepared in accordance with the "2010 Annual Statement Instructions, Property and Casualty."

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that files an application with the department for approval of a policyholder dividend shall file an Analysis of Surplus (Texas Edition) for property and casualty insurers with the application.

(7) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for property and casualty insurers with the department, on or before March 1, 2011, in accordance with the provisions of the Texas Insurance Code applicable to the type of property and casualty insurer.

(f) Requirements for Fraternal Benefit Societies. Each fraternal benefit society shall complete and file the following blanks, forms, and electronic data filings for the 2010 calendar year, and the first three quarters for the 2011 calendar year. The forms and reports identified in this subsection shall be completed in accordance with the "2010 Annual Statement Instructions, Fraternal," and the "2011 Quarterly Statement Instructions, Fraternal," as applicable. The electronic data filings with the NAIC shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) domestic insurer reports and forms in paper copy to be filed only with the department, as follows:

(A) 2010 Fraternal Annual Statement, including the printed investment schedule detail, due on or before March 1, 2011, in accordance with the Insurance Code §885.401;

(B) 2010 Fraternal Annual Statement of the Separate Accounts (required of companies maintaining separate accounts), due on or before March 1, 2011, in accordance with the Insurance Code §885.401;

(C) 2011 Fraternal Quarterly Statements, due on or before May 15, August 15, and November 15, 2011;

(D) all the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions;

(E) Management's Discussion and Analysis, due on or before April 1, 2011;

(F) Statement of Actuarial Opinion, due on or before March 1, 2011, in accordance with the Insurance Code §802.002 and §885.401, and prepared in accordance with paragraph (4) of this subsection;

(G) Supplemental Compensation Exhibit, due on or before March 1, 2011, in accordance with the Insurance Code §885.401;

(H) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2011, in accordance with the Insurance Code §885.401. This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed; and

(I) Analysis of Surplus (Texas Edition) for fraternal benefit societies, due on or before March 1, 2011, in accordance with the Insurance Code §885.401.

(2) Foreign fraternal insurers filing only electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(3) Electronic filings by domestic and foreign insurers to be filed with the NAIC:

(A) 2010 Fraternal Annual Statement electronic filing and PDF filing, due on or before March 1, 2011, in accordance with the Insurance Code Chapter 802, Subchapter B and §885.401;

(B) 2010 Fraternal Annual Statement of the Separate Accounts electronic filing and PDF filing, due on or before March 1, 2011, in accordance with the Insurance Code Chapter 802, Subchapter B and §885.401;

(C) 2011 Fraternal Quarterly Statement electronic filings and PDF filings, due on or before May 15, August 15, and November 15, 2011;

(D) all annual and quarterly supplemental electronic filings together with the related PDF filings (except for the Supplemental Compensation Exhibit) due on the dates specified in the forms; and

(E) Statement of Actuarial Opinion, due on or before March 1, 2011, in accordance with the Insurance Code §802.002, Chapter 802, Subchapter B and §885.401, and prepared in accordance with paragraph (4) of this subsection.

(4) Statement of Actuarial Opinion required by paragraphs (1)(F) and (3)(E) of this subsection shall be prepared in accordance with the following:

(A) The Statement of Actuarial Opinion, attached to the 2010 Fraternal Annual Statement, must follow the applicable provisions of §§3.1601 - 3.1608 of this title, except for companies exempted from the asset adequacy analysis pursuant to §3.1608 of this title. For those companies exempted from the asset adequacy analysis pursuant to §3.1608 of this title, the format provided by instructions 1 - 12 of the "2010 Annual Statement Instructions, Fraternal," must be followed.

(B) Any company required by §3.4505(b)(3)(G) of this title to opine on the application of X factors, shall attach this opinion to the 2010 Fraternal Annual Statement, as applicable.

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for fraternal benefit societies with the department on or before March 1, 2011, in accordance with the Insurance Code §885.401.

(g) Requirements for Title Insurers. Each title insurance company shall complete and file the following blanks and forms for the 2010 calendar year, and the first three quarters of the 2011 calendar year. The reports and forms identified in this subsection shall be completed in accordance with the "2010 Annual Statement Instructions, Title," and the "2011 Quarterly Statement Instructions, Title," as applicable. The electronic version of the filings with the NAIC identified in this subsection shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) domestic insurer reports and forms in paper copy to be filed only with the department as follows:

(A) 2010 Title Annual Statement, including printed investment schedule details, due on or before March 1, 2011, in accordance with the Insurance Code §2551.152;

(B) 2011 Title Quarterly Statements, due on or before May 15, August 15, and November 15, 2011;

(C) All the paper copies of the annual and quarterly supplements prepared and filed on dates described in the forms and instructions;

(D) Management's Discussion and Analysis, due on or before April 1, 2011;

(E) Statement of Actuarial Opinion, due on or before March 1, 2011, in accordance with the Insurance Code §802.002 and §2551.152;

(F) Supplemental Compensation Exhibit, due on or before March 1, 2011, in accordance with the Insurance Code §2551.152;

(G) Schedule SIS, due on or before March 1, 2011, in accordance with the Insurance Code §2551.152;

(H) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2011, in accordance with the Insurance Code §2551.152. This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed; and

(I) Analysis of Surplus (Texas Edition) for title companies, due on or before March 1, 2011, in accordance with the Insurance Code §2551.152.

(2) Foreign companies filing electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(3) Electronic filings with the NAIC by domestic and foreign insurers:

(A) 2010 Title Annual Statement electronic filings and PDF filings, due on or before March 1, 2011, in accordance with the Insurance Code Chapter 802, Subchapter B and §2551.152;

(B) 2011 Title Quarterly Statement electronic filings and PDF filings, due on or before May 15, August 15, and November 15, 2011;

(C) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are only filed by domestic insurers with the department in paper copy) due on the dates specified in the forms and instructions;

(D) Management Discussion and Analysis, due on or before April 1, 2011; and

(E) Statement of Actuarial Opinion, due on or before March 1, 2011, in accordance with the Insurance Code §802.002, Chapter 802, Subchapter B and §2551.152.

(4) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(5) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for title insurers on or before March 1, 2011, or within 20 days after the effective date of this section.

(h) Requirements for Health Maintenance Organizations. Each health maintenance organization licensed pursuant to the Insurance Code Chapter 843 shall complete the 2010 Health Annual Statement, and the 2011 Quarterly Statements. Insurers that are subject to life insurance statutes and are permitted or allowed to do the business of health maintenance organizations shall file the Texas HMO supplement forms as part of their annual and quarterly statement filings. The forms and reports required in this subsection shall be completed in accordance with the "2010 Annual Statement Instructions, Health," and the "2011 Quarterly Statement Instructions, Health," as applicable. The Texas supplemental forms required in this subsection and provided by the department shall be completed in accordance with the instructions on the forms. The electronic data filings with the NAIC shall be in accordance with NAIC data specifications and instructions and shall include PDF format filing. The Texas specific electronic filings regarding HMO data requested by the department shall be filed in accordance with the instructions provided by the department. The filings for insurers described in this subsection are as follows:

(1) domestic and foreign insurer reports and forms in paper copy to be filed only with the department:

(A) 2010 Health Annual Statement, including printed investment schedule detail, due on or before March 1, 2011, in accordance with the Insurance Code §843.155;

(B) 2011 Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2011. With each quarterly filing, include an up-to-date and completed Schedule E, Part 3 - Special Deposits, utilizing the format from the 2010 Health Annual Statement;

(C) Management's Discussion and Analysis, due on or before April 1, 2011; and

(D) Statement of Actuarial Opinion, due on or before March 1, 2011, in accordance with the Insurance Code §802.002 and §843.155, prepared in accordance with the "2010 Annual Statement Instructions, Health."

(2) domestic insurer reports and forms to be filed with the department:

(A) Supplemental Compensation Exhibit in paper copy only, due on or before March 1, 2011, in accordance with the Insurance Code §843.155;

(B) Texas Overhead Assessment Exemption Form (Texas Edition) in paper copy only, due on or before March 1, 2011, in accordance with the Insurance Code §843.155. This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed;

(C) Texas HMO Supplement Annual (Texas Edition), in paper copy and electronic filing, containing annual data for calendar year 2010, to be completed according to the instructions provided by the department, due on or before March 1, 2011, in accordance with the Insurance Code §843.155; and

(D) Texas HMO Supplement Quarterly (Texas Edition), in paper copy and electronic filings, containing quarterly statement data for calendar year 2011, to be completed according to the instructions provided by the department, due on or before May 15, August 15, and November 15, 2011.

(3) electronic filings with the NAIC by domestic and foreign insurers:

(A) 2010 Health Annual Statement electronic filing, and PDF filing, due on or before March 1, 2011, in accordance with the Insurance Code Chapter 802, Subchapter B and §843.155;

(B) 2011 Health Quarterly Statement electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2011;

(C) all annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are only filed by domestic insurers with the department in paper copy) due on the dates specified in the forms and instructions;

(D) Statement of Actuarial Opinion, due on or before March 1, 2011, in accordance with the Insurance Code §802.022, Chapter 802, Subchapter B, and §843.155, and prepared in accordance with the "2010 Annual Statement Instructions, Health;" and

(E) Management Discussion and Analysis, due on or before April 1, 2011.

(i) Requirements for Farm Mutual Insurers not Subject to the Provisions of Subsection (e) of this Section. Farm mutual insurance companies not subject to subsection (e) of this section shall file the following blanks and forms for the 2010 calendar year with the department only, on or before March 1, 2011, in accordance with the Insurance Code Chapters 802 and 911:

(1) Annual Statement (Texas Edition);

(2) Texas Overhead Assessment Exemption Form (Texas Edition). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed; and

(3) Statement of Actuarial Opinion, unless exempted under §7.31 of this subchapter (relating to Annual Statement Instructions for Farm Mutual Insurance Companies).

(j) Requirements for Statewide Mutual Assessment Associations, Local Mutual Aid Associations, Mutual Burial Associations, and Exempt Associations. Each statewide mutual assessment association, local mutual aid association, mutual burial association, and exempt association shall complete and file the following blanks and forms for the 2010 calendar year with the department only, on or before April 1, 2011, in accordance with the Insurance Code §887.060:

(1) Annual Statement (Texas Edition) (exempt companies are required to complete all pages except lines 22, 23, 24, 25, and 26 on page 3, the special instructions at the bottom of page 3, and pages 4 - 7);

(2) Texas Overhead Assessment Exemption Form (Texas Edition). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed;

(3) Release of Contributions Form (Texas Edition);

(4) 3-1/2 Percent Chamberlain Reserve Table (Reserve Valuation) (Texas Edition);

(5) Reserve Summary (1956 Chamberlain Table 3-1/2 Percent) (Texas Edition);

(6) Inventory of Insurance in Force by Age of Issue or Reserving Year (Texas Edition); and

(7) Summary of Inventory of Insurance in Force by Age and Calculation of Net Premiums (Texas Edition).

(k) Requirements for Nonprofit Legal Service Corporations. Each nonprofit legal service corporation doing business as authorized by a certificate of authority issued under the Insurance Code Chapter 961 shall complete and file the following blanks and forms for the 2010 calendar year with the department only. An actuarial opinion is not required. The following forms are to be filed on or before March 1, 2011, in accordance with the Insurance Code §961.202:

(1) Annual Statement (Texas Edition); and

(2) Texas Overhead Assessment Exemption Form (Texas Edition). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed.

(l) Requirements for Mexican Casualty Insurance Companies. Each Mexican casualty insurance company doing business as authorized by a certificate of authority issued under the Insurance Code Chapter 984, shall complete and file the following blanks and forms for the 2010 calendar year with the department only. All submissions shall be printed or typed in English and all monetary values shall be clearly designated in United States dollars. The form identified in paragraph (1) of this subsection shall be completed to the extent specified in paragraph (1) of this subsection and in accordance with the "2010 Annual Statement Instructions, Property and Casualty." An actuarial opinion is not required. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code. The following blanks or forms are to be filed on or before March 1, 2011, in accordance with the Insurance Code §984.153:

(1) 2010 Property and Casualty Annual Statement; provided, however, only pages 1 - 4, and 104 (Schedule T) are required to be completed;

(2) a copy of the balance sheet and the statement of profit and loss from the Mexican financial statement (printed or typed in English);

(3) a copy of the official documents issued by the Comision Nacional de Seguros y Fianzas approving the 2010 annual statement; and

(4) a copy of the current license to operate in the Republic of Mexico.

(m) Other Financial Reports. Nothing in this section prohibits the department from requiring any insurer or other regulated entity from filing other financial reports with the department.

(n) In any event, insurers and other regulated entities subject to this section shall file their 2010 annual financial statements and related annual hard copy and electronic filings with the department and the NAIC, as applicable, not later than five days after the effective date of this section.

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 March 31, 2011.

TRD-201101260
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: April 20, 2011
Proposal publication date: February 4, 2011
For further information, please call: (512) 463-6327

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.49

The Texas Department of Public Safety (the department) adopts new §15.49, concerning Proof of Domicile without changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11556).

This new section is necessary to implement Texas Transportation Code, §521.1426, which requires the department to adopt rules for determining whether a domicile has been established, including rules prescribing the types of documentation the department may require from the applicant to verify the validity of the claimed domicile.

No comments were received regarding the adoption of this new section.

This new section is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Transportation Code, §521.005 and §521.1426.

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 March 30, 2011.

TRD-201101243
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: April 19, 2011
Proposal publication date: December 24, 2010
For further information, please call: (512) 424-5848

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CHAPTER 16. COMMERCIAL DRIVER LICENSE
SUBCHAPTER A. LICENSING REQUIREMENTS, QUALIFICATIONS, RESTRICTIONS, AND ENDORSEMENTS

37 TAC §16.15

The Texas Department of Public Safety (the department) adopts new §16.15, concerning Proof of Domicile without changes to the proposed text as published in the December 24, 2010, issue of the *Texas Register* (35 TexReg 11559).

This new section is necessary to implement Texas Transportation Code, §522.0225, which requires the department to adopt rules for determining whether a domicile has been established under Texas Transportation Code, §522.022, including rules prescribing the types of documentation the department may require from the applicant to verify the validity of the claimed domicile.

No comments were received regarding the adoption of this new section.

This new section is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Transportation Code, §521.005 and §522.0225.

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 March 30, 2011.

TRD-201101244
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: April 19, 2011
Proposal publication date: December 24, 2010
For further information, please call: (512) 424-5848

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CHAPTER 35. PRIVATE SECURITY
SUBCHAPTER C. STANDARDS

37 TAC §35.46

The Texas Department of Public Safety (the department) adopts amendments to §35.46, concerning Guidelines for Disqualifying Convictions without changes to the proposed text as published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11820).

These amendments are necessary to clarify that all assaultive offenses are related to the provision of private security services, and are therefore potentially disqualifying from licensure under the Private Security Act, Chapter 1702 of the Texas Occupations Code, in compliance with the requirements of Chapter 53 of the Texas Occupations Code. This rule provides additional guidance to the regulated community, prospective applicants, and department staff, regarding the types of criminal offenses that are disqualifying under the Act.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter, and Texas Occupations Code, §1702.004(b), which required the original adoption of this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 30, 2011.

TRD-201101237
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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Proposal publication date: December 31, 2010
For further information, please call: (512) 424-5848

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SUBCHAPTER F. ADMINISTRATIVE HEARINGS

37 TAC §35.93

The Texas Department of Public Safety (the department) adopts amendments to §35.93, concerning Penalty Range without changes to the proposed text as published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11821).

These amendments are necessary to comply with the statutory mandate provided through the 81st Legislature's amendment of Texas Occupations Code, §1702.402, requiring a rule-based standardized penalty schedule. *See* H.B. 2730, §4.100. This rule will provide guidance to the Private Security Bureau staff and the regulated industry regarding the fines associated with various rule and statutory violations by the regulated community.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter, and Texas Occupations Code, §1702.004(b), which required the original adoption of this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 30, 2011.

TRD-201101238
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: April 19, 2011
Proposal publication date: December 31, 2010
For further information, please call: (512) 424-5848

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SUBCHAPTER I. COMMISSIONED SECURITY OFFICERS

37 TAC §35.142

The Texas Department of Public Safety (the department) adopts amendments to §35.142, concerning Application for a Security Officer Commission. The amendments are adopted with non-substantive changes to the proposed text as published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11822) and will be republished. Capitalization errors are corrected in subsection (a)(5) and subsection (c), the phrase "a copy of" has been added to subsection (a)(5), and the word "and" was moved from the end of subsection (a)(3) to the end of subsection (a)(4).

These amendments are necessary to authorize the submission of electronic fingerprints and proof of identification issued by other states, and to require documentation of federal firearm qualification, of those applying for security guard commissions. This rule will clarify for prospective applicants and department staff, the documents necessary for an application.

The department received a comment from Michael Samulin, representing Texas Burglar and Fire Alarm Association and Intruder Alert Systems, Inc. recommending the department add the phrase "a copy of" to the beginning of subsection (a)(5). The department agrees and the language has been added.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter, and Texas Occupations Code, §1702.004(b), which required the original adoption of this rule.

§35.142. Application for a Security Officer Commission.

(a) A completed security officer commission application shall be submitted on the most current version of the form provided by the department. The application shall include:

(1) the required fee;

(2) at least two sets of fingerprints on fingerprint cards approved by the department, or submitted electronically through a department approved vendor, and the $25 FBI Fingerprint Check Fee;

(3) a copy of the applicant's Level II certificate of completion;

(4) a copy of the certificate of completion provided to the applicant from a board approved Level III training school; and

(5) a copy of a state or government-issued identification card, issued by the state of Texas or by the state of the applicant's residence.

(6) Applicants who are not United States citizens shall submit a copy of their current alien registration card. Non-resident aliens must also submit a copy of a current work-authorization card and hunting license, or other documents establishing the right to possess firearms under federal law.

(b) Incomplete applications cannot be processed and will be returned for clarification or missing information.

(c) The employer shall affix one recent color photograph to the pocket card when received from the board. The photograph shall be 1" x 1 1/4". This subsection will not apply to those who have a driver's license or identification card issued by the state of Texas, upon development of an internal, departmental, interface.

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 March 30, 2011.

TRD-201101239
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: April 19, 2011
Proposal publication date: December 31, 2010
For further information, please call: (512) 424-5848

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SUBCHAPTER L. GENERAL REGISTRATION REQUIREMENTS

37 TAC §35.181

The Texas Department of Public Safety (the department) adopts amendments to §35.181, concerning Employment Requirements without changes to the proposed text as published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11823).

These amendments are necessary to clarify the nature of the employer/employee relationship required in order satisfy the statutory requirement of insurance coverage for regulated services. This rule will provide guidance to the Private Security Bureau staff and the regulated industry regarding appropriate employment arrangements.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter, and Texas Occupations Code, §1702.004(b), which required the original adoption of this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 30, 2011.

TRD-201101240
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: April 19, 2011
Proposal publication date: December 31, 2010
For further information, please call: (512) 424-5848

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37 TAC §35.186

The Texas Department of Public Safety (the department) adopts amendments to §35.186, concerning Registration Applications. The amendments are adopted with nonsubstantive changes to the proposed text as published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11824) and will be republished. A capitalization error is corrected in paragraph (4) and the phrase "a copy of" has also been added to paragraph (4).

These amendments are necessary to authorize the submission of electronic fingerprints and proof of identification issued by other states, and to require documentation of work authorization from non-resident alien applicants. This rule will clarify for prospective applicants and department staff the documents necessary for application.

The department received a comment from Michael Samulin, representing Texas Burglar and Fire Alarm Association and Intruder Alert Systems, Inc. recommending the department add the phrase "a copy of" to the beginning of paragraph (4). The department agrees and the language has been added.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter, and Texas Occupations Code, §1702.004(b), which required the original adoption of this rule.

§35.186. Registration Applications.

A completed registration application shall be submitted on the most current version of the form provided by the department. The application shall include:

(1) the required fee;

(2) at least two sets of fingerprints approved by the department, or submitted electronically through a department approved vendor and the $25 FBI fingerprint fee;

(3) a copy of the applicant's Level II certificate of completion;

(4) a copy of a state or government-issued identification card, issued by the state of Texas or by the state of the applicant's residence;

(5) applicants who are not United States citizens shall include a copy of their alien registration card. Non-resident aliens must also submit a copy of a current work-authorization card; and

(6) Upon request of the department, any court documents required as part of the department's criminal history background check. The failure to comply with the request may result in the rejection of the application as incomplete.

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 March 30, 2011.

TRD-201101241
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: April 19, 2011
Proposal publication date: December 31, 2010
For further information, please call: (512) 424-5848

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SUBCHAPTER S. CONTINUING EDUCATION

37 TAC §35.292

The Texas Department of Public Safety (the department) adopts amendments to §35.292, concerning Requirements for Continuing Education Courses without changes to the proposed text as published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11824).

These amendments are necessary to remove the references to fees for continuing education training courses and instructors of such courses, and thus eliminate potential conflicts with the previously amended §35.70 of this title (relating to Fees). The latter rule specifically addresses all fees charged by the department (including the fees for continuing education training courses and instructors). These amendments will clarify the fees to be charged to such training schools and instructors, and avoid confusion relating to the fee structure.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commis-

sion to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter, and Texas Occupations Code, §1702.004(b), which required the original adoption of this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 30, 2011.

TRD-201101242
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: April 19, 2011
Proposal publication date: December 31, 2010
For further information, please call: (512) 424-5848

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 21. RIGHT OF WAY

The Texas Department of Transportation (department) adopts the repeal of existing 43 TAC Chapter 21, Subchapter I, Regulation of Signs along Interstate and Primary Highways, §§21.141 - 21.163, and Subchapter K, Control of Signs along Rural Roads, §§21.401, 21.411, 21.421, 21.431, 21.441, 21.451, 21.461, 21.471, 21.481, 21.491, 21.501, 21.511, 21.521, 21.531, 21.541, 21.542, 21.551, 21.561, 21.571, 21.572, and 21.581. The department adopts the simultaneous replacement of the repealed subchapters with new Subchapter I, Regulation of Signs along Interstate and Primary Highways, Division 1, Signs, §§21.141 - 21.203, and Division 2, Electronic Signs, §§21.251 - 21.260; new Subchapter K, Control of Signs along Rural Roads, §§21.401 - 21.442, and 21.444 - 21.446; and new Subchapter Q, Regulation of Directional Signs, §§21.941 - 21.947. The repeal of §§21.141 - 21.163, 21.401, 21.411, 21.421, 21.431, 21.441, 21.451, 21.461, 21.471, 21.481, 21.491, 21.501, 21.511, 21.521, 21.531, 21.541, 21.542, 21.551, 21.561, 21.571, 21.572, 21.581, and new §§21.145, 21.160, 21.162, 21.167, 21.178, 21.183 - 21.188, 21.203, 21.252, 21.254, 21.256 - 21.258, 21.401, 21.403 - 21.406, 21.411, 21.415, 21.417, 21.419, 21.422, 21.427, 21.430, 21.431, 21.437, 21.438, 21.440, 21.444 - 21.446, and 21.941 - 21.947 are adopted without changes to the proposed text as published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10634) and will not be republished. New §§21.141 - 21.144, 21.146 - 21.159, 21.161, 21.163 - 21.166, 21.168 - 21.177, 21.179 - 21.182, 21.189 - 21.202, 21.251, 21.253, 21.255, 21.259, 21.260, 21.402, 21.407 - 21.410, 21.412 - 21.414, 21.416, 21.418, 21.420, 21.421, 21.423 - 21.426, 21.428, 21.429, 21.432 - 21.436, 21.439, 21.441, and 21.442 are adopted with changes to the proposed text as published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10634). Section 21.443 is not adopted as published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10634). The effective date of these rules is July 1, 2011.

EXPLANATION OF ADOPTED REPEALS AND NEW SECTIONS

The department is in the process of restructuring the Outdoor Advertising Program. To achieve this goal the department has determined that changes to the existing rule format are necessary. To streamline this process the department is repealing the rules relating to the existing program and simultaneously adopting new sections. A majority of the new rules have nonsubstantive changes. The department adopts a new rule organizational structure that subdivides the current rules into smaller sections and reorganizes them so that the new rules logically follow the sign permitting process. The revision permits easier location of and access to specific provisions and makes them more understandable.

In addition, the department has made substantive changes to the rules to address four specific areas: fee structure, streamlining current regulations, methods to increase consistency between the primary and rural road programs, and methods to improve consistent enforcement. The department requested input from interested parties on these four issues and any other suggestions on improving existing rules to help formulate these new rules. Several comments were received and used in drafting these revisions.

The Texas Transportation Commission (commission) also appointed a rulemaking advisory committee. Members of the Outdoor Advertising Rulemaking Advisory Committee represent the regulated industry, local political subdivisions, land owners, and scenic organizations. The views from the committee were diverse and provided the necessary input for the department to formulate the rule revisions. The committee focused on the rule revisions with substantive changes and provided advice and guidance for the language included in these rules.

In this preamble, the abbreviation "OAS" is used for "outdoor advertising signs."

The rules are divided into three subchapters. Subchapter I is then divided into two divisions. Subchapter I, Division 1, Signs, is general sign information for outdoor advertisement on the interstate and primary system. Subchapter I, Division 2, Electronic Signs, is for electronic signs on the interstate and primary system. Originally these two divisions were separate subchapters but due to spacing limitations the department has combined them into one. References to these subchapters have been corrected throughout this rule to address the correct division.

New §21.141, Purpose, contains the purpose and scope of the subchapter and is the same as the current §21.141.

New §21.142, Definitions, incorporates a majority of the definitions from the current §21.142 without change. The definitions for "commercial or industrial area," "zoned commercial or industrial area," "unzoned commercial or industrial area," and "commercial or industrial activity" have been moved to separate sections because they provided substantive language regarding the qualifications for a sign permit. This change makes the language easier to understand and find. The new section also changes the definitions of "freeway" by adding toll roads, "intersection" by referencing only intersection by primary roads, "interstate highway system" by more clearly defining which roadways qualify, and visible by clarifying that a person must be able to read the content of the sign. Additional grammatical changes were made in this section to clarify the provisions and remove unnecessary language.

New §21.143, Permit Required, is primarily the language of the current §21.146(b), but now provides an unambiguous identification of the type of OAS for which a permit is required. The language is altered from the current rule to provide that if any of the advertisement or information content is visible from the main travel lanes of a regulated highway the OAS is required to have a permit unless otherwise exempted under the chapter.

New §21.144, License Required, provides that a person must hold as outdoor advertisement license to obtain a permit for an OAS. This language is the same as the first part of the current §21.149(a)(1) with minor grammatical changes. There are no substantive changes to the requirement for the OAS license.

New §21.145, Prohibited Signs, provides specific circumstances under which a sign is prohibited and ineligible for an OAS permit under the subchapter. This language was taken from current §21.148 with the addition of the reference to signs prohibited under Transportation Code, §391.252. This reference was added so that the statutory prohibitions would not be overlooked if a licensee or another individual were tempted to rely only on the rules for guidance.

New §21.146, Exempt Signs, is a revision of the current §21.147 and provides descriptions of signs that are exempt from the permitting requirements of the subchapter. This new section provides a detailed listing of the requirements of each type of exempted sign including size, restrictions of location and time of posting if applicable, and content of the sign. This language is needed for clarification. The new section exempts a recorded subdivision's permanent entrance sign that only identifies the subdivision. The new language also allows exempt ranch or farm signs to include the telephone number and Internet website information of the ranch or farm to address current technology trends. New language also requires that an on-premise sign be erected no sooner than one year before the business is open in order to maintain exempt status. This change is needed to clarify that, although the business does not have to be open at the time the sign is installed, the opening must be forthcoming. In addition, the new section changes the size of a nonprofit service club sign from eight square feet to 32 square feet to allow for more legible signs. This also aligns the service club sign size to similar sizes of other exempt signs.

New §21.147, On-Premise Sign, provides the requirements for a sign to qualify as an on-premise sign, for which a permit is not required under the subchapter. The language is substantially the same as current §21.147(b). The new section expands the information that can be displayed on an on-premise sign to include telephone number and the Internet address of the business. New parts of the section require that a sign that advertises the sale or lease of real property on which the sign is located must be removed within 90 days after the date of the transfer of ownership or execution of the lease. This limitation prevents a real estate agent or entity from using such a sign as a means of advertisement for the agent or entity. The new language provides a working definition of "date of closing" a sales or lease transaction to clarify the time that a real estate sign can be posted. The language regarding what can be displayed on an on-premise sign tracks the federal language on this issue.

New §21.148, Exception to License Requirements for Nonprofit Signs, is substantially the same language as current §21.149(g). The section provides that a nonprofit organization does not have to obtain an OAS license, but must obtain a permit under new §21.149.

New §21.149, Nonprofit Sign Permit, provides a separate permitting process for nonprofit signs. The new section expands the listing of nonprofit organizations in current §21.147(a)(5) to include a service club, charitable association, religious organization, chamber of commerce, nonprofit museum, or governmental entity. These additions provide more guidance and reflect the current policy of the types of entities that qualify for nonprofit signs. New language also provides for an expanded message to include information pertaining to the meeting, services, events, or location of the nonprofit entity. The department believes that a separate permitting process for nonprofit signs will help clarify the differences between these specific types of signs and general advertising OAS signs.

New §21.150, Continuance of Nonconforming Signs, is one part of a four section revision of current §21.143. This new section deals with the specifics of the renewal of a permit for a nonconforming sign and provides clear statements as to the standards with which a nonconforming sign must comply. The language provides that to be eligible for a permit renewal, the nonconforming sign must have been lawful on the date it was erected, came under the control of the department, or became a nonconforming sign, and must remain substantially the same as it was on that date. The new section is taken from current §21.143(a) with minor nonsubstantive changes.

New §21.151, Time Proposed Roadway Becomes Subject to Division, clarifies that a proposed roadway becomes subject to the rules of the division when the environmental clearance and the approved alignment have been obtained from the Federal Highway Administration. If FHWA approval is not needed, the road comes under the chapter when the alignment is approved by the governmental entity responsible for the construction of the roadway. This new section provides a specific point in time in which a roadway becomes subject to these rules. This change is needed to prevent signs from being erected without complying with the permitting requirements. The current language regarding when the road becomes subject to the rules is in the current definitions of freeway and interchange in §21.142(9) and (10).

New §21.152, License Application, provides the application process for an OAS license. This language incorporates the language of current §21.149(a). The new section provides for the specifics of applying for an OAS license including the information that must be included in the application, the statutory requirement of a surety bond in the amount of $2,500 for each county in which the applicant's signs are to be erected or maintained, and the requirement of the license fee. The surety bond is payable to the commission to reimburse the department for removal costs of a sign that the license holder unlawfully erects or maintains. The language regarding the information that must be contained in the surety document in the current rule is not included in this new section because the requirement that the document must be in a form prescribed by the department is sufficient to provide the department with all necessary information to determine if the surety meets the minimum requirements. Other than the deleted language regarding the surety form the new language has only minor grammatical changes from the current §21.149(a).

New §21.153, License Issuance, stipulates that the department will issue a license if the requirements of new §21.152 are satisfied. The new section states that the department may not issue a license to a business entity that is not authorized to conduct business in this state. This differs in wording from the current §21.149(a)(3) which refers to a corporation or limited partnership

that is "authorized by the secretary of state to conduct business in the State of Texas."

New §21.154, License Not Transferable, states that a license issued under the subchapter is not transferable. This is a rewording of current §21.149(a)(4).

New §21.155, License Renewals, retains the requirement for annual renewal of an OAS license stated in current §21.149(b)(1). The new section provides for the renewal of all licenses on the date of expiration, which will increase administrative efficiency from a special listing of licenses in current §21.149(b)(1)(B) and (C), which required a renewal date of January 1st of each succeeding year if the original license was issued after January 1, 1991. The requirements for the annual renewal in the new section state that the applicant must file a written application in a form prescribed by the department accompanied by the annual renewal fee listed in new §21.156. Further, the new section requires the minimal compliance for the renewal application to be the license holder's complete legal name, mailing address, telephone number, number of licenses being renewed, proof of bond coverage, signature of the license holder or person signing on behalf of the business entity, and any additional information the department considers necessary. Lastly, the new section states that a license is not eligible for renewal if the license holder is not authorized to conduct business in this state. The renewal points of compliance in the new section differ from the current §21.149(b)(2) - (4) only in the correction of grammar. Language is also added to allow a 45-day grace period for renewals with the payment of an additional late fee. The department will not accept a renewal if received more than 45 days after the license expires.

New §21.156, License Fees, and Transportation Code, §391.069 and §394.025, provide that the department may charge fees in an amount that will recover the costs of enforcing the program. Research indicates the current fee structure for the original license application and the annual license renewal has remained unchanged since December 2, 1991 and does not support a revenue neutral program that is in substantial need of modernization in inventory and enforcement procedures paramount to federal compliance issues. To create and maintain an inventory and needed enforcement, the new section sets the original license application fee at $125, and increases the current renewal fee from $60 to $75. The appropriate fee must be submitted with the application and is payable by check, cashier's check, or money order to the Texas Highway Beautification Fund. A license is voidable if the check or money order used to pay the fee is dishonored. New verbiage requires the renewing applicant to pay a late penalty of an additional $100 for late payment up to 45 calendar days after the date of termination of the license, which is established as one year from its last issuance. A payment or late payment received by the department after this 45 day late penalty period will not be honored and the license will be subject to revocation. The rules also provide that the department will give notification of the pending expiration at least 30 days before the expiration and will then provide an additional notice of the opportunity to file a late renewal. The 45 day grace period was added to prevent the harsh penalty of license revocation for being late on a payment.

New §21.157, Temporary Suspension of License, provides the process for the temporary suspension of an OAS license if the department is notified by a surety company that a bond is being cancelled. The new section provides that the department will notify the license holder by certified mail and that a new bond must be obtained and filed with the department before the bond cancellation date or the 30th day after the day of the receipt of the notice, whichever is later. This new section is primarily a rewording of current §21.149(d).

New §21.158, License Revocation, provides that the department will revoke a license and in a restatement of §21.149(d) will not issue any permits or transfer existing permits under the license if the surety bond is not provided in the proper period, the surety bond is terminated, the license holder has not responded to previous final enforcement actions, or the license holder has a number of violations under the subchapter, new Subchapter J, or Transportation Code, Chapter 391, in combination. The section is restructured as a percentage system of 10% of the number of valid permits held by a licensee who holds more than 1,000 sign permits; 20% of the valid permits if the licensee holds 500-999 sign permits; 25% of the valid permits for 100-499; and 30% of the valid permits if the licensee holds less than 100 permits. The department will send notice of the revocation clearly stating the reasons for the action, the effective date of the action, and the right and procedures for the license holder to request an administrative hearing. The format of the notice is a rewording of current §21.149(f)(1). The new section also restates current §21.149(f)(2) but provides 45 days to request an administrative hearing instead of the current 10 days. The language also now states that the notice is presumed to be received five days after mailing. The 45-day period in the new section provides additional time for a business entity to determine whether to request a hearing. The new section restates current §21.149(f)(3) by providing that the administrative hearings will be conducted in accordance with 43 TAC Chapter 1, Subchapter E, Procedures in Contested Case. The rule is changed to require multiple violations to correspond with the seriousness of the penalty. The department has the ability to go after the individual permits for specific violations and believes that a license should be revoked only if the license holder is showing a disregard for the rules evidenced by multiple violations.

New §21.159, Permit Application, addresses the permit application process. Current §21.150 contains all aspects of the permit process from eligibility through conversions of permits. The new section adds clarity and ease of understanding by dividing current §21.150 into separate functional processes beginning with new §21.159, which includes restatements of requirements for obtaining a permit that are primarily the same requirements found in current §21.150(b). These requirements include submitting an application on a form prescribed by the department with the information from current §21.150(b), such as name and address of the applicant, the applicant's signature, the proposed location and description of the sign, the legal name and address of the owner of the designated site and verification of the nonprofit status of the applicant if applicable.

New §21.159 strengthens minimal application requirements by stating that the applicant must provide written evidence in the form of the signature of the site owner or site owner's representative consenting to the erection of the sign and providing the department right of entry onto the property at the sign location. The new section also provides that if the sign is to be located within the jurisdiction of a municipality that is exercising its authority to regulate outdoor advertising, a certified copy of the permit issued by the municipality must be submitted with the application. That provision is similar to current §21.150(b)(3). The copy is not required if the city requires a state permit prior to issuing the city permit or the city requires the sign to be erected within one year. The rule also requires the signatures to be originals to eliminate

a problem with photo copied signatures submitted on multiple applications. The changes are needed to improve the quality of the information the department receives and to improve the application process.

Additional strengthening of minimal permit application requirements in §21.159 include having the application notarized, requiring a sketch that shows the location of the sign structure support poles, and providing the exact location of the sign faces in relation to the sign structure, the means of access to the sign, the distance from buildings, landmarks, right of way line, other signs, and distinguishable features of the landscape. All of these requirements help the department review the applications in a timely manner.

New §21.160, Applicant's Identification of Proposed Site, requires the applicant to identify the location of the proposed sign structure by setting a stake or marking the concrete at the proposed location. The new section adds language regarding marking a concrete location to address the situation in which the proposed location is in an area that cannot be marked by a stake. Other than the additional language regarding concrete markings, only minor grammatical and formatting changes were made from the language of current §21.150(b)(6).

New §21.161, Site Owner's Consent; Withdrawal, restates the portion of current §21.150(b)(2) addressing the withdrawal of a site owner's consent to allow an OAS on the property. The restatement includes language that the site owner's consent operates for the life of the lease or until the site owner delivers a written statement to the department that the consent has been withdrawn in accordance with the terms of the lease agreement or through a court order. The land owner must also notify the sign owner that the consent has been withdrawn. This notice demonstrates to the department that all parties are aware of the issue. In addition, the new section adds that if the sign owner is disputing the lease termination, the sign owner must provide documentation establishing that fact for the department to stay cancellation proceedings. Requiring documentation enables the department to verify that the dispute is being addressed. The department will not proceed on the cancellation until a settlement signed by both parties or a court order resolving the matter is received. This will allow the sign owner and the land owner an opportunity to settle the matter without the department's involvement.

New §21.162, Permit Application for Certain Preexisting Signs, provides that the owner of an existing sign that becomes subject to Transportation Code, Chapter 391, because of a new highway or a change in a highway's designation must apply for a permit within 60 days after notification by the department. This revises current §21.150(n) which requires a permit application to be filed within 30 days. The department has provided the additional 30 days to provide the sign owner ample time to submit the application before the department initiates an enforcement action. In addition, the department will send notification to the sign owner by certified mail to ensure receipt and to have a specific date for any enforcement actions.

New §21.163, Permit Application Review, restates current §21.150(c) indicating permit applications will be considered in the order of their receipt and if the application is incomplete or incorrect, it will lose its priority position. If during the review process of the application another application for the same site or a conflicting site is received, that application will be held until a final decision on the previously received application is final. The department will notify the applicant that the application is being held. The new section specifies when a decision on an application is final to avoid confusion of when the department will consider a subsequent application for the same or a conflicting sign location. The new section adds language identifying the review process to include a review of the application document and a site inspection that will include verification of measurements for compliance with spacing and locations requirements.

New §21.164, Decision on Application, provides that in both the approval and denial of a permit application, the department will send a copy of the approved or denied application to the applicant within 45 days of receipt of the application. If the decision cannot be made within 45 days the department will notify the applicant of the delay and provide an estimate for when the decision will be made. This will ensure that the department continues to maintain a focus on reviewing applications. In the case of approval, a sign permit plate will be included with the copy, and in the case of denial, a written notice stating the reason for denial will be included. The new section eliminates unnecessary language in the portion of current §21.150(b)(5) relating to the notice of an approved application. The rule also contains new language requiring the department to notify the land owner of an application denial. The land owner has no standing to contest the decision unless land owner is also the sign owner. The notice is purely informational so that the land owner is aware of the status of the application.

New §21.165, Sign Permit Plate, is a revision of current §21.150(b)(5) and (f). The new section provides direction for placement of the sign permit plate on the sign structure and expands the language to require that if a permit plate becomes lost, stolen, or illegible, the sign owner must complete a department form for the replacement along with a replacement fee. New wording strengthens the visibility requirement that the sign permit plate be visible from the closest right of way at all times, which ensures that the plate is visible from the closest area with public access. The new section incorporates a revision of current §21.150(i)(11) by stating that failure to apply for a replacement plate within 60 days of notification or fail to attach in conformance with the applicable requirements may result in the cancellation of the permit.

New §21.166, Sign Location Requirements, provides that a permit will not be issued for an OAS unless it is located along a roadway subject to Transportation Code, Chapter 391 within a zoned or unzoned commercial or industrial area. The new section has minor grammatical changes from current §21.150(b)(4).

New §21.167, Erection and Maintenance from Private Property, provides that a permit will not be issued for an OAS unless the sign can be both erected and maintained from private property. This is a restatement with minor rewording of current §21.161(a) and strengthens current §21.161(b) by changing "erected or maintained" to "erected and maintained" from private property.

New §21.168, Conversion of Certain Authorization to Permit, provides language for the conversion of an off-premise OAS to a permit under the subchapter when a highway regulated under Transportation Code, Chapter 394 regarding rural roads becomes subject to Transportation Code, Chapter 391 related to regulated highways. A fee for the original application for a permit is not required and a sign permit plate will be issued at no charge. If the sign owner has prepaid registration fees under the rural roads rules, the outstanding balance will be credited to the sign owner's annual renewal fee. The new section makes additional grammatical changes, clarifies provisions, and removes unnecessary language from current §21.150(m).

New §21.169, Notice of Sign Becoming Subject to Regulation, provides notification that the owner of a sign that has become subject to Transportation Code, Chapter 391 must obtain an OAS license. The section provides that the department will send written notification by certified mail, or if the sign owner cannot be determined, the department will post the notice on the sign for 45 days. The sign owner will have 60 days to submit an OAS license application. This language adds grammatical changes, and clarifies and removes unnecessary language from current §21.150(n).

New §21.170, Appeal Process for Permit Denials, provides that if a permit application is denied, the applicant may file for an appeal with the executive director. The appeal must be in writing and contain a copy of the denied application, statements as to why the denial is believed to be in error, and supporting documentation for the appeal. The written appeal must be received by the department within 45 days after the date the denial notice was received by the applicant. The final determination will be sent to the applicant and will contain the reason for the denial of the appeal or a decision that the permit will be issued. The new section reenactments the basic language of current §21.162. However, the new section strengthens the language by providing a maximum period of 45 days in which the applicant may submit the appeal. The current rule was silent regarding the period for appeal. By providing a period to request an appeal the department is able to have a specific date that the denial is final if no appeal is requested. This allows the department to move forward on other permit applications for the same or conflicting locations. The rule also states that the department will make a decision on the appeal within 60 days. If the department is unable to make a decision the department will notify the applicant of the delay. This language is needed to provide the sign owner some guidance on how long the appeal process with take.

New §21.171, Permit Expiration, provides that an OAS permit is valid for one year or automatically expires if the license under which the permit was issued expires or is revoked by the department. The new section is a reenactment of current §21.150(h) with minor grammatical changes and removal of unnecessary language.

New §21.172, Permit Renewals, provides that an OAS permit must be renewed before the date on which it expires and is eligible for renewal if the sign continues to meet all applicable requirements of new Subchapter I and Transportation Code, Chapter 391. The renewal must be filed on the department's renewal application form and be accompanied by the scheduled renewal fee. Eligibility for the annual renewal requires that the sign be erected, to the extent that the sign includes a sign face, before the anniversary of the date the original permit was issued. The new section provides a maximum of 45 days after the date of expiration in which a late renewal will be accepted by the department along with an additional late fee penalty. The department has not always been consistent through out the districts regarding the acceptance of late renewals. This additional grace period is provided so that the sign owner is alerted that there is a specific date after which the sign cannot be renewed. The language also provides that the department will send out renewal notifications 30 days prior to the expiration. If the permit is not renewed the department will send a notice of the opportunity to submit a late renewal with the payment of a late fee. The department believes these notices will improve the timeliness of the permit renewals. The new section rephrases current §21.150(d)(1) and adds a 45-day late period in which a late renewal application can be received.

New §21.173, Transfer of Permit, provides that with the written approval of the department, one or more OAS permits may be transferred from one business entity to another assuming both entities hold a valid OAS license and that the appropriate department forms are completed and are accompanied by a prescribed transfer fee. The ability to transfer permits extends from one nonprofit organization to another assuming the sign will be maintained as a nonprofit sign. A nonprofit organization is also allowed to convert a nonprofit permit to a regular permit if the transferee holds an OAS license for the county in which the sign is located. The department will not approve the transfer of a permit if cancellation of the permit is pending or has been abated awaiting the outcome of an administrative hearing. The section allows for a statewide transfer policy. Other than the statewide transfer policy the new section differs from current §21.150(e) only in grammatical changes and removal of unnecessary language.

New §21.174, Amended Permit, provides new language that strengthens the overall OAS permit process by allowing an applicant to submit an application to amend a permit to make changes to the illumination of a sign, configuration of a multiple faced sign, size of the face, or location of the sign, to make customary maintenance or substantial changes under new §21.191, or to change a static sign face to an electronic face. This new section will allow a degree of flexibility missing from the current rules without a loss of compliance control. Nonconforming signs are not eligible for an amended permit except to perform customary maintenance. The language allows the department to develop a form and require the information from the original application that is applicable to an amended permit. However, the original signatures of the land owner and the city representative will not be required. All the information required on an original application is not necessary to amend the permit and the department needs the flexibility to require only the information that is needed based on the reason for amending the permits. The section includes the same 45-day requirement as in §21.164. In addition, the section includes the ability for the department to waive the requirement that the amended permit be submitted prior to changes to the sign in the event of a national disaster. This will give the department flexibility to handle events such as a hurricane or major flood in a more expedient manner.

New §21.175, Permit Fees, sets the permit application fee at $100 per sign permit (current fee is $96 per permit) and the annual renewal fee at $75 per sign permit (current fee is $40 per sign). The adopted rule also provides for a new type of application for an "amended permit" and sets the fee at $100. The fees do not change for the replacement plate set at $25, the transfer of a permit set at $25, the transfer of a non-profit permit that does not have a fee, or the non-profit sign permit set at $10. The new rules allow, in addition to the $75 annual fee, an additional late fee of $100 for the renewal of a permit that is received within 30 days after the permit's expiration date.

Transportation Code, §391.069 and §394.025 allow the department to recover the costs of enforcing the program. The current fee structure for OAS permits in §21.150(g)(1) has not changed since November 22, 1991. The existing fee schedule does not support a revenue neutral program. In addition, it does not allow for modernization in inventory and enforcement procedures to comply with federal law.

To create and maintain a statewide electronic inventory and produce enforcement results needed to maintain a modern, efficient, responsive program, new §21.175 increases the fees

for permits and renewals. Obviously since 1991, administrative costs have increased as have the number of signs. Without rule changes to increase the license and permit fee structure, compliance with federal and state laws becomes impossible. With the inadequate funding the department has seen a reduction in inventory compliance which has led to a decrease in effective enforcement policies. Without an increase in the fees the department will have a difficult time improving the effectiveness of the program. Failure to meet the federal compliance requirements in areas adjacent to the interstate highway system and the primary highway system could lead to a reduction in federal-aid highway funds.

New §21.175 refers to the $10 fee for the original application for or annual renewal of a nonprofit sign permit, which is set by Transportation Code, §391.070.

New language in §21.175 requires the renewing applicant to pay a late penalty of an additional $100 per sign face for late payment up to 30 calendar days after the expiration date. A payment or late payment received by the department after the 30-day late period will not be honored and the permit will be subject to cancellation. This language was added to address the new language of §21.171 regarding the expiration of the permit. The fee was set at $100 to encourage sign owners to timely initiate the renewal process, and to offset costs for additional notices and monitoring the renewal process.

New §21.176, Cancellation of Permit, provides that a permit will be cancelled if the sign is removed; not maintained in accordance with the subchapter or Transportation Code, Chapter 391; damaged beyond repair; abandoned; not built at the location described in the application; repaired or altered without obtaining an amended permit; built by an applicant who uses false information; located on property owned by a person who withdraws permission; erected, repaired, or maintained in violation of the rules on destruction of vegetation and access from the highway right of way; or does not have a permit plate properly attached. The department will provide written notification of the cancellation to the sign owner that includes the reason for the cancellation, the effective date of cancellation, and the procedures for and right of the permit holder to request an administrative hearing. The written request for the hearing must be delivered to the department within 45 days after the date the notice of cancellation is received by the sign owner. The hearing will be conducted in accordance with rules for standard contested case procedures. These provisions are found in current §21.150(i). In addition to the current language, the new section expands the provisions to include violations leading to cancellation authority when the repair or alteration have been conducted without obtaining an amended permit as now required under §21.174. The new section also provides for a voluntary cancellation process. This allows a licensee to voluntarily cancel a permit by written notification to the department and eliminates the need for the department to follow the administrative hearing process. The rule also states that for building in the wrong location or a permit plate violation the department will provide notice and 60 days to correct the problem prior to initiating a cancellation. This also provides that the department will only initiate cancellations for the wrong location for signs erected after the effective date of these rules. The department has begun an extensive inventory and this safe harbor provision prevents the inventory from triggering multiple cancellation proceedings for mistakes that have gone unidentified by the department for many years. The rule also adds language that the department will notify the land owner of pending cancellations. The land owner has no standing to challenge the cancellation unless he is also the sign owner. However, the notification will advise the land owner of the pending action.

Of all compliance issues relating to the program, the identification of the land use and activity of the area being recognized as commercial or industrial is of paramount importance.

New §21.177, Commercial or Industrial Area, clarifies that a commercial or industrial area can be either a zoned or unzoned area and references specific definitions for both zoned and unzoned commercial or industrial areas to be found in new §21.178 and §21.179.

New §21.178, Zoned Commercial or Industrial Area, contains the qualifications for a zoned commercial or industrial area. This is the language from current §21.142(33) with only minor changes. The section states that for the purposes of OAS locations, an area is not considered zoned commercial or industrial if the area is: (1) an area in which limited commercial or industrial activities incident to other primary land uses are allowed; (2) an area that is designated for and created primarily to allow outdoor advertising structures along a regulated highway; (3) an unrestricted area; or (4) a small parcel or narrow strip of land that cannot be put to ordinary commercial or industrial use and that is designated for a use classification that is different from and less restrictive than its surrounding area.

New §21.179, Unzoned Commercial or Industrial Area, provides guidance for sign location in areas that are not zoned by a local municipality. The proposed site for an OAS in an area that is not zoned must be located on the same side of the highway and within 800 feet of at least two adjacent recognized commercial or industrial activities that are not used predominately for residential purposes. The two commercial or industrial activities must be within 200 feet of the highway right of way and part of the permanent building in which the activity is conducted must be visible from the main-traveled way. To be considered adjacent, the two activities' regularly used buildings, parking lots, storage, or processing areas of the activities may not be separated by roads, streets, a vacant lot, or undeveloped area more than 50 feet wide. Two activities that occupy the same building qualify as adjacent activities if each activity has at least 400 square feet of floor space dedicated to that activity, are activities that are customarily allowed only in a zoned commercial or industrial area, are separated by a dividing wall constructed from floor to ceiling, have access to the restroom facilities for all hours the business is staffed, and can operate independently of one another. In this scenario, two separate product lines offered by one business are not considered to be two activities. The criterion used to determine whether an area is not predominantly used for residential purposes is that not more than 50 percent of the area (when considered as a whole) is used for residential purposes. Roads and streets are considered to be used for residential purposes if residential property is located on both sides of the road or street. The area considered an unzoned commercial or industrial area is the total of actual or projected frontage of the commercial or industrial activities plus 800 feet on each of the roadway frontage to a depth of 660 feet. The length of an unzoned commercial or industrial area is measured from the outer edge of the regularly used building, parking lot, storage, or processing area of the activities and along or parallel to the edge of the highway pavement.

New §21.179 revises and combines certain language from current §21.142(31), the definition for unzoned commercial or industrial activity, and §21.144(a) and (b) regarding measurements for these types of areas. The new section corrects grammar and

eliminates redundant and unnecessary language. The new section strengthens the requirements relating to the dividing wall between two activities occupying the same buildings and the independent operation of the activities. These changes were needed to address interpretation problems with the current rule. The department wanted to clarify that the activities must actually be distinct from one another and not conducted by the same business. The requirement that there be a floor to ceiling wall will eliminate confusion caused by the current language of a dividing wall. The section also clarifies that the businesses must be capable of being independent. In addition, language was added to grandfather the permits issued under the previous rules. With the changes made to the rules, the current billboards might not be eligible. Providing the language to eliminate the need for previous permits to comply with the new restrictions will mean that this change does not create nonconforming signs. The prior signs will continue to be eligible for changes and full maintenance.

New §21.180, Commercial or Industrial Activity, provides the requirements for qualifying as a commercial or industrial activity. The section states that a commercial or industrial activity is an activity customarily allowed only in a zoned area and is conducted in a building or structure that has an indoor restroom, running water, functioning electrical connections, adequate heating, and permanent flooring, other than dirt, gravel, or sand, is visible from the traffic lanes of the main-traveled way, is not primarily used as a residence, has at least 400 square feet of its interior floor space devoted to the activity, and has been open for business for six months. The new section lists activities that are not considered to be commercial or industrial, including agricultural activities of various types, seasonal activities, the operation or maintenance of certain activities or structures, and activities created primarily or exclusively to qualify an area under §21.179. The new section revises language from current §21.142(2) by correcting grammar and the elimination of redundant and unnecessary language. The new section requires the business to employ at least one individual at the activity site for a minimum of 25 hours a week. The sections also require that the employee be at the site at least five days a week. The 25 hours can be spread over the five days in any manner as long as the hours are posted. This is a change from the current rule that required 30 hours a week or at least 5 days per week. Under the current rule a business could qualify if a person showed up at the business site for any amount of time as long as the person did it five days a week. This requirement was difficult for the department to observe and confirm compliance. In addition, the floor space requirement for the business was increased from 300 to 400 square feet and the length the business is open is increased to six months in an attempt to eliminate business created for the sole purpose on obtaining an OAS. The new language provides for a more enforceable standard and also helps to eliminate businesses created solely to have the site meet the requirements. The language of the section also deletes the requirement for a telephone to recognize the emergence of reliance on cellular technology. Language was added so that the new extended hours, the larger square footage, length of time the business must be open for business, and the square footage for residence portion will only affect the issuance of new permits. The department will not use the new requirements to change the status of a current sign.

New §21.181, Abandonment of Sign, provides that a sign is considered abandoned if it goes without advertising for 365 consecutive days or longer or if it needs to be repaired or is overgrown by trees or other vegetation. The department does not have to show that the sign has been without advertisement for each of the 365 days and can initiate the cancellation process if the department has evidence from four separate occasions that supports that conclusion. Small temporary signs, such as garage sale or campaign signs, located on private property that are attached to the structure do not constitute advertising for the purpose of these rules. Payment of property taxes or retention of a sign as a balance sheet asset will not be considered in determining whether a sign's permit will be canceled. If the location of an abandoned sign is conforming, a permit may be issued to anyone who submits an application that meets the requirements of the subchapter after cancellation of the prior permit is final. The new section restates current §21.156(b) while correcting grammar and removing unnecessary language. In addition, the new section strengths the current rule by expanding the specifics of the abandonment of a sign for 365 consecutive days by stating that the department can initiate the cancellation process without proof of abandonment for each of the 365 days. Other support, such as photographs of the sign on four separate occasions, can be used to make the determination of the sign being abandoned. The new section also deletes language stating that a sign permit that has not been renewed may be considered abandoned. This language conflicted with current §21.150(j) which authorized the removal of a sign for which the permit has expired. Deleting this language clarifies that the department may move for removal of such a sign without using the cancellation process. In addition, the section now includes a requirement that the department will notify the sign owner before the cancellation and provide 60 days for the sign owner to correct the issue. This will create a more effective enforcement program. Under the current process the department initiates the cancelation procedures at the time of notification and has often dismissed or settled the case when the sign company begins to place advertising on the sign.

New §21.182, Sign Face Size and Positioning, provides for the maximum sign face size and the types of sign configurations. The size of a single face of a sign may not exceed 672 square feet, 25 feet in height, and 60 feet in length, including the border and trim. Temporary protrusions may be added to a sign provided that the protruding area does not exceed 35 percent of the sign face and the total sign face area, including the protrusions, does not exceed 907 square feet. Measurements of the area are taken by the smallest square, rectangle, triangle, circle, or combination that encompasses the entire sign face. Signs may have more than one face on a structure and may be placed back-to-back, side-by-side, stacked, or in "V" shape construction but not more than two faces may be presented in each direction. Two sign faces, facing the same direction, may not exceed the maximum sign face area when measured together. Two sign faces facing the same direction may be presented as one face as long as the size limitations are not exceeded. The determination of fees is based on each face of a sign. In the case of two sign faces covered to make one face, fees are based on the original number of two faces. The new section uses corrected grammar and removes unnecessary language in a restatement of current §21.152 as it relates to limits for size, number, direction of visibility, height, length, and temporary protrusions for sign faces. The new section removes current §21.182(g), which states that a sign may be permanently enlarged without a new permit by up to 10%, because this provision relies totally on self-reporting and provides errors in record management related to compliance with sign limitations.

New §21.183, Signs Prohibited at Certain Locations, provides that a sign may not be located in a place that creates a safety

hazard. The new section is a restatement of current §21.153(a) with only minor grammatical changes.

New §21.184, Location of Signs Near Parks, provides that a sign may not be located within 1,500 feet of a public park that is adjacent to a regulated highway on either side of a nonfreeway primary system highway and on the side of a highway adjacent to the public park if the highway is on the interstate or freeway primary system. The new section is a restatement of current §21.153(b). The rule also adds a provision that provides that a separate measurement can be taken from a park that does not abut the highway. If a park does not abut the highway a sign cannot be within a 250 foot radius from the park. The measurement is taken from the center pole of the proposed sign structure.

New §21.185, Location of Signs Near Certain Facilities, provides location restrictions for intersections, interchanges, rest areas, entrance ramps, and exit ramps. A sign may not be erected outside of the incorporated city limits of a municipality in an area that is adjacent to or within 1,000 feet of these facilities. The new section clarifies current §21.153(c) in the language describing how the 1,000 feet limitation is measured perpendicular and along the highway right of way in relation to the distance from interchanges, intersection, rest areas, ramps and acceleration and deceleration lanes. The clarification includes identifying the distance measurements from interchanges and intersections to be from the point of widening at the intersection of the right of way of the intersecting roadways. For rest areas, ramps, and acceleration and deceleration lanes the measurements are taken from the point of pavement widening at the beginning of the entrance or exit ramp and from the point that the pavement widening ends at the conclusion of the entrance or exit ramp. Further, the new section identifies and clarifies the "area adjacent to" an interchange, intersection, rest area, ramp or acceleration and deceleration lane in which a sign cannot be erected.

New §21.186, Location of Signs Near Right of Way, provides that no part of the sign face may be within five feet of the highway right of way. The new section revises current §21.153(h) and is different only in the deletion of unnecessary language.

New §21.187, Spacing of Signs, provides that signs on the same side of a regulated freeway and the freeway frontage roads outside of incorporated municipal boundaries may not be erected closer than 1,500 feet apart. A municipality's extraterritorial jurisdiction is not considered to be within it boundaries. On a nonfreeway primary system highway outside of incorporated municipal boundaries the spacing limitation is 750 feet apart and includes the areas of the extraterritorial jurisdiction. On a nonfreeway primary system highway within the boundaries of an incorporated municipality, the spacing limitation is further reduced to 300 feet apart and does not include the extraterritorial jurisdiction in which the spacing limitations would default to 750 feet. In all cases, the measurements between signs are taken along the highway right of way perpendicular to the center of the signs. The new section restates current §21.153(d), (e), and (f) but clarifies the spacing limitations to extraterritorial jurisdictions of incorporated municipal boundaries. The new section also includes an exception to spacing limitations between signs that are separated by buildings, natural surroundings, or other obstructions that cause only one sign located within the specified area to be visible at any one time, which is in current §21.153(g).

New §21.188, Wind Load Pressure, provides that an original application and an application for the renewal of an OAS must include a certification that the sign will withstand specific wind load pressure based on the size of the sign. The new section is a restatement of current §21.157 with only minor reorganization, grammatical changes, and removal of unnecessary language. The wind load pressure remains the same.

New §21.189, Sign Height Restrictions, provides that the maximum height of an OAS is 42.5 feet and is measured from the grade level of the centerline of the main-traveled way closest to the sign at a point perpendicular to the sign location. A roof sign with a solid face surface may not exceed 24 feet above the roof level. A roof sign with an open sign face in which the open area between individual letter or shapes is not less than 40 percent of the total gross area of the sign face may not at any point exceed 40 feet above the roof level. The lowest point of a projecting roof sign must be at least 14 feet above grade. The new section is basically a restatement of current §21.158 with grammatical changes and removal of unnecessary language. However, it does include a clarification that the frontage road is not the main traveled way of a controlled access highway. This clarification is needed to ensure that all parties understand the starting point for the measurement of height.

New 21.189 also includes a provision that exempts renewable energy devices from the height restriction. This will allow a sign company to install wind turbines or solar panels to the sign structure above the sign face. This provision does not allow any portion of the sign face to exceed the height restriction of 42 and 1/2 feet.

New §21.190, Lighting of and Movement on Signs, provides that a sign may not contain or be illuminated by flashing, intermittent, moving lights, or animated or scrolling displays except for public service information such as time, date, temperature, weather, or similar information. If lights are part of or used to illuminate a sign, they must be shielded, directed, and positioned from all parts of the traveled ways of a regulated highway and may not have an intensity or brilliance that would cause vision impairment of a driver on a regulated highway or interfere with the driver's operation of a vehicle. In addition, no more that four luminaries can be used per direction of the sign face or faces. The department has received numerous complaints regarding the lights of the sign and at this time the department has determined that four lights adequately illuminate a sign. Lights or illumination on a sign may not obscure or interfere with the effectiveness of an official traffic sign, device, or signal. The same limitations are applied to a temporary protrusion on a sign, except that it may be animated only if it does not create a safety hazard to the traveling public. Reflective paint or reflective disks may be used on a sign face only if they do not create the illusion of flashing or moving lights or cause an undue distraction to the traveling public. Neon lights may be used on sign faces only if the light does not flash and does not cause undue distraction and if the permit for the sign specifies that the sign is an illuminated sign. Electronic temporary protrusions that display alphabetical or numerical characters only are not prohibited as long as the display consists of a stationary image, does not change more than four times every 24 hours, and the change occurs within two minutes. The department identifies this type of protrusion as being part of the sign face similar to a cut out or other design feature. The remaining new section is a restatement of current §21.154 with grammatical changes and removal of unnecessary language.

New §21.191, Repair and Maintenance, provides the process by which an OAS may be maintained and repaired. The new language breaks the section into three parts, routine maintenance, customary maintenance, and substantial changes. Routine maintenance allows for the replacement of minor parts as

long as the replacement part materials are the same type as those being replaced and that the basic design or structure of the sign is not altered, changing existing lighting to more energy efficient lighting, and changing the sign face structure using similar materials. It also addresses such issues as changing the advertising message, cleaning, painting, nailing, welding, or the replacement of nuts and bolts. Routine maintenance can be performed without an amended permit. Under customary maintenance a sign owner can add a catwalk and replace half the poles in a 12 month period. These changes require an amended permit. These are basically the current rules regarding normal maintenance under §21.143(b) with the addition of upgrading the lighting and adding a catwalk. The use of energy efficient lighting regardless of whether there is an initial change in the casing used for the lighting will be allowed as routine maintenance and is allowed for nonconforming signs. The department recognizes a benefit in allowing energy efficient lights on all billboards. The department also recognizes the safety benefits of adding a catwalk. This addition will require an amended permit but is authorized for non-conforming signs. Under substantial changes the sign owner can make major changes to the sign structure as long as the sign structure remains in compliance with all other requirements of the subchapter. These changes are the current language of §21.143(c). Substantial changes can only be performed on conforming signs and an amended permit is required to make the change. The amended permit eliminates the potential inequity of a sign owner loosing the site between the time an existing permit was cancelled and a new permit was filed in order to comply with "substantial" changes in the current rule. The new section also excludes language in current §21.143(c)(1)(I) that classifies making repairs that exceed 60 percent of the cost to erect a new sign of the same type at the same location a substantial change. Determining the cost of the repairs that exceeded the 60 percent level requires a level of self-reporting and response that is burdensome to sign owners. Removing the language from the new section means that all "substantial" repairs and maintenance can be administratively handled by using the new amended permit application. This section also addresses a problem with continual maintenance and repair of nonconforming signs. Under the new section, nonconforming signs may only receive routine or customary maintenance. A nonconforming sign can obtain an amended permit to perform customary maintenance. This change will allow the department to monitor the maintenance and improve compliance with these provisions.

New §21.192, Permit for Relocation of Sign, allows the relocation of an OAS that is legally erected and maintained and that will be within the highway right of way as a result of a construction project. If the sign is completely located in the highway right of way, the relocation of the sign requires a new permit and departmental approval of the new relocation site, including the new sign site's compliance with all local codes, ordinances, and applicable laws. An amended permit will be used for the relocation of a sign if it will be partially located within the highway right of way as the result of a construction project. The new section restates current §21.160(c) making grammatical changes and removing unnecessary language. The new section revises and expands current §21.160(f) by correcting grammar, removing unnecessary language, and adding the use of an amended permit for signs that will only be partially located (otherwise known as a bisection) within the new right of way resulting from a construction project. Again, this change provides a more efficient and equitable means for sign owners to complete administrative documents for relocation and decreases the department's response time without lessening quality compliance control. The new rule also establishes a time frame in which the new application must be submitted. The current rules do not provide such a period and that failure has caused administrative problems because the department cannot close out the prior sign file. The rule sets the period at 36 months. The department believes this is adequate time for the sign owner to determine a new location for the sign. Language is also added to inform the sign owner that the permit must continue to be renewed to remain eligible for relocation privileges. The continuation of the sign permit allows the department to continue to track the sign during the extended time period.

New §21.193, Location of Relocated Sign, provides the relaxed location provisions for a relocated sign. The new section expands on new §21.192 by specifying in detail the requirements of the actual location of the sign relocated as a result of a highway construction project. To receive a permit under the relocation provisions, the sign must first be relocated to the remaining parcel of land in which the sign was situated before relocation. If that location is not economically or physically feasible the sign can be relocated to any location that meets the provisions of the subsection that provide for relaxed spacing requirements. The 50 mile provision has been removed as it is not necessary to limit the location within 50 miles. The 50 miles was originally used as it relates to the reimbursement provisions. The sign owner can only be reimbursed for 50 miles of the move but the new rules allow the sign owner the opportunity to move the sign further in order to avoid condemnation. The sign may not be relocated to a place where it would cause a driver to be unduly distracted, obscure or interfere with the effectiveness of an official traffic sign, signal, or device, or a driver's view of approaching, merging, or intersecting traffic. A sign located along a regulated highway on an interstate or freeway primary system may not be relocated to a place that is within 500 feet of a public park, interchange, intersection at grade, rest area, ramp, or ramp's acceleration or deceleration lane. For relocation on a highway on the interstate or freeway primary system, the sign may not be closer than 500 feet to another permitted OAS on the same side of the highway. For a highway on the nonfreeway primary system and outside of the incorporated limits of a municipality, the sign may not be closer than 100 feet to another permitted sign on the same side of the highway or within five feet of any highway right of way line. After relocation, the sign must be within 800 feet of at least one recognized commercial or industrial activity about which it provides information and that is located on the same side of the highway. The spacing limitations for relocated signs do not apply to on-premise signs, directional signs, or official signs exempted from the Transportation Code. The new section revises current §21.160(b)(5) and (7) and the spacing limitations of §21.160(b)(8) with reorganization, grammatical corrections, and removal of unnecessary language, but it does not change the reduced spacing limitations for relocated signs. The rule also provides that a sign cannot be relocated from a primary road to a road subject to the rural road program, preventing the movement of the signs into rural areas.

New §21.194, Construction and Appearance of Relocated Sign, provides that a relocated sign must be constructed with the same number of poles and of the same type of materials as the existing sign. The number of sign faces and lighting may not exceed that of the existing sign. The size of each of the sign faces of a relocated sign visible to approaching traffic may not exceed the smaller of the size of the existing sign face or an area of 1,200 square feet, a height of 25 feet, and a length of 60 feet. Configuration of the relocated sign faces may be back-to-back,

side-by-side, stacked, or in "V" construction with not more than two displays facing any direction. The exception is that if the area of a sign face exceeds 350 square feet, sign faces may not be stacked or placed side-by-side. The sign structure and sign faces are considered to be one sign except for the computation of fees. The new section revises current §21.160(c)(6),(9), and (10) with corrected grammar and removal of unnecessary language. It does not change the general size, configuration, or construction requirements expressed in the current rule. This new section excludes the language of §21.160(c)(6) that required the sign to be placed in the same relative position as to the line of sight, because the provision is unnecessary and set a subjective standard that was difficult to enforce.

New §21.195, Relocation of Sign within Municipality, provides that to relocate a sign from a location within a certified city to another location within the same city only requires the permission of the city. The new section revises current §21.160(g) by correcting grammar and removing unnecessary language. Nothing in the new section dilutes the local control of a certified city.

New §21.196, Relocation Benefits, provides that relocation benefits will be paid in accordance with 43 TAC Chapter 21, Subchapter G for the relocation of an OAS displaced by a highway transportation project. To receive the relocation benefits, the sign owner must enter into a written agreement with the governmental entity that is acquiring the right of way in which the sign is located. By so doing, the sign owner, in consideration of eligible relocation benefits, waives and releases any claim for damages against the governmental entity and the state for any temporary or permanent taking of the sign. The new section restates current §21.160(c)(11) and revises current §21.160(e).

New §21.197, Discontinuance of Sign Due to Destruction, provides for the repair or permit cancellation of a sign that is partially destroyed by an occurrence outside the control of the permit holder, including vandalism, motor vehicle wreck, or natural forces such as wind, tornado, lightening, flood, fire or hurricane. The department will determine whether the sign can be repaired without an amended permit under the rules for customary maintenance. The permit holder must submit an estimate of the proposed work, including an itemized list of the materials to be used and the manner in which the work will be done. For an act of nature, if the department determines the damage is substantial, cost of the repairs to the sign exceed 60 percent of the replacement costs, an amended permit will be required. If the licensee does not request an amended permit, the department may move to cancel the existing permit. If the permit is cancelled, the remaining sign structure must be dismantled and removed at the owner's expense. If a decision to cancel the permit is appealed, the sign may not be repaired during the appeal process. The new section restates current §21.156(a) and adds authority for the owner to rebuild the sign if the sign is destroyed by vandalism or a motor vehicle wreck. In addition, new language is added to address instances of destruction by natural forces. If a sign in an area that receives a disaster declaration is damaged the sign can be repaired prior to approval by the department, if it is repaired within 180 days and the sign owner can show that the damages would not be considered substantial. This will allow sign owners the ability to repair their signs quickly and will prevent an influx of requests that could not be handled in a timely manner by current department staffing levels.

New §21.198, Order of Removal, provides that if a sign permit expires without renewal or is canceled or if the sign is erected or maintained in violation of the rules, the department will send a written demand to the sign owner requiring the sign be removed at no cost to the state. Failure of the owner to remove the sign within 30 days allows the department to remove the sign and charge the sign owner for the cost of the removal including the cost of any court proceedings. The new section revises current §21.150(j) and strengthens the position of the state by allowing the department to remove the sign at the sign owner's expense if the owner fails to remove the sign after notice. The 30-day time period was added to provide notice to all parties of the timeframe the department will use to remove the sign. Without a specific timeframe the department was not consistent in processing removals throughout the state. This section also adds authority for the department to rescind a removal notice sent in error in order to correct mistakes before the court settlement process.

New §21.199, Destruction of Vegetation and Access from Right of Way Prohibited, prohibits a person from destroying trees or vegetation on the right of way for any purpose related to a sign or erecting or maintaining a sign from the right of way. The section provides that any of these actions will result in cancelation of the sign's permit whether the violator was the sign owner, permit holder, or someone acting on behalf of the permit holder. The language also states that it is not a violation to trim the portion of the tree or vegetation that encroaches onto private property at the private property line. The trimming must be done from the private property and must not damage the vegetation or the tree that is within the right of way. The new section clarifies current §21.161 by creating a violation for these actions that is enforceable by the department. Under the current rule the department has had difficulties enforcing the provisions. In addition, language was added to clarify use of right of way for signs in railroad right of way. Until March 1986 the department allowed signs in certain portions of railroad right of way which is also now considered portions of the state right of way. These signs are grandfathered and some are still in existence. Due to the location, use of highway right of way is often the only option for repairs. In these situations the department will allow access to state highway right of way only if the sign owner obtains prior approval from the department.

New §21.200, Local Control, provides the guidelines for the department to authorize political subdivisions to exercise control over off-premise outdoor advertising signs within their incorporated boundaries. The section requires that a city request approval from the department by providing a copy of its sign and zoning regulations, information about the number of personnel who will be dedicated to the program, the types of records that the political subdivision will keep, including an electronic inventory of signs, and an enforcement plan that includes removal of illegal signs. The political subdivision may use more or less restrictive requirements than state rules regarding the size, lighting, and spacing of signs. The department will consult with the Federal Highway Administration to decide whether the political subdivision's program is consistent with the purposes of the Highway Beautification Act of 1965. If approved, the political subdivision will be listed and monitored by the department. The department may de-certify a political subdivision if it violates its accepted regulatory responsibilities and the department may reinstate the approval if the political subdivision demonstrates a new plan that meets the requirements of these rules. The new section revises current §21.151 by making grammatical corrections, removing unnecessary language, and changing current §21.151(d) to require the documents be sent annually to the department and requiring the city to participate in conferences regarding OAS regulations. Centralization will provide a higher

level of administrative efficiency for control and consolidation of data, public complaints, and investigation of enforcement activities.

New §21.201, Fees Nonrefundable, provides that all fees paid to the department under the rules are nonrefundable. This new section combines current §21.149(c)(2) and §21.150(g)(4), under which license and permit fees are nonrefundable.

New §21.202, Property Right Not Created, provides that the issuance of a license or permit for an OAS does not create a contract or property right in the license or permit holder. The new section revises current §21.159 with grammatical corrections, rephrasing, and removal of unnecessary language. The context of the language remains the same.

New §21.203, Complaint Procedures, outlines the current complaint process for all outdoor advertising signs. The department will accept and investigate all written complaints. The department will notify the sign owner of the pending investigation and will provide all parties the results of the investigation. This language is included in the rule to provide timelines and the specific process.

New Division 2, Electronic Signs, §§21.251 - 21.260, revises current §21.163. The new sections divide current §21.163 into 10 sections to provide consistency with the organization and revisions in new Subchapter I and provide a greater level of efficiency for finding and understanding the rules.

New §21.251, Definition, restates the definition of an electronic sign found in current §21.142(8) as a sign, display, or device that changes its message or copy by programmable electronic or mechanical processes.

New §21.252, Department Determination, provides that the use of an electronic image on a digital display is not the use of a flashing, intermittent, or moving light for the purposes of any rule, regulation, or standard promulgated by the department or any agreement between the department and the Secretary of Transportation of the United States. Support of the federal assurance for the rules of the state pertaining to off-premise electronic outdoor advertising signs was obtained on November 19, 2007 by written correspondence from the Federal Highway Administration. The new section is a restatement of current §21.163(a).

New §21.253, Issuance of Permit, provides that an electronic sign requires a permit like any other OAS. The new section states that the application for the permit must satisfy the requirements of new Subchapter J and the applicable parts of Subchapter I. A certified copy of a permit issued by the municipality that has gives permission for the erection of an electronic sign must accompany the application. If the municipality in which the electronic sign will be located does not require the issuance of municipal permits for electronic signs, a certified copy of the written permission from the municipality for the erection of the electronic sign must accompany the application. The new section restates current §21.163(h) without a change in substance.

New §21.254, Prohibitions, provides that electronic signs may not be illuminated by flashing, intermittent, or moving lights, contain or display animated, moving video, or scrolling advertising, consist of a static image projected upon a stationary object, or be a mobile sign located on a truck or trailer. The new section restates current §21.163(b) without a change in substance.

New §21.255, Location, provides the location requirements for electronic signs. Electronic signs may be located, relocated, or upgraded only along regulated highways within the corporate limits of a municipality that allows electronic signs under its sign or zoning ordinances or within the extraterritorial jurisdiction of a municipality that under state law has extended its municipal regulation to include that area. Electronic signs may not be located within 1,500 feet of another electronic sign on the same side of a regulated highway. The new section eliminates the confusion of whether an electronic sign structure can have back to back electronic faces by clearly stating that two electronic signs may not be located on the same sign structure.

New §21.256, Modification to Electronic Sign, provides that a sign may be modified to be an electronic sign if a new permit for the new electronic sign is obtained from both the municipality in whose jurisdiction the sign is located and the department. However, lighting may not be added to or used to illuminate a nonconforming sign. The new section restates current §21.163(d).

New §21.257, Requirements, requires each message on an electronic sign to be displayed for at least eight seconds and the change of message must be completed within two seconds and be made simultaneously on the entire sign face. The sign must contain default mechanism that freezes the sign in one position if a malfunction occurs and automatically adjusts the intensity of its display according to natural ambient light conditions. If the department finds that the sign causes glare, impairs vision of drivers, or interferes with the operation of a motor vehicle, the sign owner is required to reduce the intensity of the sign to a level acceptable to the department within 12 hours of request by the department. The new section addresses the safety issue concerns of the use of electronic signs and is a combination of current §21.163(e)(2) and (3), §21.163(f), and §21.163(g). The current section limits an electronic sign to one electronic face and creates an almost impossible interpretation of "one direction" at an interchange or intersection. The department has determined that there is not a greater safety risk in having a back to back electronic sign than allowing two signs on opposite sides of the highway facing opposite directions. Accordingly, the department has removed the limitation.

New §21.258, Emergency Information, requires the owner of an electronic sign to coordinate with local authorities to display emergency information important to the traveling public, such as Amber Alerts and alerts concerning terrorist attacks or natural disasters. Emergency information messages must remain in the advertising rotation according to the protocols of the agency that issues the information. The section provides for the dissemination of important safety information to the traveling public without a cost to the taxpayers. Provision of the emergency information has the potential of saving lives and provides instantaneous communication tools previously not available to the citizens particularly in metropolitan areas. The new section restates current §21.163(g)(1).

New §21.259, Contact Information, requires the owner of an electronic sign to provide the department with contact information for a person who is available to be contacted at any time and who is able to turn off the electronic sign promptly if a malfunction occurs. New language is added to provide that the contact information will also be provided to the local authority to accommodate the emergency information posting requirement. This change will eliminate the need of passing the emergency information through the department to the sign owner. The remainder of the new section restates current §21.163(g)(2).

New §21.260, Application of Other Rules, provides that provisions of new Subchapter I also apply to electronic signs, unless there is a conflict with new Subchapter J, in which event, new

Subchapter J controls. The new section restates the substance of current §21.163(i).

New §21.401, Purpose, introduces new Subchapter K, Control of Signs along Rural Roads. This section restates current §21.401 and provides the purpose of the chapter, which is the regulation of signs along rural roads.

New 21.402, Definitions, provide the definitions for the new subchapter. The new section restates the definitions from current §21.411 with minor grammatical changes. The definition for "sign structure" is added to address other changes in Subchapter K regarding maintenance and repair. The definition for "small business" and "on-premise" are deleted from the new section as unnecessary. On-premise signs are discussed in §21.442.

New §21.403, Prohibited Signs, provides specific circumstances when a sign is prohibited and ineligible for an OAS permit. The new section restates current §21.551, however the language is revised to be consistent with new §21.145 where applicable.

New §21.404, Permit Required, provides the requirement of a permit for an off-premise sign. This section contains the substance of current §21.441(a).

New §21.405, Exemptions, provides a list of signs that are exempt from the requirements of Subchapter K. The language restates the provisions of §21.421(a) with minor grammatical changes, except that §21.421(a)(8) regarding signs no larger than 8 square feet is deleted from this section because that exception is not authorized under the current statute. In addition, provisions from §21.146, Exempt Signs, exempting a sign required by the Railroad Commission for oil and gas leases, a sign that provides the name and contact information for the ranch and that is less than 32 square feet, and a sign identifying a recorded subdivision located at the entrance to the subdivision have been added for better organization of the rules.

New §21.406, Exemptions for Certain Populous Counties, provides the exceptions found in Transportation Code, §394.061 and §394.063. The language is a restatement of current §21.421(c) - (e) with minor grammatical changes.

New §21.407, Existing Off-Premise Signs, exempts certain signs that were in existence before September 1, 1985 from the permit requirement. The language restates current §21.431 with minor changes, except that an amended registration is required to perform customary maintenance to the sign. This change is needed to ensure that the sign is not altered more than what is allowed under customary maintenance.

New §21.408, Continuance of Nonconforming Signs, is added for consistency between the rural and primary road programs. The language is the same as §21.150 and provides that a nonconforming sign can be renewed as long as it remains in substantially the same condition as the sign was on the day it became nonconforming. This language is added to place into the rule a policy the department has been implementing in this program.

New §21.409, Permit Application, provides a detailed listing of the information that must be included on the permit application. This language expands current §21.441(b) to include the requirements under §21.159 that are applicable to rural road permits. The department's intent is to streamline the programs and have consistent requirements for both programs, when appropriate, to eliminate confusion. The new application requirements include written evidence of the right of entry to the sign location.

New §21.410, Site Owner's Consent; Withdrawal, provides the process for the owner of the land to withdraw consent for the sign. This language is not included in current Subchapter K, but department policy allows the land owner to withdrawal consent for signs regulated under that subchapter. The language of this section is similar to the language of §21.161.

New §21.411, Applicant's Identification of Proposed Site, requires the applicant to identify the location of the sign with a stake or a mark depending on the ground surface. This language is not included in current §21.441, however, it is currently a part of the application process. This language mirrors the language in new §21.160 to maintain consistency between the two programs.

New §21.412, Permit Application Review, provides the process by which the department will review and evaluate permit applications. The new section expands the general provisions in current §21.441(b)(3) by defining when a decision on an application is final, clarifying the process for competing sign applications, and stating that the department will complete a site inspection. The language is consistent with §21.163 to provide for consistent processing of all applications.

New §21.413, Decision on Application, provides the actions the department will take for approved and denied applications. This language revises current §21.441(b)(4) and is consistent with new §21.164.

New §21.414, Sign Permit Plate, requires the attachment of a permit plate to the sign structure. The language expands current §21.441(b)(4) by providing procedures for obtaining a replacement permit plate and the consequences for failing to properly attach the permit plate to the sign structure. These provisions are added to conform the two sign programs.

New §21.415, General Sign Location Requirements, provides general information for sign locations. The section provides that permits will only be issued for signs located on rural roads and within 800 feet of a recognized commercial or industrial activity. These provisions state the requirements of Transportation Code, Chapter 394.

New §21.416, Commercial or Industrial Activity, provides the requirements for an activity to qualify as a commercial or industrial activity for purposes of the OAS program. The language originated from current §21.411(13) but is amended to conform with new §21.180. The new language strengthens compliance aspects relating to amount of time the activity must be staffed by an employee. These changes will provide for better enforcement of the provisions and should help to eliminate the problem of a sham business being used to meet the sign location requirements. The language also deletes the requirement of a landline telephone to recognize the emergence of cellular technology. The provisions are consistent with §21.180 and provide for consistent definition of a business activity for both programs.

New §21.417, Erection and Maintenance from Private Property, provides that the department will not issue a sign permit if the sign cannot be erected and maintained from private property. This language is added to be consistent with the language in new §21.167.

New §21.418, Appeal Process for Permit Denials, adds an appeal of a permit denial to the executive director. This provision was added to be consistent with the procedures authorized under the primary road program. The current rules authorize an appeal to the Board of Variance if a sign cannot meet the re-

quirements of the subchapter but the owner feels that an injustice will result if the sign is not authorized, but not an appeal to ensure consistent application of the rules throughout the state. Sign owners are using the variance process to argue that the permit met all requirements but had been wrongly denied by the department. The appeal process is established to mirror the current process for primary roads and matches the language in new §21.170. The new section provides a 45-day request period, which will provide a specific date to finalize an application if an appeal is not requested.

New §21.419, Board of Variance, establishes the board and outlines the responsibility of the board. This section contains the substance of current §21.531 with only minor grammatical changes.

New §21.420, Permit Expiration, provides the date that a permit expires. This language restates current §21.441(c)(1) maintaining the one-year validity period.

New §21.421, Permit Renewals, provides the renewal process for OAS permits. The language expands current §21.441(c) to include a period for acceptance of late renewals. The new language adds a requirement that the OAS permit must be renewed within 45 days of its expiration. Currently, the rules are silent on this and the department has applied inconsistent policies across the state. By adding a specific deadline the department is putting the industry on notice that permits must be renewed in a timely fashion or the sign is subject to removal. In addition, the section also states that the department will send notice to the permit holder 30 days prior to the expiration and a reminder notice within 20 days after the expiration date if the permit holder fails to renew the permit. This language mirrors the language under the primary program.

New §21.422, Transfer of Permit, provides the requirements for transferring permits. The language restates current §21.441(d) and is consistent with new §21.173. New language prohibits the transfer of a permit if there is a pending cancellation proceeding regarding the permit, so that the cancellation process can proceed without the necessity of changing the parties involved.

New §21.423, Amended Permit, provides a new amended permit process. This language corresponds to new §21.174 and provides the ability to amend an existing permit to make specific changes. This process will eliminate the need to cancel the existing permit and subsequently apply for a new permit for the same location or sign. The current process is an administrative burden on all parties and this new section provides for a more streamlined procedure.

New §21.424, Permit Fees, provides the fees under Subchapter K. Transportation Code, §394.025 requires the commission by rule to prescribe a fee to issue a permit in an amount the commission determines is sufficient to enable the commission to recover the costs of enforcing the orderly and effective display of outdoor advertising along rural roads.

As explained under §21.175 of this preamble, the department has determined the cost to run an effective revenue neutral OAS program under new §21.423. The fee for an original application is raised from $96 per sign to $100. The renewal is raised from $40 per sign to $75. The rule also adds the $100 late fee for a permit renewal received within 30 days of the expiration. These fees are the same as those under §21.175 for the interstate and primary highway program.

New §21.425, Cancellation of Permit, provides the procedures for the cancellation of an OAS permit. The section revises current §21.541 but includes specific information about when the department will seek cancellation. The term "revocation" is changed to "cancellation" and additional language is added to correspond with new §21.176. This section also includes the language from current §21.572 regarding the notice and appeal process for cancellations. The new language restates the current rule but provides for a longer period to request a hearing to correspond with other hearing request processes.

New §21.426, Administrative Penalties, provides the process for imposing administrative penalties. The section contains the substance of current §21.542 and §21.572. In addition this section establishes a penalty matrix. The department has reviewed the violations and set a specific dollar amount for certain violations. A permit plate violation is set at $150 per violation, the lowest penalty available under Transportation Code, §394.081. A registration or location violation is set at $250 per violation. The rule makes it a $500 penalty for maintenance from the right of way or performing maintenance without obtaining an amended permit. It is a $1000 penalty, the highest amount authorized under the statute, for erecting the sign from the right of way. The Sunset Commission review for the 2009 legislative session recommended that the department develop a penalty matrix and the department believes it will help eliminate some of the contested cases by offering a set penalty for the violation.

New §21.427, Abandonment of Sign, establishes when the department will consider a sign abandoned and initiate a cancellation action. The language restates current §21.571 with grammatical changes and matches the language in new §21.181 to maintain consistency with the primary highway program.

New §21.428, Sign Face Size and Positioning, provides information about size and height limitations for off-premise signs. The language is a restatement of current §21.471 with minor grammatical changes. The size restrictions remain the same. This section also includes language that is in new §21.182 regarding how the sign face size is calculated. Although this measurement calculation is not part of current Subchapter K it is consistent with current policies on determining size of the sign face. Subsection (i), regarding the requirement of an amended permit to change the size of the sign face, is added to ensure consistency with the primary highway program.

New §21.429, Spacing of Signs, clarifies the spacing requirements for signs on rural roads provided by Transportation Code, §394.045. The current rule and statute provide that small signs may be erected closer together than large signs, which may create a compliance problem if there is a larger pre-existing sign. Under current §21.451, a sign of over 301 square feet in size may not be erected closer than 1,500 feet from another off-premise sign. However, a sign of less than 301 square feet may be erected 501 feet from the larger sign. This creates a problem if the pre-existing sign is damaged by an outside force and is required to be replaced. It would no longer be eligible for a permit at that location because it may not be erected within 1,500 feet of the smaller sign. The change to the language clarifies that the department will not permit a new smaller sign that will in turn create a nonconforming sign out of a pre-existing larger sign. The section provides that it is the spacing distance of the larger of the two signs in question that dictates the spacing requirement. Additional language is added to this section to make it consistent with new §21.187 regarding the spacing requirements for an OAS on a primary road when those spacing requirements

are applicable to rural roads. The spacing from intersections is not included as this spacing restriction is not necessary for the intersections of rural roads.

New §21.430, Multiple Faced Signs, provides the process for determining the size of the sign face of a multiple-faced sign, which is used to determine the spacing requirements. The language restates current §21.481 with grammatical changes.

New §21.431, Wind Load Pressure, provides the amount of wind pressure that signs must be able to withstand. The language restates current §21.441(b)(2)(B) with minor non-substantive changes.

New §21.432, Height Restrictions, provides the restrictions for the height of the sign and sign structure and how the height of the sign is measured. The language restates current §21.461 with grammatical and formatting changes and adds language to make it consistent with §21.189.

New §21.433, Lighting, provides the types of lighting that can be used for an OAS. The current rules lack specific guidelines on lighting. These provisions are consistent with the language in new §21.190. The inclusion of this language in Subchapter K will address an issue that is overlooked in the current rules and provide consistency with the primary road program. This section also includes the language regarding temporary protrusions to mirror that of §21.190, Lighting and Movement on Signs.

New §21.434, Repair and Maintenance, provides new guidelines for maintaining and repairing an OAS. The new language is the same as new §21.191 to ensure consistent procedures for all signs. As stated in the discussion under new §21.191, the current language was difficult to enforce and relied too heavily on self-reporting to maintain compliance. The new section provides guidance on what qualifies as routine maintenance and customary maintenance and what is a substantial change.

New §21.435, Permit for Relocation of Sign, provides for the relocation of a sign that must be removed because of a road construction project. The current rules do not contain such a provision. With the increase in population, many rural roads are being widened to accommodate more vehicles. The department has seen an increase in the number of requests for the relocation of rural road signs. This section, which is modeled after the current primary highway program and the language in new §21.192, provides that the permit holder must obtain a new permit for the new location, unless only a portion of the sign will be located in the highway right of way after the construction project, in which event the permit holder may apply for an amended permit to adjust the sign to be entirely on private property.

New §21.436, Location of Relocated Sign, provides the order of priority for the location of a relocated sign and tracks new §21.193. The same priority order is used as in the primary highway program. Because the rural road program only requires one business activity to qualify as an unzoned commercial or industrial area there is not a reduction in that requirement. The rules also do not reduce the spacing requirements regarding the spacing between two OAS structures as the spacing is set by statute. In addition, the section specifically states that a sign may not be relocated from a rural road to a highway on the primary system. The relocation provision for signs on the primary system should be reserved for relocations from that system to ensure that there will be adequate spacing for those relocated signs.

New §21.437, Construction and Appearance of Relocated Sign, provides the requirements for materials and size of a relocated sign to match the language of new §21.194. The section provides that the relocated sign must be constructed with the same type of material and number of poles as the existing sign. The section also requires that the new sign may not be larger than the existing sign and should be placed in the same relative line of sight if possible. These provisions are based on the existing primary highway relocation provisions and are used to maintain consistency between the programs.

New §21.438, Relocation Benefits, identifies the relocation benefits that a sign owner may be entitled to. The section requires a written agreement that includes a release for claims against the government entity for any temporary or permanent taking of the sign. This language is the same as new §21.196 and is included to maintain consistency between the programs.

New §21.439, Discontinuance of Sign Due to Destruction, provides for the repair or cancellation process for signs that are partially destroyed by an occurrence outside the control of the permit holder. The section tracks the language of new §21.197 and contains new provisions regarding destruction caused by vandalism, motor vehicle accidents, and additional natural forces. The current §21.511 is also expanded to address the new cancellation process for failure to obtain an amended permit and repair the damaged sign.

New §21.440, Order of Removal, provides the authority for the department to order the removal of an OAS. The section restates current §21.156 with grammatical changes. In addition, the language includes a 30-day period in which the sign owner must remove the sign, which provides the department with a definite time for proceeding with its next action. Language also authorizes the department to rescind a removal notice if the demand was issued incorrectly. The new language is added to maintain consistency with language that is being added to new §21.198.

New §21.441, Destruction of Vegetation and Access from Right of Way Prohibited, creates a violation if a person destroys vegetation on the right of way or erects or maintains the sign from the right of way. This section addresses problems encountered with the enforcement of current §21.161 under the primary highway program. Currently, the rules do not provide any specific prohibition against removing vegetation or erecting or maintaining from the right of way. This section creates consistent enforcement procedures for all OAS permits.

New §21.442, On-Premise Signs, provides the requirements for on-premise signs on rural roads and revises current §21.501. The language is consistent with §21.147 to maintain uniformity between the programs.

New §21.443 is removed as a result of comments received. It does not address permitting issues and is a basic restatement of the statute and thus it is unnecessary.

New §21.444, Fees Nonrefundable, provides that all fees paid to the department under Subchapter K are nonrefundable. This language is currently in §21.441(e)(2) and is moved to a separate section to make it more conspicuous.

New §21.445, Property Right Not Created, provides specifically that issuance of a permit does not create a property right in the permit holder. It restates current §21.581, with no substantive changes.

New §21.446, Time Proposed Roadway Becomes Subject to Subchapter, establishes when an area becomes subject to the sign permitting requirements based on construction of new

roads. The language is the same as §21.151 and is included to create consistency between the two programs.

New Subchapter Q, Regulation of Directional Signs, §§21.941 - 21.947, revises current §21.155, regarding directional signs. This organizational change eliminates potential confusion between a directional sign, which does not require a license or permit, and off-premise outdoor advertising signs. Current §21.155 is divided into seven sections providing for easier location of particular provisions.

New §21.941, Description of Directional Sign, provides the definition of a directional sign in language similar to that of current §21.155(c). A directional sign may only contain a message that identifies an attraction or activity meeting the requirements of this section or provide directional information, such as mileage, route numbers, or exit numbers useful to the traveling public in locating the attraction or activity. A directional sign may not contain descriptive words, phrases, or pictorial or photographic representations of the activity or its environs.

New §21.942, Requirements for Erection and Maintenance of Sign, requires that a person must obtain approval from the department before erecting a directional sign. The application at a minimum must show the proposed location, message content, construction, and dimensions of the sign. No fee for filing the application is required and no permit will be issued for a directional sign. The new section revises current §21.155(a) and (b) without changing the substance of those provisions.

New §21.943, Eligibility, provides the eligibility requirements for a directional sign. The sign must be for a privately owned activity or attraction that is of national or regional interest to the traveling public or must be a natural phenomenon, scenic attraction, outdoor recreational area, or scientific, historic, educational, cultural, or religious site. The department will determine whether the attraction or activity satisfies the requirements and may use among other resources, the National Register of Historic Places and the "Texas State Travel Guide." The new section is a restatement of current §21.155(d) without a change of substance.

New §21.944, Size of Sign, provides that the maximum size of a directional sign, including its border and trim but excluding its supports, is an area of 150 square feet, a height of 20 feet, and a length of 20 feet. The new section is a restatement of current §21.155(f).

New §21.945, Condition of Sign, provides that directional signs must be structurally safe and maintained in good repair and may not be obsolete, move, or have animated or moving parts. The new section restates current §21.155(e)(4), (5), and (6).

New §21.946, Location and Spacing, provides that a directional sign may not be located within 2,000 feet of an interchange, intersection at grade along the interstate or other primary system highway, a rest area, park, or scenic area. A directional sign may not obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, interfere with a driver's view of approaching, merging, or intersecting traffic, be erected on a tree or painted or drawn on a rock or other natural feature, or be located in a rest area, parkland, or scenic area. The distance between two directional signs facing the same direction of travel may not be less than one mile. Further, not more than three directional signs relating to the same attraction or activity and facing the same direction may be erected along a single route that is approaching the attraction or activity. A directional sign located adjacent to the interstate highway system must be within 75 air miles of the attraction or activity and within 50 air miles if located adjacent to a highway on the primary system. The new section restates current §21.155(e)(2), (3), and (7) and (h).

New §21.947, Lighting of Sign, provides that directional signs may have lights that are a part of or illuminate the sign, but the lights may not be flashing, intermittent, or moving. The lights must be shielded so that they are not directed at any portion of the traveled way of an interstate or primary highway and may not be of such intensity or brilliance that they impair vision of a driver, interfere with the driver's operation, or obscure or interfere with the effectiveness of an official traffic sign, device, or signal. The new section revises current §21.155(g).

COMMENTS

Comments on the proposed repeal of §§21.141 - 21.163, 21.401, 21.411, 21.421, 21.431, 21.441, 21.451, 21.461, 21.471, 21.481, 21.491, 21.501, 21.511, 21.521, 21.531, 21.541, 21.542, 21.551, 21.561, 21.571, 21.572, and 21.581 and new §§21.141 - 21.203, §§21.251 - 21.260, §§21.401 - 21.446, and §§21.941 - 21.947 were received from H. Chris Stokes, Lamar Advertising (Lamar); Michael H. Poole, Media Outdoor Displays (Media Outdoor); Richard Rothfelder, Rothfelder & Falick, LLP (Rothfelder); Brett E. Gilbreath, SignAd Outdoor Advertising Company (SignAd); Lacye D. Odam (Odam); Leona Stabler, Texas Sign Association (TSA); Michael A. Morrill, Metro Outdoor Advertising (Metro); Drew Cartwright, Quorum Media Group, LLC (Quorum Media); Curtis Ford, ACME Partnership, LP (ACME); Douglas Cooper, Southwest Outdoor Advertising, Inc. (Southwest); Tim Anderson, Outdoor Advertising Association of Texas (OAA); M. Cullum Thompson, Jr. and J. Charles Cooper, Outdoor Signs (Outdoor); Jim Henry, Crossland Acquisition, Inc. (Crossland); Kimberly L. Kiplin, Texas Lottery Commission (Lottery Commission); James Ramsey, Impact Outdoor Advertising Co. (Impact); Margaret Lloyd, Scenic America (Scenic America); Carroll Shaddock, Scenic Texas, Inc. (Scenic Texas); Al Smith (Smith); David Oesper, Southwest Texas Section, International Dark-Sky Association (SW TX Dark-Sky); Travis County Judge Sam Biscoe and Travis County Commissioners Court (Travis County); Benjamin Jones, Texas Section, International Dark-Sky Association (TX Dark-Sky); Star Carey, Wildlife Preserve (Wildlife); Paul A. Rohlfs, Budget Signs in San Antonio (Budget Signs); Joel Heine, Daktronics (Daktronics); Robert Betz, Federal Health Sign Company (Federal Health); Pete Sitterle, Comet Signs (Comet); Kenneth Peskin, International Sign Association (International Sign); Todd Kercheval, Texas Property Rights Association (TPRA); and John Lewis, Lewis Signs (Lewis).

COMMENT: SignAd and Lamar commented on the definition of intersection in §21.142. They argued that is should not include all intersections of the road as this would include every minor road that ended at the edge of the frontage road. Lamar requested that the department only include roadways regulated by this subchapter and Sign Ad requested that the department only include roads that fully intersect each other.

RESPONSE: The department agrees with these comments and has changed the definition of intersection to state that it is a junction of two roadways that are on the primary system. This definition is consistent with department's previous interpretation with the current rule.

COMMENT: Lamar requested a clarification of the definition of public park in §21.142 and §21.402 to include only school playgrounds that are open to the public.

RESPONSE: The department disagrees with the comment. The department does not believe it is unreasonable for the definition of public park to include school playgrounds regardless of whether anyone other than school children have access to the area.

COMMENT: Rothfelder commented that the definition of nonconforming in §21.142 and §21.402 is too narrow.

RESPONSE: The department agrees with the comment and has changed the definition to include a sign that becomes nonconforming due to a changed condition. This language is included in the current definition and will allow the department to continue with current procedures.

COMMENT: Lamar complains that in §21.143 two different standards apply for permits - one inside municipality, one outside municipality - and would prefer the standard for outside a municipality be used. Lamar also questions the visibility requirement as being subjective which leads to inconsistent enforcement.

RESPONSE: The department agrees in part to this comment and has amended the definition of visible in §21.142 to require that a person be able to read the sign. The definition complies with the department's federal and state agreement and provides a more enforceable standard. As to the two standards issue, the department does not have the authority to eliminate one of the standards. The standards are simply a restatement of Transportation Code, §391.031 and are included in the rules for convenience.

COMMENT: Rothfelder complains that §21.145(b) regarding the extension of right of way is not readily understandable and subject to interpretation with unintended consequences.

RESPONSE: The department disagrees with this comment. Subsection (b) explains what happens when railroad tracks cross a regulated highway. In some instances the state does not own the right of way surrounding the railroad crossing. However, the department wants to maintain the same right of way line through the property. This language is part of the current rules and has been enforced by the department with few problems and is necessary to maintain federal compliance.

COMMENT: Odam requests that signs for non-profit clubs in §21.146 be increased to 32 square feet from the current 8 square feet size.

RESPONSE: The department agrees with this comment and has amended the rule to allow non-profit club signs to be a maximum of 32 square feet. This makes this type of sign more consistent with other exempt signs and improves the legibility of these signs.

COMMENT: TSA, Daktronics, and Budget Signs commented on the qualifications for on-premise signs in §21.147 and §21.442. They requested a change in subsection (d) regarding brand and trade name advertising.

RESPONSE: The department agrees with the comments and has changed the language of this section to track the language from 23 U.S.C. §750.709. The department's attempt to clarify principally at 51% and provide guidelines for electronic on-premise signs was clearly confusing based on the number of comments.

COMMENT: Metro requested a change to §21.150(a)(1) and §21.408 regarding the continuation of nonconforming signs requesting the language state "control of this new subchapter" and not "control of the department."

RESPONSE: The department agrees in part and has added language to address issues of a sign becoming nonconforming due to changes to these rules. However, the department cannot remove the language regarding time that a sign comes under control of the department because this addresses signs on highways that are added to the primary system and become subject to the rules after the sign has been erected.

COMMENT: Lamar commented on §21.150(c)(1) and requested that the sign owner be able to temporarily remove a sign for utility installation.

RESPONSE: The department agrees with this comment; however this does not require a change. The language of the rule allows for the sign to be removed and re-erected at the request of any condemning authority which includes a utility. For consistency, the department has also changed the language in §21.408 to match §21.150 and address the issues of this comment with regard to rural road signs.

COMMENT: Rothfelder commented on §21.150(c)(1) stating that this subsection is nonsense, he doesn't understand why a nonconforming sign cannot be removed, and that signs should be grandfathered.

RESPONSE: The department agrees in part and has changed the language to say that a nonconforming sign cannot be removed and re-erected. For consistency, the department has also changed the language in §21.408 to match this change in §21.150 and address the issues of this comment with regard to rural road signs. The department did not intend to imply that a nonconforming sign could never be removed. The department, however, does not agree that a sign should be grandfathered, which would allow the sign to hold its conforming status. The rules do allow for certain grandfathered status but the changes to the rules do not give a blanket conforming status.

COMMENT: ACME and Quorum Media commented on the new language regarding when a road becomes subject to the rules under §21.151 and §21.446. ACME believes the rules should include a road only when money and funding is acquired or when it's eminent the roadway will be built or restored. Quorum commented that it is irresponsible for the department to regulate and control a proposed roadway prior to securing funding.

RESPONSE: The department disagrees with these comments. The rule now states that a road comes under this subchapter when environmental clearance and the approved alignment have been obtained. The department has expended money on the road at this time and believes this is the best time to initiate sign regulation. Once the alignment is established sign companies can begin obtaining leases and the department needs to be able to issue permits at that time to ensure compliance with all the spacing and other requirements.

COMMENT: ACME commented on §21.154 and believes that a license should be allowed to be transferred to a qualified entity.

RESPONSE: The department disagrees with this comment. The permits held by a licensee can be transferred but the license is issued to a particular entity that has met all the licensing requirements. The department cannot transfer the license to another entity without going through the full licensing process. There is no benefit to the state or the program to allow a license to be transferred if the department must go through all that is required to issue the license without obtaining the license fee.

COMMENT: Lamar commented on §21.155 and would like the license to be valid for three years.

RESPONSE: The department's licensing system cannot accommodate multiple year renewals at this time. The department agrees that a multi-year license would be a benefit to the program and is working to update the system to accommodate this change. When the system is available the department will revisit this issue and consider multi-year license options.

COMMENT: ACME commented on §21.156 and believes a license should not be voidable without the opportunity to cure.

RESPONSE: The department agrees with comment, however, this does not require a change to the language as the rule provides for this request. The department used the term "voidable" instead of "void" at the request of the committee. With the term void the license would not be valid due to the issuance of a bad check or money order. Under the term voidable the department must take some action to render the license invalid.

COMMENT: ACME commented on §21.157 and requested that the department send notices by certified mail.

RESPONSE: The department agrees with this comment and has added language to require certified mail for all notices throughout the rule that trigger some action by the department or provide for a timed response from the permit or license holder. By using certified mail there is no longer a reason to have a presumed receipt clause so section §21.157(b) is deleted. The department will know the date the letter was received and will be able to initiate the time-period based on that information.

COMMENT: Metro, ACME, Quorum Media, Rothfelder, and Southwest all commented on §21.158 regarding the number of violations a license holder must commit for the department to initiate revocation proceedings. Metro suggested a schedule of the number of permits to the number of violations as percentages of permits: 1-50, 30%; 51-250, 20%; 251-500, 10%; 500+, 5%. ACME believes that one violation translating to revocation is onerous and unreasonable. Southwest and Quorum stated that the ten percent rule is grossly unfair to small operator. Rothfelder stated that only "outstanding" violations should be considered and that due process be followed.

RESPONSE: The department agrees that ten percent does make licensees that hold fewer permits at a disadvantage and has changed the rule. The department created a graduated system to provide for more equal assessments. Under the changed section a licensee who has more than 1000 permits must have violations equaling at lease 10 percent prior to enforcement action; a licensee with 500-999 permits, 15 percent; licensee with 100-499 permits, 20 percent; and if the licensee has less than 100 permits then they must have violations equaling 25 percent of the number of permits held. The department feels this system responds to the concerns of the commenters while still providing the department adequate authority to take action against a license holder with compliance issues. The rule was also changed to clarify that only final violation enforcement actions will be included in the calculation. Violations that are still pending in the hearing process will not be used to take revocation actions.

COMMENT: Quorum commented on §21.158(c) requesting additional time to request an appeal to accommodate small sign companies with less administrative staff.

RESPONSE: The department agrees with this comment and has extended the time to request an administrative hearing from 20 days to 45 days as requested. The department agrees that it can take time for a sign company to compile the information necessary to make the determination as to whether to request an appeal. The department also added language stating that the department will send the notice by certified mail as requested by ACME regarding §21.157. This change also includes the removal of subsection (d) regarding the presumption of receipt.

COMMENT: Lamar and SignAd commented on §21.159(d)(7) and §21.409 regarding the requirement that the applicant provide a document from the city that provides the applicable portion of the zoning map. SignAd is concerned with being able to obtain the map.

RESPONSE: The department disagrees that an alternative is necessary. The zoning map provides important information on the location of the sign and the city is required to comply with requests for documents.

COMMENT: ACME and Outdoor commented on §21.159(c) and want to be able to obtain a permit regardless of the municipality's ordinance or obtain the state permit first as most cities require the state permit to issue the city permit.

RESPONSE: The department disagrees in part with the request to change the language. The rule already provides that if the city will not issue a permit without a state permit the department will issue the permit first. There is no need for an additional alternative. However, to clarify the department has removed the requirement that the city ordinance state that the state permit must be issued prior to issuance of the city's permit to accommodate a city that has more specific procedures than those adopted in their ordinance.

COMMENT: Southwest commented on §21.159(a)(5) and states that it is unreasonable to have to specify that the sign will be located in the extraterritorial jurisdiction (ETJ) of the city unless the city specifically regulates signs inside their ETJ.

RESPONSE: The department disagrees. The sign company should know the specifics regarding the location of where the sign will be placed. It is not unreasonable to require the sign company to inform the department of whether the sign is in the ETJ of a city. This information is important to determining if the location is eligible for a sign.

COMMENT: OAA and Lamar commented on §21.159(a)(6) and §21.409(a)(6) and want "owner of recorded easement" added as an authorized signature.

RESPONSE: The department disagrees with these comments and will continue to require the land owner or their representative to sign the permit.

COMMENT: Lamar and the OAA commented on §21.161 and §21.410 regarding the withdrawal of the site owner's consent. Lamar requested that the entire section be deleted and OAA requested "in court" be removed from subsection (b).

RESPONSE: The department agrees in part to the request and has removed the requirement that the dispute be resolved by a court order. However, the department believes that the land owner should have an avenue to report that they have withdrawn consent for the sign and has left the language in the section.

COMMENT: ACME and Quorum Media commented on §21.163 and §21.412 regarding permit application review. Each requested a more precise option for submitting applications including a request for an electronic application system.

RESPONSE: The department disagrees in part and is not making any changes to the rule. However, the department is looking

at developing a new electronic system that will allow the applicant to submit an electronic application. The department will revisit this issue if that system becomes available.

COMMENT: Southwest, Outdoor, and SignAd commented on §21.164 and §21.413 and stated that subsection (d) creates a conflict between applicant and landowner and that the department should allow the applicant to inform the landowner.

RESPONSE: The department disagrees with the comment and will maintain the landowner notification. Landowner rights were discussed during the committee and the members agreed to the notifications.

COMMENT: Quorum commented on §21.164 and §21.413 and requested that the department make a decision on the application within 30 days instead of 45 days.

RESPONSE: The department disagrees with this comment and will maintain the 45 day notice requirement. The department intends to handle the applications as quickly as possible and has made it a performance measure for employees. However, with the size of the state it will often take some time to schedule the site inspections.

COMMENT: OAA commented on §21.164 and §21.413 requesting that the denial notice in subsection (c) state all reasons for denial because the application fee is paid for as a complete inspection.

RESPONSE: The department disagrees with the need for this change. The department intends to provide a full review for each application. State compliance would be jeopardized if the department were required to issue a permit because a field agent failed to state a reason for denial in the denial letter. The department will continue to conduct training for the field staff in application review and notice requirements to minimize any deficiencies in this area.

COMMENT: Metro commented on §21.165 and §21.414 regarding the permit plate and requested a change from main traveled way to nearest access or frontage road or adjacent public roadway. Metro also requested a change from 30 days to 180 days on the posting requirement and wants the cancellation changed to issuance of a violation.

RESPONSE: The department agrees in part and has changed the language regarding where the permit plate must be attached to the sign structure. The change states that the plate must be attached so that it is visible from the closest right of way. This change will allow the plate to be visible from the closest area that provides public access. The department disagrees with the request to extend the time-frame for when the plate must be attached to the structure. The rule requires 60 days not 30 days as noted in the comment and the department believes that 60 days is sufficient time to display the plate. As to the violation issue, the department does not have statutory authority for penalties, thus the only current enforcement action is cancellation. If the statute is amended to give the department other enforcement options the department will revisit this issue along with other violation issues and consider a penalty matrix like that included in §21.426 regarding rural road violations.

COMMENT: Quorum commented on §21.170 regarding the appeal process for permit denials and requested 45 days instead of 20 days to request an appeal, would like the department to respond within 45 days instead of 90, and if the appeal is approved, wants notice as to how many days before the permit will be issued.

RESPONSE: The department agrees in part and has changed the language to allow 45 days to request an appeal. The department agrees that it could take more than 20 days to prepare for the appeal. The department has also reduced the time for the response to 60 days. The department does not believe that 45 days is adequate time to review the permit application and conduct a second site inspection if one is necessary. If the permit is approved the department processes the application at that time and does not feel the rules need to include language saying the department will provide a specific date of permit issuance. For consistency, the department has also amended the language in §21.418 to match this change in §21.170 and address the issues of this comment for rural road signs.

COMMENT: Rothfelder commented on §21.170 and requested the ability to plead their case in person claiming the department just rubberstamps the initial decision.

RESPONSE: The department disagrees with this comment. Due process does not require an in-person hearing on the denial of an application. The department believes that an applicant can provide written arguments for any issues with the permit denial and that the opportunity for review provides the necessary oversight to correct any mistakes made by the staff in the initial application decision.

COMMENT: Crossland commented on §21.171 regarding the expiration of a permit and stated that it believes the language is confusing. The language is confusing as it does not represent current procedures.

RESPONSE: The department agrees with this comment and has removed the language that says a permit expires if the sign is acquired by the state. The department does not purchase signs or permits but rather provides the opportunity to relocate if the land where the billboard is located is purchased. For consistency, the department has also changed the language in §21.420 to match this change in §21.171 and address the issues of this comment for rural road signs.

COMMENT: Metro commented on §21.172 and §21.421 and requested that the department provide a 30 day notice prior to permit expiration and a second notice 10 days after the expiration regarding the extended renewal period.

RESPONSE: The department agrees with the comment and has added language to state that the department will provide a renewal notice to the permit holder 30 days prior to the expiration and a second notice within 20 days of the expiration. With these notice requirements the department had to extend the renewal grace period to 45 days to allow staff adequate time to determine that the renewal was not received and send the second notice.

COMMENT: Lamar commented on §21.172 and requested that permits be paid annually starting in January.

RESPONSE: The department disagrees with this comment at this time. The department's system will not accommodate multi-year permits. Changes to the system that will allow multi-year permits are being considered and if achieved the department will revisit this issue.

COMMENT: Rothfelder commented on §21.172(b) and stated that the language created problems for nonconforming signs and also requested renewal notices.

RESPONSE: The department disagrees with the comment on §21.172(b). That subsection requires that the sign must continue to meet all applicable requirements to be eligible for re-

newal. The language under §21.150 regarding nonconforming signs provides guidance for how a sign maintains its nonconforming status. As long as the sign continues to meet the applicable requirement for nonconforming signs the sign is eligible for renewal. As to the notice the department agrees and has added the notice requirement as discussed in the previous comment.

COMMENT: Odam commented on §21.172 and recommended adding language specifying to what extent a sign must be built to qualify as built within the first year.

RESPONSE: The department agrees with the comment and has added language to state that the sign must be fully constructed. The department believes this change will clarify that the full sign structure must be erected for the sign to be eligible for renewal. For consistency, the department has also changed the language in §21.420 to match this change in §21.172 and address the issues of this comment for rural road signs.

COMMENT: Metro Outdoor Advertising commented on §21.173 and §21.422 requesting language to state that if a sign is in compliance and transfer is requested prior to permit expiration or cancellation the transfer will be approved.

RESPONSE: The department disagrees that the language is necessary. The rule sets out all the issues the department will review to determine if the permit can be transferred. The request asks the department to disregard pending cancellation proceedings. The department does not want to initiate new cancellation procedures if the permit is transferred during the proceedings nor does the department want to bring in a new party after the proceedings have begun. A license holder should not be able to preempt a cancellation by transferring the permit.

COMMENT: Rothfelder commented and requested that the transfer form include the date thru which permit has been renewed.

RESPONSE: The department agrees with this request and will add this information to the form. This request does not require a change to the rule.

COMMENT: SignAd, Metro, and Quorum all commented on the new amended permit process of §21.174 and §21.423. Quorum, Metro, and SignAd argued that the amended permit is overbearing and that 45 days for review is excessive for signs needing maintenance.

RESPONSE: The department agrees in part with these comments and has changed the language in §21.174 and §21.423. The department does not agree with shortening the time for the review of the amended permit and the language remains at 45 days. The review of the amended permit will require coordination with field staff for the on-site inspection and a review of the permit file by division staff.

The department agrees that for some customary maintenance an amended permit is not necessary. To make this revision the department amended §21.191 and §21.434 regarding repair and maintenance by moving changes to the sign face and upgrading lighting to routine maintenance which does not require an amended permit. However, the department does not agree that the amended permit will be a hardship to the sign companies. The current rules require that the sign company file a new permit application to make changes to the sign structure. This process should streamline the process.

COMMENT: Lamar requested that §21.174(b) and §21.423 be stricken or rewritten to make the department track the number of poles with a simple form and also requested an expedited process for times of natural disaster.

RESPONSE: The department agrees and has added an expedited process for amended permits if the location of the sign is in an area affected by a natural disaster. The expedited process allows the department to waive the requirement that the permit be issued prior to the changes. Under the new language the sign owner must submit the amended permit within 60 days of making the repairs. To ensure compliance the department maintains the ability to enforce violations if the sign owner does not submit the amended permit as required or makes changes that were not authorized for the sign. As to tracking the number of poles, the rule requires an amended permit for customary maintenance which includes replacing poles. The rules state that the department can require the application information applicable for an amended permit. The department may consider different amended permit forms for various purposes and will consider the suggestion when developing the forms.

COMMENT: Rothfelder commented on §21.174 and argued that the amended permit process is too extreme and that non-conforming sign owners should still be allowed to install energy efficient lighting.

RESPONSE: The department disagrees with this comment for the reasons stated above and the rules as drafted allow the placement of updated energy efficient lights on nonconforming signs.

COMMENT: OAA and Lamar commented on §21.174(b) and §21.423(b) and requested that the landowner's and city representatives signature be excluded as requirements for amended permit.

RESPONSE: The department agrees and has amended the language to specifically state that the signatures of the landowner and city representative will not be required for an amended permit.

COMMENT: SignAd commented on §21.176 and §21.425 and stated that subsection (g) created a conflict between the applicant and the landowner and that the department should allow the applicant to inform the landowner so that the department does not interfere with the contractual obligations of the parties.

RESPONSE: The department disagrees with this comment. Throughout the committee process the topic of landowner notifications were discussed and agreed on by the committee members. The notice does not give the landowner any rights and is strictly to keep them informed of the process. Requiring the sign company to issue the notice would just add one more item to the review process and would be creating a requirement that if violated could lead to enforcement proceedings. Instead of creating these types of situations the department agreed to supply the notifications.

COMMENT: ACME commented on §21.176 and §21.425 and stated that the requirements are onerous and unreasonable requirements because they don't allow for an opportunity to cure and would like a definition of "maintained" in subsection (a)(2).

RESPONSE: The department disagrees with these comments. The rules provide an opportunity to cure under the provisions that corrections can be made. The opportunity to cure is not an option for violations of false information, clearing vegetation, erecting from the right of way, or repairing without proper authority. Under those provisions the sign company should not be allowed to correct their mistakes and enforcement actions should

proceed. The department also does not believe that the word maintained needs to be defined.

COMMENT: Quorum commented on §21.176(a)(5) and §21.425 and requested 20 feet instead of 10 feet be used to determine if the sign is placed in the correct location and that the sign owner have 20 days instead of 45 to request an appeal.

RESPONSE: The department agrees with these comments and has made the corresponding changes to the rules. As with other changes the department has agreed to extend the time period to request an appeal to 45 days. Concerning location, if the sign is placed within 20 feet of the location submitted on the application and still meets all other spacing requirements the department will accept that the sign was placed in the correct location. If the sign does not meet other spacing requirements the permit will be subject to enforcement actions.

COMMENT: Rothfelder commented on §21.176(a)(10) stating that it is unclear as to when one year timeframe begins in regard to when the business activity closes.

RESPONSE: The department disagrees with the comment and believes the rule provides a clear meaning. This provision is in affect under the current rules and the department has had few if any enforcement issues. The rule requires a two part test. First the department must be able to show that the business activity was created only to allow the location to qualify for a sign and then that the activity has not been in operation for the past year.

COMMENT: OAA commented on §21.176(a)(1) and §21.425(a)(1) and requested a change from "governmental entity" to "condemning authority" as governmental entity is too limiting.

RESPONSE: The department agrees with the comment and has made this change to both sections. The department had the language requested by OAA in another section and this change makes the rules consistent.

COMMENT: SignAd, Metro, Outdoor, and Southwest all commented on §21.178. SignAd requested that the department consider zoning designation of the land on the date of application and allow uses by a city to decide if the site is conforming. Metro, Outdoor, and Southwest argue that references to "small" and "narrow" in paragraph (4) are open to interpretation and should be more clearly stated or deleted.

RESPONSE: The department disagrees with these comments. This language is part of the federal regulations and the current rules. The department has been implementing these provisions since the beginning of the program and has not identified any issue that required more specific wording.

COMMENT: Metro and Southwest would like to see changes to §21.179(b) regarding the visibility of the building from the right of way.

RESPONSE: The department agrees in part and has amended the rule to state that a portion of the building must be visible from the right of way. Since the purpose of an unzoned area is that it be a commercial area the department believes that at least some portion of the building must be visible from the road.

COMMENT: Lamar requests changes in §21.179(h) to include subsections (d), (e), and (f) and §21.180 in the grandfather clause.

RESPONSE: The department agrees in part and has added §21.180 to subsection (h). All of the language in subsections (d), (e), and (f) is not new. If the department added the subsections in which the new language is the same as the current language the department would be removing the requirement that the sign comply with any provisions and that is not a viable option.

COMMENT: Travis County requested that the department add language preventing billboards on property platted for residential development and where deed restrictions prohibit billboards.

RESPONSE: The department disagrees with these comments. An area platted for residential development that does not prohibited the placement of commercial businesses would make the land use consistent with an area designated for commercial and industrial business which complies with Transportation Code, §391.032. The statute provides that in areas that are not zoned the department should consider if activity is allowed that would normally occur in a commercial or industrial zoned area. Under the rules the department requires two business activities which indicate that the area allows activities that normally occur in zoned commercial and industrial areas.

As to the deed restriction the department is not a party to the deed restriction and is not in a position to enforce the restrictions. Deed restrictions can lapse if not enforced and since the department is not a party to the deed it would not have the information necessary to determine if the restriction was enforceable. Another party that also holds a deed with the same restriction is the proper party to enforce the deed restrictions.

COMMENT: Quorum requested that §21.179(d)(1)(A) regarding the square footage of the business be amended to allow for the business to be 300 square feet in size instead of 400.

RESPONSE: The department disagrees with this comment. This issue was discussed by the committee members and 400 square feet was the compromise achieved between the two conflicting viewpoints.

COMMENT: Rothfelder argues that §21.179(a)(2) and (f) are unclear and complains that subsection (d)(1)(B), which requires that the business be a business that is customarily allowed in zoned commercial areas, would rule out almost all businesses. Rothfelder also comments that subsection (d)(3) regarding bathrooms is unclear.

RESPONSE: The department agrees in part to these comments and has clarified that the two activities have access to a bathroom during all hours that they are open. This change removes any ambiguity in the determination of whether the two activities share a hallway or bathroom facilities. The department disagrees that requiring the business activities be something that is customarily allowed in zoned commercial areas rules out most business. This provision is in the current rules and there are many billboards that have been located in unzoned areas based on the existence of two business activities.

COMMENT: Outdoor and Southwest commented on §21.179(c) and would like clarification that it must be a public road or street to be considered in determining whether the two business activities are adjacent.

RESPONSE: The department disagrees with these comments. Any road or street that separates the two activities indicates that they are not adjacent.

COMMENT: OAA requests language in §21.179(d)(2) to state that there can be a door in the dividing floor to ceiling wall between the two activities.

RESPONSE: The department disagrees that this request is necessary. Stating that the wall must be from floor to ceiling does not mean that there cannot be a door that connects the two activities.

COMMENT: Quorum commented on §21.180(b)(4) and §21.416(b)(4) and is requesting that the business only be required to be open four days per week instead of five.

RESPONSE: The department disagrees with these comments. The change to the number of days and hours that the business must be opened was discussed and agreed to during the committee meetings. The purpose of this rule is to indicate that the area is a commercial or industrial area so requiring that the business be open five days a week goes to the establishment of the commercial nature of the area.

COMMENT: ACME commented on §21.181(c) and §21.427(c) requesting that the language be deleted and believes if a license is paying property taxes on a sign, the department should not cancel the permit.

RESPONSE: The department disagrees with this comment. Subsection (c) states that the payment of taxes does not indicate that the sign has not been abandoned. The department does not want to base the signs status on whether taxes have been paid; rather the department believes the determination should be based on whether the sign is being used for advertisement.

COMMENT: Rothfelder stated that he does not understand what needs repair means and who makes that determination under §21.181(a)(2).

RESPONSE: The department does not agree that a change to the language is necessary. This language is in the current rule and the department has not identified any problems with the enforcement of it. It is clear, as with all enforcement issues, that the initial determination is the department's responsibility. If the sign is abandoned because of its state of disrepair then the department is responsible for initiating the cancellation proceedings. If the sign owner challenges the department's determination then the administrative judge will be involved in the determination of the issue.

COMMENT: The Lottery Commission and OAA requested that the protrusion size under §21.182 and §21.428 be increased. The Lottery Commission currently advertises on 131 billboards and uses a digital display box that will qualify as a protrusion under the new rules. The boxes range in size but 97 of them are 35% or less than the size of the billboard and they have requested a change in the size of the protrusion to accommodate those signs. OAA requested that the protrusion size be increased to 33%.

RESPONSE: The department agrees with these requests and has amended the rule to allow the protrusions to be 35% of the size of the sign.

COMMENT: Metro commented on §21.182(c)(3) and (e) and requested the square footage of the sign size be 840 square feet.

RESPONSE: The department agrees with the request and acknowledges that there was an error in the calculations for the maximum area of the sign. The language has been changed but due to a change in the size of the protrusion, the maximum area of the sign has increased. The section has been changed to provide the correct total of 907 square feet. For consistency, the department has also amended the language in §21.428 to match this change in §21.182 and address the issues of this comment for rural road signs.

COMMENT: Odam commented on §21.182 and stated that the previous language allowed for the sign to be built smaller than requested on the application but could be increased as long as it was no more than a ten percent increase and wants a statement in the rule that continues to allow a sign to be built up to the permitted size at any time.

RESPONSE: The department disagrees with this comment. The department has discovered that it is difficult to track changes in signs and feels that the sign should either be constructed as requested in the permit or be held to the structure that was constructed. The permit holder will need to go through the amended permit process if they want to make any changes to the size of the sign after it has been constructed.

COMMENT: Metro commented on §21.183 and requested that the department provide an independent traffic safety engineer report if the permit was denied or cancelled because it causes a driver to be unduly distracted, obscures or interferes with a traffic control device, or obscures or interferes with a drivers view of the traffic per §21.183(1), (2), or (3).

RESPONSE: The department disagrees with this comment. The department employs traffic engineers who through their experience can make a decision on these issues without requiring a costly traffic safety engineer report. The department is also tasked with making permitting decisions and is not going to pass this responsibility to a third party through an independent report.

COMMENT: ACME requests that the department reduce the distance that a sign must be from a park from 1,500 feet to 500 feet in §21.184.

RESPONSE: The department disagrees with this request. The current rules provide for the 1,500 feet distance from a park and the department feels that this is the correct spacing requirement at this time.

COMMENT: SignAd, ACME, Media Outdoor, and Impact all commented on §21.185. Sign Ad and Media Outdoor requested that the department return to the previous interpretation on the spacing for intersections which would not include roads that do not fully intersect each other. ACME and Impact requested the spacing from intersections be changed to 500 feet instead of 1,000.

RESPONSE: The department agrees in part and has changed the definition of intersection as discussed previously. The department is not considering changes to the spacing distance at this time.

COMMENT: Lamar, Odam, and OAA all commented on §21.189 and §21.432 requesting the ability to exceed the height restrictions for wind turbines and solar panels placed on the sign structure.

RESPONSE: The department agrees with these comments and has changed the rules to allow solar panels and wind turbines to be placed on the sign structure. The rule provides that these items can be above the 42 and 1/2 foot height restriction. This change does not allow any portion of the sign face or advertisement area of the sign to exceed the 42 and 1/2 height restriction.

COMMENT: Lamar requests allowances to upgrade to new energy efficient technology with less light spillage for all signs (§21.190(b)).

RESPONSE: The department agrees with this comment, however, the rules already authorize an upgrade to energy efficient lights for a nonconforming sign. This does not require a change to the new proposed rules. The department did make it easier to update lights by adding an energy efficient lighting system to routine maintenance under §21.191 and §21.434 which can be performed on any sign without the need of an amended permit. This change was to make it as easy as possible for the sign owner to improve the lighting situation. Making the upgrade a routine change does not give a sign company the authority to add lights to a sign that does not have lights nor does it give the authority to add outdated lights to the sign. The routine maintenance is for updated energy efficient lights only. This requirement is to ensure that the changes do not create more light spillage issues.

COMMENT: Scenic Texas, Smith, Oesper, SW TX Dark-Sky, Lottery Commission, TX Dark-Sky, Scenic America, and Carey all commented on §21.190 and §21.433 and requested additional lighting restrictions. Scenic Texas wants to preserve the dark sky and requests that the department only allow two downward facing lights. Smith and Oesper also requested only two downward facing lights. Oesper also requested no lighting with greater than 30 footcandles, no illumination when a business is closed and more stringent restrictions for rural areas. Oesper also recommended that the department follow the recommendations of Ian Lewin of Lighting Sciences, Inc., Scottsdale, Arizona. Jones requested that the rules require downward directional lighting and aim directly onto the billboard to minimize spillover, arguing that bright, over lit billboards cause pupils to dilate quickly, causing temporary blindness, and is distracting to drivers. Oesper also requested the department follow Arizona's lead for easier to read, cleaner billboards using less light. Schaar recommended the lights be turned off from midnight to 6 am. and wants the brightness measured in footcandles - 20 to 50 is sufficient for any sign. Scenic America supports use of technology that controls light spillage; if technology is not used, billboard lights should be turned off at dark or no later than 10 pm. outside incorporated cities.

RESPONSE: The department disagrees with making any additional changes to the lighting requirements at this time. The rules as submitted limit the number of lights to no more than four upward facing lights or four downward facing lights per sign direction. If there are two sign faces both facing the same direction there would be two lights per sign. The current rules do not have any lighting restrictions. The department conducted a survey of the 46 states that allow off-premise outdoor advertising (Alaska, Hawaii, Vermont, and Maine do not allow off-premise outdoor advertising). Responses to the survey, which was specifically related to billboard lighting issues, came from 42 of the states and only one state limited the number of lights to two lights per sign. The department did not receive a response from any state that limited the light to a specific maximum wattage per lighting fixture and only two states specify a maximum number of lumens (measurement of light) based on the square footage of the sign face. The department does not have the technical capabilities to measure lumens or foot candles at this time, therefore, it is not making a lumens or foot candle requirement. The department does not agree that it should limit the time that the lights are in use. The department would be unable to enforce lighting restrictions that limited the lights to when the businesses are open or no later than 10:00 p.m. This would require increased staff and shift employees to oversee enforcement. The department will continue to monitor lighting issues and technical advancements in this area. If the FHWA completes their study on lighting issues and the study indicates more restrictions are warranted the department will reconsider additional restrictions. With the changes made by these rules regarding the number of luminaries allowed per sign face, Texas is more restrictive than 97 percent of the states that responded to our inquiries.

COMMENT: Lamar, Lottery Commission, and OAA all commented on §21.190(g) and §21.433 regarding the number of changes the digital display protrusion could be changed per day and the time allotted for the change. Lamar and Lottery Commission requested a change be allowed every six hours. OAA requested a change six times per day. The Lottery Commission also requests that the department allow the change to take place over two minutes instead of one minute.

RESPONSE: The department agrees with these changes and has amended the language to allow a change four times per 24 hours and allow the change to occur over two minutes to accommodate current technology.

COMMENT: SignAd and Lamar commented on §21.191 and §21.434. SignAd disagrees with these changes since their signs are older and on wood poles which cannot be upgraded to steel poles because of city ordinance. These restrictions prevent them from making signs safer with catwalks, etc. Lamar requests that the department maintain the current rules until FHWA issues guidance on customary maintenance.

RESPONSE: The department disagrees with these comments. The department does not have the authority to force changes in city ordinances and cannot require a certified city to allow changes to the sign structure. The current rules and these new rules do not allow the change from wood to steel poles on nonconforming signs. However, the new rules will allow catwalks to be built on existing signs structures regardless of whether the sign is conforming. The department also disagrees with leaving the requirement as stated in the current rules. The current rule is confusing and the department has had difficulty enforcing the rule. Sign companies have often disregarded the new permit requirement which has left the department with signs and permits that do not match. The department believes the new rules will improve this process.

COMMENT: SignAd, Metro, ACME, Outdoor Signs, and Southwest all commented on the relocation time period in §21.192 and §21.435. They each stated that 18 months is not enough time to find a relocation site and requested that the time period be changed ranging from 36 months to ten years.

RESPONSE: The department agrees in part and has amended the rule to provide 36 months to apply for the relocation permit. The department does not agree that five or ten years is a reasonable amount of time. To accommodate the extended relocation provision the department added language requiring that the permit must remain valid during the time between the sign's removal and its erection at the new location. This requires that the permit holder submit the annual renewal and renewal fee. Failure to maintain an active permit will make the permit ineligible for relocation.

COMMENT: SignAd and Lamar commented on the relocation requirements of §21.193. They did not want to be limited by the requirement that as a first and second priority the sign must be located on the same property.

RESPONSE: The department agrees in part and has removed the first priority that required the sign to be relocated straight back from its current location. However, the department main-

tained the language that the sign owner must first attempt to relocate the sign on the same property before looking to other locations. The department believes this change provides the sign owner more flexibility but still maintains safeguards for the current landowner. For consistency, the department has also amended the language in §21.436 to match this change in §21.193 and address the issues of this comment for rural road signs.

COMMENT: Lamar and OAA both commented on §21.197 and §21.439 and the problems that could happen in the event of a natural disaster. They requested an expedited process for signs in an area that is declared a natural disaster to ensure that they are able to quickly address damage to their signs.

RESPONSE: The department agrees with these comments and has provided for an expedited process. This process will allow the sign owner the ability to repair the sign prior to approval by the department if the sign is repaired within 180 days and the sign owner sends all required documentation to the department within 60 days of the repair. The department agrees that limited resources would slow the repair process if the sign company was required to get approval prior to the repairs.

COMMENT: Lamar also requested changes to §21.197(g) to include the definition of destroyed sign per the FHWA memo of September 9, 2009 which stated "Destroyed means that 60% or more of the upright supports of a sign structure are physically damaged such that the normal repair practices would call for: in the case of wooden sign structures, replacement of the broken supports or, in the case of metal sign structures, the replacement of at least 30% of the length above ground of each broken, bent, or twisted support."

RESPONSE: The department disagrees with this request. The definition of the damage for purposes of this subsection is based on 60 percent of the costs. The department will continue to monitor the federal definition and if adopted will consider amending its rules.

COMMENT: Quorum commented on §21.198 and requested an exception to the 30 day removal if the cancellation is under appeal.

RESPONSE: The department disagrees with the need to make changes to the rule to address this issue. The rule gives the department the authority to seek a removal of a sign if it is cancelled. A permit is not cancelled until the completion of the administrative process. If the permit holder requests an appeal of the cancellation there is no cancellation until the final determination is made. There is no need to add an exception to the language.

COMMENT: Metro, Lamar, ACME, Rothfelder, and OAA all commented on §21.199 and §21.441 regarding the destruction of vegetation. Metro requested a selective cutting of vegetation program to address obscured signs. OAA and Lamar want to be able to trim vegetation from the private property side and want the word "trim" removed. ACME requests reasonable removal of vegetation blocking the visibility of a sign. Rothfelder believes that §21.199(a)(1) needs to clarify that it does not apply where the department has granted permission for removal of trees or where a city requires the vegetation be cut or else it imposes a fine.

RESPONSE: The department agrees in part with the comments. The department does not have the authority and never intended for the rule to be read to limit a person's ability to manage their own property; this would include the owner's ability to trim vegetation that crosses the property line. The department has added language to clarify that it is not a violation to trim vegetation that encroaches onto private property as long as it is done from the private property and does not damage the vegetation in the right of way.

COMMENT: Travis County commented on §21.200 and requested that the department expand the local control section to allow counties who desire to assist the department to fulfill its mission enter into interlocal agreements with the department to perform some of the tasks required to effectively regulate outdoor signs outside city jurisdictions.

RESPONSE: The department disagrees with this comment. State law gives authority to regulate outdoor advertisement to the department and cities. The statute does not provide this authority to the counties; therefore, the department cannot pass on its regulatory functions to the counties.

COMMENT: Rothfelder commented on §21.202 stating that the language is a question of law and should not be addressed by rule.

RESPONSE: The department disagrees with the comment. The rule states that the issuance of a permit or license under this chapter does not create a contract or property right. This rule is within the department's rule making authority and provides the department's interpretation of this issue.

COMMENT: ACME commented on §21.203 and requested that the department fine a complainant for filing misleading or inaccurate information in a complaint as the sign company may incur costs dealing with the complaint.

RESPONSE: The department disagrees with the comment. The Sunset Commission recommended that the department implement a complaint process and that the process be included in the department's rules. The complaints will be processed by the department and although there will be some interaction with the sign company the department does not believe it will rise to the level that reimbursement is called for. In addition, the department does not want to hinder actual complaints with the threat of monetary reprisals.

COMMENT: OAA commented on §21.253(a)(1) and requests that the department issue an electronic sign permit based on confirmation that the sign complies with FHWA regulations, thereby allowing for local control of signs.

RESPONSE: The department disagrees with this comment. The electronic signs are governed by both the state and the city. The department does not believe that relinquishing all control of this issue to the city is in the best interest of the state or the outdoor advertising program. Electronic billboards are a relatively new issue in Texas and the department will continue to be a part of the permitting process.

COMMENT: Scenic Texas and Scenic America commented on §21.255 regarding the number of electronic sign faces on one sign structure. Both requested that only one electronic sign face per sign be allowed as it is the department's current interpretation.

RESPONSE: The department agrees with this request and has changed the rule to reflect the current interpretation. The sign companies have claimed that the current language of the rule is unclear and argue that it could be interpreted to allow two electronic sign faces on one sign structure. However, the depart-

ment's current interpretation does not allow for two electronic sign faces. The department originally posted the rules to allow two sign faces but the department agrees with Scenic America and Scenic Texas that this will increase the number of electronic billboard faces. The department has been informed that the pending federal study on the driver distraction caused by electronic signs will be released shortly. The department believes it should review this information before making any changes to the rules that will increase the number of electronic signs.

COMMENT: Quorum Media commented on §21.255 regarding spacing of electronic billboards stating that the rule should apply to billboards on the same side of the highway only.

RESPONSE: The department agrees with this comment. With the change to the rule based on the previous comment the department is making this change to bring the rule back to the current interpretation. If the sign structure can only have one face then the need to include the other side of the highway in the spacing restriction is no longer necessary.

COMMENT: Travis County requests that the department close a loophole that allows on-premise signs that harm safety, aesthetics, and other public interests due to over lighting and electronics. They also request that the department prohibit all electronic signs in unincorporated areas, whether on-premise or off-premise.

RESPONSE: The department disagrees with part of the comment as the new rules do not authorize electronic off-premise signs in unincorporated areas. As to on-premise signs the department does not have the authority to restrict their choice of displays regardless of whether it is within an incorporated area or not.

COMMENT: TSA commented on §21.401 stating that outdoor advertising has different meanings and requests the term off-premise advertising to replace outdoor advertising.

RESPONSE: The department disagrees with this comment. The term outdoor advertisement has been used to reference off-premise signs regulated by the Highway Beautification Act since its inception. The department believes that changing the term at this time would lead to greater confusion.

COMMENT: TSA, Budget Signs, and Daktronics commented on §21.402 and requested a definition for on-premise sign and changes to the definitions of sign and sign face.

RESPONSE: The department disagrees with these requests. The department does not believe a definition of on-premise sign should be added to the definition section. What qualifies as an on-premise sign is fully discussed in §21.442. Adding a shorter definition will create confusion in determining if the sign qualifies as an on-premise sign. The department also disagrees that changes to the sign and sign face are necessary. The recommended changes were primarily style issues and do not request changes to the meaning of the terms.

COMMENT: TSA commented on §21.428 and request an increase in the size of an on-premise sign for multi-tenant signs. John Lewis also requested changes to the department regulations of on-premise signs since on-premise signs are regulated by the Texas Department of Licensing and Regulation.

RESPONSE: The department agrees with these comments. The main function of these rules is to detail the permitting process and outline what qualifies for a sign permit. The department does not have statutory authority to issue or require a permit for an on-premise sign. Since this section of the rule is discussing size restrictions for the issuance of a permit the department has removed the reference to on-premise signs. On-premise signs are still governed by the statute but there is no reason to simply restate the statute in department rules.

COMMENT: SignAd, Metro, Media, ACME, Outdoor Signs and OAA all commented on §21.429 regarding spacing requirements for intersections and interchanges. SignAd argued that the new spacing requirements created difficulty because they must consider city and county maintained roads and wants the rules to only apply to roads on the interstate and freeways. Metro, Outdoor Signs, and Media requested that interchange and intersection be deleted so that it is the same as the current rule. ACME and OAA want the spacing requirements to decrease.

RESPONSE: The department agrees with the comments and has deleted the spacing requirements for intersections and interchanges. The department agrees that the nature of roads under the rural road program do not warrant the 1000 foot spacing requirement. This change will maintain the current procedures regarding spacing.

COMMENT: TSA, Lewis, and International Signs requested that §21.430 regarding multi-faced signs apply to off-premise signs only.

RESPONSE: The department agrees and has removed the reference to on-premise signs. As discussed above the purpose of the rules is to issue permits and the department does not have authority to issue permits for on-premise signs.

COMMENT: TSA, Budget Signs, Daktronics, Federal Health, Comet, International Sign, and Lewis all requested that §§21.433 - 21.441 not include on-premise signs.

RESPONSE: The department agrees and has removed all references to on-premise signs in these sections for the reasons stated above.

COMMENT: SignAd and Lamar commented on §21.436 and requested the spacing restrictions for intersection and interchange be deleted under the rural road program.

RESPONSE: The department agrees and has removed the references to intersections and interchange from §21.146(g)(12). As discussed above the department agrees that the intersections and interchanges can be treated differently under the rural road program based on the nature of the roads that are regulated under the program.

COMMENT: TSA commented on §21.443 that it apply only to the installation of electrical on-premise signs.

RESPONSE: The department agrees in part to this request and has deleted this section. As stated, the purpose of the rules is to address the permitting requirements. As this section does not address permitting issues and is a basic restatement of the statute it is unnecessary and has been deleted.

COMMENT: TSA commented on §§21.941 - 21.947 regarding directional signs and requested that on-premise signs be exempted from the provisions.

RESPONSE: The department does not agree with this comment. The department does not believe it is necessary to state that on-premise signs are exempt from the directional sign program.

COMMENT: ACME requested that the department consider reasonable and fair rules that help the outdoor industry, landowners, advertisers, local and county governments, and small busi-

nesses by adding off-premise signs to areas that are deficient of off-premise signs. They also request that the department help the outdoor industry maintain existing signs which keep a business healthy.

RESPONSE: The department agrees in part with this comment. The department is charged with regulating the outdoor advertising industry. The department's goal is not to increase or limit the number of billboards but rather to effectively and consistently regulate the billboard program. The department believes that these new rules will enable the department to carry out its statutory responsibilities in a fair and equitable manner.

COMMENT: Property Rights Association commented and requested that the department look at anything that removes the opportunity to have a sign, makes it tougher for sign owners to be in business, or removes a source of income for property owners.

RESPONSE: The department has considered these issues and believes these rules balance the business opportunities for sign companies and property owners against the department responsibility to regulate outdoor advertising issues. The rules do in some situations limit new billboard construction. The department feels that the changes made in this area are necessary to address enforcement and compliance issues. The rules now require the business activity to be open for 180 days prior to the permit application and that the business is open 25 hours per week. The department feels that these changes are necessary to improve enforcement and to prohibit billboard construction in areas that do not qualify under the statute. Transportation Code, §391.031 allows billboards in locations that, although not zoned commercial, the land use is consistent with an area zoned for those purposes. By requiring the business to be in operation 180 days and open 25 hours per week the department is trying to ensure that billboards are only placed in areas that comply with the statutory requirement. In addition, the department has added several features that benefit the property owner in these rules such as the land owner notices.

SUBCHAPTER I. REGULATION OF SIGNS ALONG INTERSTATE AND PRIMARY HIGHWAYS

43 TAC §§21.141 - 21.163

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §391.032, which provides authority to establish rules to regulate the orderly and effective display of outdoor advertising on primary roads; Transportation Code, §391.063, which provides authority for the commission to set fees for the issuance of an outdoor advertising license; Transportation Code, §391.065, which provides authority to establish rules to standardize forms and regulate the issuance of outdoor advertising licenses; Transportation Code, §394.004, which provides the commission with the authority to establish rules to regulate the erection and maintenance of signs on rural roads; and Transportation Code, §394.025, which provides authority for the commission to set fees for the issuance of an outdoor advertising license.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 391 and 394.

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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Bob Jackson
General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

DIVISION 1. SIGNS

43 TAC §§21.141 - 21.203

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §391.032, which provides authority to establish rules to regulate the orderly and effective display of outdoor advertising on primary roads; Transportation Code, §391.063, which provides authority for the commission to set fees for the issuance of an outdoor advertising license; Transportation Code, §391.065, which provides authority to establish rules to standardize forms and regulate the issuance of outdoor advertising licenses; Transportation Code, §394.004, which provides the commission with the authority to establish rules to regulate the erection and maintenance of signs on rural roads; and Transportation Code, §394.025, which provides authority for the commission to set fees for the issuance of an outdoor advertising license.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 391 and 394.

§21.141. Purpose.

This division is established to regulate the orderly and effective display of outdoor advertising along a regulated highway within the State of Texas.

§21.142. Definitions.

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

(1) Commission--The Texas Transportation Commission.

(2) Department--The Texas Department of Transportation.

(3) Erect--To construct, build, raise, assemble, place, affix, attach, embed, create, paint, draw, or in any other way bring into being or establish.

(4) Freeway--A divided, controlled access highway for through traffic. The term includes a toll road.

(5) Highway--The width between the boundary lines of a publicly maintained way any part of which is open to the public for vehicular travel.

(6) Interchange--A system of interconnecting roadways in conjunction with one or more grade separations that provides for the

movement of traffic between two or more roadways or highways on different levels.

(7) Intersection--The common area at the junction of two highways that are on the primary system. The common area includes the area within the lateral boundary lines of the roadways.

(8) Interstate highway system--Highways designated officially by the commission and approved pursuant to 23 United States Code §103 as part of the national system of interstate and defense highways.

(9) License--An outdoor advertising license issued by the department.

(10) Main-traveled way--The traveled way of a highway that carries through traffic. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(11) National Highway System--Highways designated officially by the commission and approved pursuant to 23 United States Code §103 as part of the national highway system.

(12) Nonconforming sign--A sign that was lawfully erected but that no longer complies with a law or rule because of changed conditions or because the law or rule was amended after the sign was erected or that fails to comply with a law enacted or rule adopted after the sign was erected.

(13) Nonprofit sign--A sign that is erected and maintained by a nonprofit organization under a permit issued under §21.149 of this division (relating to Nonprofit Sign Permit).

(14) Person--An individual, association, partnership, limited partnership, trust, corporation, or other legal entity.

(15) Primary system--Highways designated by the commission as the federal-aid primary system and any highway on the National Highway System. The term includes all roads designated as part of the National Highway System as of 1991.

(16) Public park--A public park, forest, playground, nature preserve, or scenic area designated and maintained by a political subdivision or governmental agency.

(17) Regulated highway--A highway on the interstate highway system or primary system.

(18) Rest area--An area of public land designated by the department as a rest area, comfort station, picnic area, or roadside park.

(19) Sign--An object that is designed, intended, or used to advertise or inform, including a sign, display, light, device, figure, painting, drawing, message, plaque, placard, poster, billboard, logo, or symbol.

(20) Sign face--The part of the sign that contains advertising or information and is distinguished from other parts of the sign, including another sign face, by borders or decorative trim. The term does not include a lighting fixture, apron, or catwalk unless it displays a part of the advertising or information contents of the sign.

(21) Sign structure--All of the interrelated parts and materials, such as beams, poles, braces, apron, frame, catwalk, and stringers that are used, designed to be used, or intended to be used to support or display a sign face.

(22) Visible--Capable of being read or identified by a person with normal visual acuity.

§21.143. Permit Required.

Except as provided by this chapter, unless a person holds a permit issued under §21.164 of this division (relating to Decision on Application) or §21.200 of this division (relating to Local Control), the person may not erect or maintain an outdoor sign that is:

(1) within 660 feet of the nearest edge of the right of way of a regulated highway if any part of the sign's advertising or information content is visible from any place on the main-traveled way of the highway; or

(2) outside of the jurisdiction of an incorporated city and more than 660 feet from the nearest edge of the right of way of a regulated highway if any part of the sign's advertising or information content is visible from the main-traveled way of the highway and the sign was erected for the purpose of having its advertising or information content seen from the main-traveled way of the highway.

§21.144. License Required.

(a) Except as provided by this division, a person may not obtain a permit for a sign under this division unless the person holds a currently valid license issued under §21.153 of this division (relating to License Issuance) applicable to the county in which the sign is to be erected or maintained.

(b) A license is valid for one year from the date of issuance or most recent renewal.

§21.146. Exempt Signs.

(a) The following signs are exempt from this division:

(1) an on-premise sign that meets the criteria provided by §21.147 of this division (relating to On-premise Sign) except as provided by subsection (c) of this section;

(2) a sign that has the purpose of protecting life or property;

(3) a sign that provides information about underground utility lines;

(4) an official sign that is erected by a public officer, public agency, or political subdivision under the officer's, agency's, or political subdivision's constitutional or statutory authority;

(5) a sign required by the Railroad Commission of Texas at the principal entrance to or on each oil or gas producing property, well, tank, or measuring facility to identify or to locate the property if the sign is no larger than necessary to comply with the Railroad Commission's regulations;

(6) a sign of a nonprofit service club, charitable association, religious organization, chamber of commerce, nonprofit museum, or governmental entity that gives information about the meetings, services, events, or locations of the entity and that does not exceed an area of 32 square feet;

(7) a public service sign that:

(A) is located on a school bus stop seating bench or shelter;

(B) identifies the donor, sponsor, or contributor of the shelter;

(C) contains a public service message that occupies at least 50 percent of the area of the sign;

(D) has no content other than that described by subparagraphs (B) and (C) of this paragraph;

(E) is authorized or approved by the law of the entity that controls the highway involved, including being located at a place approved by the entity;

(F) has a sign face that does not exceed an area of 32 square feet; and

(G) is not facing the same direction as any other sign on that seating bench or shelter;

(8) a sign that shows only the name of a ranch on which livestock are raised or a farm on which crops are grown and the directions to, telephone number, or internet address of the ranch or farm and that has a sign face that does not exceed an area of 32 square feet;

(9) a sign that:

(A) relates only to a public election;

(B) is located on private property;

(C) is erected after the 91st day before the date of the election and is removed before the 11th day after the election date;

(D) has a sign face that does not exceed an area of 50 square feet; and

(E) contains no commercial endorsement; and

(10) a sign identifying the name of a recorded subdivision located at an entrance to the subdivision or on property owned by or assigned to the subdivision, home owners association, or other entity associated with the subdivision.

(b) This division does not apply to a sign that was erected before October 23, 1965 and that the commission, with the approval of the Secretary of the United States Department of Transportation, has determined to be a landmark sign of such historic or artistic significance that preservation would be consistent with the purposes of the Highway Beautification Act of 1965, 23 United States Code §131.

(c) An on-premise sign cannot be erected earlier than one year before the date that the business for which the sign is erected will open and conduct business.

§21.147. On-premise Sign.

(a) An on-premise sign is a sign that:

(1) is located on the real property of a business and consists only of:

(A) the name, logo, trademark, telephone number, and internet address of that business; or

(B) an identification of that business's principal or accessory products or services offered on the property;

(2) only advertises the sale of the real property on which the sign is located and is removed within 90 days after the date of the closing of the real property transaction; or

(3) only advertises the lease, including a pre-lease, of the real property on which the sign is located and is removed within 90 days after the date of the closing of the lease transaction.

(b) For the purposes of this section, a sign is located on the real property of a business if:

(1) the real property on which the sign is located and the real property on which the activity of the business is conducted are one contiguous tract that is under common ownership; or

(2) the sign is located on the real property of a commercial development and the businesses of the development share the sign structure of that sign.

(c) For the purpose of subsection (b)(1) of this section, real property is not considered to be a part of one contiguous tract if the real property on which the sign is located is:

(1) separated from the real property on which the business activity is located by a road or highway or by another business;

(2) devoted to a separate purpose unrelated to the advertised business activity;

(3) held under an easement or other lesser property interest than the property interest in the land on which the business activity is located; or

(4) a narrow strip or other configuration of land that cannot be put to any reasonable use related to the advertised business activity other than for signing purposes.

(d) A sign is not an on-premise sign if:

(1) the sign consists principally of brand name or trade name advertising and the product or service advertised is only incidental to the principal activity;

(2) the sign advertises activities that are not conducted on the premises; or

(3) the sign provides rental income to the owner of the real property on which it is located, unless the owner of the real property receives the income from an on-premise business for the use of the sign.

(e) For the purposes of this subsection:

(1) the date of the closing of a sales transaction is the date that legal title to a property is conveyed to a purchaser for property under a contract to buy; and

(2) the date of the closing of a lease transaction is the date that the landlord and tenant enter into a binding lease of a property.

§21.148. Exception to License Requirement for Nonprofit Signs.

A nonprofit organization may erect or maintain a nonprofit sign without obtaining an outdoor advertising license, but the organization must obtain a permit under §21.149 of this division (relating to Nonprofit Sign Permit) to erect or maintain such a sign.

§21.149. Nonprofit Sign Permit.

(a) A nonprofit service club, charitable association, religious organization, chamber of commerce, nonprofit museum, or governmental entity may obtain a permit under this section to erect or maintain a nonprofit sign.

(b) To qualify as a nonprofit sign, the sign must:

(1) be in a municipality or the extraterritorial jurisdiction of a municipality;

(2) advertise or promote only:

(A) the municipality;

(B) a political subdivision whose jurisdiction is wholly or partially located in the municipality; or

(C) the entity that will hold the permit, but may only give information about the meetings, services, events, or location of the entity; and

(3) comply with each sign requirement under this division from which it is not specifically exempted.

(c) An application for a permit under this section must be in a form prescribed by the department and must include, in detail, the content of the message to be displayed on the sign.

(d) After a permit is issued, the permit holder must obtain approval from the department to change the message of the sign. The department may issue an order of removal of the sign if the permit holder fails to obtain that approval.

(e) If a sign ceases to qualify as a nonprofit sign, the permit for the sign is subject to cancellation under §21.176 of this division (relating to Cancellation of Permit).

(f) If the holder of a permit issued under this section loses its nonprofit status or wishes to change the sign so that it no longer qualifies as a nonprofit sign the permit holder must:

(1) obtain a license under §21.153 of this division (relating to License Issuance); and

(2) convert the sign permit to a permit for a sign other than a nonprofit sign and pay the original permit and renewal fees provided by §21.175 of this division (relating to Permit Fees).

§21.150. Continuance of Nonconforming Signs.

(a) Notwithstanding other provisions of this division, the department will renew a permit for a nonconforming sign only if the sign structure:

(1) was lawful on the later of the date it was erected or became subject to the control of the department; and

(2) remains substantially the same as it was on the later of the date it was erected, became subject to the department's control, or became a nonconforming sign.

(b) A sign that was legally erected before March 3, 1986 in a railroad, utility, or road right of way that is not owned by the state or a political subdivision may be maintained as a nonconforming sign if all other requirements of this division are met.

(c) A nonconforming sign may not be:

(1) removed and re-erected for any reason, other than a request by a condemning authority; or

(2) substantially changed, as described by §21.191 of this division (relating to Repair and Maintenance).

(d) A nonprofit organization that holds a permit for a nonconforming sign that otherwise qualifies for a permit under §21.149 of this division (relating to Nonprofit Sign Permit) may convert the permit to one issued under that section.

§21.151. Time Proposed Roadway Becomes Subject to Division.

For the purposes of this division, a proposed roadway becomes a roadway or a proposed interchange becomes an interchange:

(1) when environmental clearance and the approved alignment have been obtained from the Federal Highway Administration; or

(2) if environmental clearance and approved alignment from the Federal Highway Administration are not required for a proposed roadway, when the alignment is approved by the department or other political subdivision responsible for constructing the roadway.

§21.152. License Application.

(a) To apply for a license under this division, a person must file an application in a form prescribed by the department. The application must include at a minimum:

(1) the complete legal name, mailing address, and telephone number of the applicant; and

(2) designation of each county in which the applicant's signs are to be erected or maintained.

(b) The application must be signed, notarized, and filed with the department and be accompanied by:

(1) a fully executed outdoor advertiser's surety bond:

(A) in the amount of $2,500 for each county designated under subsection (a)(2) of this section up to a maximum of $10,000;

(B) payable to the commission to reimburse the department for removal costs of a sign that the license holder unlawfully erects or maintains; and

(C) in a form prescribed by the department, executed by a surety company authorized to transact business in this state;

(2) a duly certified power of attorney from the surety company authorizing the surety company's representative to execute the bond on the effective date of the bond; and

(3) the license fee prescribed by §21.156 of this division (relating to License Fees).

§21.153. License Issuance.

(a) The department will issue a license if the requirements of §21.152 of this division (relating to License Application) are satisfied.

(b) The department will not issue a license to an entity that is not authorized to conduct business in this state.

§21.154. License Not Transferable.

A license issued under this division is not transferable.

§21.155. License Renewals.

(a) To continue a license in effect, the license must be renewed.

(b) To renew a license, the license holder must file a written application in a form prescribed by the department accompanied by each applicable license fee prescribed by §21.156 of this division (relating to License Fees). The application must be received by the department before the 46th day after the date of the license's expiration and must include at a minimum:

(1) the complete legal name, mailing address, and telephone number of the license holder;

(2) number of the license being renewed;

(3) proof of current surety bond coverage; and

(4) the signature of the license holder or person signing on behalf of the business entity.

(c) A license is not eligible for renewal if the license holder is not authorized to conduct business in this state.

§21.156. License Fees.

(a) The amount of the fee for the issuance of a license issued under this subchapter is $125.

(b) The amount of the annual renewal fee is $75.

(c) In addition to the $75 annual renewal fee, an additional late fee of $100 is required for a renewal license application that is received before the 45th day after the expiration date of the license.

(d) A license fee is payable by check, cashier's check, or money order made payable to the Texas Highway Beautification Fund, and must be submitted with the application. If the check or money order is dishonored upon presentment, the license is voidable.

(e) The department will provide a renewal notification to the license holder at least 45 days before the date of the license expiration and if the license is not renewed before it expires, the department within 20 days after the date of expiration will provide notification to the license holder of the opportunity to file a late renewal application.

§21.157. Temporary Suspension of License.

If the department is notified by a surety company that a bond is being canceled, the department will notify the license holder by certified mail that a new bond must be obtained and filed with the department before the bond cancellation date or the 30th day after the day of the receipt of the notice, whichever is later.

§21.158. License Revocation.

(a) The department will revoke a license and will not issue or renew permits or transfer existing permits under the license if:

(1) the surety bond is not provided within the time specified by the department under §21.152 of this division (relating to License Application) or §21.155 of this division (relating to License Renewals);

(2) surety bond coverage is terminated under §21.157 of this division (relating to Temporary Suspension of License);

(3) the number of final enforcement actions of this subchapter, or Transportation Code, Chapter 391, committed by the license holder in the aggregate equal or exceed:

(A) 10 percent of the number of valid permits held by the license holder if the license holder holds more than 1,000 sign permits;

(B) 20 percent of the number of valid permits held by the license holder if the license holder holds at least 500 but fewer than 1,000 sign permits;

(C) 25 percent of the number of valid permits held by the license holder if the license holder holds at least 100 but fewer than 500 sign permits; or

(D) 30 percent of the number of valid permits held by the license holder if the license holder holds fewer than 100 sign permits; or

(4) the license holder has not complied with previous final administrative enforcement actions regarding the license or any permit held under the license.

(b) The department will send notice by certified mail of an action under this section to the address of record provided by the license holder.

(c) The notice will clearly state:

(1) the reasons for the action;

(2) the effective date of the action;

(3) the right of the license holder to request an administrative hearing; and

(4) the procedure for requesting a hearing including the period in which the request must be made.

(d) A request for an administrative hearing under this section must be made in writing to the department within 45 days after the date that the notice is mailed.

(e) If timely requested, an administrative hearing will be conducted in accordance with Chapter 1, Subchapter E of this title (relating to Procedures in Contested Case).

§21.159. Permit Application.

(a) To obtain a permit for a sign, a person must file an application in a form prescribed by the department. The application must include, at a minimum:

(1) the complete name and address of the applicant;

(2) the original signature of the applicant;

(3) the proposed location and description of the sign;

(4) the complete legal name and address of the owner of the designated site;

(5) a statement of whether the requested sign is located within an incorporated city or within the city's extraterritorial jurisdiction;

(6) the site owner's or the owner's authorized representative's original signature on the application demonstrating:

(A) consent to the erection and maintenance of the sign; and

(B) right of entry onto the property of the sign location by the department or its agents;

(7) a document from the city that provides the city's current zoning map or the portion of that map applicable to the sign's location; and

(8) information that details how and the location from which the sign will be erected and maintained.

(b) If the sign is a nonprofit sign, the application must include verification of the applicant's nonprofit status.

(c) If the sign is to be located within the jurisdiction of a municipality, including the extraterritorial jurisdiction of the municipality, that is exercising its authority to regulate outdoor advertising, a certified copy of the permit issued by the municipality must be submitted with the application unless documentation is provided to show that the municipality requires:

(1) the issuance of a department permit before the municipality's; or

(2) the erection of the sign within a period of less than twelve months after the date of the issuance of the municipal permit.

(d) The application must be:

(1) notarized;

(2) filed with the department's division responsible for the outdoor advertising program in Austin; and

(3) accompanied by the fee prescribed by §21.175 of this division (relating to Permit Fees).

(e) The application must include a sketch that shows:

(1) the location of the poles of the sign structure;

(2) the exact location of the sign faces in relation to the sign structure;

(3) the means of access to the sign; and

(4) the distance from the buildings, landmarks, right of way line, other signs, and other distinguishable features of the landscape.

§21.161. Site Owner's Consent; Withdrawal.

(a) A site owner's consent to the erection and maintenance of the sign and access to the site by the department or its agent is provided with a permit application under §21.159 of this division (relating to Permit Application). The consent operates for the life of the lease or until the owner delivers to the department and to the sign owner a written statement that permission for the maintenance or inspection by the department or its agents of the sign has been withdrawn and documentation showing that the lease allowing the sign has been terminated in accordance with the terms of the lease agreement or through a court order.

(b) If the sign owner provides documentation that the sign owner is disputing the lease termination, the department will not

cancel the permit until a settlement signed by both parties or a court order settling the dispute is delivered to the department.

§21.163. Permit Application Review.

(a) The department will consider permit applications in the order of the receipt of the applications.

(b) If an application is returned to an applicant because it is not complete or has incorrect information, the application loses its priority position.

(c) The department will hold an application that is for the same site as or a conflicting site with that of an application that the department previously received until the department makes a final decision on the previously received application or returns it to the applicant. The department will notify the applicant that the applicant's application is being held because an application for the same or a conflicting site was previously received. For the purposes of this subsection, the date of a final decision on an application is:

(1) the date of the final decision on an appeal under §21.170 of this division (relating to Appeal Process for Permit Denials); or

(2) if an appeal is not filed within the period provided by §21.170 of this division, on the 46th day after the date the denial notice was received under §21.164 of this division (relating to Decision on Application).

(d) The department will review the permit application for completeness and compliance with all requirements of this division. Measurements will be taken at the site to determine if the sign placement meets the spacing and location requirements.

§21.164. Decision on Application.

(a) The department will make a decision on an application within 45 days after the date of receipt of the application. If the decision cannot be made within the 45 day period the department will notify the applicant of the delay and provide the reason for the delay and provide an estimate for when the decision will be made.

(b) If the permit application is approved, the department will issue a permit for the sign by sending a copy of the approved application and a sign permit plate to the applicant.

(c) If the permit application is not approved, the department will send a copy of the denied application and a notice that states the reason for the denial.

(d) If an application is denied, the department will notify the landowner identified on the permit application of the denial. The notice is for informational purposes only, and does not convey any rights to the landowner. The landowner may not appeal the denial unless the landowner is also the applicant.

§21.165. Sign Permit Plate.

(a) The sign owner shall securely attach the sign permit plate to the part of the sign structure that is nearest to and visible from the closest right of way not later than the 30th day after the date that:

(1) the sign is erected; or

(2) the permit is issued if the sign is lawfully in existence when the highway along which it is located becomes subject to this division.

(b) The sign permit plate may not be removed from the sign.

(c) The sign permit plate must remain visible from the closest right of way at all times.

(d) If a sign permit plate is lost or stolen or becomes illegible, the sign owner must submit to the department a request for a replacement plate on a form prescribed by the department accompanied by the replacement plate fee prescribed by §21.175 of this division (relating to Permit Fees).

(e) Failure to apply for a replacement permit plate or attach the plate to the sign structure as required in subsection (a) of this section within 60 days after the date of receipt of written notification from the department that the permit plate is not attached or not visible may result in the cancellation of the permit under §21.176 of this division (relating to Cancellation of Permit).

§21.166. Sign Location Requirements.

(a) The department will not issue a permit under this division unless the sign for which application is made is located along a roadway to which Transportation Code, Chapter 391, applies and is in:

(1) an unzoned commercial or industrial area; or

(2) a zoned commercial or industrial area.

(b) Subsection (a) of this section does not apply to a sign that was lawfully in existence when it became subject to Transportation Code, Chapter 391.

§21.168. Conversion of Certain Authorization to Permit.

(a) The department will convert a registration issued under §21.409 of this chapter (relating to Permit Application) or a permit issued under §21.407 of this chapter (relating to Existing Off-Premise Signs) to a permit under this division if a highway previously regulated under Transportation Code, Chapter 394 becomes subject to Transportation Code, Chapter 391.

(b) A holder of a permit or registration converted under this section is not required to pay an original permit fee under §21.175 of this division (relating to Permit Fees). The permit must be renewed under §21.172 of this division (relating to Permit Renewals), on the date the renewal of the permit or registration issued under §21.407 or §21.409 of this chapter, as appropriate, would have been due.

(c) If a sign owner has prepaid registration fees under §21.407 of this chapter, the outstanding balance will be credited to the sign owner's annual renewal fee.

(d) The department will issue a sign permit plate to a holder of a permit or a registration converted under this section at no charge. If a replacement plate is needed after the initial issuance, a fee will be charged in accordance with §21.175 of this division.

§21.169. Notice of Sign Becoming Subject to Regulation.

(a) The department will send notice by certified mail to the owner of a sign that becomes subject to Transportation Code, Chapter 391 because of the construction of a new highway, the change in designation of an existing highway, or decertification of a certified city. If the owner of the sign cannot be identified from the information on file with the department, the department will give notice by prominently posting the notice on the sign for a period of 45 consecutive days.

(b) If the owner of a sign described by subsection (a) of this section does not hold a license issued under §21.153 of this division (relating to License Issuance), the owner must obtain the license within 60 days after the day that:

(1) the department sends notice under subsection (a) of this section; or

(2) the 45-day posting period under subsection (a) of this section ends.

§21.170. Appeal Process for Permit Denials.

(a) If a sign permit is denied, the applicant may file a request with the executive director for an appeal.

(b) The request for appeal must:

(1) be in writing;

(2) contain:

(A) a copy of the denied permit application;

(B) a statement of why the denial is believed to be in error; and

(C) evidence that supports the issuance of the application, such as drawings, surveys, or photographs; and

(3) be received within 45 days after the date the denial notice was received.

(c) The executive director or the executive director's designee who is not below the level of assistant executive director, will make a final determination on the appeal within 60 days after the date that the executive director receives the request for appeal. If the final determination is that the permit is denied, the executive director or the executive director's designee will send the final determination to the applicant stating the reason for denial. If the determination is that the application be approved, the department will issue the permit in accordance with §21.164 of this division (relating to Decision on Application).

(d) If the executive director or designee is unable to make a final determination on the appeal within the 60-day period under subsection (c) of this section, the department will notify the applicant by mail of the delay and provide an estimated time in which a final determination will be made.

§21.171. Permit Expiration.

(a) A permit is valid for one year.

(b) A permit automatically expires on the date that the license under which the permit was issued expires or is revoked by the department under §21.158 of this division (relating to License Revocation).

§21.172. Permit Renewals.

(a) To be continued in effect, a sign permit must be renewed.

(b) A permit is eligible for renewal if the sign for which it was issued continues to meet all applicable requirements of this division and Transportation Code, Chapter 391.

(c) To renew the permit, the permit holder must file with the department a written application in a form prescribed by the department accompanied by the applicable fees prescribed by §21.175 of this division (relating to Permit Fees). The application must be received by the department before the 46th day after the date of the permit's expiration.

(d) A permit may not be renewed if the sign for which it was issued is not erected to the extent that it includes a sign face before the first anniversary of the date that the permit was issued.

(e) The department will provide a renewal notification to the license holder at least 30 days before the date of the permit expiration and if the permit is not renewed before it expires the department within 20 days after the date of expiration will provide notification to the license holder of the opportunity to file a late renewal.

§21.173. Transfer of Permit.

(a) A sign permit may be transferred only with the written approval of the department.

(b) At the time of the transfer, both the transferor and the transferee must hold a valid license issued under §21.153 of this division (relating to License Issuance), except as provided in subsections (e) - (g) of this section.

(c) To transfer one or more sign permits, the permit holder must send to the department a written request in a form prescribed by the department accompanied by the prescribed transfer fee.

(d) If the request is approved, the department will send to the transferor and to the transferee a copy of the approved permit transfer form.

(e) A permit issued to a nonprofit organization under §21.149 of this division (relating to Nonprofit Sign Permit) may be transferred to another nonprofit organization that does not hold a license issued under §21.153 of this division if the sign will be maintained as a nonprofit sign.

(f) A permit issued to a nonprofit organization under §21.149 of this division may be converted to a regular permit and transferred to a person that is not a nonprofit organization if the transferee holds a license for the county in which the sign is located at the time of the transfer and the sign meets all requirements of this division.

(g) The department may approve the transfer of one or more sign permits from a transferor whose license has expired to a person who holds a license, with or without the signature of the transferor, if the person provides to the department:

(1) legal documents showing the sign has been sold; and

(2) documents that indicate that the transferor is dead or cannot be located.

(h) The department will not approve the transfer of a permit if cancellation of the permit is pending or has been abated awaiting the outcome of an administrative hearing.

§21.174. Amended Permit.

(a) To perform customary maintenance or to make substantial changes to the sign or sign structure under §21.191 of this division (relating to Repair and Maintenance) a permit holder must submit an amended permit application. To change the sign face of an existing permitted sign to an electronic sign under Division 2 of this subchapter (relating to Electronic Signs) a permit holder must submit an amended permit application.

(b) The amended permit application must be submitted on a form prescribed by the department and must provide the information required under §21.159 of this division (relating to Permit Application) applicable to an amended permit and indicates the change from the information in the original application for the sign permit. The amended application is not required to contain the signatures of the land owner or city representative.

(c) The new sign face size, configuration, or location must meet all applicable requirements of this division and if the amended permit is to erect an electronic sign, the requirements of Division 2 of this subchapter.

(d) The holder of a permit for a nonconforming sign may apply for an amended permit to perform eligible customary maintenance under §21.191(b) of this division. An amended permit will not be issued for a substantial change as described by §21.191(c) of this division to a nonconforming sign.

(e) Making a change to a sign that requires an amended permit without first obtaining an amended permit is a violation of this division, except as provided by subsection (g) of this section and will result in an administrative enforcement action.

(f) The department will make a decision on an amended permit application within 45 days of the date of the receipt of the amended permit application. If the decision cannot be made within the 45 day period the department will notify the applicant of the delay, provide the

reason for the delay and provide an estimate of when the decision will be made.

(g) If maintenance or changes authorized under this section are being made on a conforming sign because of a natural disaster, the department may waive the requirement that the required amended permit be issued before the work begins. If the department grants a waiver under this subsection, the permit holder shall submit the amended permit application within 60 days after the date that the work is completed. If the maintenance or changes violate this section or the permit holder fails to submit the amended permit application as required by this subsection, the sign is subject to enforcement and removal actions.

§21.175. Permit Fees.

(a) The amounts of the fees related to permits under this subchapter are:

(1) $100 for an original or amended permit for a sign;

(2) $100 for an original or amended permit issued under Division 2 of this subchapter for an electronic sign;

(3) $100 for an original permit for a sign that was lawfully in existence when the sign became subject to Transportation Code, Chapter 391;

(4) $75 for the renewal of a permit;

(5) $75 for the renewal of a permit issued under Division 2 of this subchapter for an electronic sign;

(6) $25 for the transfer of a permit up to a maximum of $2,500 for a single transaction regardless of the location of the sign; and

(7) $25 for a replacement sign permit plate.

(b) The original and renewal permit fee for a nonprofit sign permit is $10.

(c) In addition to the $75 annual renewal fee, an additional late fee of $100 is required for a renewal of a permit that is received before the 46th day after the permit expiration date.

(d) No fee is charged for the transfer of a permit issued to a nonprofit organization to another nonprofit under §21.173 of this division (relating to Transfer of Permit). The fee provided under subsection (a)(6) of this section applies to the conversion and transfer of a permit issued to a nonprofit organization to a person other than a nonprofit organization under §21.173 of this division.

(e) A fee prescribed by this section is payable by check, cashier's check, or money order. If a check or money order is dishonored upon presentment, the permit, renewal, or transfer is void.

§21.176. Cancellation of Permit.

(a) The department will cancel a permit for a sign if the sign:

(1) is removed, unless the sign is removed and re-erected at the request of a condemning authority;

(2) is not maintained in accordance with this division or Transportation Code, Chapter 391;

(3) is damaged beyond repair, as determined under §21.197 of this division (relating to Discontinuance of Sign Due to Destruction);

(4) is abandoned, as determined under §21.181 of this division (relating to Abandonment of Sign);

(5) is erected after the effective date of this section and is not built within twenty feet of the location described in the permit application or is built within twenty feet of the location described in the permit application but at a location that does not meet all spacing requirements of this chapter or in accordance with the sketch or other assertions contained in the permit application;

(6) is repaired or altered without obtaining a required amended permit under §21.174 of this division (relating to Amended Permit);

(7) is built by an applicant who uses false information on a material issue of the permit application;

(8) is erected, repaired, or maintained in violation of §21.199 of this division (relating to Destruction of Vegetation and Access from Right of Way Prohibited);

(9) has been made more visible by the permit holder clearing vegetation from the highway right of way in violation of §21.199 of this division;

(10) is located in an unzoned commercial or industrial area and the department has evidence that an activity supporting the unzoned commercial or industrial area was created primarily or exclusively to qualify the area as an unzoned commercial or industrial area, and that no business has been conducted at the activity site within one year; or

(11) does not have the permit plate properly attached under §21.165 of this division (relating to Sign Permit Plate).

(b) Before initiating an enforcement action under this section, the department will notify the sign owner in writing of the violation of subsection (a)(5) or (11) of this section and will give the sign owner 60 days to correct the violation and provide proof of the correction the department.

(c) Upon determination that a permit should be canceled, the department will mail a notice of cancellation to the address of the record license holder. The notice must state:

(1) the reason for the cancellation;

(2) the effective date of the cancellation;

(3) the right of the permit holder to request an administrative hearing on the cancellation; and

(4) the procedure for requesting a hearing and the period for filing the request.

(d) A request for an administrative hearing under this section must be in writing and delivered to the department within 45 days after the date that the notice of cancellation is received.

(e) If timely requested, an administrative hearing will be conducted in accordance with Chapter 1, Subchapter E of this title (relating to Procedures in Contested Case) and the cancellation is abated until the cancellation is affirmed by order of the commission.

(f) A permit holder may voluntarily cancel a permit by submitting a request in writing after the sign has been removed. Subsections (c) - (e) of this section do not apply to a permit voluntarily canceled under this subsection.

(g) The department will notify the landowner identified on the permit application of a cancellation enforcement action. The notice is for informational purposes only, and does not convey any rights to the landowner. The landowner may not appeal the cancellation unless the landowner is also the holder of the permit.

§21.177. Commercial or Industrial Area.

For the purposes of this division, a commercial or industrial area is:

(1) a zoned commercial or industrial area described by §21.178 of this division (relating to Zoned Commercial or Industrial Area); or

(2) an unzoned commercial or industrial area described by §21.179 of this division (relating to Unzoned Commercial or Industrial Area).

§21.179. Unzoned Commercial or Industrial Area.

(a) An unzoned commercial or industrial area is an area that:

(1) is within 800 feet, measured along the edge of the highway right of way perpendicular to the centerline of the main-traveled way, of and on the same side of the highway as the principal part of at least two adjacent recognized commercial or industrial activities that meet the requirements of subsection (c) of this section;

(2) is not predominantly used for residential purposes; and

(3) has not been zoned under authority of law.

(b) A part of the regularly used buildings, parking lots, or storage or processing areas of each of the commercial or industrial activities must be within 200 feet of the highway right of way and portion of the permanent building in which the activity is conducted must be visible from the main-traveled way.

(c) For commercial or industrial activities to be considered adjacent for the purposes of subsection (a)(1) of this section, the regularly used buildings, parking lots, storage or processing areas of the activities may not be separated by a vacant lot, an undeveloped area that is more than 50 feet wide, a road, or a street.

(d) Two activities that occupy the same building qualify as adjacent activities for the purposes of subsection (a)(1) of this section, if:

(1) each activity:

(A) has at least 400 square feet of floor space dedicated to that activity; and

(B) is an activity that is customarily allowed only in a zoned commercial or industrial area;

(2) the two activities are separated by a dividing wall constructed from floor to ceiling;

(3) the two activities have access to the restroom facilities during all hours the activity is staffed or opened; and

(4) the two activities operate independently of one another.

(e) For the purposes of subsection (d) of this section, two separate product lines offered by one business are not considered to be two activities.

(f) To determine whether an area is not predominantly used for residential purposes under subsection (a)(2) of this section, not more than 50 percent of the area, considered as a whole, may be used for residential purposes. A road or street is considered to be used for residential purposes only if residential property is located on both of its sides. The area to be considered is the total of actual or projected frontage of the commercial or industrial activities plus 800 feet on each side of that frontage, measured along the highway right of way to a depth of 660 feet. The depth of an unzoned commercial or industrial area is measured from the nearest edge of the highway right of way perpendicular to the centerline of the main-traveled way of the highway.

(g) The length of an unzoned commercial or industrial area is measured from the outer edge of the regularly used building, parking lot, storage, or processing area of the commercial or industrial activity and along or parallel to the edge of the pavement of the highway. If the business activity does not front the highway, a projected frontage is measured from the outer edge of the regularly used building, parking lot, storage, or processing area to a point perpendicular to the centerline of the main-traveled way.

(h) A sign is not required to meet the requirements of subsection (d)(1)(A), (2), or (3) of this section or §21.180 of this division (relating to Commercial or Industrial Activity) to maintain conforming status if the permit for the sign was issued before the effective date of this section.

§21.180. Commercial or Industrial Activity.

(a) For the purposes of this division, a commercial or industrial activity is an activity that:

(1) is customarily allowed only in a zoned commercial or industrial area; and

(2) is conducted in a permanent building or structure permanently affixed to the real property that:

(A) has an indoor restroom, running water, functioning electrical connections, and permanent flooring, other than dirt, gravel, or sand;

(B) is visible from the traffic lanes of the main-traveled way;

(C) is not primarily used as a residence; and

(D) has at least 400 square feet of its interior floor space devoted to the activity.

(b) The following are not commercial or industrial activities:

(1) agricultural, forestry, ranching, grazing, farming, and related activities, including the operation of a temporary wayside fresh produce stand;

(2) an activity that is conducted only seasonally;

(3) an activity that has not been conducted at its present location for at least 180 days;

(4) an activity that is not conducted by at least one person who works for the business at the activity site for at least 25 hours per week on at least five days per week and for which the hours during which the activity is conducted are posted at the activity site;

(5) the operation or maintenance of:

(A) an outdoor advertising structure;

(B) a recreational facility, such as a campground, golf course, tennis court, wild animal park, or zoo, other than the related activities conducted in a building or structure that meets the requirements of subsection (a)(2) of this section and the parking facilities for that building or structure;

(C) an apartment house or residential condominium;

(D) a public or private preschool, secondary school, college, or university, other than a trade school or corporate training campus;

(E) a quarry or borrow pit, other than the related activities conducted in a building or structure that meets the requirements of subsection (a)(2) of this section and the parking facilities for that building or structure;

(F) a cemetery; or

(G) a place that is primarily used for worship;

(6) an activity that is conducted on a railroad right of way; and

(7) an activity that is created primarily or exclusively to qualify an area as an unzoned commercial or industrial area.

(c) For the purposes of this section, a building is not primarily used as a residence if more than 50 percent of the building's square footage is used solely for the business activity.

(d) A sign is not required to meet the requirements of subsections (a)(2)(C) (as clarified by subsection (c) of this section), (a)(2)(D), (b)(3), or (b)(4) of this section to maintain conforming status if the permit for the sign was issued before the effective date of this section.

§21.181. Abandonment of Sign.

(a) The department may consider a sign abandoned and cancel the sign's permit if:

(1) the sign face is blank or without legible advertising or copy for a period of 365 consecutive days or longer; or

(2) the sign needs to be repaired or is overgrown by trees or other vegetation.

(b) Small temporary signs, such as garage sale signs or campaign signs, that are attached to the structure do not constitute legible advertising or copy for the purpose of ending the period under subsection (a)(1) of this section.

(c) The department will not consider the payment of property taxes or the retention of a sign as a balance sheet asset in determining whether the sign permit should be canceled under this section.

(d) The department may initiate the cancellation process if the department has evidence that supports the fact that the sign face has been blank or has been without legible advertisement or copy for 365 days, such as photographs showing that on at least four dates throughout the 365-day period the sign was in the same condition or was degrading. Evidence is not required for each of the 365 days.

(e) If the location of the abandoned sign is allowed under this division, the department may issue a permit for the sign site to anyone who submits an application that meets the requirements of this division. The department will not issue a permit for an abandoned sign that is located in a place that does not meet the requirements of this division.

(f) For the purposes of this section "copy" includes any advertisement that the sign is available for lease.

(g) A multi-face sign is not abandoned unless all sign faces may be considered abandoned under this section.

(h) Before initiating a cancellation process under this section the department will provide notice to the sign owner and land owner as identified on the permit application of the abandonment determination and allow the sign owner 60 days to correct the issue.

§21.182. Sign Face Size and Positioning.

(a) A sign face may not exceed:

(1) 672 square feet in area;

(2) 25 feet in height; and

(3) 60 feet in length.

(b) For the purposes of this section, border and trim are included as part of the sign face.

(c) Notwithstanding the area limitation provided by subsection (a)(1) of this section, one or more temporary protrusions may be added to a sign, provided that:

(1) the sign face, including the protrusions, meets the height and length limitations of subsection (a) of this section;

(2) the area of the protrusion does not exceed 35 percent of the area indicated on the sign permit; and

(3) the sign face, including the area of the protrusions, does not exceed 907 square feet in area.

(d) The area is measured by the smallest square, rectangle, triangle, circle, or combination that encompasses the entire sign face.

(e) A sign may have two or more sign faces that are placed back-to-back, side-by-side, stacked, or in "V" type construction with not more than two faces presented in each direction. If such an arrangement is used, the sign structure or structures are considered to be one sign for all purposes. Two sign faces which together exceed 907 square feet in area, including temporary protrusions, may not face in the same direction.

(f) Two sign faces that face in the same direction may be presented as one face by covering both faces and the area between the faces with an advertisement, as long as the size limitations of subsection (a) of this section are not exceeded.

§21.189. Sign Height Restrictions.

(a) Except as provided by subsection (f) of this section, a sign may not be erected that exceeds an overall height of 42-1/2 feet.

(b) A roof sign that has a solid sign face surface may not at any point exceed 24 feet above the roof level.

(c) A roof sign that has an open sign face in which the uniform open area between individual letter or shapes is not less than 40 percent of the total gross area of the sign face may not at any point exceed 40 feet above the roof level.

(d) The lowest point of a projecting roof sign or a wall sign must be at least 14 feet above grade.

(e) For the purposes of this section, height is measured from the grade level of the centerline of the main-traveled way closest to the sign, at a point perpendicular to the sign location. A frontage road of a controlled access highway or freeway is not considered the main-traveled way for purposes of this subsection.

(f) The height measurement does not include any renewable energy device such as solar panels or wind turbines that are attached to the sign structure above the sign face to improve the energy efficiency of the sign structure.

§21.190. Lighting of and Movement on Signs.

(a) A sign may not contain or be illuminated by flashing, intermittent, or moving lights, including any type of screen using animated or scrolling displays, except that this subsection does not apply to a sign that only provides public service information, such as time, date, temperature, weather, or similar information.

(b) Except for a relocated sign, any new sign may be illuminated but only by:

(1) upward lighting of no more than 4 luminaires per direction of the sign face or faces of the structure; or

(2) downward lighting of no more than 4 luminaires per direction of the sign face or faces of the structure.

(c) Lights that are a part of or illuminate a sign:

(1) must be shielded, directed, and positioned to prevent beams or rays of light from being directed at any portion of the traveled ways of a regulated highway;

(2) may not be of such intensity or brilliance as to cause vision impairment of a driver of any motor vehicle on a regulated high-

way or otherwise interfere with the driver's operation of a motor vehicle; and

(3) may not obscure or interfere with the effectiveness of an official traffic sign, device, or signal.

(d) A temporary protrusion on a sign may be animated only if it does not create a safety hazard to the traveling public. A temporary protrusion may not be illuminated by flashing or moving lights or enhanced by reflective material that creates the illusion of flashing or moving lights.

(e) Reflective paint or reflective disks may be used on a sign face only if the paint or disks do not:

(1) create the illusion of flashing or moving lights; or

(2) cause an undue distraction to the traveling public.

(f) A neon light may be used on a sign face only if:

(1) the light does not flash;

(2) the light does not cause an undue distraction to the traveling public; and

(3) the permit for the sign specifies that the sign is an illuminated sign.

(g) This division does not prohibit a temporary protrusion that displays only alphabetical or numerical characters and that satisfies this subsection and the requirements of §21.182 of this division (relating to Sign Face Size and Positioning), relating to a temporary protrusion. The display on the temporary protrusion may be a digital or other electronic display, but if so:

(1) it must consist of a stationary image;

(2) it may not change more frequently than four times in any 24 hour period; and

(3) the process of any change of display must be completed within two minute.

§21.191. Repair and Maintenance.

(a) The following are considered to be routine maintenance activities that do not require an amended permit:

(1) the replacement of nuts and bolts;

(2) nailing, riveting, or welding;

(3) cleaning and painting;

(4) manipulation of the sign structure to level or plumb it;

(5) changing of the advertising message;

(6) the replacement of minor parts if the materials of the minor parts are the same type as those being replaced and the basic design or structure of the sign is not altered;

(7) changing all or part of the sign face structure but only if materials similar to those of the sign face being replaced are used; and

(8) upgrading existing lighting for an energy efficient lighting system.

(b) The following are considered to be customary maintenance activities that may be made but require an amended permit before the initiation of such an activity:

(1) replacement of poles, but only if not more than one-half of the total number of poles of the sign structure are replaced in any 12 month period and the same material is used for the replacement poles; and

(2) adding a catwalk to the sign structure.

(c) The following are examples of substantial changes that may be made but require an amended permit application before the initiation of such an activity:

(1) adding lights to an unilluminated sign or adding more intense lighting to an illuminated sign whether or not the lights are attached to the sign structure;

(2) changing the number of poles in the sign structure;

(3) adding permanent bracing wires, guy wires, or other reinforcing devices;

(4) changing the material used in the construction of the sign structure, such as replacing wooden material with metal material;

(5) adding faces to a sign or changing the sign configuration;

(6) increasing the height of the sign;

(7) changing the configuration of the sign structure, such as changing a "V" sign to a stacked or back to back sign, or a single face sign to a back-to back sign; and

(8) moving the sign structure or sign face in any way unless the movement is made in accordance with §21.192 of this division (relating to Permit for Relocation of Sign).

(d) To add a catwalk to a sign structure the catwalk must meet Occupational Safety and Health Administration guidelines.

§21.192. Permit for Relocation of Sign.

(a) A sign may be relocated in accordance with this section, §21.193 of this division (relating to Location of Relocated Sign), §21.194 of this division (relating to Construction and Appearance of Relocated Sign), and §21.195 of this division (relating to Relocation of Sign within Municipality) if the sign is legally erected and maintained and will be within the highway right of way as a result of a highway construction project.

(b) To relocate a sign under this section, the permit holder must obtain a new permit under §21.164 of this division (relating to Decision on Application), but the permit fee is waived.

(c) To receive a new permit to relocate a sign under this section, the permit holder must submit a new permit application that identifies that the application is for the relocation of an existing sign due to a highway construction project. The new location must meet all local codes, ordinances, and applicable laws.

(d) Notwithstanding other provisions of this section, if only a part of a sign will be located within the highway right of way as a result of the construction project, the sign owner may apply to amend the existing permit for the sign to authorize:

(1) the adjustment of the sign face on a monopole sign that would overhang the proposed right of way to the land on which the sign's pole is located, including adding a second pole if required to support the adjustment for a legal non-conforming monopole sign;

(2) the relocation of the poles and sign face of a multiple sign structure that are located in the proposed right of way from the proposed right of way to the land on which the other poles of the sign structure are located; or

(3) a reduction in the size of a sign structure that is located partially in the proposed right of way so that the sign structure and sign face are removed from the proposed right of way.

(e) A permit application for the relocation of a sign must be submitted within 36 months after the earlier of the date the original sign was removed or the date the original sign was required to move. The sign owner is required to continue to renew the sign permit and pay the permit renewal fee for the sign to remain eligible for relocation.

§21.193. Location of Relocated Sign.

(a) To receive a new permit for relocation, an existing sign must be relocated on a part of the same parcel of land on which the sign was situated before relocation in a location that is allowed under this section.

(b) If the sign owner can demonstrate that the location under subsection (a) of this section is not physically or economically feasible for a sign structure, the sign owner, on approval by the department, may relocate the sign to any other location that is allowed under this subsection. The owner is not entitled to additional relocation benefits under §21.196 of this division (relating to Relocation Benefits) if the sign structure is relocated further than 50 miles from the location of the existing sign.

(c) The location of the relocated sign must be within a zoned commercial or industrial area as described by §21.178 of this division (relating to Zoned Commercial or Industrial Area) or an unzoned commercial or industrial area, as described by §21.179 of this division (relating to Unzoned Commercial or Industrial Area) except that an unzoned commercial or industrial area may include only one recognized commercial or industrial activity.

(d) A sign may not be relocated to a place where it:

(1) can cause a driver to be unduly distracted in any way;

(2) will obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device; or

(3) will obstruct or interfere with the driver's view of approaching, merging, or intersecting motor vehicle or rail traffic.

(e) A sign may not be relocated to a place that is:

(1) within 500 feet of a public park that is adjacent to a regulated highway, with the limitation provided under this paragraph applying:

(A) on either side of a regulated highway that is on a nonfreeway primary system; or

(B) on the side of the highway adjacent to the public park if the regulated highway is on an interstate or freeway primary system;

(2) if outside of an incorporated municipality along a regulated highway, adjacent to or within 500 feet of:

(A) an interchange, intersection at grade, or rest area; or

(B) a ramp or the ramp's acceleration or deceleration lane;

(3) for a highway on the interstate or freeway primary system, closer than 500 feet to another permitted sign on the same side of the highway;

(4) for a highway on the nonfreeway primary system and outside of a municipality, closer than 300 feet to another permitted sign on the same side of the highway;

(5) for a highway on the nonfreeway primary system and within the incorporated boundaries of a municipality, closer than 100 feet to another permitted sign on the same side of the highway; or

(6) within five feet of any highway right of way line.

(f) A sign, at the time of and after its relocation, must be within 800 feet of at least one recognized commercial or industrial activity about which the sign provides information and that is located on the same side of the highway.

(g) The spacing limitations provided in subsection (e) of this section do not apply to on-premise signs or directional or official signs that are exempted from the application of Transportation Code, §391.031.

(h) A sign may not be relocated from a road regulated under this division to a rural road regulated by Subchapter K of this chapter (relating to Control of Signs along Rural Roads).

§21.194. Construction and Appearance of Relocated Sign.

(a) A relocated sign must be constructed with the same number of poles and of the same type of materials as the existing sign. A relocated sign may not exceed the maximum height provided by §21.189 of this division (relating to Sign Height Restrictions). The number of sign faces and lighting, if any, of the relocated sign may not exceed the number of faces or lighting, if any, of the existing sign.

(b) The size of each of the sign faces of a relocated sign that are visible to approaching traffic may not exceed the smaller of the size of the existing sign face or an area of 1,200 square feet, a height of 25 feet, and a length of 60 feet.

(c) The sign faces of a relocated sign may be placed back-to-back, side-by-side, stacked, or in "V" type construction with not more than two displays facing any direction, except that if the area of a sign face exceeds 350 square feet, sign faces may not be stacked or placed side-by-side. The sign structure and sign faces are considered one sign.

§21.195. Relocation of Sign within Municipality.

(a) If an existing sign is located within the incorporated boundaries of a municipality that is approved by the department to control outdoor advertising under §21.200 of this division (relating to Local Control) and the sign will be relocated within the incorporated boundaries of the same municipality, permission to relocate the sign must be obtained only from the municipality in accordance with the municipality's sign and zoning ordinances.

(b) Permission from the municipality to relocate the sign is required to receive relocation benefits from the department under §21.196 of this division (relating to Relocation Benefits).

§21.196. Relocation Benefits.

(a) Relocation benefits will be paid in accordance with Subchapter G of this chapter (relating to Relocation Assistance and Benefits) for the relocation of a sign under §21.192 of this division (relating to Permit for Relocation of Sign) or §21.195 of this division (relating to Relocation of Sign within Municipality).

(b) The owner of an existing sign that is being relocated must enter into a written agreement with the governmental entity that is acquiring the right-of-way in which the sign is located. In the agreement the owner, in consideration of the payment by the governmental entity of relocation benefits, waives and releases any claim for damages against the governmental entity and the state for any temporary or permanent taking of the sign.

§21.197. Discontinuance of Sign Due to Destruction.

(a) If a sign is partially destroyed by a natural force outside the control of the permit holder, including wind, tornado, lightening, flood, fire, or hurricane, the department will determine whether the sign can be repaired without an amended permit.

(b) The department may require the sign owner to submit an estimate of the proposed work, including an itemized list of the materials to be used and the manner in which the work will be done. The department will allow the sign to be repaired without an amended permit if the department determines that the damage is not substantial. If the damage is determined to be substantial the sign owner must obtain an amended permit under §21.174 of this division (relating to Amended Permit).

(c) The department will cancel the existing permit if it determines the damage to the sign is substantial under subsection (g) of this section and an amended permit is not obtained by the sign owner within one year after the date that the department first became aware of the damage.

(d) If a permit is canceled under this section or §21.176 of this division (relating to Cancellation of Permit) the remaining sign structure must be dismantled and removed without cost to the state.

(e) A sign that is totally or partially destroyed by vandalism or a motor vehicle accident may be rebuilt as described on the most recently approved permit application.

(f) If a decision to cancel a permit is appealed, the sign may not be repaired during the appeal process.

(g) Damage is considered to be substantial if the cost to repair the sign would exceed 60 percent of the cost to replace it with a sign of the same basic construction using new materials and at the same location.

(h) If a sign is partially destroyed by a natural force outside the control of the sign owner in an area that receives a state or federal disaster declaration and the sign owner has documentation to show that the sign damage is not considered substantial the sign may be repaired without a prior determination by the department under subsection (b) of this section if the sign is repaired within 180 days after the date of the event and if within 60 days after the date of completion of the repairs, the owner submits to the department:

(1) photos of the partially destroyed sign and the repaired sign; and

(2) a notarized affidavit executed by the sign owner containing:

(A) the permit number of the sign;

(B) a statement that the sign was damaged by the natural force;

(C) a statement that the cost to repair the sign was less than 60 percent of the cost of a new sign with the same basic construction; and

(D) a statement that the sign was repaired in the same configuration and with like materials according to the most recent approved permit.

(i) A sign repaired in violation of this subsection is subject to enforcement and removal.

§21.198. Order of Removal.

(a) If a sign permit expires without renewal or is canceled or if the sign is erected or maintained in violation of this division, the owner of the sign, on a written demand by the department, shall remove the sign at no cost to the state.

(b) If the owner does not remove the sign within 30 days of the day that the demand is sent, the department will remove the sign and will charge the sign owner for the cost of removal, including the cost of any court proceedings.

(c) The department will rescind a removal demand if the department determines the demand was issued incorrectly.

§21.199. Destruction of Vegetation and Access from Right of Way Prohibited.

(a) A person may not:

(1) trim or destroy a tree or other vegetation on the right of way for any purpose related to this division; or

(2) erect or maintain a sign from the right of way.

(b) The department will initiate enforcement action if the permit holder, or someone acting on behalf of the permit holder, violates this section.

(c) Subsection (a)(2) of this section does not apply to the maintenance of a sign if:

(1) the state right of way is the only available access for a sign on railroad right of way to which §21.150(b) of this division (relating to Continuance of Nonconforming Signs) applies; and

(2) the sign owner notifies the department and obtains approval of the department before accessing the sign for maintenance.

(d) It is not a violation to trim the portion of the tree or vegetation that encroaches onto private property at the private property line as long as the trimming occurs from the private property.

§21.200. Local Control.

(a) The department may authorize a political subdivision to exercise control over outdoor signs in its jurisdiction. If the political subdivision receives approval under this section, it will be listed as a certified city and a permit issued by that political subdivision is acceptable instead of a permit issued by the department within the approved area.

(b) To be considered for authorization under this section, the political subdivision must submit to the department:

(1) a copy of its sign regulations;

(2) a copy of its zoning regulations;

(3) information about the number of personnel who will be dedicated to the program and what type of records will be maintained, including whether the political subdivision maintains an inventory of signs that can be provided to the department in an electronic format that is acceptable to the department; and

(4) an enforcement plan that includes the removal of illegal signs.

(c) The department, after consulting with the Federal Highway Administration, shall determine whether a political subdivision has established and will enforce within its corporate limits standards and criteria for size, lighting, and spacing of outdoor signs consistent with the purposes of the Highway Beautification Act of 1965, 23 United States Code §131, and with customary use. The size, lighting, and spacing requirements of the political subdivision may be more or less restrictive than the requirements of this division as long as the requirements comply with the federal requirements, such as the prohibition of signs over 1,200 square feet in size and spacing of less than 500 feet. The authorization does not include the area in a municipality's extraterritorial jurisdiction.

(d) The department may meet with a political subdivision to ensure that it is enforcing the standards and criteria in accordance with subsection (c) of this section.

(e) After approval under this section, the political subdivision shall:

(1) provide to the department:

(A) a copy of each amendment to its sign and zoning regulations when the amendment is proposed and adopted; and

(B) a copy of any change to its corporate limits and its extraterritorial jurisdiction, if covered by the approval;

(2) annually provide to the department:

(A) an electronic copy of the sign inventory; and

(B) report of the number of sign permits issued and the status of all pending enforcement actions; and

(3) participate in at least one video conference or teleconference sponsored by the department each year.

(f) The political subdivision may:

(1) set and retain the fees for issuing a sign permit; and

(2) establish the period for which a sign permit is effective.

(g) The department will conduct an on-site compliance monitoring review every two years.

(h) The department may withdraw the approval of a political subdivision given under this section if the department determines that the political subdivision does not have an effective sign control program. The department will consider whether:

(1) the standards and criteria of political subdivision's sign regulations continue to meet the requirements of subsection (c) of this section;

(2) the political subdivision maintains an accurate sign inventory and annually provides the inventory to the department in an electronic format; and

(3) the political subdivision enforces the sign regulations and annually reports enforcement actions as required.

(i) The department may reinstate a political subdivision's authority on the showing of a new plan that meets the requirements of subsection (c) of this section.

§21.201. Fees Nonrefundable.

A fee paid to the department under this division is nonrefundable.

§21.202. Property Right Not Created.

Issuance of a permit or license under this division does not create a contract or property right in the permit or license holder.

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-201101265
Bob Jackson
General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

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DIVISION 2. ELECTRONIC SIGNS

43 TAC §§21.251 - 21.260

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §391.032, which provides authority to establish rules to regulate the orderly and effective display of outdoor advertising on primary roads; Transportation Code, §391.063, which provides authority for the commission to set fees for the issuance of an outdoor advertising license; Transportation Code, §391.065, which provides authority to establish rules to standardize forms and regulate the issuance of outdoor advertising licenses; Transportation Code, §394.004, which provides the commission with the authority to establish rules to regulate the erection and maintenance of signs on rural roads; and Transportation Code, §394.025, which provides authority for the commission to set fees for the issuance of an outdoor advertising license.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 391 and 394.

§21.251. Definition.

In this division, "electronic sign" means a sign, display, or device that changes its message or copy by programmable electronic or mechanical processes.

§21.253. Issuance of Permit.

(a) The department will issue a permit for an electronic sign if the application for the permit:

(1) satisfies the requirements of this division and any applicable requirements of Division 1 of this subchapter (relating to Signs); and

(2) has attached to it:

(A) a certified copy of the permit issued by the municipality that gives permission for the electronic sign; or

(B) if the municipality does not issue permits, a certified copy of written permission for the electronic sign from the municipality.

(b) A permit from the department is required for the erection of an electronic sign even if the requested sign location is within a city certified under §21.200 of this chapter (relating to Local Control).

§21.255. Location.

(a) An electronic sign may be located, relocated, or upgraded only along a regulated highway and within:

(1) the corporate limits of a municipality that allows electronic signs under its sign or zoning ordinance; or

(2) within the extraterritorial jurisdiction of a municipality described by paragraph (1) of this subsection that under state law has extended its municipal regulation to include that area.

(b) Two electronic signs may not be located on the same sign structure. An electronic sign may not be located within 1,500 feet of another electronic sign on the same side of the highway.

§21.259. Contact Information.

(a) The owner of an electronic sign shall provide to the department contact information for a person who is available to be contacted at any time and who is able to turn off the electronic sign promptly if a malfunction occurs or is able to accommodate an emergency notification request from a local authority under §21.258 of this division (relating to Emergency Information).

(b) The department will share the contact information with the appropriate local authority that has jurisdiction over the location of the electronic sign.

§21.260. Application of Other Rules.

The requirements and other provisions of Division 1 of this subchapter (relating to Signs) apply to an electronic sign, except that if this division conflicts with a provision of Division 1 of this subchapter, this division controls.

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. CONTROL OF SIGNS ALONG RURAL ROADS

43 TAC §§21.401, 21.411, 21.421, 21.431, 21.441, 21.451, 21.461, 21.471, 21.481, 21.491, 21.501, 21.511, 21.521, 21.531, 21.541, 21.542, 21.551, 21.561, 21.571, 21.572, 21.581

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §391.032, which provides authority to establish rules to regulate the orderly and effective display of outdoor advertising on primary roads; Transportation Code, §391.063, which provides authority for the commission to set fees for the issuance of an outdoor advertising license; Transportation Code, §391.065, which provides authority to establish rules to standardize forms and regulate the issuance of outdoor advertising licenses; Transportation Code, §394.004, which provides the commission with the authority to establish rules to regulate the erection and maintenance of signs on rural roads; and Transportation Code, §394.025, which provides authority for the commission to set fees for the issuance of an outdoor advertising license.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 391 and 394.

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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43 TAC §§21.401 - 21.442, 21.444 - 21.446

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §391.032, which provides authority to establish rules to regulate the orderly and effective display of outdoor advertising on primary roads; Transportation Code, §391.063, which provides authority for the commission to set fees for the issuance of an outdoor advertising license; Transportation Code, §391.065, which provides authority to establish rules to standardize forms and regulate the issuance of outdoor advertising licenses; Transportation Code, §394.004, which provides the commission with the authority to establish rules to regulate the erection and maintenance of signs on rural roads; and Transportation Code, §394.025, which provides authority for the commission to set fees for the issuance of an outdoor advertising license.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 391 and 394.

§21.402. Definitions.

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

(1) Commission--The Texas Transportation Commission.

(2) Department--The Texas Department of Transportation.

(3) Erect--To construct, build, raise, assemble, place, affix, attach, embed, create, paint, draw, or in any way bring into being or establish.

(4) Main-traveled way--The through traffic lanes exclusive of frontage roads, auxiliary lanes, and ramps.

(5) Permit--The authorization granted for the erection of a sign, subject to this subchapter and Transportation Code, Chapter 394.

(6) Person--An individual, association, partnership, limited partnership, trust, corporation, or other legal entity.

(7) Portable sign--A sign designed to be mounted on a trailer, bench, wheeled carrier, or other non-motorized mobile structure or on skids or legs.

(8) Rural road--A road, street, way, highway, thoroughfare, or bridge that is located in an unincorporated area and is not privately owned or controlled, any part of which is open to the public for vehicular traffic, and over which the state or any of its political subdivisions have jurisdiction.

(9) Sign--A thing that is designed, intended, or used to advertise or inform, including a sign, display, light, device, figure, painting, drawing, message, plaque, placard, poster, billboard, logo, or symbol.

(10) Sign face--The part of the sign that contains the advertising or information contents and is distinguished from other parts of the sign and another sign face by borders or decorative trim. The term does not include a lighting fixture, apron, or catwalk unless it displays a part of the advertising or information contents of the sign.

(11) Sign structure--All of the interrelated parts and materials, such as beams, poles, braces, apron, catwalk, and stringers, that are used, designed to be used, or intended to be used to support or display a sign face.

§21.407. Existing Off-Premise Signs.

(a) A sign that existed before September 1, 1985 and that was registered not later than December 30, 1985 does not require a permit issued under this subchapter as long as the registration remains valid.

(b) The sign registration is valid only for the location indicated on the original registration application and only for the sign described on that application.

(c) The sign registration must be renewed on or before January 1 of the year of its expiration.

(d) The registration will automatically terminate if:

(1) the sign is removed for any reason other than to change the advertising;

(2) the registration is not renewed; or

(3) the sign is replaced with another structure.

(e) To renew the registration, the holder must:

(1) file a written request, on the form prescribed by the department;

(2) submit a renewal fee of $10 per year for a period of up to five years; and

(3) display the registration number on the sign structure in numerals with a minimum height of two inches and a minimum width of one inch.

(f) The registration allows for routine and customary repairs and maintenance as provided under §21.434 of this subchapter (relating to Repair and Maintenance), but substantial changes are not authorized for existing signs. An amended permit under §21.423 of this subchapter (relating to Amended Permit) must be obtained prior to performing any customary repairs or maintenance.

(g) The owner of an off-premise sign that was in existence before September 1, 1985 and not duly registered or the registration for which was timely renewed shall remove the sign at the owner's expense upon written notification by the department, unless it is an exempt sign.

(h) The registration of a sign may be transferred upon filing with the department, on a form prescribed by the department, a request for the transfer and payment of the transfer fee.

§21.408. Continuance of Nonconforming Signs.

(a) Notwithstanding other provisions of this subchapter, the department will renew a permit for a nonconforming sign only if the sign structure:

(1) was lawful on the later of the date it was erected or became subject to the control of the department; and

(2) remains substantially the same as it was on the later of the date it was erected, became subject to the department's control, or became a nonconforming sign due to change in statute, rule, or condition.

(b) A nonconforming sign may not be:

(1) removed and re-erected for any reason, other than a request by a governmental entity; or

(2) substantially changed, as described by §21.434 of this subchapter (relating to Repair and Maintenance).

§21.409. Permit Application.

(a) To obtain a permit for a sign, a person must file an application in a form prescribed by the department. The application at a minimum must include:

(1) the complete name and address of the applicant;

(2) the original signature of the applicant;

(3) the proposed location and description of the sign;

(4) the complete legal name and address of the owner of the designated site;

(5) a statement of whether the requested sign is located within an incorporated city or a city's extraterritorial jurisdiction;

(6) the site owner's or the owner's authorized representative's signature on the application demonstrating consent to the erection and maintenance of the sign and right of entry onto the property of the sign location by the department or its agents;

(7) information that details how and the location from which the sign will be erected and maintained; and

(8) additional information the department considers necessary to determine eligibility.

(b) The application must be:

(1) notarized;

(2) filed with the department's division responsible for the Outdoor Advertising Program in Austin; and

(3) accompanied by the fee prescribed by §21.424 of this subchapter (relating to Permit Fees).

(c) The application must include a sketch that shows:

(1) the location of the poles of the sign structure;

(2) the exact location of the sign faces in relation to the sign structure;

(3) the means of access to the sign; and

(4) the distance from the buildings, landmarks, right of way line, other signs, and other distinguishable features of the landscape.

§21.410. Site Owner's Consent; Withdrawal.

(a) A site owner's consent to the erection and maintenance of the sign and access to the site by the department or its agent is provided with a permit application under §21.409 of this subchapter (relating to Permit Application). The consent operates for the life of the lease or until the owner delivers to the department and the sign owner a written statement that permission for the maintenance or inspection by the department or its agents of the sign has been withdrawn and documentation showing that the lease allowing the sign has been terminated in accordance with the terms of the lease agreement or through a court order.

(b) If the sign owner provides documentation that the sign owner is disputing the lease termination, the department will not cancel the permit until a settlement signed by both parties or a court order settling the dispute is delivered to the department.

§21.412. Permit Application Review.

(a) The department will consider permit applications in the order of the receipt of the applications.

(b) If an application is returned to an applicant because it is not complete or has incorrect information, the application loses its priority position.

(c) The department will hold an application that is for the same site as or a conflicting site with that of an application that the department previously received until the department makes a final decision on the previously received application or returns it to the applicant. For the purposes of this subsection, the date of a final decision on an application is:

(1) the date of the final decision on an appeal under §21.418 of this subchapter (relating to Appeal Process for Permit Denials); or

(2) if an appeal is not filed within the period provided by §21.418 of this subchapter, on the 46th day after the date the denial notice was received under §21.413 of this subchapter (relating to Decision on Application).

(d) The department will review the permit application for completeness and compliance with all requirements of this subchapter. Measurements will be taken at the site to determine if the sign placement meets the spacing and location requirements.

§21.413. Decision on Application.

(a) The department will make a decision on an application within 45 days of the date of receipt of the application. If the decision cannot be made within the 45 day period the department will notify the applicant of the delay providing the reason for the delay, and provide an estimate of when the decision will be made.

(b) If the application is approved, the department will issue a permit for the sign by sending a copy of the approved application and a sign permit plate to the applicant.

(c) If the application is not approved, the department will send a copy of the denied application and a notice that states the reason for the denial.

(d) If an application is denied, the department will notify the landowner identified on the permit application of the denial. The notice is for informational purposes only, and does not convey any rights to the landowner. The landowner may not appeal the denial unless the landowner is also the applicant.

§21.414. Sign Permit Plate.

(a) The sign owner shall securely attach the sign permit plate to the part of the sign structure that is nearest to the rural road and visible from the closest right of way not later than the 30th day after the date that the sign is erected.

(b) The sign permit plate may not be removed from the sign.

(c) The sign permit plate must remain visible from the closest right of way at all times.

(d) If a sign permit plate is lost or stolen or becomes illegible, the sign owner must submit to the department a request for a replacement plate in a form prescribed by the department accompanied by the replacement plate fee prescribed by §21.424 of this subchapter (relating to Permit Fees).

(e) Failure to apply for a replacement permit or attach the plate to the sign structure as required in subsection (a) of this section within 60 days of the date of written notification from the department that the permit plate is not visible or attached may result in an enforcement action under §21.425 or §21.426 of this subchapter (relating to Cancellation of Permit and Administrative Penalties, respectively).

§21.416. Commercial or Industrial Activity.

(a) For the purposes of this subchapter, a commercial or industrial activity is an activity that:

(1) is customarily allowed only in a zoned commercial or industrial area; and

(2) is conducted in a permanent building or structure affixed to the real property that:

(A) has an indoor restroom, running water, functioning electrical connections, and permanent flooring, other than dirt, gravel, or sand;

(B) is visible from the traffic lanes of the main-traveled way;

(C) is not primarily used as a residence; and

(D) has at least 400 square feet of its interior floor space devoted to the activity.

(b) The following are not commercial or industrial activities:

(1) agricultural, forestry, ranching, grazing, farming, and related activities, including the operation of a temporary wayside fresh produce stand;

(2) an activity that is conducted only seasonally;

(3) an activity that has not been conducted at its present location for at least 180 days;

(4) an activity that is not conducted by at least one person who works for the business at the activity site for at least 25 hours per week on at least five days per week and for which the hours during which the activity is conducted are posted at the activity site;

(5) the operation or maintenance of:

(A) an outdoor advertising structure;

(B) a recreational facility, such as a campground, golf course, tennis court, wild animal park, or zoo, other than the related activities conducted in a building or structure that meets the requirements of subsection (a)(2) of this section and the parking facilities for that building or structure;

(C) an apartment house or residential condominium;

(D) a public or private preschool, secondary school, college, or university, other than a trade school or corporate training campus;

(E) a quarry or borrow pit, other than the related activities conducted in a building or structure that meets the requirements of subsection (a)(2) of this section and the parking facilities for that building or structure;

(F) a cemetery; or

(G) a place that is primarily used for worship;

(6) an activity that is conducted on a railroad right of way; and

(7) an activity that is created primarily or exclusively to qualify an area as an unzoned commercial or industrial area.

(c) For the purposes of this section, a building is not primarily used as a residence if more than 50 percent of the building's square footage is used solely for the business activity.

(d) A sign is not required to meet the requirements of subsections (a)(2)(C) (as clarified by subsection (c) of this section), (a)(2)(D),

(b)(3), or (b)(4) of this section to maintain conforming status if the permit for the sign was issued before the effective date of this section.

§21.418. Appeal Process for Permit Denials.

(a) If a sign permit is denied, the applicant may file a request with the executive director for an appeal.

(b) The request for appeal must:

(1) be in writing;

(2) contain:

(A) a copy of the denied permit application;

(B) a statement of why the denial is believed to be in error; and

(C) evidence that supports the issuance of the application, such as drawings, surveys, or photographs; and

(3) be received within 45 days after the date the denial notice was received.

(c) The executive director or the executive director's designee, who may not be below the level of assistant executive director, will make a final determination on the appeal within 60 days after the date that the executive director receives the request for appeal. If the final determination is that the permit is denied, the executive director or the executive director's designee will send the final determination to the applicant stating the reason for denial. If the final determination is that the application be approved, the department will issue the permit in accordance with §21.413 of this subchapter (relating to Decision on Application).

(d) If the executive director or the designee is unable to make a final determination on the appeal within the 60-day period under subsection (c) of this section, the department will notify the applicant by mail of the delay and provide an estimated time in which a final determination will be made.

§21.420. Permit Expiration.

A permit is valid for one year.

§21.421. Permit Renewals.

(a) To continue in effect, a permit must be renewed.

(b) A permit is eligible for renewal if the sign for which it was issued continues to meet all applicable requirements of this subchapter and Transportation Code, Chapter 394.

(c) To renew the permit, the permit holder must file with the department a written application in a form prescribed by the department accompanied by the applicable fees prescribed by §21.424 of this subchapter (relating to Permit Fees). The application must be received by the department before the 46th day after the date of the permit expiration.

(d) A permit may not be renewed if the sign for which it was issued is not erected to the extent that it includes a sign face before the first anniversary of the date the permit was issued.

(e) The department will provide a renewal notification to the licensee at least 30 days before the date of the permit expiration and if the permit is not renewed before it expires the department within 20 days after the date of expiration will provide notification to the licensee of the opportunity to file a late renewal.

§21.423. Amended Permit.

(a) To perform customary maintenance or to make substantial changes to the sign or sign structure under §21.434 of this subchapter (relating to Repair and Maintenance), a permit holder must submit an amended permit application.

(b) The amended permit application must be submitted on a form prescribed by the department that provides the information required under §21.409 of this subchapter (relating to Permit Application) that is applicable to an amended permit and indicates the change from the information in the original application for the sign permit. The amended permit will not require the signature of the land owner or city representative.

(c) The new sign face size, configuration, or location must meet all applicable requirements of this subchapter.

(d) The holder of a permit for a nonconforming sign may apply for an amended permit to perform eligible customary maintenance under §21.434 of this subchapter. An amended permit will not be issued for a substantial change, as described by §21.434(c) of this subchapter, to a nonconforming sign.

(e) Making a change to a sign that requires an amended permit without first obtaining an amended permit is a violation of this subchapter and will result in an administrative enforcement action.

(f) The department will make a decision on an amended permit application within 45 days of the date receipt of the amended permit application. If the decision cannot be made within the 45 day period the department will notify the applicant of the delay, provide the reason for the delay, and provide an estimate for when the decision will be made.

(g) In the event of a natural disaster the department may waive the requirement that a required amended permit be issued prior to the repair of a conforming sign. If the department waives this requirement the amended permit must be submitted within 60 days of the completion of the repairs. If the repairs are in violation of these rules or the permit holder fails to submit the amended permit application the sign is subject to enforcement and removal actions.

§21.424. Permit Fees.

(a) The amounts of the fees related to permits under this subchapter are:

(1) $100 for an original or amended permit for a sign;

(2) $75 for the renewal of a permit;

(3) $25 for the transfer of a permit up to a maximum of $2,500 for a single transaction regardless of the location of the sign; and

(4) $25 for a replacement sign permit plate.

(b) In addition to the $75 annual renewal fee, an additional late fee of $100 is required for a renewal of a permit that is received before the 46th day after the permit expiration date.

(c) A fee prescribed by this section is payable by check, cashier's check, or money order. If a check or money order is dishonored upon presentment, the permit, renewal, or transfer is void.

§21.425. Cancellation of Permit.

(a) The department will cancel a permit for a sign if the sign:

(1) is removed, unless the sign is removed and re-erected at the request of a condemning authority;

(2) is not maintained in accordance with this subchapter or Transportation Code, Chapter 394;

(3) is damaged beyond repair, as determined under §21.439 of this subchapter (relating to Discontinuance of Sign Due to Destruction);

(4) is abandoned, as determined under §21.427 of this subchapter (relating to Abandonment of Sign);

(5) is erected after the effective date of this section and is not built within 20 feet of the location described in the permit application or is built within 20 feet of the location described in the permit application but at a location that does not meet all spacing requirements of this chapter or in accordance with the sketch or other assertions contained in the permit application;

(6) is repaired or altered without obtaining a required amended permit under §21.423 of this subchapter (relating to Amended Permit);

(7) is built by an applicant who uses false information on a material issue of the permit application;

(8) is erected, repaired, or maintained in violation of §21.441 of this subchapter (relating to Destruction of Vegetation and Access from Right of Way Prohibited);

(9) has been made more visible by the permit holder clearing vegetation from the highway right of way in violation of §21.441 of this subchapter;

(10) is in an unzoned commercial or industrial area and the department has evidence that an activity supporting the unzoned commercial or industrial area was created primarily or exclusively to qualify the area as an unzoned commercial or industrial area and that no business has been conducted at the activity site within one year; or

(11) does not have the permit plate properly attached under §21.414 of this subchapter (relating to Sign Permit Plate).

(b) Before initiating an enforcement action under this section, the department will notify a sign owner in writing of a violation of subsection (a)(5) or (11) of this section and will give the sign owner 60 days to correct the violation and provide proof of the correction to the department.

(c) Upon determination that a permit should be canceled, the department will mail a notice of cancellation to the address of the record license holder. The notice must state:

(1) the reason for the cancellation;

(2) the effective date of the cancellation;

(3) the right of the permit holder to request an administrative hearing on the cancellation; and

(4) the procedure for requesting a hearing and the period for filing the request.

(d) A request for an administrative hearing under this section must be in writing and delivered to the department within 45 days after the date that the notice of cancellation is received.

(e) If timely requested, an administrative hearing will be conducted in accordance with Chapter 1, Subchapter E of this title (relating to Procedures in Contested Case) and the cancellation will be abated until the cancellation is affirmed by order of the commission.

(f) A permit holder may voluntarily cancel a permit by submitting a request in writing after the sign for which the permit was issued has been removed. Subsections (c) - (e) of this section do not apply to a permit voluntarily canceled under this subsection.

(g) The department will notify the landowner identified on the permit application of a cancellation enforcement action. The notice is for informational purposes only, and does not convey any rights to the landowner. The landowner may not appeal the cancellation unless the landowner is also the permit holder.

§21.426. Administrative Penalties.

(a) The department may impose administrative penalties against a person who intentionally violates Transportation Code, Chapter 394 or this subchapter.

(b) The amount of the administrative penalty may not exceed the maximum amount of a civil penalty that may be imposed under Transportation Code, §394.081 and will based on the following:

(1) $150 for a violation of a permit plate requirement under §21.414 of this subchapter (relating to Sign Permit Plate);

(2) $250 for a violation of:

(A) a registration requirement of §21.407 of this subchapter (relating to Existing Off-Premise Signs); or

(B) erecting the sign at the location other than the location specified on the application, except that if the actual sign location does not conform to all other requirements the department will seek cancellation of the permit;

(3) $500 for:

(A) maintaining or repairing the sign from the state right of way; or

(B) performing customary maintenance on any sign or substantial maintenance on a conforming sign without first obtaining an amended permit; or

(4) $1000 for erecting a sign from the right of way.

(c) In addition to the penalties assessed under subsection (b) of this section, the department may seek to recover the cost of repairing any damage to the right of way done by the sign owner or on the sign owner's behalf.

(d) Before initiating an enforcement action under this section, the department will notify the sign owner in writing of a violation of subsection (b)(1) or (2)(B) of this section and will give the sign owner 60 days to correct the violation and provide proof of the correction to the department.

(e) Upon determination to seek administrative penalties the department will mail a notice of the administrative penalties to the last known address of the permit holder. The notice must clearly state:

(1) the reasons for the administrative penalties;

(2) the amount of the administrative penalty; and

(3) the right of the holder of the permit to request an administrative hearing.

(f) A request for an administrative hearing under this section must be made in writing and delivered to the department within 45 days after the date of the receipt of the notice.

(g) If timely requested, an administrative hearing shall be conducted in accordance with Chapter 1, Subchapter E of this title (relating to Procedures in Contested Case), and the imposition of administrative penalties will be abated unless and until that action is affirmed by order of the commission.

§21.428. Sign Face Size and Positioning.

(a) An off-premise sign face may not exceed:

(1) 672 square feet in area;

(2) 25 feet in height; and

(3) 60 feet in length.

(b) For the purposes of subsection (a) of this section, border and trim are included as part of the sign face.

(c) Notwithstanding the area limitation provided by subsection (a)(1) of this section, one or more temporary protrusions may be added to a sign, provided that:

(1) the sign face, including the protrusions, meets the height and length limitations of subsection (a) of this section;

(2) the area of the protrusion does not exceed 35 percent of the area indicated on the sign permit; and

(3) the sign face, including the area of the protrusions, does not exceed 907 square feet in area.

(d) The area is measured by the smallest square, rectangle, triangle, circle, or combination that encompasses the entire sign face.

(e) A sign may not be erected that has more than two faces fronting a particular direction of travel on the main-traveled way.

(f) A sign erected in a back-to-back or V-type configuration, may have only one face fronting a particular direction of travel.

(g) A sign face that exceeds 454 square feet in area, including cutouts, may not be stacked on or placed side by side with another sign face. Two sign faces may not be stacked or placed side by side if combined they exceed 907 square feet in area.

(h) A sign face may consist of commercial electronic variable message signs (CEVMS), otherwise referred to as rotating slat signs or tri-vision signs, provided that the rotation is completed within one second and the message is stationary for at least 10 seconds following a rotation.

(i) If a sign is built with a smaller face than the size shown on the permit application or if the face is reduced in size after it is built, an amended permit will be required to increase the size of the face.

§21.429. Spacing of Signs.

(a) An off-premise sign having a sign face area of at least 301 square feet may not be located within 1,500 feet of another off-premise sign on the same side of the roadway.

(b) An off-premise sign having a sign face area of at least 100 but less than 301 square feet may not be located within 500 feet of another off-premise sign having a sign face within that range or within 1500 feet of an off-premise sign that has a sign face of at least 301 square feet and is on the same side of the roadway.

(c) An off-premise sign having a face area of less than 100 square feet may not be located within 150 feet of another off-premise sign having a sign face of less than 100 square feet, within 500 feet of a sign with a face area of at least 100 but less than 301 square feet, or within 1,500 feet of an off-premise sign with a face area of at least 301 square feet that is on the same side of the roadway.

(d) Two signs located at the same intersection do not violate this section if they:

(1) are located so that their messages are not directed toward traffic flowing in the same direction; and

(2) are not visible from the main-traveled way of an interstate or federal-aid primary highway.

(e) For the purposes of this section, the space between signs is measured between points along the right of way of the roadway perpendicular to the center of the signs.

(f) The spacing requirements of this section do not apply to signs separated by buildings, natural surroundings, or other obstructions in a manner that causes only one of the signs to be visible within the specified spacing area.

(g) An off-premise sign may not be erected within five feet of a rural road right-of-way line.

(h) An off-premise sign must be erected within 800 feet of at least one recognized commercial or industrial activity. The commercial or industrial activity must be on the same side of the rural road as the sign.

(i) Distance from the commercial or industrial activity is measured from the outer edges of the regularly used buildings, parking lots, storage facilities, or processing areas of the commercial or industrial activity. Measurements are not made from the property line unless the property lines coincide with the regularly used portions of the activity.

(j) A sign may not be located in a place that creates a safety hazard, including a location that:

(1) is likely to cause a driver to be unduly distracted;

(2) obscures or interferes with the effectiveness of an official traffic sign, signal, or device; or

(3) obstructs or interferes with the driver's view of approaching, merging, or intersecting roadway or rail traffic.

(k) A sign may not be located in an area that is adjacent to or within 1,000 feet of a rest area.

(l) The distance from a rest area is measured along the right of way line from the outer edges of the rest area boundary abutting the right of way.

(m) The center of a sign may not be located within 250 feet of the nearest point of the boundary of a public park.

(n) This subsection applies only if a public park boundary abuts the right of way of a regulated highway. A sign may not be located within 1,500 feet of the boundary of the public park, as measured along the right of way line from the nearest common point of the park's boundary and the right of way. This limitation applies on both sides of the rural road.

§21.432. Height Restrictions.

(a) Except as provided in subsection (f) of this section a sign may not be erected that exceeds an overall height of 42-1/2 feet.

(b) A roof sign that has a solid sign face surface may not at any point exceed 24 feet above the roof level.

(c) A roof sign that has an open sign face in which the uniform open area between individual letter or shapes is not less than 40 percent of the total gross area of the sign face may not at any point exceed 40 feet above the roof level.

(d) The lowest point of a projecting roof sign or a wall sign must be at least 14 feet above grade.

(e) For the purposes of this section, height is measured from the grade level of the centerline of the main-traveled way closest to the sign, at a point perpendicular to the sign location.

(f) The height measurement does not include any renewable energy device such as solar panels or wind turbines that are attached to the sign structure above the sign face to improve the energy efficiency of the sign structure.

§21.433. Lighting.

(a) A sign may not contain or be illuminated by any flashing, intermittent, or moving light except that this subsection does not apply

to a sign that only provides public service information, such as time, date, temperature, or weather.

(b) Except for a relocated sign, any new sign may be illuminated but only by:

(1) upward lighting of no more than four luminaires per direction of the sign face or faces of the structure; or

(2) downward lighting of no more than four luminaires per direction of the sign face or faces of the structure.

(c) Lights that are a part of or illuminate a sign:

(1) must be shielded, directed, and positioned to prevent beams or rays of light from being directed at any portion of the traveled ways of a regulated rural road;

(2) may not be of such intensity or brilliance as to cause vision impairment of a driver of any motor vehicle on a regulated rural road or otherwise interfere with the driver's operation of a motor vehicle; and

(3) may not obscure or interfere with the effectiveness of an official traffic sign, device, or signal.

(d) A temporary protrusion on a sign may be animated only if it does not create a safety hazard to the traveling public. A temporary protrusion may not be illuminated by flashing or moving lights or enhanced by reflective material that creates the illusion of flashing or moving lights.

(e) Reflective paint or reflective disks may be used on a sign face only if the paint or disks do not:

(1) create the illusion of flashing or moving lights; or

(2) cause an undue distraction to the traveling public.

(f) A neon light may be used on a sign face only if:

(1) the light does not flash;

(2) the light does not cause an undue distraction to the traveling public; and

(3) the permit for the sign specifies that the sign is an illuminated sign.

(g) This subchapter does not prohibit a temporary protrusion that displays only alphabetical or numerical characters and that satisfies this subsection and the requirements of §21.428 of this subchapter (relating to Sign Face Size and Positioning) relating to a temporary protrusion. The display on the temporary protrusion may be a digital or other electronic display, but if so:

(1) it must consist of a stationary image;

(2) it may not change more frequently than four times in any 24 hour period; and

(3) the process of any change of display must be completed within two minutes.

§21.434. Repair and Maintenance.

(a) The following are considered to be routine maintenance activities that do not require an amended permit:

(1) the replacement of nuts and bolts;

(2) nailing, riveting, or welding;

(3) cleaning and painting;

(4) manipulation of the sign structure to level or plumb it;

(5) changing of the advertising message;

(6) the replacement of minor parts if the materials of the minor parts are the same type as those being replaced and the basic design or structure of the sign is not altered;

(7) changing all or part of the sign face structure but only if materials similar to those of the sign face being replaced are used; and

(8) upgrading existing lighting for an energy efficient lighting system.

(b) The following are considered to be customary maintenance activities that may be made but require an amended permit prior to the initiation of such an activity:

(1) replacement of poles, but only if not more than one-half of the total number of poles of the sign structure are replaced in any 12 month period and the same material is used for the replacement poles; and

(2) adding a catwalk to the sign structure.

(c) The following are examples of substantial changes that may be made but require an amended permit application before the initiation of such an activity:

(1) adding lights to an unilluminated sign or adding more intense lighting to an illuminated sign whether or not the lights are attached to the sign structure;

(2) changing the number of poles in the sign structure;

(3) adding permanent bracing wires, guy wires, or other reinforcing devices;

(4) changing the material used in the construction of the sign structure, such as replacing wooden material with metal material;

(5) adding faces to a sign or changing the sign configuration;

(6) increasing the height of the sign;

(7) changing the configuration of the sign structure, such as changing a "V" sign to a stacked or back to back sign, or a single face sign to a back-to back sign; and

(8) moving the sign structure or sign face in any way unless the movement is made in accordance with §21.435 of this subchapter (relating to Permit for Relocation of Sign).

(d) To add a catwalk to a sign structure the catwalk must meet Occupational Safety and Health Administration guidelines.

§21.435. Permit for Relocation of Sign.

(a) A sign may be relocated in accordance with this section, §21.436 of this subchapter (relating to Location of Relocated Sign), and §21.437 of this subchapter (relating to Construction and Appearance of Relocated Sign) if the sign is legally erected and maintained and will be within the highway right of way as a result of a construction project.

(b) To relocate a sign under this section, the permit holder must obtain a new permit under §21.409 of this subchapter (relating to Permit Application), but the permit fee is waived.

(c) To receive a new permit to relocate a sign, the permit holder must submit a new permit application that identifies that the application is for the relocation of an existing sign due to a highway project. The new location must meet all local codes, ordinances, and applicable laws.

(d) Notwithstanding other provisions of this section, if only a part of a sign will be located within the highway right of way as a result of the construction project, the sign owner may apply to amend an existing permit for the sign to authorize:

(1) the relocation of the sign face of a monopole sign that would overhang the proposed right of way from that location to the land on which the sign's pole is located;

(2) the relocation of the poles and sign face of a multiple sign structure that are located in the proposed right of way from the proposed right of way to the land on which the other poles of the sign structure are located; or

(3) a reduction in the size of a sign structure that is located partially in the proposed right of way, so that the sign structure and sign face are removed from the proposed right of way.

(e) A permit for the relocation of a sign must be submitted within 36 months from the earlier of the date the original sign was removed or the date the original sign was required to move. The sign owner is required to continue to renew the sign permit and pay the permit renewal fee for the sign to remain eligible for relocation.

§21.436. Location of Relocated Sign.

(a) To receive a new permit for relocation, an existing sign must be relocated on a part of the same parcel of land on which the sign was situated before relocation in a location that is allowed under this section.

(b) If the sign owner can demonstrate that the location under subsection (a) of this section is not physically or economically feasible for a sign structure, the sign owner, on approval by the department, may relocate the sign to any other location that is allowed under this section. The owner is not entitled to additional relocation benefits under §21.438 of this subchapter (relating to Relocation Benefits) if the sign structure is relocated further than 50 miles from the location of the existing sign.

(c) The location of the relocated sign must be within the required distance of a commercial or industrial activity as described by §21.416 of this subchapter (relating to Commercial or Industrial Activity).

(d) A sign may not be relocated to a place where it:

(1) is likely to cause a driver to be unduly distracted in any way;

(2) will obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device; or

(3) will obstruct or interfere with the driver's view of approaching, merging, or intersecting motor vehicle or rail traffic.

(e) A sign may not be relocated from a rural road to a highway that is subject to Subchapter I of this chapter (relating to Regulation of Signs along Interstate and Primary Highways).

(f) Spacing requirements of §21.429(a) - (c) of this subchapter (relating to Spacing of Signs) apply to signs relocated under this section.

(g) A sign may not be relocated to a place that is:

(1) within 500 feet of a public park that is adjacent to a rural road on either side of the roadway; or

(2) within five feet of any highway right of way line.

§21.439. Discontinuance of Sign Due to Destruction.

(a) If a sign is partially destroyed by a natural force outside the control of the permit holder, including wind, tornado, lightening, flood, fire, or hurricane, the department will determine whether the sign can be repaired without an amended permit.

(b) The department may require the permit holder to submit an estimate of the proposed work, including an itemized list of the materials to be used and the manner in which the work will be done. The department will allow the sign to be repaired without an amended permit if the department determines that the damage is not substantial. If the damage is determined to be substantial the sign owner must obtain an amended permit under §21.423 of the subchapter (relating to Amended Permit).

(c) The department will cancel the existing permit if it determines the damage to the sign is substantial under subsection (g) of this section and an amended permit is not obtained by the sign owner within one year after the date that the department first became aware of the damage.

(d) If a permit is canceled under this section or §21.425 of this subchapter (relating to Cancellation of Permit) the remaining sign structure must be dismantled and removed without cost to the state.

(e) A sign that is totally or partially destroyed by vandalism or a motor vehicle accident may be rebuilt as described on the most recently approved permit application.

(f) If a decision to cancel a permit is appealed, the sign may not be repaired during the appeal process.

(g) Damage is considered to be substantial if the cost to repair the sign would exceed 50 percent of the cost to replace it with a sign of the same basic construction using new materials and at the same location.

(h) A sign that is partially destroyed by a natural force outside the control of the permit holder in an area that receives a state or federal disaster declaration and the sign owner has documentation to show that the sign damage would not be considered substantial the sign may be repaired without prior determination by the department if, repaired within 180 days of the event and if within 60 days of the completion of the repairs, the owner submits the following:

(1) photos of the partially destroyed sign and the repaired sign; and

(2) a notarized affidavit executed by the permit holder containing:

(A) the permit number of the sign;

(B) a statement that the sign was damaged by the natural force;

(C) a statement that the cost to repair the sign was less than 60 percent of the cost of a new, sign with the same basic construction; and

(D) a statement that the sign was repaired in the same configuration and with like materials according to the most recent approved permit.

(i) A sign repaired in violation of this subsection is subject to enforcement and removal.

§21.441. Destruction of Vegetation and Access from Right of Way Prohibited.

(a) A person may not:

(1) destroy a tree or other vegetation on the right of way for any purpose related to this subchapter; or

(2) erect or maintain a sign from the right of way.

(b) The department will initiate an enforcement action if the permit holder, or someone acting on behalf of the permit holder, violates this section.

(c) It is not a violation to trim the portion of the tree or vegetation that encroaches onto private property at the private property line as long as the trimming occurs from the private property.

§21.442. On-Premise Signs.

(a) A business may not maintain more than five on-premise signs on a frontage of a single rural road at a single business location.

(b) A permit under §21.404 of this subchapter (relating to Permit Required) is not required to erect an on-premise sign.

(c) An on-premise sign is a sign that:

(1) is located on the real property of a business and consists only of:

(A) the name, logo, trademark, telephone number, and internet address of that business; or

(B) an identification of that business's principal and accessory products or services offered on the property; or

(2) only advertises the sale or lease of the real property on which the sign is located and is removed within 90 days after the date of the closing of the real property transaction.

(d) For the purposes of this section, a sign is located on the real property of a business if:

(1) the real property on which the sign is located and the real property on which the activity of the business is conducted are one contiguous tract that is under common ownership; or

(2) the sign is located on the real property of a commercial development and the businesses of the development share the sign structure of that sign.

(e) For the purpose of subsection (d)(1) of this section, real property is not considered to be a part of one contiguous tract if the real property on which the sign is located is:

(1) separated from the real property on which the business activity is located by a road or highway or by another business;

(2) devoted to a separate purpose unrelated to the advertised business activity;

(3) held under an easement or other lesser property interest than the property interest in the land on which the business activity is located; or

(4) is a narrow strip or other configuration of land that cannot be put to any reasonable use related to the advertised business activity other than for signing purposes.

(f) A sign is not an on-premise sign if:

(1) the sign consists principally of brand name or trade name advertising and the product or service advertised is only incidental to the principal activity;

(2) the sign advertises activities that are not conducted on the premises; or

(3) the sign provides rental income to the owner of the real property on which it is located, unless the owner of the real property receives the income from an on-premise business for the use of the sign.

(g) For the purposes of this subsection:

(1) the date of the closing of a sales transaction is the date that legal title to a property is conveyed to a purchaser for property under a contract to buy; and

(2) the date of the closing of a lease transaction is the date that the landlord and tenant enter into a binding lease of a property.

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 April 1, 2011.

TRD-201101267
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: July 1, 2011
Proposal publication date: December 3, 2010
For further information, please call: (512) 463-8683

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SUBCHAPTER Q. REGULATION OF DIRECTIONAL SIGNS

43 TAC §§21.941 - 21.947

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §391.032, which provides authority to establish rules to regulate the orderly and effective display of outdoor advertising on primary roads; Transportation Code, §391.063, which provides authority for the commission to set fees for the issuance of an outdoor advertising license; Transportation Code, §391.065, which provides authority to establish rules to standardize forms and regulate the issuance of outdoor advertising licenses; Transportation Code, §394.004, which provides the commission with the authority to establish rules to regulate the erection and maintenance of signs on rural roads; and Transportation Code, §394.025, which provides authority for the commission to set fees for the issuance of an outdoor advertising license.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 391 and 394.

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 April 1, 2011.

TRD-201101268
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: July 1, 2011
Proposal publication date: December 3, 2010
For further information, please call: (512) 463-8683

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PART 3. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

43 TAC §57.28

The Automobile Burglary and Theft Prevention Authority (ABTPA) adopts amendments to §57.28, concerning Conditions for Withholding Funds from Grantees without changes to the proposed text as published in the February 11, 2011, issue of the *Texas Register* (36 TexReg 763).

The adopted amendments to §57.28 includes language to withhold funding from a grantee who does not provide a response to an audit or progress monitoring. Currently, grantees are not expressly required to provide a written response to audit findings. The adopted change is to better ensure compliance with grant requirements and to assist grantees with projects. The change in rule requires a response from a grantee to monitoring and auditing. The amendments place grantees on notice that funding may be withheld if a response is not submitted or if there are deficiencies found in a project. Other conforming changes are made to the section for consistency and clarity.

No written comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 4413(37), §6(a), which the ABTPA interprets as authorizing it to adopt rules implementing its statutory powers and duties.

The following are the statutes, articles, or codes affected by the amendments: Article 4413(37), §6(a).

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 March 29, 2011.

TRD-201101227
Charles Caldwell
Director
Automobile Burglary and Theft Prevention Authority
Effective date: April 18, 2011
Proposal publication date: February 11, 2011
For further information, please call: (512) 374-5101

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 41, concerning Practice and Procedure, Subchapter A - Communications, and Subchapter B - Access to Board Records. This review is pursuant to Government Code §2001.039.

The Division's reason for adopting the following rules contained in this chapter continues to exist. The Division proposes to repeal §41.50 of Subchapter A and §§41.101, 41.105, 41.110, 41.115, 41.120, 41.125, 41.130, 41.135, 41.140, 41.150, and 41.160 of Subchapter B. The Division's reason for adopting these rules no longer continues to exist. Accordingly, the Division proposes to readopt the following rules:

Subchapter A - Communications.

§41.1. Name Change.

§41.5. Compliance and Suspension of Rules.

§41.8. Contents of Rule-making Petitions.

§41.10. Definitions.

§41.15. Social Security Number.

§41.20. Adjuster Identification.

§41.25. Attorney Identification.

§41.27. Employer's Identification.

§41.30. Self-insureds.

§41.35. Designation of Insurance Carrier's Austin Representative.

§41.40. General Policy Concerning Communications.

§41.45. Communication to Claimants.

§41.55. Communication to Employers.

§41.60. Communication to Insurance Carriers.

§41.65. Communication to Health Care Provider.

§41.70. Filing of Instruments.

§41.75. Timely Filing.

§41.80. Filing Subsequent to Final Order or Award.

§41.85. Translation of Documents.

§41.90. Responsibility of Translators.

§41.95. Wage Information.

The Division's reason for not adopting §41.50 of Subchapter A and §§41.101, 41.105, 41.110, 41.115, 41.120, 41.125, 41.130, 41.135, 41.140, 41.150, and 41.160 of Subchapter B no longer continues to exist and the repeal of these rules is recommended.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on May 16, 2011; comments may be submitted by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

TRD-201101335
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: April 6, 2011

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Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 42, concerning Medical Benefits, Subchapter A, General Medical Provisions, Subchapter B, Medical Cost Evaluation, and Subchapter D, Dispute Resolution. This review is pursuant to Government Code §2001.039. The Division's reason for adopting the following rules continues to exist.

Accordingly, the Division proposes to readopt the following rules:

Subchapter A - General Medical Provisions.

§42.5. Applicability and Scope of Rules.

§42.10. Acceptance of Rules and Guidelines.

§42.15. Definitions.

§42.20. Who May Treat.

§42.25. Prohibited Practices.

§42.28. Confirmation of Coverage.

§42.30. Written Communications.

§42.33. Health Care Providers' Reporting Requirements.

§42.35. Required Reports: First Report.

§42.40. Required Reports: Subsequent Reports.

§42.55. Required Reports: Change of Status Reports.

§42.60. Required Reports: Special Reports.

§42.65. Changing Treating Doctors.

§42.75. Excess Recovery from Third Party Actions.

§42.78. Reports to Be Filed by the Carrier.

§42.80. Assignment of Medical Benefits.

§42.85. Voluntary Arbitration.

§42.90. Demand for Surgical Operation.

§42.95. Scars and Deformities.

Subchapter B - Medical Cost Evaluation.

§42.101. Purpose.

§42.105. Medical Fee Guideline.

§42.115. Pharmaceutical Fee Guideline.

§42.135. Liability for Covered Health Care.

§42.137. Utilization Review.

§42.140. Amount of Payment.

§42.145. Billing.

§42.155. Carrier Review of Bills.

§42.160. Carrier Desk Audit of Bills.

§42.165. Carrier On-Site Audit of Hospital Bills.

§42.175. Miscellaneous Covered Services.

Subchapter D - Dispute Resolution.

§42.305. Requesting Dispute Review and Resolution.

§42.307. Procedure for Requesting Dispute Review.

§42.308. Procedure for Responding to a Request for Dispute Review.

§42.309. Payment for the Review.

§42.310. Board Review and Resolution.

§42.315. Appeal.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on May 16, 2011; comments may be submitted by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

TRD-201101336
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: April 6, 2011

♦ ♦ ♦

Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 63 concerning Promptness of First Payment. This review is pursuant to Government Code §2001.039. The Division's reason for adopting the following rule continues to exist.

Accordingly, the Division proposes to readopt the following rule:

§63.10. Sanctions for Late Payment.

The Division's reason for not adopting §63.5 no longer continues to exist. Accordingly, the Division proposes to repeal the following rule:

§63.5. Quarterly Report.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on May 16, 2011; comments may be submitted by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

TRD-201101337
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: April 6, 2011

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Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 76, Extracurricular Activities, Subchapter AA, Commissioner's Rules, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 76, Subchapter AA, in the February 11, 2011, issue of the *Texas Register* (36 TexReg 851).

Relating to the review of 19 TAC Chapter 76, Subchapter AA, the TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rules. The TEA received one comment related to the review of Subchapter AA. Following is a summary of the public comment received and the corresponding response.

Comment: The Texas Classroom Teachers Association commented that they believe that good reasons for adopting 19 TAC Chapter 76, Subchapter AA, continue to exist, particularly with respect to the limitations on practice and rehearsal for extracurricular activities during the school day.

Agency response: The agency agrees that the reasons for adopting the rule continue to exist.

This concludes the review of 19 TAC Chapter 76.

TRD-201101293
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: April 4, 2011

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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: 16 TAC §402.205(p)

If	Then
Bingo Cards/Paper	Organization transferring from, organization transferring to, series number, serial number, #on/#up, total number of sets/sheets transferred, signature of an officer, director or the primary operator.
Bingo Equipment	Organization transferring from, organization transferring to, equipment type, manufacturer, model and/or serial number, signature of an officer, director or the primary operator.
Instant Bingo Tickets	Organization transferring from, organization transferring to, form number, name of game, series number, total number of instant bingo tickets transferred, signature of an officer, director or the primary operator.

Figure: 25 TAC §289.202(ee)(4)(A)(ii)

Contaminant	Maximum Permissible Limits pCi/cm^2 *	dpm/cm^2
Beta-gamma emitting radionuclides; all radionuclides with half-lives less than 10 days; natural uranium; natural thorium, uranium-235; uranium-238; thorium-232; thorium-228; and thorium-230 when contained in ores or physical concentrates....	100	220
All other alpha emitting radionuclides....	10	22

* To convert picocuries (pCi) to SI units of millibecquerels, multiply the values by 37.

Figure: 25 TAC §289.202(ggg)(6)

NUCLIDE[a]	AVERAGE[bcf]	MAXIMUM[bdf]	REMOVABLE[bcef]
U-nat, U-235, U-238, and associated decay products except Ra-226, Th-230, Ac-227, and Pa-231	5,000 dpm alpha/ 100 cm^2	15,000 dpm alpha/ 100 cm^2	1,000 dpm alpha/ 100 cm^2
Transuranics, Ra-223, Ra-224, Ra-226, Ra-228, Th-nat, Th-228, Th-230, Th-232, U-232, Pa-231,Ac-227, Sr-90, I-129	1,000 dpm/100 cm^2	3,000 dpm/100	200 dpm/100 cm^2
Beta-gamma emitters (nuclides with decay modes other than alpha emission or spontaneous fission) except Sr-90 and others noted above.	5,000 dpm beta, gamma/100 cm^2	15,000 dpm beta, gamma/100 cm^2	1,000 dpm beta, gamma/100 cm^2
Tritium (applicable to surface dpm/100 cm^2 and subsurface)[g]	NA	NA	10,000

[a] Where surface contamination by both alpha and beta-gamma emitting nuclides exists, the limits established for alpha and beta-gamma emitting nuclides should apply independently.

[b] As used in this table, dpm (disintegrations per minute) means the rate of emission by radioactive material as determined by correcting the counts per minute observed by an appropriate detector for background, efficiency, and geometric factors associated with the instrumentation.

[c] Measurements of average contamination level should not be averaged over more than 1 square meter. For objects of less surface area, the average should be derived for each object.

[d] The maximum contamination level applies to an area of not more than 100 cm^2.

[e] The amount of removable radioactive material per 100 cm^2 of surface area should be determined by wiping that area with dry filter or soft absorbent paper, applying moderate pressure, and assessing the amount of radioactive material on the wipe with an appropriate instrument of known efficiency. When removable contamination on objects of less surface area is determined, the pertinent levels should be reduced proportionally and the entire surface should be wiped.

[f] The average and maximum radiation levels associated with surface contamination resulting from beta-gamma emitters should not exceed 0.2 mrad/hr at 1 centimeter and 1.0 mrad/hr at 1 centimeter, respectively, measured through not more than 7 mg/cm^2 of total absorber.

[g] Property recently exposed or decontaminated, should have measurements (smears) at regular time intervals to ensure that there is not a build-up of contamination over time. Because tritium typically penetrates material it contacts, the surface guidelines in group 4 are not applicable to tritium. The agency has reviewed the analysis conducted by the Department of Energy Tritium Surface Contamination Limits Committee ("Recommended Tritium Surface Contamination Release Guides," February 1991), and has assessed potential doses associated with the release of property containing residual tritium. The agency recommends the use of the stated guideline as an interim value for removable tritium. Measurements demonstrating compliance of the removable fraction of tritium on surfaces with this guideline are acceptable to ensure that non-removable fractions and residual tritium in mass will not cause exposures that exceed dose limits as specified in this section and agency constraints.

Figure: 25 TAC §289.202(ggg)(8)

RC Form 202-2 Texas Department of State Health Services/Radiation Control

CUMULATIVE OCCUPATIONAL EXPOSURE HISTORY

1. NAME (LAST, FIRST, MIDDLE INITIAL)			2. IDENTIFICATION NUMBER		3. ID TYPE	4. SEX MALE ☐ FEMALE ☐	5. DATE OF BIRTH
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ☐ ESTIMATE ☐ NO RECORD ☐	10. ROUTINE ☐ PSE ☐
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE	18. TODE
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ☐ ESTIMATE ☐ NO RECORD ☐	10. ROUTINE ☐ PSE ☐
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE	18. TODE
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ☐ ESTIMATE ☐ NO RECORD ☐	10. ROUTINE ☐ PSE ☐
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE	18. TODE
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ☐ ESTIMATE ☐ NO RECORD ☐	10. ROUTINE ☐ PSE ☐
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE	18. TODE
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ☐ ESTIMATE ☐ NO RECORD ☐	10. ROUTINE ☐ PSE ☐
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE	18. TODE
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ☐ ESTIMATE ☐ NO RECORD ☐	10. ROUTINE ☐ PSE ☐
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE	18. TODE
19. SIGNATURE OF MONITORED INDIVIDUAL		20. DATE SIGNED	21. CERTIFYING ORGANIZATION		22. SIGNATURE OF DESIGNEE		23. DATE SIGNED

INSTRUCTIONS AND ADDITIONAL INFORMATION PERTINENT TO THE COMPLETION OF RC FORM 202-2

(All doses should be stated in rems)

1. Type or print the full name of the monitored individual in the order of last name (include "Jr," "Sr," "III," etc.), first name, middle initial (if applicable).

2. Enter the individual's identification number, including punctuation. This number should be the 9-digit social security number if at all possible. If the individual has no social security number, enter the number from another official identification such as a passport or work permit.

3. Enter the code for the type of identification used as shown below:

CODE	ID TYPE
SSN	U.S. Social Security Number
PPN	Passport Number
CSI	Canadian Social Insurance Number
WPN	Work Permit Number
IND	INDEX Identification Number
OTH	Other

4. Check the box that denotes the sex of the individual being monitored.

5. Enter the date of birth of the individual being monitored in the format MM/DD/YY.

6. Enter the monitoring period for which this report is filed. The format should be MM/DD/YY - MM/DD/YY.

7. Enter the name of the licensee, registrant, or facility not licensed by the Agency that provided monitoring.

8. Enter the Agency license or registration number or numbers.

9. Place an "X" in Record, Estimate, or No Record. Choose "Record" if the dose data listed represent a final determination of the dose received to the best of the licensee's or registrant's knowledge. Choose "Estimate" only if the listed dose data are preliminary and will be superseded by a final determination resulting in a subsequent report. An example of such an instance would be dose data based on self-reading dosimeter results and the licensee or registrant intends to assign the record dose on the basis of TLD results that are not yet available.

10. Place an "X" in either Routine or PSE. Choose "Routine" if the data represent the results of monitoring for routine exposures. Choose "PSE" if the listed dose data represents the results of monitoring of planned special exposures received during the monitoring period. If more than one PSE was received in a single year, the licensee should sum them and report the total of all PSEs.

11. Enter the deep dose equivalent (DDE) to the whole body.

12. Enter the eye dose equivalent (LDE) recorded for the lens of the eye.

13. Enter the shallow dose equivalent recorded for the skin of the whole body (SDE,WB).

14. Enter the shallow dose equivalent recorded for the skin of the extremity receiving the maximum dose (SDE,ME).

15. Enter the committed effective dose equivalent (CEDE).

16. Enter the committed dose equivalent (CDE) recorded for the maximally exposed organ.

17. Enter the total effective dose equivalent (TEDE). The TEDE is the sum of items 11 and 15.

18. Enter the total organ dose equivalent (TODE) for the maximally exposed organ. The TODE is the sum of items 11 and 16.

19. Signature of the monitored individual. The signature of the monitored individual on this form indicates that the information contained on the form is complete and correct to the best of his or her knowledge.

20. Enter the date this form was signed by the monitored individual.

21. [OPTIONAL] Enter the name of the licensee, registrant or facility not licensed by the Agency, providing monitoring for exposure to radiation (such as a DOE facility) or the employer if the individual is not employed by the licensee or registrant and the employer chooses to maintain exposure records for its employees.

22. [OPTIONAL] Signature of the person designated to represent the licensee, registrant or employer entered in item 21. The licensee, registrant or employer who chooses to countersign the form should have on file documentation of all the information on the Agency Form Y being signed.

23. [OPTIONAL] Enter the date this form was signed by the designated representative.

Figure: 25 TAC §289.202(ggg)(9)

PAGE _____ OF _____

RC Form 202-3 — Texas Department of State Health Services/Radiation Control

OCCUPATIONAL EXPOSURE RECORD FOR A MONITORING PERIOD

1. NAME (LAST, FIRST, MIDDLE INITIAL)	2. IDENTIFICATION NUMBER	3. ID TYPE	4. SEX ☐ MALE ☐ FEMALE	5. DATE OF BIRTH

6. MONITORING PERIOD	7. LICENSEE OR REGISTRANT NAME	8. LICENSE OR REGISTRATION NUMBER(S)	9A. ☐ RECORD ☐ ESTIMATE	9B. ☐ ROUTINE ☐ PSE

INTAKES

10A. RADIONUCLIDE	10B. CLASS	10C. MODE	10D. INTAKE IN μCi

DOSES (in rem)

DEEP DOSE EQUIVALENT (DDE)	11.
EYE DOSE EQUIVALENT TO THE LENS OF THE EYE (LDE)	12.
SHALLOW DOSE EQUIVALENT, WHOLE BODY (SDE,WB)	13.
SHALLOW DOSE EQUIVALENT, MAX EXTREMITY (SDE,ME)	14.
COMMITTED EFFECTIVE DOSE EQUIVALENT (CEDE)	15.
COMMITTED DOSE EQUIVALENT, MAXIMALLY EXPOSED ORGAN (CDE)	16.
TOTAL EFFECTIVE DOSE EQUIVALENT *(BLOCKS 11+15) (TEDE)*	17.
TOTAL ORGAN DOSE EQUIVALENT, MAX ORGAN *(BLOCKS 11+16) (TODE)*	18.

19. COMMENTS

20. SIGNATURE -- LICENSEE OR REGISTRANT	21. DATE PREPARED

INSTRUCTIONS AND ADDITIONAL INFORMATION PERTINENT TO THE COMPLETION OF RC FORM 202-3

(All doses should be stated in rems)

1. **Type or print the full name of the monitored individual in the order of last name (include "Jr," "Sr," "III," etc.), first name, middle initial (if applicable).**

2. Enter the individual's identification number, including punctuation. This number should be the 9-digit social security number if at all possible. If the individual has no social security number, enter the number from another official identification such as a passport or work permit.

3. Enter the code for the type of identification used as shown below:

CODE	ID TYPE
SSN	U.S. Social Security Number
PPN	Passport Number
CSI	Canadian Social Insurance Number
WPN	Work Permit Number
IND	INDEX Identification Number
OTH	Other

4. Check the box that denotes the sex of the individual being monitored.

5. Enter the date of birth of the individual being monitored in the format MM/DD/YY.

6. Enter the monitoring period for which this report is filed. The format should be MM/DD/YY - MM/DD/YY.

7. Enter the name of the licensee or registrant.

8. Enter the Agency license or registration number or numbers.

9A. Place an "X" in Record or Estimate. Choose "Record" if the dose data listed represent a final determination of the dose received to the best of the licensee's or registrant's knowledge. Choose "Estimate" only if the listed dose data are preliminary and will be superseded by a final determination resulting in a subsequent report. An example of such an instance would be dose data based on self-reading dosimeter results and the licensee intends to assign the record dose on the basis of TLD results that are not yet available.

9B. Place an "X" in either Routine or PSE. Choose "Routine" if the data represent the results of monitoring for routine exposures. Choose "PSE" if the listed dose data represents the results of monitoring of planned special exposures received during the monitoring period. If more than one PSE was received in a single year, the licensee or registrant should sum them and report the total of all PSEs.

10A. Enter the symbol for each radionuclide that resulted in an internal exposure recorded for the individual, using the format "Xx-###x," for instance, Cs-137 or Tc-99m.

10B. Enter the lung clearance class as listed in subsection (ggg)(2)(F) of this section for all intakes by inhalation.

10C. Enter the mode of intake. For inhalation, enter "H." For absorption through the skin, enter "B." For oral ingestion, enter "G." For injection, enter "J."

10D. Enter the intake of each radionuclide in μCi.

11. Enter the deep dose equivalent (DDE) to the whole body.

12. Enter the eye dose equivalent (LDE) recorded for the lens of the eye.

13. Enter the shallow dose equivalent recorded for the skin of the whole body (SDE,WB).

14. Enter the shallow dose equivalent recorded for the skin of the extremity receiving the maximum dose (SDE,ME).

15. Enter the committed effective dose equivalent (CEDE) or "NR" for "Not Required" or "NC" for "Not Calculated".

16. Enter the committed dose equivalent (CDE) recorded for the maximally exposed organ or "NR" for "Not Required" or "NC" for "Not Calculated".

17. Enter the total effective dose equivalent (TEDE). The TEDE is the sum of items 11 and 15.

18. Enter the total organ dose equivalent (TODE) for the maximally exposed organ. The TODE is the sum of items 11 and 16.

19. COMMENTS.
In the space provided, enter additional information that might be needed to determine compliance with limits. An example might be to enter the note that the SDE,ME was the result of exposure from a discrete hot particle. Another possibility would be to indicate that an overexposed report has been sent to the Agency in reference to the exposure report.

20. Signature of the person designated to represent the licensee or registrant.

21. Enter the date this form was prepared.

Figure: 25 TAC §289.203(i)
RC FORM 203-1

Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

NOTICE TO EMPLOYEES

TEXAS REGULATIONS FOR CONTROL OF RADIATION

The Department of State Health Services has established standards for your protection against radiation hazards, in accordance with the Texas Radiation Control Act, Health and Safety Code, Chapter 401.

YOUR EMPLOYER'S RESPONSIBILITY

Your employer is required to-

1. Apply these rules to work involving sources of radiation.
2. Post or otherwise make available to you a copy of the Department of State Health Services rules, licenses, certificates of registration, notices of violations, and operating procedures that apply to your work, and explain their provisions to you.

YOUR RESPONSIBILITY AS A WORKER

You should familiarize yourself with those provisions of the rules and the operating procedures that apply to your work. You should observe the rules for your own protection and protection of your co-workers.

WHAT IS COVERED BY THESE RULES

1. Limits on exposure to sources of radiation in restricted and unrestricted areas;
2. Measures to be taken after accidental exposure;
3. Individual monitoring devices, surveys and equipment;
4. Caution signs, labels, and safety interlock equipment;
5. Exposure records and reports;
6. Options for workers regarding agency inspections; and
7. Related matters.

REPORTS ON YOUR RADIATION EXPOSURE HISTORY

1. The rules require that your employer give you a written report if you receive an exposure in excess of any applicable limit as stated in the rules, license, or certificate of registration. The basic limits for exposure to employees are stated in 25 Texas Administrative Code (TAC) §289.202(f), (k), (l), and (m) (relating to Standards for Protection Against Radiation from Radioactive Materials) and 25 TAC §289.231(m) (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation). These subsections specify limits on exposure to radiation and exposure to concentrations of radioactive material in air and water.

2. If you work where individual monitoring devices are provided in accordance with 25 TAC §289.202 or §289.231:

(a) your employer must furnish to you an annual written report of your exposure to radiation if:
   (1) the individual's occupational dose exceeds 100 mrem (1 mSv) total effective dose equivalent or 100 mrem (1 mSv) to any individual organ or tissue; or
   (2) the individual requests his or her annual dose report in writing.

(b) your employer must give you a written report, upon termination of your employment, of your radiation exposures if you request the information on your radiation exposure in writing.

INSPECTIONS

All licensed or registered activities are subject to inspection by representatives of the Department of State Health Services. In addition, any worker or representative of the workers who believe that there is a violation of the Texas Radiation Control Act, the rules issues thereunder, or the terms of the employer's license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by sending a notice of the alleged violation to the Department of State Health Services. The request must state the specific grounds for the notice, and must be signed by the worker or the representative of the workers. During inspections, agency inspectors may confer privately with workers, and any worker may bring to the attention of the inspectors any past or present condition that the individual believes contributed to or caused any violation as described above.

POSTING REQUIREMENT

Copies of this notice shall be posted in a sufficient number of places in every establishment where employees are employed in activities licensed or registered, in accordance with 25 TAC §289.252 (relating to Licensing of Radioactive Material) and 25 TAC §289.226 (relating to Registration of Radiation Machine Use and Services), to permit employees to observe a copy on the way to or from their place of employment.

Applicable sections of 25 TAC Chapter 289 may be reviewed online, at www.dshs.state.tx.us/radiation/rules.shtm. Our license and/or certificate of registration and any associated documents, our operating procedures, and any "Notice of Violation" or order issued by the agency may be reviewed at the following location:

Figure: 25 TAC §289.256(www)

Rule Cross Reference	Name of Records/Documents	Time Interval for Keeping Records/Documents
§289.201(d)(1)	Records of receipt, transfer, and disposal of radioactive material	Until disposal is authorized by the agency
§289.201(g)(7), §289.202(bbb)	Records of leak tests for specific devices and sealed sources	3 years
§289.203(b)(1)(B)	Current applicable sections of this chapter as listed in the radioactive material license	Until termination of the radioactive material license
§289.203(b)(1)(B)	Copy of the current radioactive material license	Until termination of the radioactive material license
§289.203(b)(1)(C), §289.256(f)(3)(A)	Current operating, safety, and emergency procedures	Until termination of the radioactive material license
§289.256 (f)(3)(C)(i)	Qualifications of RSO	Duration of employment
§289.256(f)(3)(C)(ii)	Qualifications of authorized users	Duration of employment
§289.256(f)(3)(C)(iii)	Qualifications of authorized medical physicist	Duration of employment
§289.256(f)(3)(C)(iv)	Qualifications of authorized nuclear pharmacist, if applicable	Duration of employment
§289.256(g)(1)	Authority of RSO	Duration of employment
§289.256(g)(5)	Qualifications and dates of service for temporary RSO	3 years
§289.256(i)(4)	RSC meetings	3 years
§289.256(t)(3)	Written directives	3 years
§289.256(v)(4)	Calibration of instruments (dose calibrators)	3 years
§289.256(x)(6)	Dosage determinations of unsealed radioactive material for medical use	3 years
§289.256(y)(6)	Physical inventory for all sealed sources received, possessed, and transferred	Until termination of the radioactive material license
§289.256(z)(2)	Sealed source/brachytherapy inventory	3 years
§289.256(bb)(3)	Surveys for ambient radiation exposure rate	3 years
§289.256(cc)(3) §289.256(eee)(2)	Patient release	3 years after date of release
§289.256(dd)(3)	Mobile nuclear medicine service client letters	Duration of licensee/client relationship
§289.256(dd)(3)	Mobile nuclear medicine service surveys	3 years
§289.256(ee)(2)	Decay in storage/disposal	3 years
§289.256(ii)(3)	Molybdenum-99 concentrations	3 years

Rule Cross Reference	Name of Records/Documents	Time Interval for Keeping Records/Documents
§289.256(ll)(2)	Safety instructions - unsealed radioactive materials	3 years
§289.256(ss)(3)	Surveys after sealed source implant and removal	3 years
§289.256(tt)(3)	Brachytherapy sealed sources accountability	3 years
§289.256(uu)(2)	Safety instructions - brachytherapy	3 years
§289.256(ww)(4)	Calibration measurements of brachytherapy sealed sources	3 years
§289.256(xx)(2)	Strontium 90 activity of source	Duration of life of source
§289.256(bbb)(2)	Service provider documentation	3 years
§289.256(fff)(4)	Installation, maintenance, adjustment and repair-remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units	3 years
§289.256(iii)(3)	Dosimetry equipment calibration, intercomparison and comparison	Until termination of the radioactive material license
§289.256(jjj)(7)	Calibration - teletherapy units	3 years
§289.256(kkk)(9)	Calibration - remote afterleader units	3 years
§289.256(lll)(7)	Calibration - gamma stereotactic radiosurgery units	3 years
§289.256(mmm)(2)	Written procedures for spot checks-teletherapy units	Until licensee no longer possesses unit
§289.256(mmm)(6)	Spot checks- teletherapy units	Until licensee no longer possesses unit
§289.256(nnn)(2)	Written procedures for spot checks - remote afterloaders	3 years
§289.256(nnn)(6)	Spot checks- remote afterloader	3 years
§289.256(ooo)(2)	Written procedures for spot checks-gamma stereotactic radiosurgery units	3 years
§289.256(ooo)(8)	Spot checks-gamma stereotactic radiosurgery units	3 years
§289.256(ppp)(5)	Technical requirements for mobile remote afterloader units	3 years
§289.256(qqq)(3)	Radiation surveys	Duration of the use of the unit
§289.256(rrr)(3)	Five-year inspection for teletherapy and gamma sterotactic radiosurgery units	Duration of the use of the unit
§289.256(uuu)(9)	Annotated report - medical event	Until termination of the radioactive material license
§289.256(vvv)(8)	Annotated report - dose to embryo/fetus or nursing child	Until termination of the radioactive material license

Figure: 25 TAC §289.257(ee)(4)(A)

$$\sum_i \frac{B(i)}{A_1(i)} \leq 1$$

where $B(i)$ is the activity of radionuclide I, and $A_1(i)$ is the A_1 value for radionuclide I.

Figure: 25 TAC §289.257(ee)(4)(B)

$$\sum_i \frac{B(i)}{A_2(i)} \leq 1$$

where $B(i)$ is the activity of radionuclide I and $A_2(i)$ is the A_2 value for radionuclide I.

Figure: 25 TAC §289.257(ee)(4)(C)

$$A_1 \text{ for mixture} = \frac{1}{\sum_i \frac{f(i)}{A_1(i)}}$$

where $f(i)$ is the fraction of activity of nuclide I in the mixture and $A_1(i)$ is the appropriate A_1 value for nuclide I.

Figure: 25 TAC §289.257(ee)(4)(D)

$$A_2 \text{ for mixture} = \frac{1}{\sum_i \frac{f(i)}{A_2(i)}}$$

where $f(i)$ is the fraction of activity of nuclide I in the mixture and $A_2(i)$ is the appropriate A_2 value for nuclide I.

Figure: 25 TAC §289.257(ee)(4)(E)

$$\text{Exempt activity concentration for mixture} = \frac{1}{\sum \frac{f(i)}{[A](i)}}$$

where f(i) is the fraction of activity concentration of radionuclide I in the mixture, and [A] is the activity concentration for exempt material containing radionuclide I.

Figure: 25 TAC §289.257(ee)(4)(F)

$$\text{Exempt activity concentration for mixture} = \frac{1}{\sum \frac{f(i)}{A(i)}}$$

where f(i) is the fraction of activity of radionuclide I in the mixture, and A is the activity limit for exempt consignments for radionuclide I.

Figure: 25 TAC §289.257(ee)(6)

Table 257-3

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Ac-225 (a)	Actinium (89)	$8.0X10^{-1}$	$2.2X10^{1}$	$6.0X10^{-3}$	$1.6X10^{-1}$	$2.1X10^{3}$	$5.8X10^{4}$
Ac-227 (a)		$9.0X10^{-1}$	$2.4X10^{1}$	$9.0X10^{-5}$	$2.4X10^{-3}$	2.7	$7.2X10^{1}$
Ac-228		$6.0X10^{-1}$	$1.6X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$8.4X10^{4}$	$2.2X10^{6}$
Ag-105	Silver (47)	2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$1.1X10^{3}$	$3.0X10^{4}$
Ag-108m (a)		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$9.7X10^{-1}$	$2.6X10^{1}$
Ag-110m (a)		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.8X10^{2}$	$4.7X10^{3}$
Ag-111		2.0	$5.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$5.8X10^{3}$	$1.6X10^{5}$
Al-26	Aluminum (13)	$1.0X10^{-1}$	2.7	$1.0X10^{-1}$	2.7	$7.0X10^{-4}$	$1.9X10^{-2}$
Am-241	Americium (95)	$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$1.3X10^{-1}$	3.4
Am-242m (a)		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$3.6X10^{-1}$	$1.0X10^{1}$
Am-243 (a)		5.0	$1.4X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$7.4X10^{-3}$	$2.0X10^{-1}$
Ar-37	Argon (18)	$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$3.7X10^{3}$	$9.9X10^{4}$
Ar-39		$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{1}$	$5.4X10^{2}$	1.3	$3.4X10^{1}$
Ar-41		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$1.5X10^{6}$	$4.2X10^{7}$
As-72	Arsenic (33)	$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$6.2X10^{4}$	$1.7X10^{6}$
As-73		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$8.2X10^{2}$	$2.2X10^{4}$
As-74		1.0	$2.7X10^{1}$	$9.0X10^{-1}$	$2.4X10^{1}$	$3.7X10^{3}$	$9.9X10^{4}$
As-76		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$5.8X10^{4}$	$1.6X10^{6}$
As-77		$2.0X10^{1}$	$5.4X10^{2}$	$7.0X10^{-1}$	$1.9X10^{1}$	$3.9X10^{4}$	$1.0X10^{6}$
At-211 (a)	Astatine (85)	$2.0X10^{1}$	$5.4X10^{2}$	$5.0X10^{-1}$	$1.4X10^{1}$	$7.6X10^{4}$	$2.1X10^{6}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Au-193	Gold (79)	7.0	$1.9X10^{2}$	2.0	$5.4X10^{1}$	$3.4X10^{4}$	$9.2X10^{5}$
Au-194		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$1.5X10^{4}$	$4.1X10^{5}$
Au-195		$1.0X10^{1}$	$2.7X10^{2}$	6.0	$1.6X10^{2}$	$1.4X10^{2}$	$3.7X10^{3}$
Au-198		1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$9.0X10^{3}$	$2.4X10^{5}$
Au-199		$1.0X10^{1}$	$2.7X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$7.7X10^{3}$	$2.1X10^{5}$
Ba-131 (a)	Barium (56)	2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$3.1X10^{3}$	$8.4X10^{4}$
Ba-133		3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	9.4	$2.6X10^{2}$
Ba-133m		$2.0X10^{1}$	$5.4X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.2X10^{4}$	$6.1X10^{5}$
Ba-140 (a)		$5.0X10^{-1}$	$1.4X10^{1}$	$3.0X10^{-1}$	8.1	$2.7X10^{3}$	$7.3X10^{4}$
Be-7	Beryllium (4)	$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{1}$	$5.4X10^{2}$	$1.3X10^{4}$	$3.5X10^{5}$
Be-10		$4.0X10^{1}$	$1.1X10^{3}$	$6.0X10^{-1}$	$1.6X10^{1}$	$8.3X10^{-4}$	$2.2X10^{-2}$
Bi-205	Bismuth (83)	$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$1.5X10^{3}$	$4.2X10^{4}$
Bi-206		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$3.8X10^{3}$	$1.0X10^{5}$
Bi-207		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	1.9	$5.2X10^{1}$
Bi-210		1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$4.6X10^{3}$	$1.2X10^{5}$
Bi-210m (a)		$6.0X10^{-1}$	$1.6X10^{1}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$2.1X10^{-5}$	$5.7X10^{-4}$
Bi-212 (a)		$7.0X10^{-1}$	$1.9X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$5.4X10^{5}$	$1.5X10^{7}$
Bk-247	Berkelium (97)	8.0	$2.2X10^{2}$	$8.0X10^{-4}$	$2.2X10^{-2}$	$3.8X10^{-2}$	1.0
Bk-249 (a)		$4.0X10^{1}$	$1.1X10^{3}$	$3.0X10^{-1}$	8.1	$6.1X10^{1}$	$1.6X10^{3}$
Br-76	Bromine (35)	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$9.4X10^{4}$	$2.5X10^{6}$
Br-77		3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	$2.6X10^{4}$	$7.1X10^{5}$
Br-82		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{4}$	$1.1X10^{6}$
C-11	Carbon (6)	1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.1X10^{7}$	$8.4X10^{8}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
C-14		$4.0X10^{1}$	$1.1X10^{3}$	3.0	$8.1X10^{1}$	$1.6X10^{-1}$	4.5
Ca-41	Calcium (20)	Unlimited	Unlimited	Unlimited	Unlimited	$3.1X10^{-3}$	$8.5X10^{-2}$
Ca-45		$4.0X10^{1}$	$1.1X10^{3}$	1.0	$2.7X10^{1}$	$6.6X10^{2}$	$1.8X10^{4}$
Ca-47 (a)		3.0	$8.1X10^{1}$	$3.0X10^{-1}$	8.1	$2.3X10^{4}$	$6.1X10^{5}$
Cd-109	Cadmium (48)	$3.0X10^{1}$	$8.1X10^{2}$	2.0	$5.4X10^{1}$	$9.6X10^{1}$	$2.6X10^{3}$
Cd-113m		$4.0X10^{1}$	$1.1X10^{3}$	$5.0X10^{-1}$	$1.4X10^{1}$	8.3	$2.2X10^{2}$
Cd-115 (a)		3.0	$8.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.9X10^{4}$	$5.1X10^{5}$
Cd-115m		$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$9.4X10^{2}$	$2.5X10^{4}$
Ce-139	Cerium (58)	7.0	$1.9X10^{2}$	2.0	$5.4X10^{1}$	$2.5X10^{2}$	$6.8X10^{3}$
Ce-141		$2.0X10^{1}$	$5.4X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.1X10^{3}$	$2.8X10^{4}$
Ce-143		$9.0X10^{-1}$	$2.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.5X10^{4}$	$6.6X10^{5}$
Ce-144 (a)		$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$1.2X10^{2}$	$3.2X10^{3}$
Cf-248	Californium (98)	$4.0X10^{1}$	$1.1X10^{3}$	$6.0X10^{-3}$	$1.6X10^{-1}$	$5.8X10^{1}$	$1.6X10^{3}$
Cf-249		3.0	$8.1X10^{1}$	$8.0X10^{-4}$	$2.2X10^{-2}$	$1.5X10^{-1}$	4.1
Cf-250		$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{-3}$	$5.4X10^{-2}$	4.0	$1.1X10^{2}$
Cf-251		7.0	$1.9X10^{2}$	$7.0X10^{-4}$	$1.9X10^{-2}$	$5.9X10^{-2}$	1.6
Cf-252 (h)		$5.0X10^{-2}$	1.4	$3.0X10^{-3}$	$8.1X10^{-2}$	$2.0X10^{1}$	$5.4X10^{2}$
Cf-253 (a)		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{-2}$	1.1	$1.1X10^{3}$	$2.9X10^{4}$
Cf-254		$1.0X10^{-3}$	$2.7X10^{-2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$3.1X10^{2}$	$8.5X10^{3}$
Cl-36	Chlorine (17)	$1.0X10^{1}$	$2.7X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.2X10^{-3}$	$3.3X10^{-2}$
Cl-38		$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$4.9X10^{6}$	$1.3X10^{8}$
Cm-240	Curium (96)	$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$7.5X10^{2}$	$2.0X10^{4}$
Cm-241		2.0	$5.4X10^{1}$	1.0	$2.7X10^{1}$	$6.1X10^{2}$	$1.7X10^{4}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Cm-242		$4.0X10^{1}$	$1.1X10^{3}$	$1.0X10^{-2}$	$2.7X10^{-1}$	$1.2X10^{2}$	$3.3X10^{3}$
Cm-243		9.0	$2.4X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$1.9X10^{-3}$	$5.2X10^{1}$
Cm-244		$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{-3}$	$5.4X10^{-2}$	3.0	$8.1X10^{1}$
Cm-245		9.0	$2.4X10^{2}$	$9.0X10^{-4}$	$2.4X10^{-2}$	$6.4X10^{-3}$	$1.7X10^{-1}$
Cm-246		9.0	$2.4X10^{2}$	$9.0X10^{-4}$	$2.4X10^{-2}$	$1.1X10^{-2}$	$3.1X10^{-1}$
Cm-247 (a)		3.0	$8.1X10^{1}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$3.4X10^{-6}$	$9.3X10^{-5}$
Cm-248		$2.0X10^{-2}$	$5.4X10^{-1}$	$3.0X10^{-4}$	$8.1X10^{-3}$	$1.6X10^{-4}$	$4.2X10^{-3}$
Co-55	Cobalt (27)	$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$1.1X10^{5}$	$3.1X10^{6}$
Co-56		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$1.1X10^{3}$	$3.0X10^{4}$
Co-57		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	$3.1X10^{2}$	$8.4X10^{3}$
Co-58		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$1.2X10^{3}$	$3.2X10^{4}$
Co-58m		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$2.2X10^{5}$	$5.9X10^{6}$
Co-60		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$4.2X10^{1}$	$1.1X10^{3}$
Cr-51	Chromium (24)	$3.0X10^{1}$	$8.1X10^{2}$	$3.0X10^{1}$	$8.1X10^{2}$	$3.4X10^{3}$	$9.2X10^{4}$
Cs-129	Cesium (55)	4.0	$1.1X10^{2}$	4.0	$1.1X10^{2}$	$2.8X10^{4}$	$7.6X10^{5}$
Cs-131		$3.0X10^{1}$	$8.1X10^{2}$	$3.0X10^{1}$	$8.1X10^{2}$	$3.8X10^{3}$	$1.0X10^{5}$
Cs-132		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$5.7X10^{3}$	$1.5X10^{5}$
Cs-134		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$4.8X10^{1}$	$1.3X10^{3}$
Cs-134m		$4.0X10^{1}$	$1.1X10^{3}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.0X10^{5}$	$8.0X10^{6}$
Cs-135		$4.0X10^{1}$	$1.1X10^{3}$	1.0	$2.7X10^{1}$	$4.3X10^{-5}$	$1.2X10^{-3}$
Cs-136		$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$2.7X10^{3}$	$7.3X10^{4}$
Cs-137 (a)		2.0	$5.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	3.2	$8.7X10^{1}$
Cu-64	Copper (29)	6.0	$1.6X10^{2}$	1.0	$2.7X10^{1}$	$1.4X10^{5}$	$3.9X10^{6}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Cu-67		$1.0X10^{1}$	$2.7X10^{2}$	$7.0X10^{-1}$	$1.9X10^{1}$	$2.8X10^{4}$	$7.6X10^{5}$
Dy-159	Dysprosium (66)	$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{1}$	$5.4X10^{2}$	$2.1X10^{2}$	$5.7X10^{3}$
Dy-165		$9.0X10^{-1}$	$2.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.0X10^{5}$	$8.2X10^{6}$
Dy-166 (a)		$9.0X10^{-1}$	$2.4X10^{1}$	$3.0X10^{-1}$	8.1	$8.6X10^{3}$	$2.3X10^{5}$
Er-169	Erbium (68)	$4.0X10^{1}$	$1.1X10^{3}$	1.0	$2.7X10^{1}$	$3.1X10^{3}$	$8.3X10^{4}$
Er-171		$8.0X10^{-1}$	$2.2X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$9.0X10^{4}$	$2.4X10^{6}$
Eu-147	Europium (63)	2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$1.4X10^{3}$	$3.7X10^{4}$
Eu-148		$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$6.0X10^{2}$	$1.6X10^{4}$
Eu-149		$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{1}$	$5.4X10^{2}$	$3.5X10^{2}$	$9.4X10^{3}$
Eu-150 (short lived)		2.0	$5.4X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$6.1X10^{4}$	$1.6X10^{6}$
Eu-150 (long lived)		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$6.1X10^{4}$	$1.6X10^{6}$
Eu-152		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	6.5	$1.8X10^{2}$
Eu-152m		$8.0X10^{-1}$	$2.2X10^{1}$	$8.0X10^{-1}$	$2.2X10^{1}$	$8.2X10^{4}$	$2.2X10^{6}$
Eu-154		$9.0X10^{-1}$	$2.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	9.8	$2.6X10^{2}$
Eu-155		$2.0X10^{1}$	$5.4X10^{2}$	3.0	$8.1X10^{1}$	$1.8X10^{1}$	$4.9X10^{2}$
Eu-156		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$2.0X10^{3}$	$5.5X10^{4}$
F-18	Fluorine (9)	1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.5X10^{6}$	$9.5X10^{7}$
Fe-52 (a)	Iron (26)	$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$2.7X10^{5}$	$7.3X10^{6}$
Fe-55		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$8.8X10^{1}$	$2.4X10^{3}$
Fe-59		$9.0X10^{-1}$	$2.4X10^{1}$	$9.0X10^{-1}$	$2.4X10^{1}$	$1.8X10^{3}$	$5.0X10^{4}$
Fe-60 (a)		$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{-1}$	5.4	$7.4X10^{-4}$	$2.0X10^{-2}$
Ga-67	Gallium (31)	7.0	$1.9X10^{2}$	3.0	$8.1X10^{1}$	$2.2X10^{4}$	$6.0X10^{5}$
Ga-68		$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$1.5X10^{6}$	$4.1X10^{7}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Ga-72		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.1X10^{5}$	$3.1X10^{6}$
Gd-146 (a)	Gadolinium (64)	$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$6.9X10^{2}$	$1.9X10^{4}$
Gd-148		$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{-3}$	$5.4X10^{-2}$	1.2	$3.2X10^{1}$
Gd-153		$1.0X10^{1}$	$2.7X10^{2}$	9.0	$2.4X10^{2}$	$1.3X10^{2}$	$3.5X10^{3}$
Gd-159		3.0	$8.1X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.9X10^{4}$	$1.1X10^{6}$
Ge-68 (a)	Germanium (32)	$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$2.6X10^{2}$	$7.1X10^{3}$
Ge-71		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$5.8X10^{3}$	$1.6X10^{5}$
Ge-77		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$1.3X10^{5}$	$3.6X10^{6}$
Hf-172 (a)	Hafnium (72)	$6.0X10^{-1}$	$1.6X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$4.1X10^{1}$	$1.1X10^{3}$
Hf-175		3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	$3.9X10^{2}$	$1.1X10^{4}$
Hf-181		2.0	$5.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$6.3X10^{2}$	$1.7X10^{4}$
Hf-182		Unlimited	Unlimited	Unlimited	Unlimited	$8.1X10^{-6}$	$2.2X10^{-4}$
Hg-194 (a)	Mercury (80)	1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$1.3X10^{-1}$	3.5
Hg-195m (a)		3.0	$8.1X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$1.5X10^{4}$	$4.0X10^{5}$
Hg-197		$2.0X10^{1}$	$5.4X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	$9.2X10^{3}$	$2.5X10^{5}$
Hg-197m		$1.0X10^{1}$	$2.7X10^{2}$	$4.0X10^{-1}$	$1.1X10^{1}$	$2.5X10^{4}$	$6.7X10^{5}$
Hg-203		5.0	$1.4X10^{2}$	1.0	$2.7X10^{1}$	$5.1X10^{2}$	$1.4X10^{4}$
Ho-166	Holmium (67)	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$2.6X10^{4}$	$7.0X10^{5}$
Ho-166m		$6.0X10^{-1}$	$1.6X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$6.6X10^{-2}$	1.8
I-123	Iodine (53)	6.0	$1.6X10^{2}$	3.0	$8.1X10^{1}$	$7.1X10^{4}$	$1.9X10^{6}$
I-124		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$9.3X10^{3}$	$2.5X10^{5}$
I-125		$2.0X10^{1}$	$5.4X10^{2}$	3.0	$8.1X10^{1}$	$6.4X10^{2}$	$1.7X10^{4}$
I-126		2.0	$5.4X10^{1}$	1.0	$2.7X10^{1}$	$2.9X10^{3}$	$8.0X10^{4}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
I-129		Unlimited	Unlimited	Unlimited	Unlimited	$6.5X10^{-6}$	$1.8X10^{-4}$
I-131		3.0	$8.1X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$4.6X10^{3}$	$1.2X10^{5}$
I-132		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$3.8X10^{5}$	$1.0X10^{7}$
I-133		$7.0X10^{-1}$	$1.9X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$4.2X10^{4}$	$1.1X10^{6}$
I-134		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$9.9X10^{5}$	$2.7X10^{7}$
I-135 (a)		$6.0X10^{-1}$	$1.6X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.3X10^{5}$	$3.5X10^{6}$
In-111	Indium (49)	3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	$1.5X10^{4}$	$4.2X10^{5}$
In-113m		4.0	$1.1X10^{2}$	2.0	$5.4X10^{1}$	$6.2X10^{5}$	$1.7X10^{7}$
In-114m (a)		$1.0X10^{1}$	$2.7X10^{2}$	$5.0X10^{-1}$	$1.4X10^{1}$	$8.6X10^{2}$	$2.3X10^{4}$
In-115m		7.0	$1.9X10^{2}$	1.0	$2.7X10^{1}$	$2.2X10^{5}$	$6.1X10^{6}$
Ir-189 (a)	Iridium (77)	$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	$1.9X10^{3}$	$5.2X10^{4}$
Ir-190		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$2.3X10^{3}$	$6.2X10^{4}$
Ir-192 (c)		1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.4X10^{2}$	$9.2X10^{3}$
Ir-194		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$3.1X10^{4}$	$8.4X10^{5}$
K-40	Potassium (19)	$9.0X10^{-1}$	$2.4X10^{1}$	$9.0X10^{-1}$	$2.4X10^{1}$	$2.4X10^{-7}$	$6.4X10^{-6}$
K-42		$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$2.2X10^{5}$	$6.0X10^{6}$
K-43		$7.0X10^{-1}$	$1.9X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.2X10^{5}$	$3.3X10^{6}$
Kr-81	Krypton (36)	$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$7.8X10^{-4}$	$2.1X10^{-2}$
Kr-85		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	$1.5X10^{1}$	$3.9X10^{2}$
Kr-85m		8.0	$2.2X10^{2}$	3.0	$8.1X10^{1}$	$3.0X10^{5}$	$8.2X10^{6}$
Kr-87		$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$1.0X10^{6}$	$2.8X10^{7}$
La-137	Lanthanum (57)	$3.0X10^{1}$	$8.1X10^{2}$	6.0	$1.6X10^{2}$	$1.6X10^{-3}$	$4.4X10^{-2}$
La-140		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$2.1X10^{4}$	$5.6X10^{5}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Lu-172	Lutetium (71)	$6.0X10^{-1}$	$1.6X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$4.2X10^{3}$	$1.1X10^{5}$
Lu-173		8.0	$2.2X10^{2}$	8.0	$2.2X10^{2}$	$5.6X10^{1}$	$1.5X10^{3}$
Lu-174		9.0	$2.4X10^{2}$	9.0	$2.4X10^{2}$	$2.3X10^{1}$	$6.2X10^{2}$
Lu-174m		$2.0X10^{1}$	$5.4X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	$2.0X10^{2}$	$5.3X10^{3}$
Lu-177		$3.0X10^{1}$	$8.1X10^{2}$	$7.0X10^{-1}$	$1.9X10^{1}$	$4.1X10^{3}$	$1.1X10^{5}$
Mg-28 (a)	Magnesium (12)	$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$2.0X10^{5}$	$5.4X10^{6}$
Mn-52	Manganese (25)	$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$1.6X10^{4}$	$4.4X10^{5}$
Mn-53		Unlimited	Unlimited	Unlimited	Unlimited	$6.8X10^{-5}$	$1.8X10^{-3}$
Mn-54		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$2.9X10^{2}$	$7.7X10^{3}$
Mn-56		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$8.0X10^{5}$	$2.2X10^{7}$
Mo-93	Molybdenum (42)	$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{1}$	$5.4X10^{2}$	$4.1X10^{-2}$	1.1
Mo-99 (a) (i)		1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.8X10^{4}$	$4.8X10^{5}$
N-13	Nitrogen (7)	$9.0X10^{-1}$	$2.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$5.4X10^{7}$	$1.5X10^{9}$
Na-22	Sodium (11)	$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$2.3X10^{2}$	$6.3X10^{3}$
Na-24		$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$3.2X10^{5}$	$8.7X10^{6}$
Nb-93m	Niobium (41)	$4.0X10^{1}$	$1.1X10^{3}$	$3.0X10^{1}$	$8.1X10^{2}$	8.8	$2.4X10^{2}$
Nb-94		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$6.9X10^{-3}$	$1.9X10^{-1}$
Nb-95		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$1.5X10^{3}$	$3.9X10^{4}$
Nb-97		$9.0X10^{-1}$	$2.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$9.9X10^{5}$	$2.7X10^{7}$
Nd-147	Neodymium (60)	6.0	$1.6X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.0X10^{3}$	$8.1X10^{4}$
Nd-149		$6.0X10^{-1}$	$1.6X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$4.5X10^{5}$	$1.2X10^{7}$
Ni-59	Nickel (28)	Unlimited	Unlimited	Unlimited	Unlimited	$3.0X10^{-3}$	$8.0X10^{-2}$
Ni-63		$4.0X10^{1}$	$1.1X10^{3}$	$3.0X10^{1}$	$8.1X10^{2}$	2.1	$5.7X10^{1}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Ni-65		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$7.1X10^{5}$	$1.9X10^{7}$
Np-235	Neptunium (93)	$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$5.2X10^{1}$	$1.4X10^{3}$
Np-236 (short-lived)		$2.0X10^{1}$	$5.4X10^{2}$	2.0	$5.4X10^{1}$	$4.7X10^{-4}$	$1.3X10^{-2}$
Np-236 (long-lived)		$9.0X10^{0}$	$2.4X10^{2}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$4.7X10^{-4}$	$1.3X10^{-2}$
Np-237		$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{-3}$	$5.4X10^{-2}$	$2.6X10^{-5}$	$7.1X10^{-4}$
Np-239		7.0	$1.9X10^{2}$	$4.0X10^{-1}$	$1.1X10^{1}$	$8.6X10^{3}$	$2.3X10^{5}$
Os-185	Osmium (76)	1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$2.8X10^{2}$	$7.5X10^{3}$
Os-191		$1.0X10^{1}$	$2.7X10^{2}$	2.0	$5.4X10^{1}$	$1.6X10^{3}$	$4.4X10^{4}$
Os-191m		$4.0X10^{1}$	$1.1X10^{3}$	$3.0X10^{1}$	$8.1X10^{2}$	$4.6X10^{4}$	$1.3X10^{6}$
Os-193		2.0	$5.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.0X10^{4}$	$5.3X10^{5}$
Os-194 (a)		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$1.1X10^{1}$	$3.1X10^{2}$
P-32	Phosphorus (15)	$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$1.1X10^{4}$	$2.9X10^{5}$
P-33		$4.0X10^{1}$	$1.1X10^{3}$	1.0	$2.7X10^{1}$	$5.8X10^{3}$	$1.6X10^{5}$
Pa-230 (a)	Protactinium (91)	2.0	$5.4X10^{1}$	$7.0X10^{-2}$	1.9	$1.2X10^{3}$	$3.3X10^{4}$
Pa-231		4.0	$1.1X10^{2}$	$4.0X10^{-4}$	$1.1X10^{-2}$	$1.7X10^{-3}$	$4.7X10^{-2}$
Pa-233		5.0	$1.4X10^{2}$	$7.0X10^{-1}$	$1.9X10^{1}$	$7.7X10^{2}$	$2.1X10^{4}$
Pb-201	Lead (82)	1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$6.2X10^{4}$	$1.7X10^{6}$
Pb-202		$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{1}$	$5.4X10^{2}$	$1.2X10^{-4}$	$3.4X10^{-3}$
Pb-203		4.0	$1.1X10^{2}$	3.0	$8.1X10^{1}$	$1.1X10^{4}$	$3.0X10^{5}$
Pb-205		Unlimited	Unlimited	Unlimited	Unlimited	$4.5X10^{-6}$	$1.2X10^{-4}$
Pb-210 (a)		1.0	$2.7X10^{1}$	$5.0X10^{-2}$	1.4	2.8	$7.6X10^{1}$
Pb-212 (a)		$7.0X10^{-1}$	$1.9X10^{1}$	$2.0X10^{-1}$	5.4	$5.1X10^{4}$	$1.4X10^{6}$
Pd-103 (a)	Palladium (46)	$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$2.8X10^{3}$	$7.5X10^{4}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Pd-107		Unlimited	Unlimited	Unlimited	Unlimited	$1.9X10^{-5}$	$5.1X10^{-4}$
Pd-109		2.0	$5.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$7.9X10^{4}$	$2.1X10^{6}$
Pm-143	Promethium (61)	3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	$1.3X10^{2}$	$3.4X10^{3}$
Pm-144		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$9.2X10^{1}$	$2.5X10^{3}$
Pm-145		$3.0X10^{1}$	$8.1X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	5.2	$1.4X10^{2}$
Pm-147		$4.0X10^{1}$	$1.1X10^{3}$	2.0	$5.4X10^{1}$	$3.4X10^{1}$	$9.3X10^{2}$
Pm-148m (a)		$8.0X10^{-1}$	$2.2X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$7.9X10^{2}$	$2.1X10^{4}$
Pm-149		2.0	$5.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.5X10^{4}$	$4.0X10^{5}$
Pm-151		2.0	$5.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.7X10^{4}$	$7.3X10^{5}$
Po-210	Polonium (84)	$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$1.7X10^{2}$	$4.5X10^{3}$
Pr-142	Praseodymium (59)	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$4.3X10^{4}$	$1.2X10^{6}$
Pr-143		3.0	$8.1X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.5X10^{3}$	$6.7X10^{4}$
Pt-188 (a)	Platinum (78)	1.0	$2.7X10^{1}$	$8.0X10^{-1}$	$2.2X10^{1}$	$2.5X10^{3}$	$6.8X10^{4}$
Pt-191		4.0	$1.1X10^{2}$	3.0	$8.1X10^{1}$	$8.7X10^{3}$	$2.4X10^{5}$
Pt-193		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	1.4	$3.7X10^{1}$
Pt-193m		$4.0X10^{1}$	$1.1X10^{3}$	$5.0X10^{-1}$	$1.4X10^{1}$	$5.8X10^{3}$	$1.6X10^{5}$
Pt-195m		$1.0X10^{1}$	$2.7X10^{2}$	$5.0X10^{-1}$	$1.4X10^{1}$	$6.2X10^{3}$	$1.7X10^{5}$
Pt-197		$2.0X10^{1}$	$5.4X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.2X10^{4}$	$8.7X10^{5}$
Pt-197m		$1.0X10^{1}$	$2.7X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.7X10^{5}$	$1.0X10^{7}$
Pu-236	Plutonium (94)	$3.0X10^{1}$	$8.1X10^{2}$	$3.0X10^{-3}$	$8.1X10^{-2}$	$2.0X10^{1}$	$5.3X10^{2}$
Pu-237		$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{1}$	$5.4X10^{2}$	$4.5X10^{2}$	$1.2X10^{4}$
Pu-238		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$6.3X10^{-1}$	$1.7X10^{1}$
Pu-239		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$2.3X10^{-3}$	$6.2X10^{-2}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Pu-240		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$8.4X10^{-3}$	$2.3X10^{-1}$
Pu-241 (a)		$4.0X10^{1}$	$1.1X10^{3}$	$6.0X10^{-2}$	1.6	3.8	$1.0X10^{2}$
Pu-242		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$1.5X10^{-4}$	$3.9X10^{-3}$
Pu-244 (a)		$4.0X10^{-1}$	$1.1X10^{1}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$6.7X10^{-7}$	$1.8X10^{-5}$
Ra-223 (a)	Radium (88)	$4.0X10^{-1}$	$1.1X10^{1}$	$7.0X10^{-3}$	$1.9X10^{-1}$	$1.9X10^{3}$	$5.1X10^{4}$
Ra-224 (a)		$4.0X10^{-1}$	$1.1X10^{1}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$5.9X10^{3}$	$1.6X10^{5}$
Ra-225 (a)		$2.0X10^{-1}$	5.4	$4.0X10^{-3}$	$1.1X10^{-1}$	$1.5X10^{3}$	$3.9X10^{4}$
Ra-226 (a)		$2.0X10^{-1}$	5.4	$3.0X10^{-3}$	$8.1X10^{-2}$	$3.7X10^{-2}$	1.0
Ra-228 (a)		$6.0X10^{-1}$	$1.6X10^{1}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$1.0X10^{1}$	$2.7X10^{2}$
Rb-81	Rubidium (37)	2.0	$5.4X10^{1}$	$8.0X10^{-1}$	$2.2X10^{1}$	$3.1X10^{5}$	$8.4X10^{6}$
Rb-83 (a)		2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$6.8X10^{2}$	$1.8X10^{4}$
Rb-84		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$1.8X10^{3}$	$4.7X10^{4}$
Rb-86		$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$3.0X10^{3}$	$8.1X10^{4}$
Rb-87		Unlimited	Unlimited	Unlimited	Unlimited	$3.2X10^{-9}$	$8.6X10^{-8}$
Rb(nat)		Unlimited	Unlimited	Unlimited	Unlimited	$6.7X10^{6}$	$1.8X10^{8}$
Re-184	Rhenium (75)	1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$6.9X10^{2}$	$1.9X10^{4}$
Re-184m		3.0	$8.1X10^{1}$	1.0	$2.7X10^{1}$	$1.6X10^{2}$	$4.3X10^{3}$
Re-186		2.0	$5.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$6.9X10^{3}$	$1.9X10^{5}$
Re-187		Unlimited	Unlimited	Unlimited	Unlimited	$1.4X10^{-9}$	$3.8X10^{-8}$
Re-188		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$3.6X10^{4}$	$9.8X10^{5}$
Re-189 (a)		3.0	$8.1X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.5X10^{4}$	$6.8X10^{5}$
Re(nat)		Unlimited	Unlimited	Unlimited	Unlimited	0.0	$2.4X10^{-8}$
Rh-99	Rhodium (45)	2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$3.0X10^{3}$	$8.2X10^{4}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Rh-101		4.0	$1.1X10^{2}$	3.0	$8.1X10^{1}$	$4.1X10^{1}$	$1.1X10^{3}$
Rh-102		$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$4.5X10^{1}$	$1.2X10^{3}$
Rh-102m		2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$2.3X10^{2}$	$6.2X10^{3}$
Rh-103m		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$1.2X10^{6}$	$3.3X10^{7}$
Rh-105		$1.0X10^{1}$	$2.7X10^{2}$	$8.0X10^{-1}$	$2.2X10^{1}$	$3.1X10^{4}$	$8.4X10^{5}$
Rn-222 (a)	Radon (86)	$3.0X10^{-1}$	8.1	$4.0X10^{-3}$	$1.1X10^{-1}$	$5.7X10^{3}$	$1.5X10^{5}$
Ru-97	Ruthenium (44)	5.0	$1.4X10^{2}$	5.0	$1.4X10^{2}$	$1.7X10^{4}$	$4.6X10^{5}$
Ru-103 (a)		2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$1.2X10^{3}$	$3.2X10^{4}$
Ru-105		1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.5X10^{5}$	$6.7X10^{6}$
Ru-106 (a)		$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$1.2X10^{2}$	$3.3X10^{3}$
S-35	Sulphur (16)	$4.0X10^{1}$	$1.1X10^{3}$	3.0	$8.1X10^{1}$	$1.6X10^{3}$	$4.3X10^{4}$
Sb-122	Antimony (51)	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.5X10^{4}$	$4.0X10^{5}$
Sb-124		$6.0X10^{-1}$	$1.6X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$6.5X10^{2}$	$1.7X10^{4}$
Sb-125		2.0	$5.4X10^{1}$	1.0	$2.7X10^{1}$	$3.9X10^{1}$	$1.0X10^{3}$
Sb-126		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$3.1X10^{3}$	$8.4X10^{4}$
Sc-44	Scandium (21)	$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$6.7X10^{5}$	$1.8X10^{7}$
Sc-46		$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$1.3X10^{3}$	$3.4X10^{4}$
Sc-47		$1.0X10^{1}$	$2.7X10^{2}$	$7.0X10^{-1}$	$1.9X10^{1}$	$3.1X10^{4}$	$8.3X10^{5}$
Sc-48		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$5.5X10^{4}$	$1.5X10^{6}$
Se-75	Selenium (34)	3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	$5.4X10^{2}$	$1.5X10^{4}$
Se-79		$4.0X10^{1}$	$1.1X10^{3}$	2.0	$5.4X10^{1}$	$2.6X10^{-3}$	$7.0X10^{-2}$
Si-31	Silicon (14)	$6.0X10^{-1}$	$1.6X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.4X10^{6}$	$3.9X10^{7}$
Si-32		$4.0X10^{1}$	$1.1X10^{3}$	$5.0X10^{-1}$	$1.4X10^{1}$	3.9	$1.1X10^{2}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Sm-145	Samarium (62)	$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	$9.8X10^{1}$	$2.6X10^{3}$
Sm-147		Unlimited	Unlimited	Unlimited	Unlimited	$8.5X10^{-1}$	$2.3X10^{-8}$
Sm-151		$4.0X10^{1}$	$1.1X10^{3}$	$1.0X10^{1}$	$2.7X10^{2}$	$9.7X10^{-1}$	$2.6X10^{1}$
Sm-153		9.0	$2.4X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.6X10^{4}$	$4.4X10^{5}$
Sn-113 (a)	Tin (50)	4.0	$1.1X10^{2}$	2.0	$5.4X10^{1}$	$3.7X10^{2}$	$1.0X10^{4}$
Sn-117m		7.0	$1.9X10^{2}$	$4.0X10^{-1}$	$1.1X10^{1}$	$3.0X10^{3}$	$8.2X10^{4}$
Sn-119m		$4.0X10^{1}$	$1.1X10^{3}$	$3.0X10^{1}$	$8.1X10^{2}$	$1.4X10^{2}$	$3.7X10^{3}$
Sn-121m (a)		$4.0X10^{1}$	$1.1X10^{3}$	$9.0X10^{-1}$	$2.4X10^{1}$	2.0	$5.4X10^{1}$
Sn-123		$8.0X10^{-1}$	$2.2X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.0X10^{2}$	$8.2X10^{3}$
Sn-125		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{3}$	$1.1X10^{5}$
Sn-126 (a)		$6.0X10^{-1}$	$1.6X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.0X10^{-3}$	$2.8X10^{-2}$
Sr-82 (a)	Strontium (38)	$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$2.3X10^{3}$	$6.2X10^{4}$
Sr-85		2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$8.8X10^{2}$	$2.4X10^{4}$
Sr-85m		5.0	$1.4X10^{2}$	5.0	$1.4X10^{2}$	$1.2X10^{6}$	$3.3X10^{7}$
Sr-87m		3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	$4.8X10^{5}$	$1.3X10^{7}$
Sr-89		$6.0X10^{-1}$	$1.6X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.1X10^{3}$	$2.9X10^{4}$
Sr-90 (a)		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	5.1	$1.4X10^{2}$
Sr-91 (a)		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$1.3X10^{5}$	$3.6X10^{6}$
Sr-92 (a)		1.0	$2.7X10^{1}$	$3.0X10^{-1}$	8.1	$4.7X10^{5}$	$1.3X10^{7}$
T(H-3)	Tritium (1)	$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$3.6X10^{2}$	$9.7X10^{3}$
Ta-178 (long-lived)	Tantalum (73)	1.0	$2.7X10^{1}$	$8.0X10^{-1}$	$2.2X10^{1}$	$4.2X10^{6}$	$1.1X10^{8}$
Ta-179		$3.0X10^{1}$	$8.1X10^{2}$	$3.0X10^{1}$	$8.1X10^{2}$	$4.1X10^{1}$	$1.1X10^{3}$
Ta-182		$9.0X10^{-1}$	$2.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$2.3X10^{2}$	$6.2X10^{3}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Tb-157	Terbium (65)	$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$5.6X10^{-1}$	$1.5X10^{1}$
Tb-158		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$5.6X10^{-1}$	$1.5X10^{1}$
Tb-160		1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$4.2X10^{2}$	$1.1X10^{4}$
Tc-95m (a)	Technetium (43)	2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$8.3X10^{2}$	$2.2X10^{4}$
Tc-96		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.2X10^{4}$	$3.2X10^{5}$
Tc-96m (a)		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.4X10^{6}$	$3.8X10^{7}$
Tc-97		Unlimited	Unlimited	Unlimited	Unlimited	$5.2X10^{-5}$	$1.4X10^{-3}$
Tc-97m		$4.0X10^{1}$	$1.1X10^{3}$	1.0	$2.7X10^{1}$	$5.6X10^{2}$	$1.5X10^{4}$
Tc-98		$8.0X10^{-1}$	$2.2X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$3.2X10^{-5}$	$8.7X10^{-4}$
Tc-99		$4.0X10^{1}$	$1.1X10^{3}$	$9.0X10^{-1}$	$2.4X10^{1}$	$6.3X10^{-4}$	$1.7X10^{-2}$
Tc-99m		$1.0X10^{1}$	$2.7X10^{2}$	4.0	$1.1X10^{2}$	$1.9X10^{5}$	$5.3X10^{6}$
Te-121	Tellurium (52)	2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$2.4X10^{3}$	$6.4X10^{4}$
Te-121m		5.0	$1.4X10^{2}$	3.0	$8.1X10^{1}$	$2.6X10^{2}$	$7.0X10^{3}$
Te-123m		8.0	$2.2X10^{2}$	1.0	$2.7X10^{1}$	$3.3X10^{2}$	$8.9X10^{3}$
Te-125m		$2.0X10^{1}$	$5.4X10^{2}$	$9.0X10^{-1}$	$2.4X10^{1}$	$6.7X10^{2}$	$1.8X10^{4}$
Te-127		$2.0X10^{1}$	$5.4X10^{2}$	$7.0X10^{-1}$	$1.9X10^{1}$	$9.8X10^{4}$	$2.6X10^{6}$
Te-127m (a)		$2.0X10^{1}$	$5.4X10^{2}$	$5.0X10^{-1}$	$1.4X10^{1}$	$3.5X10^{2}$	$9.4X10^{3}$
Te-129		$7.0X10^{-1}$	$1.9X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$7.7X10^{5}$	$2.1X10^{7}$
Te-129m (a)		$8.0X10^{-1}$	$2.2X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.1X10^{3}$	$3.0X10^{4}$
Te-131m (a)		$7.0X10^{-1}$	$1.9X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$3.0X10^{4}$	$8.0X10^{5}$
Te-132 (a)		$5.0X10^{-1}$	$1.4X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$3.1X10^{4}$	$3.0X10^{5}$
Th-227	Thorium (90)	$1.0X10^{1}$	$2.7X10^{2}$	$5.0X10^{-3}$	$1.4X10^{-1}$	$1.1X10^{3}$	$3.1X10^{4}$
Th-228 (a)		$5.0X10^{-1}$	$1.4X10^{1}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$3.0X10^{1}$	$8.2X10^{2}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Th-229		5.0	$1.4X10^{2}$	$5.0X10^{-4}$	$1.4X10^{-2}$	$7.9X10^{-3}$	$2.1X10^{-1}$
Th-230		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$7.6X10^{-4}$	$2.1X10^{-2}$
Th-231		$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$2.0X10^{4}$	$5.3X10^{5}$
Th-232		Unlimited	Unlimited	Unlimited	Unlimited	$4.0X10^{-9}$	$1.1X10^{-7}$
Th-234 (a)		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$8.6X10^{2}$	$2.3X10^{4}$
Th(nat)		Unlimited	Unlimited	Unlimited	Unlimited	$8.1X10^{-9}$	$2.2X10^{-7}$
Ti-44 (a)	Titanium (22)	$5.0X10^{-1}$	$1.4X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	6.4	$1.7X10^{2}$
Tl-200	Thallium (81)	$9.0X10^{-1}$	$2.4X10^{1}$	$9.0X10^{-1}$	$2.4X10^{1}$	$2.2X10^{4}$	$6.0X10^{5}$
Tl-201		$1.0X10^{1}$	$2.7X10^{2}$	4.0	$1.1X10^{2}$	$7.9X10^{3}$	$2.1X10^{5}$
Tl-202		2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$2.0X10^{3}$	$5.3X10^{4}$
Tl-204		$1.0X10^{1}$	$2.7X10^{2}$	$7.0X10^{-1}$	$1.9X10^{1}$	$1.7X10^{1}$	$4.6X10^{2}$
Tm-167	Thulium (69)	7.0	$1.9X10^{2}$	$8.0X10^{-1}$	$2.2X10^{1}$	$3.1X10^{3}$	$8.5X10^{4}$
Tm-170		3.0	$8.1X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.2X10^{2}$	$6.0X10^{3}$
Tm-171		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$
U-230 (fast lung absorption) (a)(d)	Uranium (92)	$4.0X10^{1}$	$1.1X10^{3}$	$1.0X10^{-1}$	2.7	$1.0X10^{3}$	$2.7X10^{4}$
U-230 (medium lung absorption) (a)(e)		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{-3}$	$1.1X10^{-1}$	$1.0X10^{3}$	$2.7X10^{4}$
U-230 (slow lung absorption) (a)(f)		$3.0X10^{1}$	$8.1X10^{2}$	$3.0X10^{-3}$	$8.1X10^{-2}$	$1.0X10^{3}$	$2.7X10^{4}$
U-232 (fast lung absorption) (d)		$4.0X10^{1}$	$1.1X10^{3}$	$1.0X10^{-2}$	$2.7X10^{-1}$	$8.3X10^{-1}$	$2.2X10^{1}$
U-232 (medium lung absorption) (e)		$4.0X10^{1}$	$1.1X10^{3}$	$7.0X10^{-3}$	$1.9X10^{-1}$	$8.3X10^{-1}$	$2.2X10^{1}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
U-232 (slow lung absorption) (f)		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$8.3X10^{-1}$	$2.2X10^{1}$
U-233 (fast lung absorption) (d)		$4.0X10^{1}$	$1.1X10^{3}$	$9.0X10^{-2}$	2.4	$3.6X10^{-4}$	$9.7X10^{-3}$
U-233 (medium lung absorption) (e)		$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$3.6X10^{-4}$	$9.7X10^{-3}$
U-233 (slow lung absorption) (f)		$4.0X10^{1}$	$1.1X10^{3}$	$6.0X10^{-3}$	$1.6X10^{-1}$	$3.6X10^{-4}$	$9.7X10^{-3}$
U-234 (fast lung absorption) (d)		$4.0X10^{1}$	$1.1X10^{3}$	$9.0X10^{-2}$	2.4	$2.3X10^{-4}$	$6.2X10^{-3}$
U-234 (medium lung absorption) (e)		$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$2.3X10^{-4}$	$6.2X10^{-3}$
U-234 (slow lung absorption) (f)		$4.0X10^{1}$	$1.1X10^{3}$	$6.0X10^{-3}$	$1.6X10^{-1}$	$2.3X10^{-4}$	$6.2X10^{-3}$
U-235 (all lung absorption types) (a),(d),(e),(f)		Unlimited	Unlimited	Unlimited	Unlimited	$8.0X10^{-8}$	$2.2X10^{-6}$
U-236 (fast lung absorption) (d)		Unlimited	Unlimited	Unlimited	Unlimited	$2.4X10^{-6}$	$6.5X10^{-5}$
U-236 (medium lung absorption) (e)		$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$2.4X10^{-6}$	$6.5X10^{-5}$
U-236 (slow lung absorption) (f)		$4.0X10^{1}$	$1.1X10^{3}$	$6.0X10^{-3}$	$1.6X10^{-1}$	$2.4X10^{-6}$	$6.5X10^{-5}$
U-238 (all lung absorption types) (d),(e),(f)		Unlimited	Unlimited	Unlimited	Unlimited	$1.2X10^{-8}$	$3.4X10^{-7}$
U (nat)		Unlimited	Unlimited	Unlimited	Unlimited	$2.6X10^{-8}$	$7.1X10^{-7}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
U (enriched to 20% or less) (g)		Unlimited	Unlimited	Unlimited	Unlimited	See Table 257-6	See Table 257-6
U (dep)		Unlimited	Unlimited	Unlimited	Unlimited	See Table 257-6	(See Table 257-5)
V-48	Vanadium (23)	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$6.3X10^{3}$	$1.7X10^{5}$
V-49		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$3.0X10^{2}$	$8.1X10^{3}$
W-178 (a)	Tungsten (74)	9.0	$2.4X10^{2}$	5.0	$1.4X10^{2}$	$1.3X10^{3}$	$3.4X10^{4}$
W-181		$3.0X10^{1}$	$8.1X10^{2}$	$3.0X10^{1}$	$8.1X10^{2}$	$2.2X10^{2}$	$6.0X10^{3}$
W-185		$4.0X10^{1}$	$1.1X10^{3}$	$8.0X10^{-1}$	$2.2X10^{1}$	$3.5X10^{2}$	$9.4X10^{3}$
W-187		2.0	$5.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.6X10^{4}$	$7.0X10^{5}$
W-188 (a)		$4.0X10^{-1}$	$1.1X10^{1}$	$3.0X10^{-1}$	8.1	$3.7X10^{2}$	$1.0X10^{4}$
Xe-122 (a)	Xenon (54)	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$4.8X10^{4}$	$1.3X10^{6}$
Xe-123		2.0	$5.4X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$4.4X10^{5}$	$1.2X10^{7}$
Xe-127		4.0	$1.1X10^{2}$	2.0	$5.4X10^{1}$	$1.0X10^{3}$	$2.8X10^{4}$
Xe-131m		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$3.1X10^{3}$	$8.4X10^{4}$
Xe-133		$2.0X10^{1}$	$5.4X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	$6.9X10^{3}$	$1.9X10^{5}$
Xe-135		3.0	$8.1X10^{1}$	2.0	$5.4X10^{1}$	$9.5X10^{4}$	$2.6X10^{6}$
Y-87 (a)	Yttrium (39)	1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$1.7X10^{4}$	$4.5X10^{5}$
Y-88		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$5.2X10^{2}$	$1.4X10^{4}$
Y-90		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$2.0X10^{4}$	$5.4X10^{5}$
Y-91		$6.0X10^{-1}$	$1.6X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$9.1X10^{2}$	$2.5X10^{4}$
Y-91m		2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$1.5X10^{6}$	$4.2X10^{7}$
Y-92		$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$3.6X10^{5}$	$9.6X10^{6}$
Y-93		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$1.2X10^{5}$	$3.3X10^{6}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Yb-169	Ytterbium (70)	4.0	$1.1X10^{2}$	1.0	$2.7X10^{1}$	$8.9X10^{2}$	$2.4X10^{4}$
Yb-175		$3.0X10^{1}$	$8.1X10^{2}$	$9.0X10^{-1}$	$2.4X10^{1}$	$6.6X10^{3}$	$1.8X10^{5}$
Zn-65	Zinc (30)	2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$3.0X10^{2}$	$8.2X10^{3}$
Zn-69		3.0	$8.1X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.8X10^{6}$	$4.9X10^{7}$
Zn-69m (a)		3.0	$8.1X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.2X10^{5}$	$3.3X10^{6}$
Zr-88	Zirconium (40)	3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	$6.6X10^{2}$	$1.8X10^{4}$
Zr-93		Unlimited	Unlimited	Unlimited	Unlimited	$9.3X10^{-5}$	$2.5X10^{-3}$
Zr-95 (a)		2.0	$5.4X10^{1}$	$8.0X10^{-1}$	$2.2X10^{1}$	$7.9X10^{2}$	$2.1X10^{4}$
Zr-97 (a)		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$7.1X10^{4}$	$1.9X10^{6}$

[a] A_1 and/or A_2 values include contributions from daughter nuclides with half-lives less than 10 days.
[b] The values of A_1 and A_2 in Curies (Ci) are approximate and for information only; the regulatory standard units are Terabecquerels (TBq), (subsection (ee)(1) of this section - Determination of A_1 and A_2, Section I.).
[c] The quantity may be determined from a measurement of the rate of decay or a measurement of the radiation level at a prescribed distance from the source.
[d] These values apply only to compounds of uranium that take the chemical form of UF_6, UO_2F_2 and $UO_2(NO_3)_2$ in both normal and accident conditions of transport.
[e] These values apply only to compounds of uranium that take the chemical form of UO_3, UF_4, UCl_4 and hexavalent compounds in both normal and accident conditions of transport.
[f] These values apply to all compounds of uranium other than those specified in notes (d) and (e) of this table.
[g] These values apply to unirradiated uranium only.
[h] A_1 = 0.1 TBq (2.7 Ci) and A_2 = 0.001 TBq (0.027 Ci) for Cf-252 for domestic use.
[i] A_2 = 0.74 TBq (20 Ci) for Mo-99 for domestic use.

Figure: 25 TAC §289.257(ee)(7)

Table 257-4

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Ac-225	Actinium (89)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Ac-227		$1.0X10^{-1}$	$2.7X10^{-12}$	$1.0X10^{3}$	$2.7X10^{-8}$
Ac-228		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ag-105	Silver (47)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ag-108m (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ag-110m		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ag-111		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Al-26	Aluminum (13)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Am-241	Americium (95)	1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Am-242m (b)		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Am-243 (b)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Ar-37	Argon (18)	$1.0X10^{6}$	$2.7X10^{-5}$	$1.0X10^{8}$	$2.7X10^{-3}$
Ar-39		$1.0X10^{7}$	$2.7X10^{-4}$	$1.0X10^{4}$	$2.7X10^{-7}$
Ar-41		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{9}$	$2.7X10^{-2}$
As-72	Arsenic (33)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
As-73		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
As-74		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
As-76		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
As-77		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
At-211	Astatine (85)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Au-193	Gold (79)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Au-194		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Au-195		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Au-198		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Au-199		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ba-131	Barium (56)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ba-133		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ba-133m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ba-140 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Be-7	Beryllium (4)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Be-10		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{6}$	$2.7X10^{-5}$
Bi-205	Bismuth (83)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Bi-206		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Bi-207		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Bi-210		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Bi-210m		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Bi-212 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Bk-247	Berkelium (97)	1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Bk-249		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Br-76	Bromine (35)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Br-77		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Br-82		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
C-11	Carbon (6)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
C-14		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Ca-41	Calcium (20)	$1.0X10^{5}$	$2.7X10^{-6}$	$1.0X10^{7}$	$2.7X10^{-4}$
Ca-45		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Ca-47		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cd-109	Cadmium (48)	$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cd-113m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cd-115		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cd-115m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ce-139	Cerium (58)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ce-141		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Ce-143		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ce-144 (b)		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cf-248	Californium (98)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cf-249		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Cf-250		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cf-251		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Cf-252		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cf-253		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cf-254		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Cl-36	Chlorine (17)	$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cl-38		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Cm-240	Curium (96)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cm-241		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cm-242		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cm-243		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cm-244		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cm-245		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Cm-246		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Cm-247		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cm-248		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Co-55	Cobalt (27)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Co-56		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Co-57		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Co-58		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Co-58m		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Co-60		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cr-51	Chromium (24)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Cs-129	Cesium (55)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cs-131		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cs-132		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cs-134		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cs-134m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cs-135		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Cs-136		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cs-137 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cu-64	Copper (29)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cu-67		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Dy-159	Dysprosium (66)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Dy-165		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Dy-166		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Er-169	Erbium (68)	$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Er-171		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-147	Europium (63)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-148		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-149		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Eu-150 (short lived)		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-150 (long lived)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-152		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-152m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-154		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-155		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Eu-156		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
F-18	Fluorine (9)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Fe-52	Iron (26)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Fe-55		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{6}$	$2.7X10^{-5}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Fe-59		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Fe-60		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Ga-67	Gallium (31)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ga-68		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Ga-72		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Gd-146	Gadolinium (64)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Gd-148		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Gd-153		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Gd-159		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ge-68	Germanium (32)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Ge-71		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{8}$	$2.7X10^{-3}$
Ge-77		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Hf-172	Hafnium (72)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Hf-175		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Hf-181		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Hf-182		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Hg-194	Mercury (80)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Hg-195m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Hg-197		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Hg-197m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Hg-203		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Ho-166	Holmium (67)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{5}$	$2.7X10^{-6}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Ho-166m		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
I-123	Iodine (53)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
I-124		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
I-125		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
I-126		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
I-129		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
I-131		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
I-132		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
I-133		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
I-134		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
I-135		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
In-111	Indium (49)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
In-113m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
In-114m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
In-115m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ir-189	Iridium (77)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Ir-190		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ir-192		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Ir-194		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
K-40	Potassium (19)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
K-42		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
K-43		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Kr-81	Krypton (36)	$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Kr-85		$1.0X10^{5}$	$2.7X10^{-6}$	$1.0X10^{4}$	$2.7X10^{-7}$
Kr-85m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{10}$	$2.7X10^{-1}$
Kr-87		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{9}$	$2.7X10^{-2}$
La-137	Lanthanum (57)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
La-140		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Lu-172	Lutetium (71)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Lu-173		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Lu-174		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Lu-174m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Lu-177		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Mg-28	Magnesium (12)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Mn-52	Manganese (25)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Mn-53		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{9}$	$2.7X10^{-2}$
Mn-54		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Mn-56		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Mo-93	Molybdenum (42)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{8}$	$2.7X10^{-3}$
Mo-99		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
N-13	Nitrogen (7)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{9}$	$2.7X10^{-2}$
Na-22	Sodium (11)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Na-24		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Nb-93m	Niobium (41)	$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Nb-94		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Nb-95		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Nb-97		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Nd-147	Neodymium (60)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Nd-149		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ni-59	Nickel (28)	$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{8}$	$2.7X10^{-3}$
Ni-63		$1.0X10^{5}$	$2.7X10^{-6}$	$1.0X10^{8}$	$2.7X10^{-3}$
Ni-65		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Np-235	Neptunium (93)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Np-236 (short-lived)		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Np-236 (long-lived)		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Np-237 (b)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Np-239		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Os-185	Osmium (76)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Os-191		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Os-191m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Os-193		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Os-194		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
P-32	Phosphorus (15)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{5}$	$2.7X10^{-6}$
P-33		$1.0X10^{5}$	$2.7X10^{-6}$	$1.0X10^{8}$	$2.7X10^{-3}$
Pa-230	Protactinium (91)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pa-231		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Pa-233		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Pb-201	Lead (82)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pb-202		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pb-203		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pb-205		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Pb-210 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Pb-212 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Pd-103	Palladium (46)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{8}$	$2.7X10^{-3}$
Pd-107		$1.0X10^{5}$	$2.7X10^{-6}$	$1.0X10^{8}$	$2.7X10^{-3}$
Pd-109		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pm-143	Promethium (61)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pm-144		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pm-145		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Pm-147		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Pm-148m		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pm-149		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pm-151		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Po-210	Polonium (84)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Pr-142	Praseodymium (59)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Pr-143		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pt-188	Platinum (78)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pt-191		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Pt-193		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Pt-193m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Pt-195m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pt-197		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pt-197m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pu-236	Plutonium (94)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Pu-237		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Pu-238		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Pu-239		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Pu-240		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Pu-241		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Pu-242		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Pu-244		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Ra-223 (b)	Radium (88)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Ra-224 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Ra-225		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Ra-226 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Ra-228 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Rb-81	Rubidium (37)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Rb-83		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Rb-84		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Rb-86		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Rb-87		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Rb(nat)		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Re-184	Rhenium (75)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Re-184m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Re-186		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Re-187		$1.0X10^{6}$	$2.7X10^{-5}$	$1.0X10^{9}$	$2.7X10^{-2}$
Re-188		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Re-189		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Re(nat)		$1.0X10^{6}$	$2.7X10^{-5}$	$1.0X10^{9}$	$2.7X10^{-2}$
Rh-99	Rhodium (45)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Rh-101		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Rh-102		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Rh-102m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Rh-103m		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{8}$	$2.7X10^{-3}$
Rh-105		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Rn-222 (b)	Radon (86)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{8}$	$2.7X10^{-3}$
Ru-97	Ruthenium (44)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Ru-103		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ru-105		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ru-106 (b)		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
S-35	Sulfur (16)	$1.0X10^{5}$	$2.7X10^{-6}$	$1.0X10^{8}$	$2.7X10^{-3}$
Sb-122	Antimony (51)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{4}$	$2.7X10^{-7}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Sb-124		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sb-125		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sb-126		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Sc-44	Scandium (21)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Sc-46		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sc-47		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sc-48		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Se-75	Selenium (34)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Se-79		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Si-31	Silicon (14)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Si-32		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sm-145	Samarium (62)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Sm-147		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Sm-151		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{8}$	$2.7X10^{-3}$
Sm-153		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sn-113	Tin (50)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Sn-117m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sn-119m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Sn-121m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Sn-123		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sn-125		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Sn-126		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Sr-82	Strontium (38)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Sr-85		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sr-85m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Sr-87m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sr-89		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sr-90 (b)		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{4}$	$2.7X10^{-7}$
Sr-91		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Sr-92		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
T(H-3)	Tritium (1)	$1.0X10^{6}$	$2.7X10^{-5}$	$1.0X10^{9}$	$2.7X10^{-2}$
Ta-178 (long-lived)	Tantalum (73)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ta-179		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Ta-182		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Tb-157	Terbium (65)	$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Tb-158		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tb-160		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tc-95m	Technetium (43)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tc-96		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tc-96m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Tc-97		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{8}$	$2.7X10^{-3}$
Tc-97m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Tc-98		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tc-99		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Tc-99m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Te-121	Tellurium (52)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Te-121m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Te-123m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Te-125m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Te-127		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Te-127m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Te-129		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Te-129m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Te-131m		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Te-132		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Th-227	Thorium (90)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Th-228 (b)		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Th-229 (b)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Th-230		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Th-231		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Th-232		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Th-234 (b)		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{5}$	$2.7X10^{-6}$
Th (nat) (b)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Ti-44	Titanium (22)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Tl-200	Thallium (81)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tl-201		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Tl-202		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tl-204		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{4}$	$2.7X10^{-7}$
Tm-167	Thulium (69)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tm-170		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tm-171		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{8}$	$2.7X10^{-3}$
U-230 (fast lung absorption) (b),(d)	Uranium (92)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
U-230 (medium lung absorption) (e)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-230 (slow lung absorption) (f)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-232 (fast lung absorption) (b),(d)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
U-232 (medium lung absorption) (e)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-232 (slow lung absorption) (f)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-233 (fast lung absorption) (d)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-233 (medium lung absorption) (e)		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
U-233 (slow lung absorption) (f)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
U-234 (fast lung absorption) (d)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
U-234 (medium lung absorption) (e)		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
U-234 (slow lung absorption) (f)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
U-235 (all lung absorption types) (b),(d),(e),(f)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-236 (fast lung absorption) (d)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-236 (medium lung absorption) (e)		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
U-236 (slow lung absorption) (f)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-238 (all lung absorption types) (b),(d),(e),(f)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U (nat) (b)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
U (enriched to 20% or less) (g)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
U (dep)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
V-48	Vanadium (23)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
V-49		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
W-178	Tungsten (74)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
W-181		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
W-185		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
W-187		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
W-188		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Xe-122	Xenon (54)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{9}$	$2.7X10^{-2}$
Xe-123		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{9}$	$2.7X10^{-2}$
Xe-127		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{5}$	$2.7X10^{-6}$
Xe-131m		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{4}$	$2.7X10^{-7}$
Xe-133		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{4}$	$2.7X10^{-7}$
Xe-135		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{10}$	$2.7X10^{-1}$
Y-87	Yttrium (39)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Y-88		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Y-90		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{5}$	$2.7X10^{-6}$
Y-91		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Y-91m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Y-92		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Y-93		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Yb-169	Ytterbium (70)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Yb-175		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Zn-65	Zinc (30)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Zn-69		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{6}$	$2.7X10^{-5}$
Zn-69m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Zr-88	Zirconium (40)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Zr-93 (b)		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Zr-95		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Zr-97 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$

[a][Reserved]

[b] Parent nuclides and their progeny included in secular equilibrium are listed in the following:

Sr-90	Y-90
Zr-93	Nb-93m
Zr-97	Nb-97
Ru-106	Rh-106
Cs-137	Ba-137m
Ce-134	La-134
Ce-144	Pr-144
Ba-140	La-140
Bi-212	Tl-208 (0.36), Po-212 (0.64)
Pb-210	Bi-210, Po-210
Pb-212	Bi-212, Tl-208 (0.36), Po-212 (0.64)
Rn-220	Po-216
Rn-222	Po-218, Pb-214, Bi-214, Po-214
Ra-223	Rn-219, Po-215, Pb-211, Bi-211, Tl-207
Ra-224	Rn-220, Po-216, Pb-212, Bi-212, Tl-208(0.36), Po-212 (0.64)
Ra-226	Rn-222, Po-218, Pb-214, Bi-214, Po-214, Pb-210, Bi-210, Po-210
Ra-228	Ac-228
Th-226	Ra-222, Rn-218, Po-214
Th-228	Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
Th-229	Ra-225, Ac-225, Fr-221, At-217, Bi-213, Po-213, Pb-20
Th-nat	Ra-228, Ac-228, Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 0.36), Po-212 (0.64)
Th-234	Pa-234m
U-230	Th-226, Ra-222, Rn-218, Po-214
U-232	Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
U-235	Th-231
U-238	Th-234, Pa-234m
U-nat	Th-234, Pa-234m, U-234, Th-230, Ra-226, Rn-222, Po-218, Pb-214, Bi-214, Po-214, Pb-210, Bi-210, Po-210
U-240	Np-240m

Np-237	Pa-233
Am-242m	Am-242
Am-243	Np-239

[c][Reserved]

[d] These values apply only to compounds of uranium that take the chemical form of UF_6, UO_2F_2 and $UO_2(NO_3)_2$ in both normal and accident conditions of transport.

[e] These values apply only to compounds of uranium that take the chemical form of UO_3, UF_4, UCl_4 and hexavalent compounds in both normal and accident conditions of transport.

[f] These values apply to all compounds of uranium other than those specified in notes (d) and (e) of this table.

[g] These values apply to unirradiated uranium only.

Figure: 25 TAC §289.257(ee)(8)

Table 257-5: General Values For A_1 And A_2

Contents	A_1		A_2		Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limits for exempt consignments (Bq)	Activity limits for exempt consignments (Ci)
	(TBq)	(Ci)	(TBq)	(Ci)				
Only beta or gamma emitting radionuclides are known to be present	1×10^{-1}	2.7×10^{0}	2×10^{-2}	5.4×10^{-1}	1×10^{1}	2.7×10^{-10}	1×10^{4}	2.7×10^{-7}
Only alpha emitting radionuclides are known to be present	2×10^{-1}	5.4×10^{0}	9×10^{-5}	2.4×10^{-3}	1×10^{-1}	2.7×10^{-12}	1×10^{3}	2.7×10^{-8}
No relevant data are available	1×10^{-3}	2.7×10^{-2}	9×10^{-5}	2.4×10^{-3}	1×10^{-1}	2.7×10^{-12}	1×10^{3}	2.7×10^{-8}

Figure: 25 TAC §289.257(ee)(9)

Table 257-6: Activity-Mass Relationships for Uranium

Uranium Enrichment* wt % U-235 present	Specific Activity TBq/g	Specific Activity Ci/g
0.45	1.8×10^{-8}	5.0×10^{-7}
0.72	2.6×10^{-8}	7.1×10^{-7}
1.0	2.8×10^{-8}	7.6×10^{-7}
1.5	3.7×10^{-8}	1.0×10^{-6}
5.0	1.0×10^{-7}	2.7×10^{-6}
10.0	1.8×10^{-7}	4.8×10^{-6}
20.0	3.7×10^{-7}	1.0×10^{-5}
35.0	7.4×10^{-7}	2.0×10^{-5}
50.0	9.3×10^{-7}	2.5×10^{-5}
90.0	2.2×10^{-6}	5.8×10^{-5}
93.0	2.6×10^{-6}	7.0×10^{-5}
95.0	3.4×10^{-6}	9.1×10^{-5}

* The figures for uranium include representative values for the activity of the uranium-235 which is concentrated during the enrichment process.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Comptroller of Public Accounts

Notice of Contract Award

The Comptroller of Public Accounts (Comptroller) announces the award of an outside counsel contract to Andrews Kurth LLP, 111 Congress Avenue, Suite 1700, Austin, Texas 78701, for TRAN bond counsel services under Request for Proposal (RFP) #201b.

The RFP was published in the February 4, 2011, issue of the *Texas Register* (36 TexReg 652). The term of the contract is April 1, 2011 through August 31, 2013. The amount of the contract is not to exceed $200,000.00.

TRD-201101273
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: April 1, 2011

♦ ♦ ♦

Notice of Request for Proposals

Pursuant to Chapter 403, §403.301 and §403.3011, and Chapter 2156, §2156.121, Texas Government Code; and Chapter 54, Subchapter F, Education Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Prepaid Higher Education Tuition Board (Board), announces the issuance of a Request for Proposals (RFP #201h) from qualified, independent individuals and firms to provide Broad All Cap Passive U.S. Stock investment management and related services to the Comptroller and Board for the Texas Guaranteed Tuition Program (Plan or TTF I). The successful respondent(s) will assist Comptroller and the Board in investing and managing the Plan funds according to the new mandate and provide additional, reasonably-related services for the Plan funds. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about July 30, 2011, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, April 15, 2011, after 10:00 a.m., Central Time (CT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Electronic State Business Daily at: http://esbd.cpa.state.tx.us after 10:00 a.m. (CT) on Friday, April 15, 2011.

Non-Mandatory Letters of Intent and Questions: All Non-Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 463-3669, not later than 2:00 p.m. (CT), on May 5, 2011. Official responses to questions received by the foregoing deadline will be posted electronically on the Electronic State Business Daily no later than Friday, May 13, 2011, or as soon thereafter as practical. Non-Mandatory Letters of Intent or Questions received after the deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be received in the Assistant General Counsel's Office at the address specified above no later than 2:00 p.m. (CT), on Friday, June 3, 2011. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit proposals by the foregoing deadline. Respondents shall be solely responsible for confirming the timely receipt of proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation based on the evaluation criteria and procedures set forth in the RFP. The Board will make the final decision regarding the award of a contract, if any. The Board and Comptroller reserve the right to award one or more contracts under this RFP. The Board and Comptroller reserve the right to accept or reject any or all proposals submitted. The Board and Comptroller are under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The Board and Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - April 15, 2011, after 10:00 a.m. CT; Non-Mandatory Letters of Intent and Questions Due - May 5, 2011, 2:00 p.m. CT; Official Responses to Questions Posted - May 13, 2011, or as soon thereafter as practical; Proposals Due - June 3, 2011, 2:00 p.m. CT; Contract Execution - July 30, 2011, or as soon thereafter as practical; Commencement of Project Activities - July 30, 2011, or as soon thereafter as practical.

TRD-201101329
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: April 6, 2011

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Notice of Request for Proposals

Pursuant to Chapter 403, §403.301 and §403.3011, and Chapter 2156, §2156.121, Texas Government Code; and Chapter 54, Subchapter F, Education Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Prepaid Higher Education Tuition Board (Board), announces the issuance of a Request for Proposals (RFP #201i) from qualified, independent individuals and firms to provide Broad All Cap Active U.S. Stock investment management and related services to the Comptroller and Board for the Texas Guaranteed Tuition Program (Plan or TTF I). The successful respondent(s) will assist Comptroller and the Board in investing and managing the Plan funds according to the new mandate and provide additional, reasonably-related services for the Plan funds. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about July 30, 2011, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a

copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, April 15, 2011, after 10:00 a.m., Central Time (CT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Electronic State Business Daily at: http://esbd.cpa.state.tx.us after 10:00 a.m. (CT) on Friday, April 15, 2011.

Non-Mandatory Letters of Intent and Questions: All Non-Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 463-3669, not later than 2:00 p.m. (CT), on April 25, 2011. Official responses to questions received by the foregoing deadline will be posted electronically on the Electronic State Business Daily no later than Monday, May 2, 2011, or as soon thereafter as practical. Non-Mandatory Letters of Intent or Questions received after the deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be received in the Assistant General Counsel's Office at the address specified above no later than 2:00 p.m. (CT), on Thursday, May 26, 2011. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit proposals by the foregoing deadline. Respondents shall be solely responsible for confirming the timely receipt of proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation based on the evaluation criteria and procedures set forth in the RFP. The Board will make the final decision regarding the award of a contract, if any. The Board and Comptroller reserve the right to award one or more contracts under this RFP. The Board and Comptroller reserve the right to accept or reject any or all proposals submitted. The Board and Comptroller are under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The Board and Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - April 15, 2011, after 10:00 a.m. CT; Non-Mandatory Letters of Intent and Questions Due - April 25, 2011, 2:00 p.m. CT; Official Responses to Questions Posted - May 2, 2011, or as soon thereafter as practical; Proposals Due - May 26, 2011, 2:00 p.m. CT; Contract Execution - July 30, 2011, or as soon thereafter as practical; Commencement of Project Activities - July 30, 2011, or as soon thereafter as practical.

TRD-201101330
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: April 6, 2011

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Request for Qualifications for Independent Examining Services

A. Request for Qualifications 201d (RFQ 201d): Pursuant to Subchapter A, Chapter 111, §111.0045, Texas Tax Code, Comptroller of Public Accounts (Comptroller) issues this RFQ 201d from qualified independent persons or firms to perform certain services described below. For clarification and as used in this RFQ 201d and Comptroller's rules codified at 34 Texas Administrative Code §3.3, the services under any contracts resulting from this RFQ 201d mean tax compliance examination services; such services do not include any attestation services or rendition of an opinion of any nature by any such contractors.

B. Comptroller issues this RFQ 201d, by posting it on the ESBD on April 15, 2011, and by publishing this RFQ 201d in the April 15, 2011, issue of the *Texas Register.* Comptroller solicits a Statement of Qualifications pursuant to Chapter 2254, Subchapter A, of the Texas Government Code from persons or firms that are interested in contracting with Comptroller to perform examinations that meet the requirements of §111.0045, Texas Tax Code, administrative rules as codified at 34 Texas Administrative Code §3.3 and procedures established by Comptroller under that statute, and other applicable law. Under this RFQ 201d, Comptroller reserves the right to select and contract with one or more persons or firms to conduct these examinations on an as-needed basis. No minimum amount of examinations or compensation is guaranteed to any selected contractor.

C. Comptroller solicits Statements of Qualifications in response to this RFQ 201d from existing contract examiners as well as qualified persons or firms not currently or previously under contract with Comptroller. All Respondents, including contract examiners selected under previous RFQs must attend the Mandatory Orientation conducted by Comptroller prior to receipt of any examination packages under any contract awarded under this RFQ 201d. HOWEVER, RESPONDENTS THAT ARE EXISTING CONTRACTORS AND HAVE RECEIVED AN OFFICIAL NOTICE OF INTENT TO RENEW A CONTRACT THROUGH AUGUST 31, 2012, DO NOT NEED TO SUBMIT A RESPONSE TO THIS RFQ 201d.

Any contract resulting from this RFQ 201d shall be effective on signature by Comptroller after signature by Contractor and shall terminate on August 31, 2012 with two (2) renewal options, in CPA's sole discretion, of one (1) year each exercised one (1) year at a time. Contract examiners must be able to begin performing services on September 1, 2011.

D. As a result of this RFQ 201d, Comptroller intends to increase the number of examinations of taxpayers. Comptroller has implemented a program to contract with persons and firms selected that meet the minimum qualifications in this RFQ 201d and other reasonable qualifications established by Comptroller consistent with §111.0045, Texas Tax Code, Comptroller's administrative rules and procedures and other applicable law.

E. Respondent(s) must have the following minimum qualifications:

(i) a bachelor's degree from an accredited senior college or university with a minimum of twenty-four (24) hours of accounting, including six (6) hours of intermediate accounting and three (3) hours of auditing; and

(ii) one (1) year of experience in Texas tax auditing, accounting, or other Texas tax services.

F. For state fiscal year 2012 beginning September 1, 2011, Comptroller will select, in its sole discretion, those qualified examiners (contract examiner) to perform examinations on an as-needed and as-assigned basis. Awards shall be based on the Respondent's Statement of Qualifications submitted.

Comptroller anticipates issuing only one (1) round of initial awards at the beginning of the one (1) year initial contract term; however, Comptroller reserves the right, in its sole discretion, to make additional awards during the one (1) year initial contract term. Comptroller reserves the right, in its sole discretion, to reallocate, after initial assignment, examination packages among contract examiners based on Contractor's substantial performance or non-performance under the Contract terms so as to increase or decrease the number of examinations assigned to a particular contract examiner. Payment will be made in accordance with the terms of the Contract.

Compensation for the initial year and any optional renewal year shall not exceed:

-$180,000 for a firm with two (2) or more examiners assigned multiple packages

-$60,000, $75,000 or $90,000 per package assigned for individual examiners at the discretion of Comptroller. Compensation for additional packages assigned to individual examiners will not exceed $90,000.

Based on historical examination completion data, a $60,000 package will require an estimated 1280 person hours of work to complete at the rate of $46.88 per hour. The estimated hours will be calculated based on the average number of hours required in the past to complete the examinations of each type of business during a period to be determined at the sole discretion of Comptroller, notwithstanding the fact that a previous examination of a specific taxpayer or business may have required more or less hours than the average.

Upon successful completion of the assigned examinations (final examination package) and Comptroller's written acceptance of the examination report and other contract deliverables, including work papers examiners will be paid for assigned work completed to date in $10,000 increments. The last payment, if applicable, will be made upon completion of a set number of the examinations assigned as determined by Comptroller and, upon submission to and acceptance by Comptroller as provided in the Contract.

COMPTROLLER WILL NOT MAKE ANY PAYMENTS IN ADVANCE.

G. Selected contract examiners will perform all work necessary to identify the correct amount of tax that should have been reported by each taxpayer and provide Comptroller with the data and other information necessary to support any assessment of tax or refund of tax that results from the examination report. Selected contract examiners will also provide any time reports and other written documentation required by Comptroller.

H. Under this RFQ 201d, the maximum contract amount paid to any individual examiner without additional examiner employees will be $90,000 for any state fiscal year during the term of the Contract or any extensions. Maximum contract amount for an individual examiner with additional examiner employees or a firm with multiple examiners will not exceed $180,000 for any state fiscal year during the term of the Contract or any extensions.

I. Selected contract examiners must complete all work and submit all examination reports, work papers and other deliverables no later than required under the terms of the Contract.

J. Selected contract examiners must meet professional conflict of interest standards and other standards established by Comptroller to ensure the independence of each assigned examination.

K. Regarding prior employment with Comptroller, the following provisions shall apply in determining eligibility for contract awards, if any, resulting from this RFQ 201d:

L. Section 2252.901, Texas Government Code reads as follows:

"(a) A state agency may not enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with a former or retired employee of the agency before the first anniversary of the last date on which the individual was employed by the agency, if appropriated money will be used to make payments under the Contract. This section does not prohibit an agency from entering into a professional services contract with a corporation, firm, or other business entity that employs a former or retired employee of the agency within one year of the employee's leaving the agency, provided that the former or retired employee does not perform services on projects for the corporation, firm, or other business entity that the employee worked on while employed by the agency."

It is Comptroller's policy that an individual employed by Comptroller during the last twelve (12) months may not provide services under the Contract as individual or employee of Contractor or another Contractor and may not receive any compensation under the Contract. The twelve (12) month period is measured from the date of separation from Comptroller employment until the date responses to this RFQ 201d are due as stated on Page 4 of this RFQ 201d.

Section 572.054, Texas Government Code, reads in pertinent part as follows:

"(b) A former state officer or employee of a regulatory agency who ceases service or employment with that agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility.

(c) Subsection (b) applies only to:

(1) a state officer of a regulatory agency; or

(2) a state employee of a regulatory agency who is compensated, as of the last date of state employment, at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule, including an employee who is exempt from the state's position classification plan."

This §572.054(b) prohibition against working on matters that the former employee participated in while employed by Comptroller applies without limitation to any such past actions by the employee even if longer than twelve (12) months, if the employee's compensation exceeded $33,000 annually while employed by Comptroller at any time during that employee's employment with Comptroller. Again, it is Comptroller's policy interpretation that "matter" includes specific examinations of taxpayers.

M. Time is of the essence in implementation of this program. Respondents to this RFQ 201d must be available to begin accepting assignments no later than September 1, 2011, upon completion of orientation or other timelines established by Comptroller for such implementation. Comptroller anticipates awarding multiple Contracts as a result of this RFQ 201d and will not entertain negotiation of the basic terms and conditions. All Respondents will be offered the same contract terms and conditions. Respondents should not respond to this RFQ 201d if they cannot agree to the terms and conditions of the sample Contract. Any resulting agreements are non-exclusive and Comptroller may issue additional solicitations for the contracted services at any time. Comptroller is not obligated to assign any examinations to recipients of contract awards.

N. Schedule of Events; Questions

Comptroller anticipates that the selection of Successful Respondent(s) and execution of the Contract(s), if any, shall proceed according to the following approximate schedule: April 15, 2011 Issuance of RFQ 201d (after 10:00 a.m. Central Time Austin, Texas (CT)); May 2, 2011 Deadline for Submission of Questions (2:00 p.m. CT); May 11, 2011 Release of Official Response to Questions (or as soon thereafter as practical); May 20, 2011 Statements of Qualifications Due (2:00 p.m. CT) (Late submissions will not be considered); June 23 - July 22, 2011 Notification of Successful Respondents and Preparation of Contracts; July 25 - 26, 2011 Mandatory Orientation; August 5, 2011 Contract Execution (or as soon thereafter as practical); September 1, 2011 Commencement of Services (or as soon thereafter as practical).

Questions: Questions concerning this RFQ 201d must be in writing and submitted no later than May 2, 2011, 2:00 p.m., Central Time (CT) Austin, Texas to Rose-Michel Munguía, Assistant General Counsel, Contracts, General Counsel Division, Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas 78774, (Issuing Office), telephone number: (512) 305-8673, facsimile (512) 463-3669 or e-mail at contracts@cpa.state.tx.us. Comptroller's official response to questions received by the deadline will be posted as an addendum to the ESBD. Comptroller expects to post these official responses no later than May 11, 2011 or as soon thereafter as practicable. Respondents should note that the Official Response to Questions may contain information modifying the terms and conditions of the RFQ 201d, revising or amending the RFQ 201d and/or other documents attached to the RFQ 201d. For these reasons, Respondents should carefully review and consider the Official Response to Questions, amendments or modifications before submitting their Statement of Qualifications.

O. Changes to RFQ 201d

Comptroller reserves the discretion to revise any or all of the above dates, in the best interests of Comptroller, the Program or the State and all deadlines are subject to change. Notices of changes to items directly impacting the original RFQ 201d or proposal process will be posted on the Electronic State Business Daily (ESBD), located at: http://esbd.cpa.state.tx.us. Any amendment to this solicitation will be posted as an addendum on the ESBD. It is the responsibility of interested parties to periodically check the ESBD for updates to the procurement prior to submitting Statements of Qualifications. Respondent's failure to periodically check the ESBD for updates will in no way release Successful Respondent from compliance with any requirements in the "addenda or additional information" although such compliance results in additional costs to meet the requirements.

P. Statements of Qualifications Requirements

A copy of the sample Contract, the standard form Respondent Questionnaire described below, mandatory Execution of Statement of Qualifications Form, Required Checklist for Statement of Qualifications, and other required documents are posted in the ESBD and are incorporated as part of this RFQ 201d for reference and use by Respondents.

Statements of Qualifications must include all of the following information in order to be considered:

1. Checklist in format of Exhibit F to this RFQ 201d as posted on the addenda to the ESBD notice of issuance of this RFQ 201d;

2. Transmittal letter that (a) describes specific experience and qualifications of both the firm and each individual in the conduct of state tax examinations; and (b) outlines Respondent's understanding of §111.0045, Texas Tax Code, other relevant provisions of the Texas Tax Code and other related enabling legislation related to conduct of these examinations on an as needed basis;

3. Respondent Identifying Information. Respondent must provide the following identifying information:

a. name, physical and mailing address of the individual or business entity submitting the Statement of Qualifications;

b. names of all principals;

c. type of business entity (i.e., sole proprietorship, corporation, partnership, limited liability company, etc.);

d. state of incorporation or organization and principal place of business (attach copies of articles or other certificates showing official approval by the pertinent governmental entity);

e. name, address, business and home telephone number, fax number, cell phone number, and e-mail address of Respondent's principal contact person regarding the Contract;

f. Respondent's Federal Employer Identification Number and Texas Tax Identification/Registration Number, if any;

g. full name and address, telephone number, fax number, cell phone number and e-mail address for each shareholder, member, partner, and employee of Respondent who will perform services on the Contract;

h. detail any firm ownership changes which have occurred in the last three years. Are any changes pending?

i. detail any joint ventures or affiliations.

4. Respondent Questionnaire Exhibit A to the RFQ 201d for each individual who will be involved in the project. Respondent Questionnaire must be on the form contained on the addenda to the ESBD notice of issuance of this RFQ 201d. The response to the RFQ 201d must disclose all personnel who will perform professional services under the terms of the Contract. Respondent understands only those persons disclosed by Respondent Questionnaire will be admitted to the required orientation classes. This provision will be strictly enforced. All information on Respondent Questionnaire form must be fully filled out and complete in all respects. Evaluation of Respondents will be based in part on the information on this form and it is vitally important that the information be fully complete and accurate. Failure to submit a complete, separate, and signed Respondent Questionnaire detailing all courses, dates, and subject of courses by each person who applies to perform examination services may result in disqualification of the Statement of Qualifications;

5. A sample Examination Plan providing a list of the examination procedures and resources that will be utilized to conduct these examinations on an as needed basis if selected by Comptroller. The Examination plan should list or describe the actual procedures to be used in sufficient detail so as to demonstrate an understanding of internal control, record keeping, and taxpayer reporting responsibilities for sales tax and the appropriate examination procedures necessary for verification of correct amounts of tax. The sample Examination Plan must include, at a minimum, all items contained in the General Audit Checklist section of Comptroller's Auditing Fundamentals Manual, Chapter 3. The sample examination plan should include all necessary procedures and instructions for completing those procedures in sufficient detail to allow any person who meets the one year experience requirement in 34 Texas Administrative Code §3.3 to properly perform a sales and use tax examination with minimal supervision. The Examination Plan submitted should represent an example of actual past work performed by Respondent. If portions of any Comptroller publication, manual, or other document are used to prepare the examination plan or are incorporated into the plan, the most current version must be used. Comptroller's audit manuals may be found at the following internet location:

http://www.window.state.tx.us/taxinfo/audit/auditman.htm. Also see Comptroller's Auditing Fundamentals Manual, Chapter 3 and 4 at http://www.window.state.tx.us/taxinfo/audit/auditfun/3aplan.htm and http://www.window.state.tx.us/taxinfo/audit/auditfun/4entranc.htm, respectively.

6. Proposed sample Work Plan (including Timeline, Tasks and Deliverables) to implement each of the examinations after assignment, including: (a) methods for deploying personnel and equipment to perform the examinations timely and otherwise in accordance with each contractual requirement; (b) methods for making personnel available for orientation and examination; (c) date availability for each of the personnel to perform assigned examinations; (d) methods for conducting preliminary (prior to receipt of taxpayer questionnaire) and final (after

receipt of taxpayer questionnaire) conflicts checks regarding actual or potential conflicts of interest and notifying Comptroller prior to accepting or beginning an assignment and (e) an understanding of the Audit Flowchart Timelines contained in the appendix of Comptroller's Audit Fundamentals Manual;

7. Statement of whether or not Respondent is a Historically Underutilized Business (HUB) and the efforts and willingness of Respondent to comply with the HUB requirements of Texas law and administrative rules and regulations. In order to be a Historically Underutilized Business, a Respondent must be registered as such with Comptroller's Texas Purchasing and Support Services Division to its rules and regulations concerning the same. You may check the website at http://www.window.state.tx.us/procurement/prog/hub/hub-certification/ or call Comptroller's HUB Coordinator, Lynne Sanchez at (512) 463-4216;

8. Confirmation of understanding of and willingness to comply with the policies, directives, rules, procedures and guidelines of Comptroller and other Standards of Performance established by Comptroller for the conduct of the assigned examinations;

9. Confirmation of understanding of and willingness to adhere to all provisions of the sample Contract, including, without limitation, the proposed fee arrangements, as posted on the addenda to the ESBD notice of issuance of this RFQ 201d;

10. Completed, initialed where applicable, and signed Execution of Statement of Qualifications Form on Exhibit B as posted on the addenda to the ESBD notice of issuance of this RFQ 201d;

11. Completed and signed Nondisclosure Agreement on the form set out on Exhibit D to this RFQ 201d as posted on the addenda to the ESBD notice of issuance of this RFQ 201d;

12. Signed letter or letters from a qualified insurance agent or agents containing quotations for ALL OF the required insurance coverages described in Section VIII of the Sample Contract for Professional Services attached to this RFQ 201d as Exhibit C and stating that the coverages are available to Respondent upon selection, if any, of the contract examiner pursuant to this RFQ 201d. In the alternative, Respondents may submit current certificates of insurance showing the required coverage is already in force and in effect. Failure to provide information on EACH of the required coverages may result in disqualification of Respondent's Statement of Qualifications. Respondent's insurance agents shall be ready to immediately issue policies and certificates upon notification of Respondent's selection. Time is of the essence and no Contracts will be executed without the coverage required. A Successful Respondent's preliminary selection may be rescinded due to failure to have the required insurance coverage by the time set by Comptroller;

13. Completed, signed, and initialed where applicable Criminal History Certification on the form set out on Exhibit E to this RFQ 201d as posted on the addenda to the ESBD notice of issuance of this RFQ 201d;

14. Signed statement of representation that Respondent and any persons holding equity interests, that is, financial ownership or other interest in Respondent's firm and all persons listed as examiners in its Statement of Qualifications are neither Respondents under any other Statement of Qualifications responding to this RFQ 201d, nor are employed by, contracted with, and do not own any equity or debt interest in any other Respondent to this RFQ 201d;

15. Compliance with any amendments, modifications, or other requirements and changes to the RFQ 201d set out in the Official Response to Questions in connection with this RFQ 201d and posted by Comptroller on the ESBD prior to the Closing Date for this RFQ 201d.

16. Confirmation of understanding of and willingness to adhere to all provisions of the Requirements for Submission of Statements of Qualifications, as posted on the addenda to the ESBD notice of issuance of this RFQ 201d.

The above 16 items shall be submitted in Respondent's Statement of Qualifications as separate and independent numbered sections corresponding to the above items. Failure to properly label and fully respond to each of the 16 items above may result in disqualification of Respondent but Comptroller reserves the right to waive minor variations in responses in the best interests of Comptroller and of the State of Texas.

Q. Mandatory Orientation Session: All Respondents must attend, at their sole cost and expense, Mandatory Orientation Session to be conducted by Comptroller in Austin on July 25, 2011, through July 26, 2011, or as soon as possible thereafter. Questions regarding this Mandatory Orientation Session should be submitted prior to the deadline for submission of other written questions, May 2, 2011, on this RFQ 201d.

R. Evaluation and Award Procedure: All qualifying Statements of Qualifications received by the deadline above will be evaluated based on the evaluation criteria set out on Exhibit G attached to and made a part of this RFQ 201d. Comptroller will make the final selections in accordance with Chapter 2254, Subchapter A, Texas Government Code in its sole discretion in the best interests of Comptroller and the State of Texas. Successful Respondents will be notified by e-mail of their preliminary selection prior to the Mandatory Orientation Session. Notice of contract awards will be published in the ESBD and the *Texas Register* as soon as possible after all Contracts, if any, resulting from this Statement of Qualifications, are fully executed. Respondents who do not receive a preliminary selection e-mail notice before the date the Mandatory Orientation Session begins should assume that they were not selected. The official notice of award will not be published at the time of the Mandatory Orientation Session but will be posted as soon as practical after contract execution. The ESBD may be accessed online at: http://esbd.cpa.state.tx.us/

S. Protests. Protests regarding this RFQ 201d or actions taken under it shall be governed by Comptroller's rule located at 34 Texas Administrative Code §1.72, Protests of Agency Purchases.

T. Limitations: Comptroller reserves the right to accept or reject any or all Statements of Qualifications submitted in response to this RFQ 201d. Comptroller reserves the further right to evaluate individual examiners employed by a firm or who are employees of a Respondent and approve of contract examiners on an individual basis based on the evaluation criteria. Comptroller is not obligated to execute any contract or contracts or any specific number of contracts as a result of issuing this RFQ 201d. Comptroller further reserves the right to issue additional RFQs or other solicitations for the contracted or similar services at any time as Comptroller determines are necessary to ensure an adequate number of examiners for any assigned examination under this program or any similar program. Comptroller will pay no costs or any other amounts incurred by any entity in responding to this RFQ 201d. Comptroller reserves the right to award Contracts on the basis of the need to achieve appropriate examination coverage in all geographical areas of the State of Texas and the states bordering the State of Texas and to evaluate Respondents in a manner that will best achieve this need.

U. Texas Government Code, §322.020 and as per the following requirements, no later than two (2) business days after Successful Respondent's receipt of notice from Comptroller of Successful Respondent's tentative Contract award, Successful Respondent (and no other Respondents) must deliver to Comptroller four (4) electronic copies of

its complete Statement of Qualifications to upload to the Legislative Budget Board (LBB) State Contracts Database. Successful Respondent shall deliver these electronic copies to Comptroller via overnight delivery in compliance with all of the following requirements:

Two (2) CDs, each containing a complete copy of Successful Respondent's Statement of Qualifications in searchable pdf format. A complete copy of the Statement of Qualifications includes all documents contained in the Statement of Qualifications submitted in response to this RFQ 201d including those documents with Successful Respondent's signature. These two (2) identical CDs should be entitled: "Complete copy of (Name of Successful Respondent's) Statement of Qualifications. Comptroller's RFQ No. 201d."

Two (2) CDs, each containing a copy of Successful Respondent's Statement of Qualifications, in searchable pdf format, which has excised, blacked out, or otherwise redacted information from its Statement of Qualifications that Successful Respondent reasonably considers to be confidential and exempt from public disclosure under the Texas Public Information Act, Chapter 552 of the Texas Government Code (this should be a de minimis portion, if any, of Successful Respondent's Statement of Qualifications, such as social security numbers). Each CD shall also contain an Appendix for Successful Respondent's Statement of Qualifications which provides a cross reference for the location of all information redacted by Successful Respondent and a general description of the redacted information. These two identical CDs should be entitled "For Public Release: Redacted Version of (Name of Successful Respondent's) Statement of Qualifications and Exhibits. Comptroller's RFQ No. 201d."

See the LBB website at www.lbb.state.tx.us. Comptroller uploads the text of the complete Contract (with limited redaction and appendix) to the LBB's contracts database no later than ten (10) days after date of Contract award. In submitting a Statement of Qualifications in response to this RFQ 201d, Respondents acknowledge that they understand and accept this requirement.

TRD-201101328
Pamela Smith
Deputy General Counsel, Contracts
Comptroller of Public Accounts
Filed: April 6, 2011

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Concho Valley Workforce Development Board

Public Notice

Concho Valley Workforce Development Board (CVWDB) is seeking qualified parties to submit proposals for staffing and management of its workforce center (Workforce Solutions), incorporating at a minimum Childcare Services, Workforce Investment Act (WIA) programs, Choices/Temporary Assistance to Needy Families (TANF), Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) and Reintegration of Offenders (RIO). Interested parties may obtain a copy of the Request for Proposals by visiting the website at www.cvworkforce.org/rfp.asp. Proposals will be accepted until 5:00 p.m. CDST, May 20, 2011, at the office of CVWDB, 36 East Twohig, Suite 805, San Angelo, Texas 76903. A conference will be held on April 14, 2011, at 9:30 a.m. at Workforce Solutions, 202 Henry O. Flipper, San Angelo, Texas 76903, Room 103, to answer questions for any party interested in submitting a proposal. CVWDB reserves the right to accept or reject any or all proposals.

TRD-201101319
Johnny Griffin
Executive Director
Concho Valley Workforce Development Board
Filed: April 5, 2011

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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, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/11/11 - 04/17/11 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 04/11/11 - 04/17/11 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 04/01/11 - 04/30/11 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 04/01/11 - 04/30/11 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-201101327
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 5, 2011

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East Texas Regional Water Planning Group (Region I)

Notice of Application for Regional Water Planning Grant Funding

Notice is hereby given that the City of Nacogdoches will submit by April 8, 2011, a grant application for financial assistance to the Texas Water Development Board (TWDB) on behalf of Region I, to carry out planning activities to develop the 2016 Region I Regional Water Plan as part of the state's Fourth Cycle (2012-2016) of Regional Water Planning. It is anticipated that the application will be considered by the Texas Water Development Board at its June 22, 2011, meeting.

The East Texas Regional Water Planning Group (Region I) includes all or part of the following counties: Anderson, Angelina, Cherokee, Hardin, Henderson, Houston, Jasper, Jefferson, Nacogdoches, Newton, Orange, Panola, Polk, Rusk, Sabine, San Augustine, Shelby, Smith, Trinity and Tyler counties.

Copies of the grant application may be obtained from City of Nacogdoches when it becomes available or online at www.etexwaterplan.org. Written comments from the public regarding the grant application must be submitted to the East Texas Regional Water Planning Group and TWDB prior to TWDB Board action on this application (June 22, 2011). Comments may be submitted to any of the following:

Alan Plummer Associates, Inc.

Rex Hunt, P.E

Consulting Engineer for Region I

6300 La Calma, Suite 400

Austin, Texas 78752

e-mail: rhunt@apaienv.com

or

Texas Water Development Board

Executive Administrator

P.O. Box 13231

Austin, Texas 78711-3231

or

City of Nacogdoches

Lila Fuller

City Secretary

P.O. Box 635030

Nacogdoches, Texas 75963

For additional information, please contact Lila Fuller, Region I Administrative Contact, c/o City of Nacogdoches, P.O. Box 635030, Nacogdoches, Texas 75963-5030; telephone: (936) 559-2504; or e-mail: lfuller@ci.nacogdoches.tx.us.

TRD-201101258
Kelley Holcomb
Chair
East Texas Regional Water Planning Group (Region I)
Filed: March 31, 2011

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Notice of Public Meeting

Notice is hereby given that the East Texas Regional Water Planning Group (Region I) is seeking input from the public on the scope of planning activities to be considered during the Fourth Cycle of Regional Water Planning.

Input will be received at a public meeting, which will be conducted in conjunction with the upcoming regular Region I Planning Group meeting, to be held at the Nacogdoches Recreation Center, 1112 North Street, Nacogdoches, Texas on June 22, 2011, at 10:00 a.m. Written and oral comments (not to exceed five (5) minutes per speaker) regarding the scope of activities to be considered during the Fourth Cycle of Regional Water Planning will be accepted at this meeting. Written comments will also be accepted through June 22, 2011, and may be e-mailed to rhunt@apaienv.com or mailed to the address as follows:

Alan Plummer Associates, Inc.

Rex H. Hunt, P.E.

6300 LaCalma, Suite 400

Austin, Texas 78752

The East Texas Regional Water Planning Group (Region I) includes all or part of the following counties: Anderson, Angelina, Cherokee, Hardin, Henderson, Houston, Jasper, Jefferson, Nacogdoches, Newton, Orange, Panola, Polk, Rusk, Sabine, San Augustine, Shelby, Smith, Trinity and Tyler counties.

For additional information, please contact Lila Fuller, Region I Administrative Contact, c/o City of Nacogdoches, P.O. Box 635030, Nacogdoches, Texas 75963-5030; telephone: (936) 559-2504; or e-mail: lfuller@ci.nacogdoches.tx.us.

TRD-201101259
Kelley Holcomb
Chair
East Texas Regional Water Planning Group (Region I)
Filed: March 31, 2011

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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. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 16, 2011.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 16, 2011.** 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: Aaron E. Ross II and Lagoon Pumping & Dredging, Incorporated; DOCKET NUMBER: 2011-0240-WQ-E; IDENTIFIER: RN106016371; LOCATION: Comanche County; TYPE OF FACILITY: unauthorized spill site; RULE VIOLATED: TWC, §26.121(a), by failing to prevent the unauthorized discharge of agricultural waste into or adjacent to water in the state; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Thomas Jecha, P.G., (512) 239-2576; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: AIG Annuity Insurance Company; DOCKET NUMBER: 2011-0403-PST-E; IDENTIFIER: RN105668479; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: petroleum storage tanks; RULE VIOLATED: 30 Texas Administrative Code (TAC) §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: Aqua Texas, Incorporated; DOCKET NUMBER: 2010-1957-MLM-E; IDENTIFIER: RN100843143; LOCATION: Travis County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §291.93, by failing to furnish, operate, and maintain production, storage, transmission, and distribution facilities of sufficient size and capacity to provide a continuous and adequate supply of water for all consumer demands; 30 TAC §290.41(c)(3)(N), by failing to provide all water supply wells with a flow measuring device; and 30 TAC §290.46(r), by failing to maintain a minimum pressure of 35 pounds per square inch throughout the distribution system at all times; PENALTY: $2,987; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(4) COMPANY: Best of Lama Incorporated dba Jonathans Shop N Save; DOCKET NUMBER: 2010-2031-PST-E; IDENTIFIER: RN102354453; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the TWC, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,500; ENFORCEMENT COORDINATOR: John Muennink, (713) 422-8970; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Chevron Phillips Chemical Company, L. P.; DOCKET NUMBER: 2010-1881-AIR-E; IDENTIFIER: RN102320850; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: organic chemical manufacturing plant; RULE VIOLATED: 30 TAC §113.890, Texas Health and Safety Code (THSC), §382.085(b), and 40 Code of Federal Regulations (CFR) §63.2460(a), by failing to reduce the organic Hazardous Air Pollutant (HAP) outlet concentration to less than or equal to 20 parts per million by volume as total organic HAP; PENALTY: $23,250; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(6) COMPANY: Christopher D. Moss, Jr.; DOCKET NUMBER: 2011-0419-WOC-E; IDENTIFIER: RN103842951; LOCATION: Houston, Harris County; TYPE OF FACILITY: occupational licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: City of Cedar Park; DOCKET NUMBER: 2010-1951-MWD-E; IDENTIFIER: RN102845914; LOCATION: Cedar Park, Williamson County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012308001, Permit Conditions 2.g., by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state; PENALTY: $12,800; Supplemental Environmental Project (SEP) offset amount of $12,800 applied to Texas Association of Resource Conservation and Development Areas, Incorporated (RC&D) -Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 2800 S IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(8) COMPANY: City of Cleveland; DOCKET NUMBER: 2010-2036-MWD-E; IDENTIFIER: RN101613735; LOCATION: Liberty County; TYPE OF FACILITY: wastewater treatment with an associated collection system; RULE VIOLATED: TWC, §26.121, 30 TAC §305.125(1), and TPDES Permit Number WQ0010766002, Permit Conditions Number 2.g., by failing to prevent the unauthorized discharges of wastewater; PENALTY: $7,600; SEP offset amount of $6,080 applied to Texas Association of RC&D - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: City of Normangee; DOCKET NUMBER: 2010-1879-PWS-E; IDENTIFIER: RN101409142; LOCATION: Normangee, Leon County; TYPE OF FACILITY: municipal PWS; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of the well; 30 TAC §290.42(l), by failing to compile a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous water service to new construction, on any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement, correction, or addition to the private water distribution facilities; and 30 TAC §290.44(h)(1)(A), by failing to ensure that a backflow prevention assembly or air gap is provided at all locations where an actual or potential contamination hazard exists; PENALTY: $1,624; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 403-4012; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Enterprise Products Operating, LLC; DOCKET NUMBER: 2011-0032-AIR-E; IDENTIFIER: RN102984911; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: natural gas fractionation plant; RULE VIOLATED: 30 TAC §106.4(c) and §106.6(c), THSC, §382.085(b), and Permit By Rule Registration Number 28849, by failing to properly maintain a control device and by failing to prevent unauthorized emissions during an event that occurred on August 25, 2010; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: FORT WORTH LUCKY ONE, INCORPORATED dba Lucky One; DOCKET NUMBER: 2011-0033-PST-E; IDENTIFIER: RN102346418; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the UST system; PENALTY: $2,679; ENFORCEMENT COORDINATOR: Cara Windle, (512) 239-2581; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: General Dynamics Ordnance and Tactical Systems, Incorporated; DOCKET NUMBER: 2011-0092-AIR-E; IDENTIFIER: RN102660909; LOCATION: Garland, Dallas County; TYPE OF FACILITY: aerospace manufacturing plant; RULE VIOLATED: 30 TAC §122.146(1) and (2) and THSC, §382.085(b), by failing to submit the Permit Compliance Certification within the required time frame; PENALTY: $2,925; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Houston Refining, L. P.; DOCKET NUMBER: 2010-2029-AIR-E; IDENTIFIER: RN100218130; LOCATION: Houston, Harris County; TYPE OF FACILITY: refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), THSC, §382.085(b) and Flexible Permit Number 2167 and PSD-TX-985 Special Conditions

1, by failing to prevent unauthorized emissions during an emissions event that occurred on August 15, 2010; PENALTY: $10,000; SEP offset amount of $4,000 applied to Barbers Hill Independent School District - Barbers Hill Energy Efficiency Program; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Hurtado Construction Company; DOCKET NUMBER: 2011-0400-WQ-E; IDENTIFIER: RN106077597; LOCATION: Richmond, Fort Bend County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5424 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Jim Hogg County; DOCKET NUMBER: 2011-0069-MSW-E; IDENTIFIER: RN104420146; LOCATION: Hebbronville, Jim Hogg County; TYPE OF FACILITY: used oil collection center; RULE VIOLATED: 30 TAC §324.7 and 40 CFR §279.31(b)(2), by failing to renew the registration as a used oil collection center; and 30 TAC §324.1 and 40 CFR §279.22, by failing to prevent the unauthorized discharge of used oil; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(16) COMPANY: Johnny Micah; DOCKET NUMBER: 2011-0418-WOC-E; IDENTIFIER: RN106052673; LOCATION: Sweet Home, Lavaca County; TYPE OF FACILITY: occupational licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(17) COMPANY: Military Highway Water Supply Corporation; DOCKET NUMBER: 2010-2019-MWD-E; IDENTIFIER: RN101524452; LOCATION: Cameron County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0013462008, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations for ammonia nitrogen (NH_3N); and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0013462008, Monitoring and Reporting Requirements Number 1, by failing to submit results at the intervals specified in the permit; PENALTY: $1,255; ENFORCEMENT COORDINATOR: Marty Hott, (512) 239-2587; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(18) COMPANY: OM NMO GLOBAL INCORPORATED dba MR 4 Food Mart; DOCKET NUMBER: 2011-0186-PST-E; IDENTIFIER: RN102342466; LOCATION: Euless, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the UST system; PENALTY: $2,629; ENFORCEMENT COORDINATOR: Andrea Park, (512) 239-4575; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Pars Properties, Incorporated; DOCKET NUMBER: 2010-1959-PWS-E; IDENTIFIERS: RN101260313, RN101269363, RN102677374, RN101270965, and RN101227478; LOCATION: Houston, Harris County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) 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: $14,568; ENFORCEMENT COORDINATOR: Andrea Byington, 512-239-2579; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Pilgrim's Pride Corporation; DOCKET NUMBER: 2011-0139-PST-E; IDENTIFIER: RN101443422; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the system; 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for review upon request by agency personnel; and 30 TAC §21.4 and TWC, §5.702, by failing to pay outstanding Consolidated Water Quality late fees; PENALTY: $3,621; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Ross Ridge Sand Company, L.P.; DOCKET NUMBER: 2011-0421-WR-E; IDENTIFIER: RN106082837; LOCATION: Vidor, Orange County; TYPE OF FACILITY: water rights; RULE VIOLATED: TWC, §11.081 and §11.121, by impounding, diverting, or using state water without a required permit; PENALTY: $350; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: S Bayyoud Incorporated dba Lancaster Mart; DOCKET NUMBER: 2011-0130-PST-E; IDENTIFIER: RN105584593; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $4,500; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: SAHIL VENTURES, INCORPORATED dba Paradise Food Mart; DOCKET NUMBER: 2010-1299-PST-E; IDENTIFIER: RN102038924; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii), by failing to provide a release detection method for the USTs and by failing to conduct reconciliation of inventory control records; 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers, or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free of liquid or debris; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $5,353; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (817) 588-5800.

(24) COMPANY: SAN ANGELO BY-PRODUCTS, INCORPORATED; DOCKET NUMBER: 2010-1966-IWD-E; IDENTIFIER: RN101526358; LOCATION: Tom Green County; TYPE OF FA-

CILITY: wastewater disposal system; RULE VIOLATED: 30 TAC §305.125(1) and TCEQ Permit Number WQ0001594000, V. Special Provisions D.1, by failing to sample the four monitoring wells at three-month intervals; PENALTY: $11,521; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(25) COMPANY: Skidmore Water Supply Corporation; DOCKET NUMBER: 2011-0206-MWD-E; IDENTIFIER: RN102342201; LOCATION: Bee County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0014112001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations for NH_3N and total suspended solids (TSS); and 30 TAC §305.125(1) and (17) and §319.7(d) and TPDES Permit Number WQ0014112001, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results at the intervals specified in the permit; PENALTY: $6,845; ENFORCEMENT COORDINATOR: Thomas Jecha, P.G., (512) 239-2576; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(26) COMPANY: TIKI FOOD MART, L.L.C.; DOCKET NUMBER: 2010-1949-PST-E; IDENTIFIER: RN102232055; LOCATION: Galveston, Galveston 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 at least once every 12 months; and 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers, or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight and free from liquid and debris; PENALTY: $3,578; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Tristream East Texas, L. L. C.; DOCKET NUMBER: 2010-2015-AIR-E; IDENTIFIER: RN102176377; LOCATION: Eustace, Henderson County; TYPE OF FACILITY: natural gas refining; RULE VIOLATED: 30 TAC §122.121 and THSC, §382.054 and §382.085(b), by failing to obtain permit authorization prior to the operation of a facility which emits air contaminants; PENALTY: $2,500; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(28) COMPANY: United States Army Corps of Engineers; DOCKET NUMBER: 2011-0401-WQ-E; IDENTIFIER: RN105966394; LOCATION: Comanche, Comanche County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(29) COMPANY: WOODMARK UTILITIES, INCORPORATED; DOCKET NUMBER: 2010-1884-MWD-E; IDENTIFIER: RN101511400; LOCATION: Smith County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0013168001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits for NH_3N, TSS, and *e. coli;* PENALTY: $8,600; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(30) COMPANY: WTG FUELS, INCORPORATED dba Wallisville Gascard 260303; DOCKET NUMBER: 2011-0052-PST-E; IDENTIFIER: RN102480407; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $1,875; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201101322
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 5, 2011

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Notice of Correction to Default Order Number 1

In the April 1, 2011, issue of the *Texas Register* (36 TexReg 2176), the Texas Commission on Environmental Quality (commission) published a notice of Default Order Number, specifically Item Number 1. The reference to 5 Star Diamond, LLC dba Diamond Mart was submitted in error by the commission as 30 TAC §115.245(7)(A) and instead should have been submitted as 30 TAC §115.246(7)(A).

For questions concerning this error, please contact Xavier Guerra at (210) 403-4016.

TRD-201101326
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 5, 2011

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 16, 2011.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas

78711-3087 and must be **received by 5:00 p.m. on May 16, 2011.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Coastal Crushed Concrete LLC; DOCKET NUMBER: 2010-0005-AIR-E; TCEQ ID NUMBER: RN105813166; LOCATION: 23023 Interstate 45 North, Spring, Harris County; TYPE OF FACILITY: rock crusher; RULES VIOLATED: 30 TAC §116.115(b) and §116.615(2), Texas Health and Safety Code (THSC), §382.085(b), and Air Quality Standard Permit for Temporary Rock Crushers General Requirements (1)(B), by failing to locate the rock crusher at least 440 yards away from any building which was in use as a single or multi-family residence, school, or place of worship; PENALTY: $1,000; STAFF ATTORNEY: Jeff Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Hamilton Oil, Inc.; DOCKET NUMBER: 2009-1561-AIR-E; TCEQ ID NUMBER: RN102859717; LOCATION: two miles north of the intersection of United States (US) Highways 277 and 90, on the east side of US Highway 277, north of Del Rio, Val Verde County; TYPE OF FACILITY: rock crusher; RULES VIOLATED: 30 TAC §101.102(e) and THSC, §382.085(b), by failing to notify the TCEQ of an excess opacity event; Rule Registration Number 16320D, 30 TAC §106.4(c) and §111.111(a)(8)(A) and THSC, §382.085(b), by failing to employ required emissions control equipment and by allowing excess opacity; and Rule Registration Number 16320D, 30 TAC §106.142(2), and THSC, §382.085(b), by failing to control dust emissions from plant roads; PENALTY: $2,700; STAFF ATTORNEY: Jeff Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(3) COMPANY: Jasani's International Inc. dba Silsbee Shell; DOCKET NUMBER: 2010-1018-PST-E; TCEQ ID NUMBER: RN102430303; LOCATION: 3211 Farm-to-Market Road 92, Silsbee, Hardin County; TYPE OF FACILITY: three underground storage tanks (USTs) and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A), (2), (2)(A)(i)(III), (d)(1)(B)(ii) and (iii)(I) and TWC, §26.3475(a) and (c)(1), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between monitoring) by failing to provide proper release detection for the piping associated with the UST system, failing to test the line leak detectors at least once per year for performance and operational reliability; by failing to conduct reconciliation of inventory control at least once per month in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, and failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; 30 TAC §115.246(3), (4), and (6) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and vapor space manifolding and dynamic back-pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: $8,601; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: JP Environmental Recycling, LLC, Contractors Abatement Services, Inc, and BBC AF Management/Development LLC; DOCKET NUMBER: 2010-0234-MSW-E; TCEQ ID NUMBER: RN105833420 and RN105825889; LOCATION: 802 Pleasant View Drive, Wichita Falls, Wichita County; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; 30 TAC §330.103(b), by failing to prevent the unauthorized transportation of a municipal solid waste; PENALTY: $30,000; STAFF ATTORNEY: Jeff Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: SETX Clearwater Environmental, L.L.C.; DOCKET NUMBER: 2010-1047-MLM-E; TCEQ ID NUMBER: RN105904635; LOCATION: 9501 Jade Avenue, Port Arthur, Jefferson County; TYPE OF FACILITY: industrial wastewater disposal facility; RULES VIOLATED: 30 TAC §324.1 and §324.4(1) and 40 Code of Federal Regulations (CFR) §279.22, by failing to prevent the unauthorized discharge of used oil; 30 TAC §324.6 and 40 CFR §279.22(c), by failing to clearly label containers storing used oil; 30 TAC §324.12(2) and §324.4(2)(C)(i) and 40 CFR §279.51, by failing to obtain a used oil registration and United States Environmental Protection Agency ID number prior to conducting used oil activities; 30 TAC §335.4, by failing to prevent the unauthorized discharge of industrial hazardous waste; 30 TAC §324.12(3) and 40 CFR §279.55, by failing to maintain an adequate Waste Analysis Plan; PENALTY: $5,000; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201101324
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 5, 2011

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 16, 2011.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory author-

ity. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 16, 2011.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Bosque Basin Water Supply Corporation; DOCKET NUMBER: 2010-1245-PWS-E; TCEQ ID NUMBER: RN101213544; LOCATION: 352 Oak Street, China Spring, McLennan County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(n)(3) and TCEQ Default Order Docket Number 2008-1593-PWS-E, Ordering Provision Number 2.c.iii., by failing to provide copies of well completion data; 30 TAC §290.41(c)(1)(F) and TCEQ DO Docket Number 2008-1593-PWS-E, Ordering Provision Number 2.c.i., by failing to keep on file and make available for commission review documentation of a sanitary control easement for Well Number 1; 30 TAC §290.41(c)(1)(A) and TCEQ Agreed Order Docket Number 2006-0075-MLM-E, Ordering Provision Number 2.c.i., by failing to locate the facility's well at least 150 feet away from a septic tank perforated drain field; PENALTY: $14,355; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Jasper Cindi, Inc. dba Bullfrogs Bar & Grill; DOCKET NUMBER: 2010-1498-PWS-E; TCEQ ID NUMBER: RN105973796; LOCATION: 4108 United States Highway 96 North, Jasper, Jasper County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.42(b)(1), by failing to provide disinfection facilities for microbiological control and distribution protection; and 30 TAC §290.39(e)(1) and (m) and Texas Health and Safety Code (THSC), §341.035(c), by failing to provide notification to the commission of the startup of a public water supply system and failing to submit engineering plans and specifications for a public water supply system; PENALTY: $850; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Jose Pena; DOCKET NUMBER: 2010-0788-LII-E; TCEQ ID NUMBER: RN105912588; LOCATION: 3425 Castle Rock Lane, Garland, Dallas County; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §30.5(b) and TWC, §37.003, by failing to refrain from advertising or representing himself to the public as a holder of a license or registration without holding or possessing a license or registration; PENALTY: $250; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Maclovio Ramon; DOCKET NUMBER: 2010-1490-MSW-E; TCEQ ID NUMBER: RN105137780; LOCATION: State Highway 44, outside of Freer city limits, Duval County; TYPE OF FACILITY: unauthorized municipal solid waste disposal site; RULES VIOLATED: 30 TAC §330.15(c) and TCEQ Agreed Order Docket Number 2008-1057-MSW-E, Ordering Provisions Numbers 2.a, 2.b, and 2.c; PENALTY: $9,100; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(5) COMPANY: Rene Coumans dba Belle Vue Dairy; DOCKET NUMBER: 2010-0913-AGR-E; TCEQ ID NUMBER: RN102887031; LOCATION: nine miles southeast of Sulphur Springs, on the east side of County Road 1567, Hopkins County; TYPE OF FACILITY: dairy operation; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §321.31(a) and §321.37(d), and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG920089, Part III.A.5(a)(1), by failing to prevent a discharge of wastewater from a concentrated animal feeding operation into or adjacent to water in the state; and 30 TAC §321.46(a)(1) and (6), and TPDES General Permit Number TXG920089, Part III.A.1(a) and III.A.4(a), by failing to identify and implement measures used to prevent contamination to water in the state; PENALTY: $5,355; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: Star Fuels, Inc. dba Brookshire Conoco; DOCKET NUMBER: 2010-0696-PST-E; TCEQ ID NUMBER: RN102009396; LOCATION: 306 Farm-to-Market Road 359 South, Brookshire, Waller County; TYPE OF FACILITY: underground storage tank (USTs) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2) and (2)(A)(i)(III), by failing to provide proper release detection for the pressurized piping associated with the USTs and failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.72(3)(b), by failing to report a suspected release to the TCEQ within 24 hours of discovery; 30 TAC §334.74, by failing to investigate a suspected release of regulated substances within 30 days of discovery; PENALTY: $43,696; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201101325
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 5, 2011

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Notice of Water Quality Applications

The following notice was issued on March 25, 2011 through April 1, 2011.

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

CHEVRON PHILLIPS CHEMICAL COMPANY LP which operates Chevron Phillips Chemical Company Borger Plant, has applied for a major amendment to TPDES Permit No. WQ0002484000 to authorize an increase in the discharge of treated wastewater to a volume not to exceed a daily average flow of 100,000 gallons per day via Outfall 003 and to suspend the monitoring requirements for Outfall 004 and related provisions (Other Requirements Nos. 6 & 7), to only those times wastewater is being used as a source of make-up water for the fire wa-

ter system; and to remove Outfall 001. The current permit authorizes the discharge of storm water commingled with de minimus quantities of process wastewater and cooling tower blowdown at an intermittent and flow-variable basis via Outfalls 001 and 002; and the discharge of reverse osmosis reject water at a daily average flow not to exceed 72,000 gallons per day via Outfall 003; and the discharge of fire test water via Outfall 004. The facility is located approximately two (2) miles northeast of the City of Borger on State Highway Spur 119, Hutchinson County, Texas 79007.

CITY OF GARLAND which operates the City of Garland Municipal Separate Storm Sewer System (MS4) has applied for a renewal of TPDES Permit No. WQ0004682000 to authorize storm water point source discharges to surface water in the state from the City of Garland MS4. The MS4 is located in the City of Garland, in Dallas, Collin, Rockwall, and Kaufman Counties, Texas, 75040, 75041, 75042, 75043, 75044, 75045, 75046, 75047, 75048, 75049.

CITY OF CANTON has applied for a renewal of TPDES Permit No. WQ0010399002 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,300,000 gallons per day. The application also includes a request for a temporary variance to the existing water quality standards for Total Copper. The variance would authorize a three-year period in which to conduct a water quality study of Mill Creek, into which the treated domestic wastewater is discharged. The study would show whether a site-specific amendment to water quality standards is justified. Prior to the expiration of the three-year variance period, the Commission will consider the site-specific standards and determine whether to adopt the standards or require the existing water quality standards to remain in effect. The facility is located 4,000 feet northeast of the intersection of Interstate Highway 20 and State Highway 19 and approximately 5,000 feet northwest of the intersection of Interstate Highway 20 and Farm-to-Market Road 17 in Van Zandt County, Texas 75103.

DR. JAMES DONALD SMITH JR has applied for a renewal of TPDES Permit No. WQ0014498001, 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 2,211 feet south of State Highway 787 and approximately 4,800 feet east of the Community of Romayor in Liberty County, Texas 77327.

SOUTH FORT WORTH RV RANCH LLC has applied for a renewal of TPDES Permit No. WQ0014680001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 48,000 gallons per day. The facility is located at 2301 South Interstate Highway 35 West, on the east side of Interstate Highway 35 West, approximately 5/8 mile north of the intersection of Bethesda Road and Interstate Highway 35 West in Johnson County, Texas 76028.

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-201101340
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 6, 2011

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 5, 2011, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v Waylon Collins; SOAH Docket No. 582-11-0470; TCEQ Docket No. 2010-0597-PST-E. The Commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Waylon Collins on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201101341
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 6, 2011

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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.

Deadline: 30-Day Pre-Election Report due October 4, 2010 for Candidates and Officeholders

Cecil Anthony Ince, 320 Brown Drive #109, Irving, Texas 75061-6971

Deadline: 30-Day Pre-Election Report due October 4, 2010 for Committees

David Bradley, Dallas County Democratic PAC - State and Local (CEC), 3464 Webb Garden Drive, Dallas, Texas 75229-5934

Deadline: 8-Day Pre-Election Report due October 25, 2010 for Candidates and Officeholders

Cecil Anthony Ince, 320 Brown Drive #109, Irving, Texas 75061-6971

Deadline: 8-Day Pre-Election Report due October 25, 2010 for Committees

Lynne Liberato, Haynes & Boone PAC, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219-7672

Rob Todd, Harris County Deputies Association, Inc., 1314 Texas Street, Suite 2000, Houston, Texas 77002-3576

Deadline: Lobby Activities Report due January 10, 2011

Kristine Weaver, 3207 Briarcrest Drive, Bryan, Texas 77802

Deadline: Monthly Report due February 7, 2011 for Committees

David P. Dodson, ACE Cash Express Texas PAC, 1231 Greenway Drive, Suite 600, Irving, Texas 75038

TRD-201101249
David Reisman
Executive Director
Texas Ethics Commission
Filed: March 30, 2011

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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 is issued by Greg Pollock, Deputy Commissioner, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on 18 November 2010.

PRELIMINARY REPORT

The Texas General Land Office (TGLO) has conducted an investigation and TGLO employees have inspected the R/V Miss Jeanie (GLO Tracking Number 1-905). The steel and aluminum-hulled recreational vessel is approximately 59 feet long, and sunken in an uncovered boat slip in Adams Bayou. The suspected owner or operator of this steel/aluminum-hulled vessel cannot be located. The vessel has apparently been abandoned at the Sabine Yacht Basin in the City of Orange, in Orange County, Texas. Pursuant to §40.254 of the Texas Natural Resources Code (TNRC), the Deputy Commissioner of the Oil Spill Prevention and Response Division, acting under authority of the Commissioner, has determined that this vessel is in a wrecked, derelict, or substantially dismantled condition and is a threat to public health, safety, and welfare, a hazard to the environment and a threat to navigation. The R/V Miss Jeanie was the source of two unauthorized discharges to waters of the state. The first occurrence was in 2002, GLO spill case #2002-1493, and the second incident was in 2010, GLO spill case #2010-3598. Additionally, Notice of Violations (NOVs) were sent to the suspected owner, Mr. Michael Jordan, regarding spill 2010-3598 and the apparent abandonment of the vessel. The NOVs were sent via certified mail with a return receipt requested. The Letter of State Interest regarding spill case 2010-3598 was returned to the GLO as unclaimed.

TNRC §40.108(a) prohibits a person from leaving, abandoning, or maintaining a vessel in coastal waters if the vessel is in a wrecked, derelict, or substantially dismantled condition and the Commissioner determines the vessel is a threat to public health, safety, or welfare or a threat to the environment. TNRC §40.108(b) authorizes the Commissioner to remove and dispose of or contract for the removal and disposal of any vessel described in TNRC §40.108(a). The Deputy Commissioner has determined there is a need to remove this vessel from Texas coastal waters and dispose of it in accordance with §40.108. This notice was also placed on the vessel on October 23, 2010 to inform the owner or operator of the pending removal and disposal of the vessel. This Notice of Violation was sent to the suspected owner on March 7, 2011. The NOV was subsequently unclaimed and returned to the GLO. Therefore, pursuant to §40.254 TNRC, we are now publishing notice on the GLO website, and through publication with the *Texas Register.*

NOTICE OF VIOLATION

The Commissioner finds that this vessel is a threat to public health, safety, and welfare, a hazard to the environment and a threat to navigation because it has been abandoned in Texas coastal waters at a location where operators of public and private vessels may encounter and suffer injury from it and in a condition that constitutes a threat to the environment. The Commissioner recommends that the vessel be removed from Texas coastal waters and disposed of in accordance with TNRC §40.108.

The owner or operator of this vessel 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-201101269
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: April 1, 2011

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High Plains Underground Water Conservation District Number 1

Notice of Application for Regional Water Planning Grant Funding

Notice is hereby given that the High Plains Underground Water Conservation District No. 1 will submit by 5:00 p.m. on April 8, 2011, a grant application for financial assistance to the Texas Water Development Board (TWDB) on behalf of Region O, to carry out planning activities to develop the 2016 Region O Regional Water Plan as part of the state's Fourth Cycle (2012-2016) of Regional Water Planning. It is anticipated that the application will be considered by the Texas Water Development Board at its June 22, 2011, meeting.

The Llano Estacado Regional Water Planning Group (Region O) includes the following counties: Bailey, Briscoe, Castro, Cochran, Crosby, Dawson, Deaf Smith, Dickens, Floyd, Gaines, Garza, Hale, Hockley, Lamb, Lubbock, Lynn, Motley, Parmer, Swisher, Terry, and Yoakum.

Copies of the grant application may be obtained from High Plains Underground Water Conservation District No. 1 when it becomes available or online at www.llanoplan.org. Written comments from the public regarding the grant application must be submitted to High Plains Underground Water Conservation District No. 1 (HPUWCD No. 1) and Texas Water Development Board (TWDB) prior to TWDB action on this application (June 22, 2011). Comments can be submitted to HPUWCD No. 1 and the TWDB as follows:

Region O (Llano Estacado Regional Water Planning Group)

Jim Conkwright - Administrative Agent for Region O

High Plains Water Conservation District No. 1

2930 Avenue Q

Lubbock, Texas 79411-2499

or

Texas Water Development Board

Executive Administrator

P.O. Box 13231

Austin, Texas 78711-3231

For additional information, please contact Mike McGregor, High Plains Underground Water Conservation District No. 1, c/o Region O, 2930 Avenue Q; telephone: (806) 762-0181; or e-mail mikem@hpwd.com.

TRD-201101323

Mike McGregor
Project Manager
High Plains Underground Water Conservation District Number 1
Filed: April 5, 2011

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Texas Department of Housing and Community Affairs

2011 Housing Trust Fund Program: Veterans Rental Assistance Program Notice of Funding Availability

I. Source of Housing Trust Funds.

The Housing Trust Fund was established by the 72nd Legislature, Senate Bill 546, §2306.201 of the Texas Government Code, to create affordable housing for low and very low income individuals and families. Funding sources consist of appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts, grants, or donations.

II. Notice of Funding Availability (NOFA).

(1) The Texas Department of Housing and Community Affairs (the "Department") announces the availability of up to $2,000,000 in funding from the 2011 Housing Trust Fund ("HTF") appropriation for the Veterans Rental Assistance ("VRA") Program through the HTF Texas Veterans Housing Support Program. The Program provides eligible tenant households with monthly rental subsidies and security deposits.

(2) The HTF VRA serves eligible Veterans with a projected income of 80% or less of the Area Median Family Income (AMFI), as defined by the Department.

III. Applicant Eligibility.

Applicants must meet the qualifications of the NOFA and must be Units of Local Government, Nonprofit Organizations, Public Housing Authorities, for-profit organizations, and any other entity authorized under Chapter 2306 of the Texas Government code, and Title 10, Part 1, Chapter 51 of the Texas Administrative Code (the "Housing Trust Fund Rule").

IV. Funding Reservation Process.

To access funds, eligible Applicants must apply for approval to participate in the Funding Reservation Process in which approved Administrators may reserve funds on a first-come, first-served basis. Contracts will be required for participation in the Funding Reservation Process described in the Notice of Funding Availability.

V. Application Deadline and Availability.

The HTF Veterans Rental Assistance Program NOFA is posted on the Department's website: http://www.tdhca.state.tx.us/htf/index.htm and organizations on the Department's list serve will receive an email notification that the NOFA is available on the Department's website.

VI. Deadline for Receipt.

Eligible Applicants may apply for approval starting on Thursday, March 31, 2011. The Department will accept applications on regular business days until all funds have been committed in the system, or until Friday, December 28, 2011, regardless of method of delivery.

Mailing Address:

Ms. Jessica Perez, Housing Trust Fund Program Coordinator

Housing Trust Fund 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 Jessica Perez at (512) 475-2261 (jessica.perez@tdhca.state.tx.us) or Glynis Laing at (512) 936-7800 (glynis.laing@tdhca.state.tx.us) when you arrive at the lobby of our building for application acceptance.

Questions. Questions pertaining to the content of the HTF Veterans Rental Assistance Program NOFA may be directed to Jessica Perez at (512) 475-2261 (jessica.perez@tdhca.state.tx.us) or Glynis Laing at (512) 936-7800 (glynis.laing@tdhca.state.tx.us).

TRD-201101334
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 6, 2011

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by ELEPHANT INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Richmond, Virginia.

Application to change the name of INSURANCE COMPANY OF THE AMERICAS to ACCELERATED INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Lake Mary, Florida.

Application for admission to the State of Texas by PLATEAU CASUALTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Crossville, Tennessee.

Application for admission to the State of Texas by PLATEAU INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Crossville, Tennessee.

Application to change the name of REPUBLIC LLOYDS to REPUBLIC INSURANCE COMPANY, a domestic lloyds. The home office is in Dallas, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (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-201101338
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 6, 2011

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Texas Lottery Commission

Instant Game Number 1323 "Triple Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1323 is "TRIPLE CASH". The play style for this game is "key number match with doubler and tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1323 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 1323.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, $$ SYMBOL, $$$ SYMBOL, $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $30.00, $60.00, $100, $500, $1000 or $1,500.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1323 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
$$ SYMBOL	DOUBLE
$$$ SYMBOL	TRIPLE
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$5.00	FIVE$
$6.00	SIX$
$10.00	TEN$
$20.00	TWENTY
$30.00	THIRTY
$60.00	SIXTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$1,500	15 HUND

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $4.00, $6.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $60.00, $100 or $100.

H. High-Tier Prize - A prize of $1,000 or $1,500.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven

(7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1323), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1323-0000001-001.

K. Pack - A pack of "TRIPLE CASH" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TRIPLE CASH" Instant Game No. 1323 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TRIPLE CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 10 (ten) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins PRIZE for that number. If a player reveals a "$$" play symbol, the player wins DOUBLE the PRIZE for that symbol. If a player reveals a "$$$" play symbol, the player wins TRIPLE the PRIZE for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 10 (ten) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 10 (ten) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 10 (ten) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 10 (ten) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols on a ticket.

C. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. Non-winning prize symbols will never be the same as the winning prize symbol(s).

F. The "$$" (doubler) and "$$$" (tripler) play symbols will only appear on winning tickets as dictated by the prize structure.

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 5 and $5).

H. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "TRIPLE CASH" Instant Game prize of $1.00, $2.00, $3.00, $4.00, $6.00, $10.00, $20.00, $30.00, $60.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $60.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TRIPLE CASH" Instant Game prize of $1,000 or $1,500, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TRIPLE CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "TRIPLE CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "TRIPLE CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 9,120,000 tickets in the Instant Game No. 1323. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1323 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	608,000	15.00
$2	668,800	13.64
$3	334,400	27.27
$4	106,400	85.71
$6	60,800	150.00
$10	76,000	120.00
$20	15,010	607.59
$30	6,460	1,411.76
$60	3,040	3,000.00
$100	722	12,631.58
$500	304	30,000.00
$1,000	28	240,000.00
$1,500	25	364,800.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.85. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1323 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1323, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201101331
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 6, 2011

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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 April 1, 2011, 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 Universal Cable Holdings, Inc. d/b/a Suddenlink, Communications for Amendment to a State-Issued Certificate of Franchise Authority, Project Number 39299.

The requested amendment is to expand the service area footprint to include the municipalities of Lone Star and Ingram, 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 39299.

TRD-201101320
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 5, 2011

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Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 1, 2011, for an amendment to certificated service area for a service area exception within Moore County, Texas.

Docket Style and Number: Application of Rita Blanca Electric Cooperative to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Moore County. Docket Number 39300.

The Application: Rita Blanca Electric Cooperative (RBEC) filed an application for a service area boundary exception to allow RBEC to provide service to a specific customer located within the certificated service area of Southwestern Public Service Company (SPS). SPS has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than April 25, 2011 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 telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 39300.

TRD-201101321
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 5, 2011

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Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on April 5, 2011 with the Public Utility Commission of Texas for waiver from the requirements in P.U.C. Substantive Rule §26.420(f)(3)(A).

Docket Style and Number: Application of Hughes Telematics, Inc. for Waiver to Apply Safe Harbor Percentage to Calculate Texas Universal Service Fund (TUSF) Assessment Pursuant to P.U.C. Substantive Rule §26.420(f). Docket Number 39304.

The Application: Hughes Telematics, Inc. (Hughes) is a reseller of wireless services. Hughes has elected to use the safe-harbor percentage approved by the Commission for its classification of telecommunications service provided. Hughes indicated it has no method to determine assessable TUSF intrastate receipts other than by the use of the safe harbor percentage. Hughes requests that the commission grant it a permanent waiver from the requirements contained in P.U.C. Substantive Rule §26.420(f)(3)(A) to allow Hughes to use the commission-ordered safe-harbor TUSF assessment methodology to calculate TUSF assessments.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by April 29, 2011, 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 telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 39304.

TRD-201101339
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 6, 2011

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on March 31, 2011, to amend a certificate of convenience and necessity for a proposed transmission line in Hale, Floyd, Motley, Cottle, Briscoe, Hall, Childress, Donley, Collingsworth, and Wheeler Counties, Texas and Beckham County, Oklahoma.

Docket Style and Number: Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a Proposed TUCO to Texas/Oklahoma Interconnection 345-kV Transmission Line Within Hale, Floyd, Motley, Cottle, Briscoe, Hall, Childress, Donley, Collingsworth, and Wheeler Counties. Docket Number 38877.

The Application: The application of Southwestern Public Service Company (SPS) for a proposed 345-kV transmission line is designated as the TUCO to Texas-Oklahoma Interconnect Transmission Line Project. The proposed project is presented with twenty (20) alternate routes. The applicant has selected Alternate Route 20 as its preferred route. Any route presented in the application could, however, be approved by the commission. Depending on the route chosen, the proposed line will be 180 to 200 miles in length. The proposed project will be constructed on two-pole H-frame steel structures. The total estimated cost for the project is between $158 million and $172 million. SPS proposes to construct the line from its TUCO Substation, located in Hale County, Texas, to a point of interconnection with Oklahoma Gas & Electric Co., which is approximately three miles east of the Texas/Oklahoma state line.

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 May 16, 2011. 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 Docket Number 38877.

TRD-201101270
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 1, 2011

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*