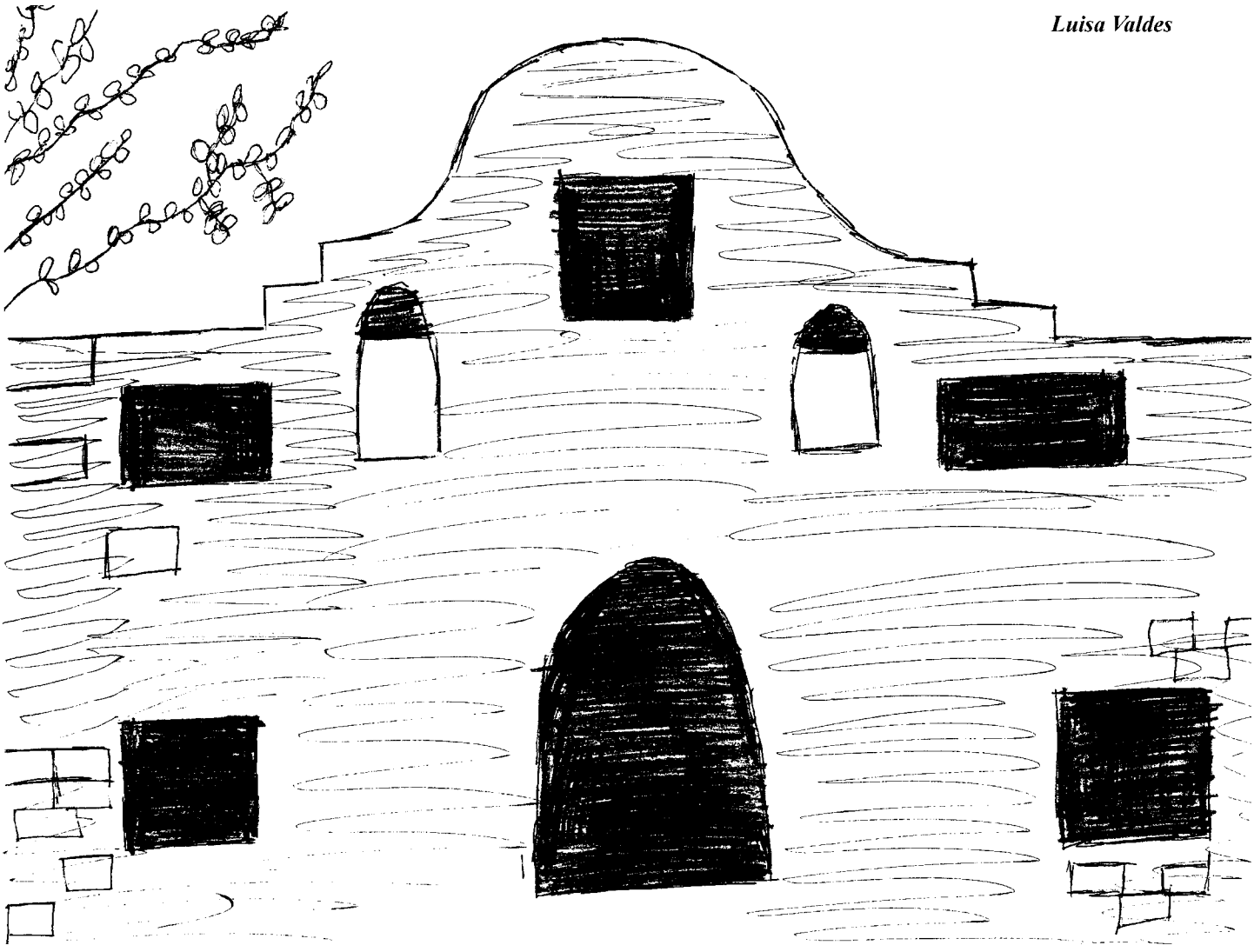
TEXAS REGISTER

Volume 37 Number 39 *September 28, 2012* *Pages 7533 - 7814*



Luisa Valdes

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

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

***Texas Register,* (ISSN 0362-4781, USPS 120-090),** is published weekly (52 times per year) for $211.00 ($311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** 136 Carlin Rd., Conklin, N.Y. 13748-1531.

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

http://www.sos.state.tx.us
register@sos.state.tx.us

Secretary of State –
Hope Andrade

Director –
Dan Procter

Staff
Leti Benavides
Dana Blanton
Elaine Crease
Kris Hogan
Belinda Kirk
Roberta Knight
Jill S. Ledbetter
S. Gail Woods
Mirand Zepeda-Jaramillo

IN THIS ISSUE

WITHDRAWN RULES

ADOPTED RULES

RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION

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-1082-GA

Requestor:

The Honorable Patricia R. Lykos

Harris County District Attorney

1201 Franklin, Suite 600

Houston, Texas 77002-1901

Re: Proper disposition of blood seized during the investigation of an intoxication-related offense (RQ-1082-GA)

Briefs requested by October 17, 2012

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

TRD-201204932
Katherine Cary
General Counsel
Office of the Attorney General
Filed: September 19, 2012

♦ ♦ ♦

Opinions

Opinion No. GA-0964

The Honorable Susan Combs

Texas Comptroller of Public Accounts

Post Office Box 13528

Austin, Texas 78711-3528

Re: Confidentiality of alcoholic beverage reports submitted to the Comptroller under section 151.462 of the Tax Code (RQ-1050-GA)

S U M M A R Y

Information from alcoholic beverage reports that is required to be furnished to authorized persons under the circumstances described in section 111.006(h), Tax Code, must identify the retailers to whom the alcoholic beverages are sold.

Opinion No. GA-0965

The Honorable Burt R. Solomons

Chair, Committee on Redistricting

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Transfer of a tax lien pursuant to section 32.06 of the Tax Code, and the items that may be secured by the transferred lien (RQ-1051-GA)

S U M M A R Y

The tax assessor-collector, acting alone, must carry out the statutorily required duties related to a transfer of a tax lien under section 32.06 of the Tax Code. Neither the tax assessor-collector nor the governing body of the taxing unit is empowered to deny the transfer of a tax lien if the conditions of section 32.06 of the Tax Code are otherwise met.

A court could conclude that closing costs and lien recordation fees charged by a property tax lien transferee under section 32.06 of the Tax Code are secured by the transferred tax lien.

Opinion No. GA-0966

The Honorable Jeri Yenne

Brazoria County Criminal District Attorney

111 East Locust, Suite 408A

Angleton, Texas 77515

Re: Authority to operate a golf cart under section 551.403 of the Transportation Code (RQ-1052-GA)

S U M M A R Y

A person is operating a golf cart legally for purposes of section 551.403 of the Texas Transportation Code if a person is operating a golf cart within the parameters of subsection (a)(1), (a)(2), or (a)(3) of that section.

Subsection 551.403(a)(3) of the Transportation Code allows operation of a golf cart on a public highway only if, among other requirements, the golf cart is operated not more than two miles from the location where the golf cart is usually parked and is operated only for the purpose of transportation to or from a golf course.

Opinion No. GA-0967

The Honorable David K. Walker

Montgomery County Attorney

207 West Phillips, Suite 100

Conroe, Texas 77301

Re: Whether an individual may be prosecuted for an alleged assaultive offense that occurred in 1998 when the person was thirteen years of age, and in which the victim died in 2011 (RQ-1055-GA)

S U M M A R Y

A county or district attorney's determination regarding the initiation of further proceedings falls within the scope of prosecutorial discretion.

Opinion No. GA-0968

The Honorable Jeff Wentworth

Chair, Select Committee on Open Government

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Authority of the City of San Antonio, Bexar County, and VIA Metropolitan Transit Authority to use the proceeds of a sales and use tax for a streetcar project in light of certain representations that were made preceding an election to create an advanced transportation district (RQ-1048-GA)

S U M M A R Y

Determining the extent to which representations and statements made prior to an election creating an advanced transportation district may have become a part of the contract with the voters and construing the terms of such representations and statements involve questions of fact and contract construction not amenable to the opinion process.

Twenty-five percent of the proceeds of an advanced transportation district sales and use tax must be used as the local share of a state or federal grant according to law for advanced transportation or mobility enhancement purposes in the territory of the district. Whether using such proceeds for a streetcar project would comport with this requirement would involve questions of fact that cannot be determined in an attorney general opinion.

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

TRD-201204926
Katherine Cary
General Counsel
Office of the Attorney General
Filed: September 18, 2012

♦ ♦ ♦

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 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER I. IMPLEMENTATION OF THE HELP AMERICA VOTE ACT OF 2002

The Office of the Secretary of State proposes the repeal and replacement of §§81.172 - 81.174, concerning Implementation of the Help American Vote Act of 2002. The repeals and new sections are necessary to restore an earlier version of the rules.

Restoration of the earlier version of the rules is necessary because the current version was promulgated in anticipation of U.S. Department of Justice ("DOJ") preclearance of Chapter 123, Senate Bill 14, 2011 Texas Legislature, relating to voter photo ID requirements. DOJ interposed an objection to Chapter 123, and, following litigation instituted by the State of Texas, on August 30, 2012, in *State of Texas v. Holder,* no. 12-cv-128, the United States District Court for the District of Columbia denied the State's request for a declaratory judgment preclearing Chapter 123 under Section 5 of the Federal Voting Rights Act.

Keith Ingram, Director of Elections, has determined that for the first five-year period the repeals and new rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Ingram has determined also that for each year of the first five years the repeals and new rules are in effect, the public benefit anticipated as a result of enforcing the change is conformity to existing law. There will be no effect to individuals required to comply with the proposed rules. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to the Office of the Secretary of State, Keith Ingram, Director of Elections, P.O. Box 12060, Austin, Texas 78711.

The deadline for furnishing comments is 30 days after publication in the *Texas Register.*

1 TAC §§81.172 - 81.174

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

The repeals are proposed under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code.

No other sections are affected by the proposal.

§81.172. Provisional Voting Procedures: Paper Ballot.

§81.173. Provisional Voting Procedures for Electronic Voting System: Optical Scan Precinct Ballot Counters.

§81.174. Provisional Voting Procedures for Optical Scan Voting System Ballots Tabulated at a Central Counting Station.

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 September 19, 2012.

TRD-201204943
Keith Ingram
Director of Elections
Office of the Secretary of State
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 463-5650

♦ ♦ ♦

1 TAC §§81.172 - 81.174

The new rules are proposed under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code.

No other sections are affected by the proposal.

§81.172. Provisional Voting Procedures: Paper Ballot.

(a) Polling Place Preparation.

(1) The Election Judge shall set aside a sufficient number of regular ballots from the supply of official ballots and write or stamp "provisional" on the back of the ballot (referred to below as "provisional ballots").

(2) The Election Judge shall keep the provisional ballots separate from the regular ballots.

(b) Eligibility to vote provisional ballots.

(1) At all elections, the following individuals shall be eligible to cast a provisional ballot:

(A) A Voter who claims to be properly registered and eligible to vote at the election precinct, but whose name does not appear on the list of registered voters and whose registration cannot be determined by the Voter Registrar; or

(B) A Voter who is designated as a first time Voter on the list of registered voters, but who is unable to produce the required identification; or

(C) A Voter who has applied for a ballot by mail, but has not returned the ballot by mail or cancelled the ballot with the main early voting clerk; or

(D) A Voter who votes during the polling hours that are extended by a state or federal court; or

(E) A Voter who is registered to vote but attempting to vote in a different precinct other than the one in which the Voter is registered.

(F) A Voter who is required to present identification but does not.

(G) A Voter who is on the list, but registered residence address is outside the political subdivision.

(H) A Voter who voted in another party's primary.

(2) A person voting by mail may not vote a provisional ballot.

(c) Polling Place Procedures for Hand-Counted Paper Ballot.

(1) If a Voter is eligible to cast a provisional ballot, the Election Judge shall immediately inform the Voter of this right. The Election Judge shall also inform the Voter that their provisional ballot will not be counted if the Voter casts a provisional ballot at a precinct in which the Voter is not registered (regardless of whether the Voter is registered in another precinct but in the same political subdivision) or if there is an indication on the list of registered voters that the Voter has voted early in person or by mail.

(2) The Election Judge must request the Voter to present a valid form of identification to vote a provisional ballot. If the Voter has no identification, he may still be permitted to vote a provisional ballot, but his ballot will not be approved for counting and the Election Judge must notify the Voter of that fact. Acceptable forms of identification include:

(A) a driver's license or personal identification card issued to the person by the Department of Public Safety or a similar document issued to the person by an agency of another state, regardless of whether the license or card has expired;

(B) a form of identification containing the person's photograph that establishes the person's identity;

(C) a birth certificate or other document confirming birth that is admissible in a court of law and establishes the person's identity;

(D) United States citizenship papers issued to the person;

(E) a United States passport issued to the person;

(F) official mail addressed to the person by name from a governmental entity;

(G) a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the Voter; or

(H) any other form of identification prescribed by the secretary of state.

(3) Prior to casting a provisional ballot, the Voter shall be required to sign a Provisional Ballot Affidavit Envelope. The Provisional Ballot Affidavit Envelope shall state that the Voter is a registered voter in the political subdivision and a resident on election day and that he is eligible to vote in the election. The Provisional Ballot Affidavit Envelope shall also require the information necessary to register the Voter, if he proves to be unregistered. A Voter who refuses to sign the Provisional Ballot Affidavit Envelope is not eligible to vote provisionally.

(4) The Election Judge shall make clear to the Voter that in order for the provisional ballot to be evaluated by the Early Voting Ballot Board, he must complete and sign the Provisional Ballot Affidavit Envelope.

(5) The Election Judge shall enter the Provisional Voter's name on the List of Provisional Voter's form.

(6) The Election Judge shall add the name of the Provisional Voter to the poll list and check the column "Provisional".

(7) The Provisional Voter signs the regular signature roster.

(8) The Election Judge shall check the reason under which the Voter voted provisionally on the provisional ballot envelope. The reasons include:

(A) Voter not on list of registered voters, Voter Registrar could not be reached;

(B) Voter not on list of registered voters and could not be verified by Voter Registrar;

(C) Voter on list of registered voters, but did not provide certificate or other form of identification;

(D) Voter not on list and no identification;

(E) Voter on list of persons who voted early by mail, Voter says he/she did not receive or return the ballot and refuses to cancel the ballot with the Early Voting Clerk;

(F) First time Voter without any identification;

(G) Voter who voted after 7:00 p.m. due to court order; or

(H) Voter who voted in another party's primary.

(9) The Election Judge shall then sign the provisional ballot envelope.

(10) The Election Judge shall direct the Voter to choose a ballot from a stack of pre-designated "provisional" ballots.

(11) The Election Judge shall inform the Voter that ballots stamped "provisional" will not be counted if placed in the ballot box without sealing it inside the corresponding envelope.

(12) The Election Judge shall inform the Voter that the Voter will receive notice in the mail as to whether or not their ballot was counted and shall immediately provide to the Voter a written notice which will inform the Voter of this fact in writing, along with information that explains that the Provisional Ballot Affidavit Envelope will be used by the Voter Registrar to register the Voter or update his registration, as applicable.

(13) After the provisional ballot has been voted, the Voter shall:

(A) seal the provisional ballot in a plain white secrecy envelope;

(B) seal the secrecy envelope inside the provisional ballot envelope; and

(C) deposit the Provisional Ballot Affidavit Envelope in Ballot Box #1 or a separate container that meets the requirements of §51.034 of the Code or has been approved by the Secretary of State.

(d) Early Voting By Personal Appearance Provisional Ballot Procedures.

(1) To the extent practicable, the Early Voting Clerk or Deputy Early Voting Clerk shall follow election day provisional ballot procedures during the early voting period.

(2) The Provisional Voter's precinct number shall be added to an Early Voting List of Provisional Voters.

(3) When the Early Voting Ballot Board convenes, the early voting ballot board shall separate the provisional ballot envelopes from the regularly-cast ballots and place them in a ballot box or transfer case for delivery to the Voter Registrar. The Voter Registrar shall sign the List of Early Voting Provisional Voters to verify receipt of the provisional ballot envelopes.

(4) The Voter Registrar shall review the Provisional Ballot Affidavit Envelopes as set out in subsection (e) of this section.

(e) Provisional Ballot Affidavit Envelope transfer procedures.

(1) The presiding Election Judge shall enter the number of Provisional Ballot Affidavit Envelopes cast on the register of official ballots and on the List of Provisional Voters.

(2) The Election Judge shall separate the Provisional Ballot Affidavit Envelopes from regular ballots during the counting phase, and shall secure the regularly-counted ballots in Ballot Box Number 3 and secure the provisional ballots in Ballot Box Number 4.

(3) The List of Provisional Voters is placed in Envelope Number 2.

(4) On election night, the General Custodian shall open all Envelopes Number 2 and remove the List of Provisional Voters. From these lists, the General Custodian shall prepare a Summary of Provisional Ballots listing each precinct and the number of provisional ballots received by that precinct as indicated on the Register of Official Ballots. The information on the Summary of Provisional Ballots shall be available during election night.

(5) The General Custodian shall unlock Ballot Box Number 4 and remove the Provisional Ballot Affidavit Envelopes.

(6) The General Custodian shall also verify that the number of Provisional Voters on the List of Provisional Voters from each precinct matches the number of provisional ballots recorded on the ballot register from each precinct.

(7) The General Custodian shall sign the List of Provisional Voters evidencing the number of Provisional Voters per precinct and the number of Provisional Ballot Affidavit Envelopes to be forwarded to the Voter Registrar.

(8) Ballots stamped "provisional" but not contained in a provisional ballot envelope may not be counted and are not transferred to the Voter Registrar. The presiding Election Judge shall write the reason for not counting the ballot on the back of the ballot. These ballots shall be retained for the appropriate preservation period, and shall also be placed in Ballot Box No. 4.

(9) The General Custodian shall place the voted Provisional Ballot Affidavit Envelopes from all the election day precincts into a ballot box or transfer case with the corresponding List of Provisional Voters for each precinct.

(10) The General Custodian shall give the Voter Registrar a copy of the Summary of Provisional Ballots at the same time the Provisional Ballot Affidavit Envelopes and List of Provisional Voters are delivered to the Voter Registrar.

(11) The General Custodian shall lock and seal each ballot box or transfer case that contains the Provisional Ballot Affidavit Envelopes prior to delivery to the Voter Registrar. The numbers on the seal shall be recorded on the Summary of Provisional Ballots.

(12) A Poll Watcher, if available, may sign the Summary of Provisional Ballots.

(f) Transfer to Voter Registrar.

(1) The General Custodian shall deliver the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes along with the Summary of Provisional Ballots and the List of Provisional Voters for each precinct to the Voter Registrar on the next business day after the election.

(2) If the Voter Registrar wishes to take possession of the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes from the General Custodian of election records on election night, the Voter Registrar must inform the General Custodian of election records and post a Notice of Election Night Transfer no later than 24 hours before election day. If the Voter Registrar makes this determination, the Voter Registrar must go to the General Custodian's office and take possession on election night.

(3) Upon receipt of the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes and their keys, the Voter Registrar shall sign the Verification of Provisional Ballots and Serial Numbers to verify such receipt, that the box was in tact, and that the seal was not broken.

(4) The Voter Registrar shall break the seal and unlock the box.

(5) The General Custodian of election records shall supply the Voter Registrar with a sufficient number of seals to re-seal the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes once his or her review is completed.

(6) The Voter Registrar must keep the List of Provisional Voters together with the corresponding Provisional Ballot Affidavit Envelopes for that precinct. The Voter Registrar does not complete any information on this form.

(7) If the Early Voting Ballot Board meets prior to election day to prepare ballots for processing as authorized under §87.062 of the Code, the Voter Registrar may attend the meeting and take possession of early voting Provisional Ballot Affidavit Envelopes prior to election day. The Voter Registrar shall give the General Custodian of election records written notice of his or her intent to take early possession of the Provisional Ballot Affidavit Envelopes at least 24 hours prior to the scheduled meeting of the ballot board.

(g) Voter Registrar Review of Provisional Ballot Affidavit Envelopes.

(1) No later than the third business day after election day, the Voter Registrar shall complete the review of the Provisional Ballot Affidavit Envelopes. As part of the review, the Voter Registrar shall review information from the following sources to attempt to determine the Provisional Voter's registration status:

(A) the Department of Public Safety;

(B) Volunteer Deputy Registrars; and

(C) other records that may establish the Voter's eligibility. The Voter Registrar must examine each Provisional Ballot Affidavit Envelope, determine the Voter's registration status, and indicate the status on the face of the Provisional Ballot Affidavit Envelope as one of the following:

(i) No record of voter registration application on file in this county;

(ii) Registration cancelled on _____ (fill in date);

(iii) Registered less than 30 days before the election;

(iv) Incomplete registration received, but additional information not returned;

(v) Voter rejected for registration due to ineligibility;

(vi) Registered to vote, but erroneously listed in wrong precinct;

(vii) Registered to vote in a different precinct within the county;

(viii) Information on file indicating applicant completed a voter registration application, but it was never received in the Voter Registrar's office;

(ix) Voter erroneously removed from list of registered voters;

(x) Voter is registered;

(xi) Voter voted in another party's primary; or

(xii) Other: _____ (with an explanation).

(2) The Voter Registrar shall sign and date his review of each Provisional Ballot Affidavit Envelope.

(3) The Voter Registrar shall copy the Provisional Ballot Affidavit Envelope of each Voter who was not registered to vote, who was registered but whose information contains updated voter registration information, or who was erroneously cancelled or listed in the wrong precinct or for any other reason the Voter Registrar deems necessary.

(4) For purposes of voter registration, the copied Provisional Ballot Affidavit Envelope serves as an original voter registration application or change form; the effective date will be calculated as thirty days from the Election Date at which the Provisional Ballot Affidavit Envelope was submitted.

(5) If the residence address provided on the Provisional Ballot Affidavit Envelope falls outside the Voter Registrar's jurisdiction, the Voter Registrar shall forward a copy of the Provisional Ballot Affidavit Envelope to the appropriate Voter Registrar. The effective date of the transferred copy shall be calculated as thirty days from the election date on which the Provisional Ballot Affidavit Envelope was originally submitted. The original Provisional Ballot Affidavit Envelope shall be transferred to the appropriate Voter Registrar after the preservation period upon the Voter Registrar's request.

(6) The Voter Registrar shall keep the Provisional Ballot Affidavit Envelopes separated by election precinct during the review. The Voter Registrar shall replace the Provisional Ballot Affidavit Envelopes in the same ballot boxes or other containers in which the Provisional Ballots Affidavit Envelopes were originally received for transfer to the Early Voting Ballot Board or General Custodian of election records, as designated by the General Custodian of election records, along with the List of Provisional Voters for each precinct. The copy of the Summary of Provisional Ballots is returned to the General Custodian. The box is relocked and resealed in the same manner in which it was received. The serial number of the seal shall be recorded on the Verification of Provisional Ballots and Serial Number form.

(7) The General Custodian of the election records or the Early Voting Ballot Board Judge shall pick up the secured ballot boxes or other containers and all other materials at the time, date, and location designated by the Voter Registrar.

(8) The Voter Registrar shall sign the Verification of Provisional Ballots and Serial Numbers form verifying transfer, and the presiding judge of the Early Voting Ballot Board or General Custodian of election records shall sign indicating receipt of the Provisional Ballot Affidavit Envelopes and that the key and ballot box(es) was properly sealed.

(9) Poll Watchers are not entitled to be present during the Voter Registrar's review.

(h) Early Voting Ballot Board defined. The authority appointing the Early Voting Ballot Board may determine which members of the board will review and count the provisional ballots. The entire ballot board is not required to be present. A minimum of three members of the board is required to conduct the review.

(i) Review of Provisional Ballot Affidavit Envelopes by Early Voting Ballot Board; Rules for Counting.

(1) The presiding judge of the Early Voting Ballot Board shall take receipt of the Provisional Ballot Affidavit Envelopes from the Voter Registrar directly or via the General Custodian of election records at a time and place to be determined by the presiding judge.

(2) The presiding judge of the Early Voting Ballot Board may convene the board as soon as practicable after the Voter Registrar has completed the review of the provisional ballots. The judge must post a notice on the bulletin board used for posting notices of meetings of the governing body ordering the election no later than 24 hours before the board is scheduled to meet. The board may also convene while the Voter Registrar continues his or her review.

(3) The Early Voting Ballot Board must receive and review the Provisional Ballot Affidavit Envelopes.

(4) The Early Voting Ballot Board shall review both the Election Judge's and the Voter Registrar's notation on each Provisional Ballot Affidavit Envelope to determine whether or not the ballot should be counted as indicated below:

(A) If the Voter Registrar indicates that the Provisional Voter is registered to vote and was erroneously registered in the wrong election precinct, the ballot shall be counted.

(B) The ballot shall be counted if the Voter Registrar determines that the Provisional Voter is eligible and submitted a timely voter registration application, but was not timely received by the Voter Registrar.

(C) If the Election Judge indicated that the Voter did not provide a valid registration certificate or other form of identification, the ballot shall not be counted.

(D) If the Election Judge indicated that the reason for casting a provisional ballot was that the Voter appeared on the list of registered voters as having cast a ballot by mail and the Voter claimed that he never received the mail ballot and is not willing to cancel his or her mail ballot application with the main Early Voting Clerk, the provisional ballot shall not be counted.

(E) If the Voter Registrar indicates that there is no record of the Provisional Voter's registration application on file with the county, the provisional ballot shall not be counted.

(F) If the Voter Registrar indicates that the Provisional Voter's registration has been cancelled and provides the date, the ballot shall not be counted.

(G) If the Voter Registrar indicates that the Provisional Voter was registered less than 30 days before Election Day and therefore did not have effective registration for the precinct at which he attempted to vote, the ballot shall not be counted.

(H) If the Voter Registrar indicates that an incomplete application was received from the Provisional Voter but the required additional information was not returned, the ballot shall not be counted.

(I) If the Voter Registrar indicates that the Provisional Voter's registration application was rejected due to ineligibility, the ballot shall not be counted.

(J) If the Voter Registrar indicates that the Provisional Voter is registered to vote at a different precinct other than the one the Voter voted in, the ballot shall not be counted.

(K) If the board determines that the Provisional Voter was not registered and not entitled to vote at the election precinct where the ballot was cast, the ballot shall not be counted.

(L) If either the Election Judge or the Voter Registrar indicates that the voter voted in another party's primary, the ballot shall not be counted.

(M) The Voter Registrar has information in the office that the Voter did complete an application, and the Voter is otherwise qualified, the ballot shall be counted.

(N) If the Voter was erroneously removed from list and Voter is otherwise qualified to vote, the ballot shall be counted.

(O) If the Voter Registrar indicates that the Voter is registered, the ballot shall be counted.

(5) The presiding judge shall indicate the disposition of each ballot on the appropriate space of the Provisional Ballot Affidavit Envelope.

(6) The presiding judge shall indicate the disposition of each Provisional Ballot Affidavit Envelope on the List of Provisional Voters for that precinct.

(7) The ballots to be counted shall be removed from their Provisional Ballot Affidavit Envelopes and counted under the normal procedure for counting ballots by mail in the election. The presiding judge of the Early Voting Ballot Board shall make a return sheet of the votes and record the votes by precinct.

(8) The Provisional Ballot Affidavit Envelopes for accepted ballots shall be placed in an Envelope for Provisional Ballot Affidavit Envelopes marked "Accepted" and the Provisional Ballot Affidavit Envelopes and their Provisional Ballots for the rejected ballots shall be placed in an Envelope for Provisional Ballot Envelopes marked "Rejected".

(9) Once counted, the provisional ballots shall be re-locked and returned to the General Custodian of election records. The key shall be delivered to the General Custodian of the key. The records of the ballot board shall be distributed in accordance with Chapter 66 of the Code.

(10) The List of Provisional Voters for each precinct shall be delivered to the General Custodian of election records in the Envelope for Accepted Provisional Ballot Affidavit Envelopes.

(11) The General Custodian of election records shall prepare an amended unofficial return once the General Custodian receives the documents contained in Envelope #2.

(12) The provisional ballots and Provisional Ballot Affidavit Envelopes shall be retained for the appropriate preservation period for the election.

(13) The Lists of Provisional Voters for each precinct shall be retained and used by the General Custodian of election records to provide information to Voters on whether the provisional ballot was counted or not.

(14) All Provisional Ballot Affidavit Envelopes and the List of Provisional Voters are public records.

(15) Rejected Provisional Ballot Affidavit Envelopes may not be opened except by court order.

(16) Poll Watchers are entitled to be present at the meeting of Early Voting Ballot Board pursuant to §33.054 of the Texas Election Code.

(j) Request for Return of Original Envelopes. Upon request of the Voter Registrar, the General Custodian of election records shall deliver the original Provisional Ballot Affidavit Envelopes to the Voter Registrar after the preservation period.

(k) Notice to Provisional Voters. Not later than the 10th day after the local canvass, the presiding judge of the Early Voting Ballot Board shall deliver written notice regarding whether the provisional ballot was counted, and if the ballot was not counted, the reason the ballot was not counted. The presiding judge shall use the information provided on the Provisional Ballot Affidavit Envelope to obtain the proper mailing address for the Voter and the final resolution of the provisional ballot.

§81.173. Provisional Voting Procedures for Electronic Voting System: Optical Scan Precinct Ballot Counters.

(a) Polling Place Preparation.

(1) The Election Judge shall set aside a sufficient number of regular ballots from the supply of official ballots and write or stamp "provisional" on the back of the ballot (referred to below as "provisional ballots").

(2) The Election Judge shall keep the provisional ballots separate from the regular ballots.

(b) Eligibility to vote provisional ballot.

(1) At all elections, the following Voters shall be eligible to cast a provisional ballot:

(A) A Voter who claims to be properly registered and eligible to vote at the election precinct, but whose name does not appear on the list of registered voters and whose registration cannot be determined by the Voter Registrar; or

(B) A Voter who is designated as a first time Voter on the list of registered voters, but who is unable to produce the required identification; or

(C) A Voter who has applied for a ballot by mail, but has not returned the ballot by mail or cancelled the ballot with the main early voting clerk; or

(D) A Voter who votes during the polling hours that are extended by a state or federal court; or

(E) A Voter who is registered to vote but attempting to vote in a different precinct other than the one in which the Voter is registered.

(F) A Voter who is required to present identification but does not.

(G) A Voter who is on the list, but registered residence address is outside the political subdivision.

(H) A Voter who voted in another party's primary.

(2) A person voting by mail may not vote a provisional ballot.

(c) Polling Place Procedures.

(1) If a Voter is eligible to cast a provisional ballot, the Election Judge shall immediately inform the Voter of this right. The Election Judge shall also inform the Voter that his or her provisional ballot will not be counted if the Voter casts a provisional ballot at a precinct in which the Voter is not registered (regardless of whether the Voter is registered in another precinct but in the same political subdivision) or if there is an indication on the list of registered Voters that the Voter has voted early in person or by mail.

(2) The Election Judge must request the Voter to present a valid form of identification to vote a provisional ballot. If the Voter has no identification, he may still be permitted to vote a provisional ballot, but his ballot will not be approved for counting and the Election Judge must notify the Voter of that fact. Acceptable forms of identification include:

(A) a driver's license or personal identification card issued to the person by the Department of Public Safety or a similar document issued to the person by an agency of another state, regardless of whether the license or card has expired;

(B) a form of identification containing the person's photograph that establishes the person's identity;

(C) a birth certificate or other document confirming birth that is admissible in a court of law and establishes the person's identity;

(D) United States citizenship papers issued to the person;

(E) a United States passport issued to the person;

(F) official mail addressed to the person by name from a governmental entity;

(G) a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the Voter; or

(H) any other form of identification prescribed by the secretary of state.

(3) Prior to casting a provisional ballot, the Voter shall be required to sign a Provisional Ballot Affidavit Envelope. The Provisional Ballot Affidavit Envelope shall state that the Voter is a registered Voter in the political subdivision and a resident on election day and that he is eligible to vote in the election. The Provisional Ballot Affidavit Envelope shall also require the information necessary to register the Voter, if he proves to be unregistered. A Voter who refuses to sign the Provisional Ballot Affidavit Envelope is not eligible to vote provisionally.

(4) The Election Judge shall make clear to the Voter that in order for the provisional ballot to be evaluated by the Early Voting Ballot Board, he must complete and sign the Provisional Ballot Affidavit Envelope.

(5) The Election Judge shall enter the Provisional Voter's name on the List of Provisional Voter's form.

(6) The Election Judge shall add the name of the Provisional Voter to the poll list and check the column "Provisional".

(7) The Provisional Voter signs the regular signature roster.

(8) The Election Judge shall check the reason under which the Voter voted provisionally on the provisional ballot envelope. The reasons include:

(A) Voter not on list of registered voters, Voter Registrar could not be reached;

(B) Voter not on list of registered voters and could not be verified by Voter Registrar;

(C) Voter on list of registered voters, but did not provide certificate or other form of identification;

(D) Voter not on list and no identification;

(E) Voter on list of persons who voted early by mail, Voter says he/she did not receive or return the ballot and refuses to cancel the ballot with the Early Voting Clerk;

(F) First time Voter without any identification;

(G) Voter who voted after 7:00 p.m. due to court order; or

(H) Voter who voted in another party's primary.

(9) The Election Judge shall then sign the provisional ballot envelope.

(10) The Election Judge shall direct the Voter to choose a ballot from a stack of pre-designated "provisional" ballots.

(11) The Election Judge shall inform the Voter that ballots stamped "provisional" will not be counted if placed in the ballot box without sealing it inside the corresponding envelope.

(12) The Election Judge shall inform the Voter that the Voter will receive notice in the mail as to whether or not their ballot was counted and shall immediately provide to the Voter a written notice which will inform the Voter of this fact in writing, along with information that explains that the Provisional Ballot Affidavit Envelope will be used by the Voter Registrar to register the Voter or update his registration, as applicable.

(13) After the provisional ballot has been voted, the Voter shall:

(A) seal the provisional ballot in a plain white secrecy envelope;

(B) seal the secrecy envelope inside the provisional ballot envelope; and

(C) deposit the Provisional Ballot Affidavit Envelope in the Ballot Box #1 or a separate container that meets the requirements of §51.034 of the Code or has been approved by the Secretary of State.

(d) Early Voting Provisional Ballot Procedures.

(1) To the extent practicable, the Early Voting Clerk or Deputy Early Voting Clerk shall follow election day provisional ballot procedures during the early voting period.

(2) The Provisional Voter's precinct number shall be added to an Early Voting List of Provisional Voters.

(3) The presiding judge shall direct the provisional ballot envelopes to be separated from the regularly-cast ballots and placed in a ballot box or transfer case for delivery to the General Custodian of election records. The General Custodian shall deliver the provisional ballots to the Voter Registrar. The Voter Registrar shall sign the List of Early Voting Provisional Voters to verify receipt of the provisional ballot envelopes.

(4) The Voter Registrar shall review the Provisional Ballot Affidavit Envelopes as set out in subsection (e) of this section.

(e) Provisional Ballot Affidavit Envelope Transfer Procedures.

(1) After the election day polls have closed, the Election Judge shall enter the number of Provisional Ballot Affidavit Envelopes cast on the register of official ballots and on the List of Provisional Voters.

(2) The Election Judge shall place a copy of the List of Provisional Voters form inside Envelope Number 2.

(3) The ballot box (or other secure container) containing ballots cast on the tabulator and the separate ballot box (or other secure container) containing Provisional Ballot Affidavit Envelopes shall be delivered to the General Custodian of election records or central counting personnel, if applicable under §127.157 of the Texas Election Code.

(4) After the polls have closed and the ballots cast on the precinct tabulator have been reviewed, if ballots stamped "provisional" but not contained in a Provisional Ballot Affidavit Envelope are discovered, such ballots may not be counted and are not transferred to the Voter Registrar. The ballots shall be treated as irregularly marked ballots and the procedure set out in §127.157 of the Code.

(5) The voted Provisional Ballot Affidavit Envelopes shall be placed into a ballot box or transfer case and locked with a copy of the List(s) of Provisional Voters.

(6) The General Custodian of election records or central counting station personnel, if applicable under §127.157 of the Texas Election Code, shall verify that the number of Provisional Voters on the List of Provisional Voters matches the number of Provisional Ballot Affidavit Envelopes recorded on the ballot register. The General Custodian shall also sign the List of Provisional Voters evidencing the number of Provisional Voters per precinct and the number of Provisional Ballot Affidavit Envelopes to be forwarded to the Voter Registrar.

(7) The General Custodian shall also prepare a Summary of Provisional Ballots listing each precinct and the number of Provisional Ballot Affidavit Envelopes received by that precinct.

(8) The General Custodian shall give the Voter Registrar a copy of the Summary of Provisional Ballots at the same time the Provisional Ballot Affidavit Envelopes and List of Provisional Voters are delivered to the Voter Registrar.

(9) The General Custodian shall lock and seal each ballot box or transfer case that contains Provisional Ballot Affidavit Envelopes prior to delivery to the Voter Registrar. The numbers on the seal shall be recorded on the Summary of Provisional Ballots.

(10) A Poll Watcher, if available, may sign the Summary of Provisional Ballots.

(f) Transfer to Voter Registrar.

(1) The General Custodian shall deliver the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes along with the Summary of Provisional Ballots and the List of Provisional Voters for each precinct to the Voter Registrar on the next business day after the election.

(2) If the Voter Registrar wishes to take possession of the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes from the General Custodian of election records on election night, the Voter Registrar must inform the General Custodian of election records and post a Notice of Election Night Transfer no later than 24 hours before election day. If the Voter Registrar makes this determination, the Voter Registrar must go to the General Custodian's office and take possession on election night.

(3) Upon receipt of the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes and their keys, the Voter Registrar shall sign the Verification of Provisional Ballots and Serial Numbers to verify such receipt, that the box was intact, and that the seal was not broken.

(4) The Voter Registrar shall break the seal and unlock the box.

(5) The General Custodian of election records shall supply the Voter Registrar with a sufficient number of seals to re-seal the ballot box(es) or transfer case(s) containing the provisional ballots once his or her review is completed.

(6) The Voter Registrar must keep the List of Provisional Voters together with the corresponding Provisional Ballot Affidavit Envelopes for that precinct. The Voter Registrar does not complete any information on this form.

(7) If the Early Voting Ballot Board meets prior to election day to prepare ballots for counting as authorized under §87.101 of the Code, the Voter Registrar may attend the meeting and take possession of early voting Provisional Ballot Affidavit Envelopes prior to election day. The Voter Registrar shall give the General Custodian of election records written notice of his or her intent to take early possession of the Provisional Ballot Affidavit Envelopes at least 24 hours prior to the scheduled meeting of the ballot board.

(g) Voter Registrar Review of Provisional Ballot Affidavit Envelopes.

(1) No later than the third business day after election day, the Voter Registrar shall complete the review of the Provisional Ballot Affidavit Envelopes. As part of the review, the Voter Registrar shall review information from the following sources to attempt to determine the Provisional Voter's registration status:

(A) the Department of Public Safety;

(B) Volunteer Deputy Registrars; and

(C) other records that may establish the Voter's eligibility. The Voter Registrar must examine each Provisional Ballot Affidavit Envelope, determine the Voter's registration status, and indicate the status on the face of the Provisional Ballot Affidavit Envelope as one of the following:

(i) No record of voter registration application on file in this county;

(ii) Registration cancelled on _____ (fill in date);

(iii) Registered less than 30 days before the election;

(iv) Incomplete registration received, but additional information not returned;

(v) Voter rejected for registration due to ineligibility;

(vi) Registered to vote, but erroneously listed in wrong precinct;

(vii) Registered to vote in a different precinct within the county;

(viii) Information on file indicating applicant completed a voter registration application, but it was never received in the Voter Registrar's office; and/or

(ix) Voter erroneously removed from list of registered voters.

(x) Voter is registered;

(xi) Voter voted in another party's primary; or

(xii) Other: _____ (with explanation).

(2) The Voter Registrar shall sign and date his review of each Provisional Ballot Affidavit Envelope.

(3) The Voter Registrar shall copy the Provisional Ballot Affidavit Envelope of each Voter who was not registered to vote, who was registered but whose information contains updated voter registration information, or who was erroneously cancelled or listed in the wrong precinct or for any other reason the Voter Registrar deems necessary.

(4) For purposes of voter registration, the copied Provisional Ballot Affidavit Envelope serves as an original voter registration application or change form; the effective date will be calculated as of the Election Date for which the Provisional Ballot Affidavit Envelope was submitted.

(5) If the residence address provided on the Provisional Ballot Affidavit Envelope falls outside the Voter Registrar's jurisdiction, the Voter Registrar shall forward a copy of the Provisional Ballot Affidavit Envelope to the appropriate Voter Registrar. The effective date of the transferred copy shall be calculated as thirty days from the election date on which the Provisional Ballot Affidavit Envelope was originally submitted. The original Provisional Ballot Affidavit Envelope shall be transferred to the appropriate Voter Registrar after the preservation period upon the Voter Registrar's request.

(6) The Voter Registrar shall keep the Provisional Ballot Affidavit Envelopes separated by election precinct during the review. The Voter Registrar shall replace the Provisional Ballot Affidavit Envelopes in the same ballot boxes or other containers in which the Provisional Ballot Affidavit Envelopes were originally received for transfer to the Early Voting Ballot Board or General Custodian of election records, as designated by the General Custodian of election records, along with the List of Provisional Voters for each precinct. The copy of the Summary of Provisional Ballots is returned to the General Custodian. The box is relocked and resealed in the same manner in which it was received. The serial number of the seal shall be recorded on the Verification of Provisional Ballots and Serial Number form.

(7) The General Custodian of the election records or the Early Voting Ballot Board Judge shall pick up the secured ballot boxes or other containers and all other materials at the time, date, and location designated by the Voter Registrar.

(8) The Voter Registrar shall sign the Verification of Provisional Ballots and Serial Numbers form verifying transfer, and the presiding judge of the Early Voting Ballot Board shall sign indicating receipt of the Provisional Ballot Affidavit Envelopes and that the key and ballot box(es) was properly sealed.

(9) Poll Watchers are not entitled to be present during the Voter Registrar's review.

(h) Early Voting Ballot Board defined. The authority appointing the Early Voting Ballot Board may determine which members of the board will review and count the provisional ballots. The entire ballot board is not required to be present. A minimum of three members of the board is required to conduct the review.

(i) Review of Provisional Ballot Affidavit Envelopes by Early Voting Ballot Board; Counting Rules.

(1) The presiding judge of the Early Voting Ballot Board shall take receipt of the Provisional Ballot Affidavit Envelopes from the Voter Registrar directly or via the General Custodian of election records at a time and place to be determined by the presiding judge.

(2) The presiding judge of the Early Voting Ballot Board may convene the board as soon as practicable after the Voter Registrar has completed the review of the provisional ballots. The judge must post a notice on the bulletin board used for posting notices of meetings of the governing body ordering the election no later than 24 hours before the board is scheduled to meet. The board may also convene while the Voter Registrar continues his or her review.

(3) The Early Voting Ballot Board must receive and review the Provisional Ballot Affidavit Envelopes.

(4) The Early Voting Ballot Board shall review both the Election Judge's and the Voter Registrar's notation on each Provisional Ballot Affidavit Envelope to determine whether or not the ballot should be counted as indicated below:

(A) If the Voter Registrar indicates that the Provisional Voter is registered to vote and was erroneously registered in the wrong election precinct, the ballot shall be counted.

(B) The ballot shall be counted if the Voter Registrar determines that the Provisional Voter is eligible and submitted a timely voter registration application, but was not timely received by the Voter Registrar.

(C) If the Election Judge indicated that the Voter did not provide a valid registration certificate or other form of identification, the ballot shall not be counted.

(D) If the Election Judge indicated that the reason for casting a provisional ballot was that the Voter appeared on the list of registered voters as having cast a ballot by mail and the Voter claimed that he never received the mail ballot and is not willing to cancel his or her mail ballot application with the main Early Voting Clerk, the provisional ballot shall not be counted.

(E) If the Voter Registrar indicates that there is no record of the Provisional Voter's registration application on file with the county, the provisional ballot shall not be counted.

(F) If the Voter Registrar indicates that the Provisional Voter's registration has been cancelled and provides the date, the ballot shall not be counted.

(G) If the Voter Registrar indicates that the Provisional Voter was registered less than 30 days before Election Day and therefore did not have effective registration for the precinct at which he attempted to vote, the ballot shall not be counted.

(H) If the Voter Registrar indicates that an incomplete application was received from the Provisional Voter but the required additional information was not returned, the ballot shall not be counted.

(I) If the Voter Registrar indicates that the Provisional Voter's registration application was rejected due to ineligibility, the ballot shall not be counted.

(J) If the Voter Registrar indicates that the Provisional Voter is registered to vote at a different precinct other than the one the Voter voted in, the ballot shall not be counted.

(K) If the board determines that the Provisional Voter was not registered and not entitled to vote at the election precinct where the ballot was cast, the ballot shall not be counted.

(L) If either the Election Judge or the Voter Registrar indicates that the voter voted in another party's primary, the ballot shall not be counted.

(M) The Voter Registrar has information in the office that the Voter did complete an application, and the Voter is otherwise qualified, the ballot shall be counted.

(N) If the Voter was erroneously removed from list and Voter is otherwise qualified to vote, the ballot shall be counted.

(O) If the Voter Registrar indicates that the Voter is registered, the ballot shall be counted.

(5) The presiding judge shall indicate the disposition of each ballot on the Provisional Ballot Affidavit Envelope.

(6) The presiding judge shall indicate the disposition of each ballot on the appropriate space of the List of Provisional Voters for that precinct.

(7) The ballots to be counted shall be removed from their Provisional Ballot Affidavit Envelopes and counted under the normal procedure for counting ballots by mail in the election, unless the manager of the central counting station decides that the ballot board shall count the ballots manually and add the totals to the computer count for a canvass total. See paragraph (9) of this subsection for electronic procedures, if the manager decides to count ballots in regular manner. If counted by hand, the ballots are tallied by precinct in the regular manner. The board prepares the returns and submits the returns to the General Custodian of election records.

(8) The Provisional Ballot Affidavit Envelopes for accepted ballots shall be placed in an Envelope for Provisional Ballot Affidavit Envelopes marked "Accepted" and the Provisional Ballot Affidavit Envelopes and their Provisional Ballots for the rejected ballots shall be placed in an Envelope for Provisional Ballot Envelopes marked "Rejected".

(9) If the provisional ballots are to be counted electronically:

(A) The manager of the central counting station shall decide whether the ballot board shall manually count the ballots and be manually added to the computer count for a canvass total or whether the central counting station shall reconvene.

(B) The manager shall send notice to the presiding judge of the ballot board prior to reconvening the board as to whether the ballots are to be counted manually by the board or whether the ballots are merely to be prepared for delivery to the central counting station.

(C) The manager must order a second test to be conducted prior to the count. The test must be successful.

(D) After the second successful test is conducted, the unofficial election results, preserved by electronic means, shall be loaded in the tabulating equipment.

(E) Once the ballots have been counted, results shall be prepared in the regular manner. The manager shall prepare a certification and attach it to the returns, then place the certification and returns in envelope #1 to be delivered to the presiding officer of the canvassing board indicating that the result supersedes any returns printed prior to the reconvening of the central counting station after election day.

(F) After the results have been prepared, a successful third test must be performed.

(G) The results, ballots, and distribution of ballots and all records shall be made in the regular manner.

(10) Once counted, the Provisional Ballot Affidavit Envelopes shall be re-locked in the container and returned to the General Custodian of election records. The key shall be delivered to the General Custodian of the key.

(11) The List of Provisional Voters for each precinct shall be delivered to the General Custodian of election records in the Envelope for Accepted Provisional Ballot Affidavit Envelopes.

(12) The provisional ballots and Provisional Ballot Affidavit Envelopes shall be retained for the appropriate preservation period for the election.

(13) The Lists of Provisional Voters for each precinct shall be retained and used by the General Custodian of election records to provide information to Voters on whether the provisional ballot was counted or not.

(14) All Provisional Ballot Affidavit Envelopes and the List of Provisional Voters are public records.

(15) Rejected Provisional Ballot Affidavit Envelopes may not be opened except by court order.

(16) Poll Watchers are entitled to be present at the meeting of Early Voting Ballot Board pursuant to §33.054 of the Texas Election Code.

(j) Request for Return of Original Envelopes. Upon request of the Voter Registrar, the General Custodian of election records shall deliver the original Provisional Ballot Affidavit Envelopes to the Voter Registrar after the preservation period.

(k) Notice to Provisional Voters. Not later than the 10th day after the local canvass, the presiding judge of the Early Voting Ballot Board shall deliver written notice regarding whether the provisional ballot was counted, and if the ballot was not counted, the reason the ballot was not counted. The presiding judge shall use the information provided on the Provisional Ballot Affidavit Envelope to obtain the proper mailing address for the Voter and the final resolution of the provisional ballot.

§81.174. Provisional Voting Procedures for Optical Scan Voting System Ballots Tabulated at a Central Counting Station.

(a) Polling Place Preparation.

(1) The Election Judge shall set aside a sufficient number of regular ballots from the supply of official ballots and write or stamp "provisional" on the back of the ballot (referred to below as "provisional ballots").

(2) The Election Judge shall keep the provisional ballots separate from the regular ballots.

(b) Eligibility to vote provisional ballot.

(1) At all elections, the following individuals shall be eligible to cast a provisional ballot:

(A) A Voter who claims to be properly registered and eligible to vote at the election precinct, but whose name does not appear on the list of registered voters and whose registration cannot be determined by the Voter Registrar; or

(B) A Voter who is designated as a first time Voter on the list of registered voters, but who is unable to produce the required identification; or

(C) A Voter who has applied for a ballot by mail, but has not returned the ballot by mail or cancelled the ballot with the mail early voting clerk; or

(D) A Voter who votes during the polling hours that are extended by a state or federal court; or

(E) A Voter who is registered to vote but attempting to vote in a different precinct other than the one in which the Voter is registered.

(F) A Voter who is required to present identification but does not.

(G) A Voter who is on the list, but registered residence address is outside the political subdivision.

(H) A Voter who voted in another party's primary.

(2) A person voting by mail may not vote a provisional ballot.

(c) Polling Place Procedures.

(1) If a Voter is eligible to cast a provisional ballot, the Election Judge shall immediately inform the Voter of this right. The Election Judge shall also inform the Voter that his or her provisional ballot will not be counted if the Voter casts a provisional ballot at a precinct in which the Voter is not registered (regardless of whether the Voter is registered in another precinct but in the same political subdivision) or if there is an indication on the list of registered Voters that the Voter has voted early in person or by mail.

(2) The Election Judge must request the Voter to present a valid form of identification to vote a provisional ballot. If the Voter has no identification, he may still be permitted to vote a provisional ballot, but his ballot will not be approved for counting and the Election Judge must notify the Voter of that fact. Acceptable forms of identification include:

(A) a driver's license or personal identification card issued to the person by the Department of Public Safety or a similar document issued to the person by an agency of another state, regardless of whether the license or card has expired;

(B) a form of identification containing the person's photograph that establishes the person's identity;

(C) a birth certificate or other document confirming birth that is admissible in a court of law and establishes the person's identity;

(D) United States citizenship papers issued to the person;

(E) a United States passport issued to the person;

(F) official mail addressed to the person by name from a governmental entity;

(G) a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the Voter; or

(H) any other form of identification prescribed by the secretary of state.

(3) Prior to casting a provisional ballot, the Voter shall be required to sign a Provisional Ballot Affidavit Envelope. The Provisional Ballot Affidavit Envelope shall state that the Voter is a registered voter in the political subdivision and a resident on election day and that he is eligible to vote in the election. The Provisional Ballot Affidavit Envelope shall also require the information necessary to register the Voter, if he proves to be unregistered. A Voter who refuses to sign the Provisional Ballot Affidavit Envelope is not eligible to vote provisionally.

(4) The Election Judge shall make clear to the Voter that in order for the provisional ballot to be evaluated by the Early Voting Ballot Board, he must complete and sign the Provisional Ballot Affidavit Envelope.

(5) The Election Judge shall enter the Provisional Voter's name on the List of Provisional Voter's form.

(6) The Election Judge shall add the name of the Provisional Voter to the poll list and check the column "Provisional".

(7) The Provisional Voter signs the regular signature roster.

(8) The Election Judge shall check the reason under which the Voter voted provisionally on the provisional ballot envelope. The reasons include:

(A) Voter not on list of registered voters, Voter Registrar could not be reached;

(B) Voter not on list of registered voters and could not be verified by Voter Registrar;

(C) Voter on list of registered voters, but did not provide certificate or other form of identification;

(D) Voter not on list and no identification;

(E) Voter on list of persons who voted early by mail, Voter says he/she did not receive or return the ballot and refuses to cancel the ballot with the Early Voting Clerk;

(F) First time Voter without any identification;

(G) Voter voted after 7:00 p.m. due to court order; or

(H) Voter voted in another party's primary.

(9) The Election Judge shall then sign the provisional ballot envelope.

(10) The Election Judge shall direct the Voter to choose a ballot from a stack of pre-designated "provisional" ballots.

(11) The Election Judge shall inform the Voter that ballots stamped "provisional" will not be counted if placed in the ballot box without sealing it inside the corresponding envelope.

(12) The Election Judge shall inform the Voter that the Voter will receive notice in the mail as to whether or not their ballot was counted and shall immediately provide to the Voter a written notice which will inform the Voter of this fact in writing, along with information that explains that the Provisional Ballot Affidavit Envelope will be used by the Voter Registrar to register the Voter or update his registration, as applicable.

(13) After the provisional ballot has been voted, the Voter shall:

(A) seal the provisional ballot in a plain white secrecy envelope;

(B) seal the secrecy envelope inside the provisional ballot envelope; and

(C) deposit the Provisional Ballot Affidavit Envelope in Ballot Box #1 or a separate container that meets the requirements of §51.034 of the Code or has been approved by the Secretary of State.

(d) Early Voting By Personal Appearance Provisional Ballot Procedures.

(1) To the extent practicable, the Early Voting Clerk or Deputy Early Voting Clerk shall follow election day provisional ballot procedures during the early voting period.

(2) The Provisional Voter's precinct number shall be added to an Early Voting List of Provisional Voters.

(3) The central counting station manager shall direct the provisional ballot envelopes to be separated from the regularly-cast ballots and placed in a ballot box or transfer case for delivery to the Voter Registrar. The Voter Registrar shall sign the List of Early Voting Provisional Voters to verify receipt of the provisional ballot envelopes.

(4) The Voter Registrar shall review the Provisional Ballot Affidavit Envelopes as set out in subsection (e) of this section.

(e) Provisional Ballot Affidavit Envelope transfer procedures.

(1) The presiding Election Judge shall enter the number of Provisional Ballot Affidavit Envelopes cast on the register of official ballots and on the List of Provisional Voters.

(2) The Election Judge shall place a copy of the List of Provisional Voters form in Envelope Number 2.

(3) The ballot box(es) shall be delivered to the central counting station after the polls close.

(4) Upon opening the ballot box(es) at the central counting station, counting station personnel shall separate the regularly-cast ballots from the Provisional Ballot Affidavit Envelopes.

(5) Ballots stamped "provisional" but not contained in a Provisional Ballot Affidavit Envelope may not be counted and are not transferred to the Voter Registrar. The presiding Election Judge shall write the reason for not counting the ballot on the back of the ballot. These ballots shall be retained for the appropriate preservation period, and shall be placed in Ballot Box No. 4.

(6) The central counting station personnel shall also verify that the number of Provisional Voters on the List of Provisional Voters from each precinct matches the number of Provisional Ballot Affidavit Envelopes recorded on the ballot register from each precinct. If there is no match, the central counting station personnel shall note this fact on both documents.

(7) The central counting station personnel shall place the voted Provisional Ballot Affidavit Envelopes from all of the election day precincts into a ballot box or transfer case with the corresponding List of Provisional Voters for each precinct.

(8) The central counting station personnel shall sign the List of Provisional Voters evidencing the number of Provisional Voters per precinct and the number of Provisional Ballot Affidavit Envelopes to be forwarded to the Voter Registrar.

(9) The central counting station personnel shall prepare a Summary of Provisional Ballots listing each precinct and the number of Provisional Ballot Affidavit Envelopes received from that precinct.

(10) The central counting station personnel (or General Custodian after election night) shall give the Voter Registrar a copy of the Summary of Provisional Ballots at the same time the Provisional Ballot Affidavit Envelopes are delivered to the Voter Registrar.

(11) The General Custodian shall lock and seal each ballot box or transfer case that contains Provisional Ballot Affidavit Envelopes prior to delivery to the Voter Registrar. The numbers on the seal shall be recorded on the Summary of Provisional Ballots.

(12) A Poll Watcher, if available, may sign the Summary of Provisional Ballots.

(f) Transfer to Voter Registrar.

(1) The General Custodian shall deliver the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes along with the Summary of Provisional Ballots and the List of Provisional Voters for each precinct to the Voter Registrar on the next business day after the election.

(2) If the Voter Registrar wishes to take possession of the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes from the General Custodian of election records on election night, the Voter Registrar must inform the General Custodian of election records and post a Notice of Election Night Transfer no later than 24 hours before election day. If the Voter Registrar makes this determination, the Voter Registrar must go to the General Custodian's office and take possession on election night.

(3) Upon receipt of the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes and their keys, the Voter Registrar shall sign the Verification of Provisional Ballots and Serial Numbers to verify such receipt, that the box was in tact, and that the seal was not broken.

(4) The Voter Registrar shall break the seal and unlock the box.

(5) The General Custodian of election records shall supply the Voter Registrar with a sufficient number of seals to re-seal the ballot box(es) or transfer case(s) containing the Provisional Ballot Affidavit Envelopes once his or her review is completed.

(6) The Voter Registrar must keep the List of Provisional Voters together with the corresponding Provisional Ballot Affidavit Envelopes for that precinct. The Voter Registrar does not complete any information on this form.

(7) If the Early Voting Ballot Board meets prior to election day to prepare ballots for processing if authorized under Chapter 87, Subchapter B of the Code, the Voter Registrar may attend the meeting and take possession of early voting Provisional Ballot Affidavit Envelopes prior to election day. The Voter Registrar shall give the General Custodian of election records written notice of his or her intent to take early possession of the Provisional Ballot Affidavit Envelopes at least 24 hours prior to the scheduled meeting of the ballot board.

(8) If the central counting station personnel in a county with a population of 100,000 or more, take possession of the early voting ballots prior to election day in accordance with §87.0241 of the Code, the Voter Registrar may take possession of the Provisional Ballot Affidavit Envelopes prior to election day. The Voter Registrar shall give the General Custodian of election records written notice of his or her intent to take early possession of the Provisional Ballot Affidavit Envelopes at least 24 hours prior to the scheduled meeting of the ballot board.

(g) Voter Registrar Review of Provisional Ballot Affidavit Envelopes.

(1) No later than the third business day after election day, the Voter Registrar shall complete the review of the Provisional Ballot

Affidavit Envelopes. As part of the review, the Voter Registrar shall review information from the following sources to attempt to determine the Provisional Voter's registration status:

(A) the Department of Public Safety;

(B) Volunteer Deputy Registrars; and

(C) other records that may establish the Voter's eligibility. The Voter Registrar must examine each Provisional Ballot Affidavit Envelope, determine the Voter's registration status, and indicate the status on the face of the Provisional Ballot Affidavit Envelope as one of the following:

(i) No record of voter registration application on file in this county;

(ii) Registration cancelled on _____ (fill in date);

(iii) Registered less than 30 days before the election;

(iv) Incomplete registration received, but additional information not returned;

(v) Voter rejected for registration due to ineligibility;

(vi) Registered to vote, but erroneously listed in wrong precinct;

(vii) Registered to vote in a different precinct within the county;

(viii) Information on file indicating applicant completed a voter registration application, but it was never received in the Voter Registrar's office; and/or

(ix) Voter erroneously removed from list of registered voters.

(x) Voter is registered;

(xi) Voter voted in another party's primary; or

(xii) Other: _____ (with an explanation).

(2) The Voter Registrar shall sign and date his review of each Provisional Ballot Affidavit Envelope.

(3) The Voter Registrar shall copy the Provisional Ballot Affidavit Envelope of each Voter who was not registered to vote, who was registered but whose information contains updated voter registration information, or who was erroneously cancelled or listed in the wrong precinct or for any other reason the Voter Registrar deems necessary.

(4) For purposes of voter registration, the copied Provisional Ballot Affidavit Envelope serves as an original voter registration application or change form; the effective date will be calculated as of the Election Date for which the Provisional Ballot Affidavit Envelope was submitted.

(5) If the residence address provided on the Provisional Ballot Affidavit Envelope falls outside the Voter Registrar's jurisdiction, the Voter Registrar shall forward a copy of the Provisional Ballot Affidavit Envelope to the appropriate Voter Registrar. The effective date of the transferred copy shall be calculated as thirty days from the election date on which the Provisional Ballot Affidavit Envelope was originally submitted. The original Provisional Ballot Affidavit Envelope shall be transferred to the appropriate Voter Registrar after the preservation period upon the Voter Registrar's request.

(6) The Voter Registrar shall keep the envelopes separated by election precinct during the review. The Voter Registrar shall replace the Provisional Ballot Affidavit Envelopes in the same ballot boxes or other containers in which the Provisional Ballot Affidavit Envelopes were originally received for transfer to the Early Voting Ballot Board or General Custodian of election records, along with the List of Provisional Voters for each precinct. The copy of the Summary of Provisional Ballots is returned to the General Custodian. The box is relocked and resealed in the same manner in which it was received. The serial number of the seal shall be recorded on the Verification of Provisional Ballots and Serial Number form.

(7) The General Custodian of the election records or the Early Voting Ballot Board Judge shall pick up the secured ballot boxes or other containers and all other materials at the time, date, and location designated by the Voter Registrar.

(8) The Voter Registrar shall sign the Verification of Provisional Ballots and Serial Numbers form verifying transfer, and the presiding judge of the Early Voting Ballot Board or General Custodian of election records shall sign indicating receipt of the Provisional Ballot Affidavit Envelopes and that the key and ballot box(es) was properly sealed.

(9) Poll Watchers are not entitled to be present during the Voter Registrar's review.

(h) Early Voting Ballot Board defined. The authority appointing the Early Voting Ballot Board may determine which members of the board will review and count the provisional ballots. The entire ballot board is not required to be present. A minimum of three members of the board is required to conduct the review.

(i) Review of Provisional Ballot Affidavit Envelopes by Early Voting Ballot Board; Counting Rules.

(1) The presiding judge of the Early Voting Ballot Board shall take receipt of the Provisional Ballot Affidavit Envelopes from the Voter Registrar directly or via the General Custodian of election records at a time and place to be determined by the presiding judge.

(2) The presiding judge of the Early Voting Ballot Board may convene the board as soon as practicable after the Voter Registrar has completed the review of the provisional ballots. The judge must post a notice on the bulletin board used for posting notices of meetings of the governing body ordering the election no later than 24 hours before the board is scheduled to meet. The board may also convene while the Voter Registrar continues his or her review.

(3) The Early Voting Ballot Board must receive and review the Provisional Ballot Affidavit Envelopes.

(4) The Early Voting Ballot Board shall review both the Election Judge's and the Voter Registrar's notation on each Provisional Ballot Affidavit Envelope to determine whether or not the ballot should be counted as indicated below:

(A) If the Voter Registrar indicates that the Provisional Voter is registered to vote and was erroneously registered in the wrong election precinct, the ballot shall be counted.

(B) The ballot shall be counted if the Voter Registrar determines that the Provisional Voter is eligible and submitted a timely voter registration application, but was not timely received by the Voter Registrar.

(C) If the Election Judge indicated that the Voter did not provide a valid registration certificate or other form of identification, the ballot shall not be counted.

(D) If the Election Judge indicated that the reason for casting a provisional ballot was that the Voter appeared on the list of registered voters as having cast a ballot by mail and the Voter claimed that he never received the mail ballot and is not willing to cancel his or her mail ballot application with the main Early Voting Clerk, the provisional ballot shall not be counted.

(E) If the Voter Registrar indicates that there is no record of the Provisional Voter's registration application on file with the county, the provisional ballot shall not be counted.

(F) If the Voter Registrar indicates that the Provisional Voter's registration has been cancelled and provides the date, the ballot shall not be counted.

(G) If the Voter Registrar indicates that the Provisional Voter was registered less than 30 days before Election Day and therefore did not have effective registration for the precinct at which he attempted to vote, the ballot shall not be counted.

(H) If the Voter Registrar indicates that an incomplete application was received from the Provisional Voter but the required additional information was not returned, the ballot shall not be counted.

(I) If the Voter Registrar indicates that the Provisional Voter's registration application was rejected due to ineligibility, the ballot shall not be counted.

(J) If the Voter Registrar indicates that the Provisional Voter is registered to vote at a different precinct other than the one the Voter voted in, the ballot shall not be counted.

(K) If the board determines that the Provisional Voter was not registered and not entitled to vote at the election precinct where the ballot was cast, the ballot shall not be counted.

(L) If either the Election Judge or the Voter Registrar indicates that the Voter voted in another party's primary, the ballot shall not be counted.

(M) The Voter Registrar has information in the office that the Voter did complete an application, and the Voter is otherwise qualified, the ballot shall be counted.

(N) If the Voter was erroneously removed from list and Voter is otherwise qualified to vote, the ballot shall be counted.

(O) If the Voter Registrar indicates that the Voter is registered, the ballot shall be counted.

(5) The presiding judge shall indicate the disposition of each ballot on the appropriate space of the Provisional Ballot Affidavit Envelope.

(6) The presiding judge shall indicate the disposition of each Provisional Ballot Affidavit Envelope on the List of Provisional Voters for that precinct.

(7) The ballots to be counted shall be removed from their Provisional Ballot Affidavit Envelopes and counted in the regular manner, unless the manager of the central counting station decides that the ballot board shall count the ballots manually and add the totals to the computer count for a canvass total. See paragraph (9) of this subsection for electronic procedures, if the manager decides to count ballots in regular manner. If counted by hand, the ballots are tallied by precinct in the regular manner. The board prepares the returns and submits the returns to the General Custodian of election records.

(8) The Provisional Ballot Affidavit Envelopes for accepted ballots shall be placed in an Envelope for Provisional Ballot Affidavit Envelopes marked "Accepted" and the Provisional Ballot Affidavit Envelopes and their Provisional Ballots for the rejected ballots shall be placed in an Envelope for Provisional Ballot Envelopes marked "Rejected".

(9) If the provisional ballots are to be counted electronically:

(A) The manager of the central counting station shall decide whether the ballot board shall manually count the ballots and be manually added to the computer count for a canvass total or whether the central counting station shall reconvene.

(B) The manager shall send notice to the presiding judge of the ballot board prior to reconvening the board as to whether the ballots are to be counted manually by the board or whether the ballots are merely to be prepared for delivery to the central counting station.

(C) The manager must order a second test to be conducted prior to the count. The test must be successful.

(D) After the second successful test is conducted, the unofficial election results, preserved by electronic means, shall be loaded in the tabulating equipment.

(E) Once the ballots have been counted, results shall be prepared in the regular manner. The manager shall prepare a certification and attach it to the returns, then place the certification and returns in envelope #1 to be delivered to the presiding officer of the canvassing board indicating that the result supersedes any returns printed prior to the reconvening of the central counting station after election day.

(F) After the results have been prepared, a successful third test must be performed.

(G) The results, ballots, and distribution of ballots and all records shall be made in the regular manner.

(10) The List of Provisional Voters for each precinct shall be delivered to the General Custodian of election records in the Envelope for Accepted and Provisional Ballot Affidavit Envelopes.

(11) The provisional ballots and Provisional Ballot Affidavit Envelopes shall be retained for the appropriate preservation period for the election.

(12) The Lists of Provisional Voters for each precinct shall be retained and used by the General Custodian of election records to provide information to Voters on whether the provisional ballot was counted or not.

(13) All Provisional Ballot Affidavit Envelopes and the List of Provisional Voters are public records.

(14) Rejected Provisional Ballot Affidavit Envelopes may not be opened except by court order.

(15) Poll Watchers are entitled to be present at the meeting of Early Voting Ballot Board pursuant to §33.054 of the Texas Election Code.

(j) Request for Return of Original Envelopes. Upon request of the Voter Registrar, the General Custodian of election records shall deliver the original Provisional Ballot Affidavit Envelopes to the Voter Registrar after the preservation period.

(k) Notice to Provisional Voters. Not later than the 10th day after the local canvass, the presiding judge of the Early Voting Ballot Board shall deliver written notice regarding whether the provisional ballot was counted, and if the ballot was not counted, the reason the ballot was not counted. The presiding judge shall use the information provided on the Provisional Ballot Affidavit Envelope to obtain

the proper mailing address for the Voter and the final resolution of the provisional ballot.

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 September 19, 2012.

TRD-201204944
Keith Ingram
Director of Elections
Office of the Secretary of State
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 463-5650

♦ ♦ ♦

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES
SUBCHAPTER P. APPEAL PROCEDURES FOR THE FOOD AND NUTRITION PROGRAMS
DIVISION 1. APPEAL PROCEDURES FOR THE CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

4 TAC §1.1000, §1.1003

The Texas Department of Agriculture (the department) proposes amendments to Chapter 1, Subchapter P, §1.1000, concerning Definitions, and §1.1003, concerning Suspension Review for Submitting False or Fraudulent Claims. The amendment to §1.1000 adds the definition of a Suspension Review Official. The amendments to §1.1003 are proposed to clarify the procedures for a suspension review by a CACFP Contracting Entity (CE).

Dolores Alvarado Hibbs, general counsel, has determined that for the first five years the amended sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Hibbs also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of administering and enforcing the amended sections will be having updated rules and state procedures for suspension review by CEs that participate in CACFP that are consistent with the requirements of 7 CFR §226.6(c)(5)(ii), relating to suspension of a CE for submitting false or fraudulent claims. There will be no economic cost for micro-businesses, small businesses or individuals who are required to comply with the amended sections, as proposed.

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments to §1.1000 and §1.1003 are proposed under the Texas Agriculture Code §12.016 which provides the department with the authority to adopt rules to administer its duties under the Texas Agriculture Code.

The Texas Agriculture Code, Chapter 12, is affected by the proposal.

§1.1000. Definitions.

In addition to the definitions set out in 7 Code of Federal Regulations (CFR) §226.2, the following words, names, and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (12) (No change.)

(13) Suspension review official (SRO)--An independent and impartial person, not accountable to any person involved in the decision to initiate suspension proceedings, appointed by the Commissioner or Deputy Commissioner to make a written determination of whether TDA's proposed suspension was appropriate or inappropriate.

(14) [~~(13)~~] TDA--The Texas Department of Agriculture.

§1.1003. Suspension Review for Submitting False or Fraudulent Claims.

The following are requirements for a suspension review based on submitting false or fraudulent claims.

(1) Notice of Suspension. TDA shall notify the [~~The~~] institution's executive director and chairman of the board of directors that TDA intends to suspend the institution's participation in CACFP, including suspension of all Program payments, [~~and the responsible principals and responsible individuals, shall be given notice of the proposed suspension action being taken (including all Program payments)~~] unless the institution requests a review of the proposed suspension. The notice must also specify:

(A) - (D) (No change.)

(E) that if the institution wishes to have a suspension review, it must request a review and submit to the SRO [~~ARO~~] written documentation opposing the proposed suspension within ten (10) days of the institution's receipt of the notice.

(2) Request for suspension review. The request for suspension review shall be submitted in writing to the SRO not later than ten (10) days after the date the notice is received and must include written documentation opposing the proposed suspension. On or before that date, TDA may submit documentation and/or written argument and authorities in support of the suspension. [~~TDA shall acknowledge the receipt of the request within five (5) days of its receipt of the request.~~]

(3) Hearing. No hearing shall be provided. The suspension review shall be limited to a review of TDA's file pertaining to the institution, including relevant information from the Texas Unified Nutrition Performance System, along with written submissions by the institution or TDA concerning TDA's proposal to suspend the institution's participation.

(4) Basis for decision. The SRO [~~ARO~~] shall make a determination based on a preponderance of the evidence provided by TDA, the institution, and the executive director and chairman of the board of directors, [~~the responsible principals and responsible individuals, and~~] based on the [~~federal and according to~~] laws, regulations, policies, and procedures governing the Program.

(5) Time for issuing a decision. Within ten (10) days of TDA's receipt of the request for the suspension review, the SRO [~~ARO~~]

shall issue a written determination informing [~~inform~~] TDA, the institution, and the institution's executive director and chairman of the board of directors, [~~and the responsible principals and responsible individuals,~~] of the SRO's [~~ARO's~~] decision. This timeframe is an administrative requirement for TDA and may not be used as a basis for overturning TDA's action if a decision is not made within the specified timeframe.

(6) Appeal from decision by the SRO. If the SRO determines that TDA's action was appropriate, the institution, or the institution's executive director and chairman of the board of directors, may seek an administrative review of the suspension as provided by 7 CFR §226.6(c)(5)(ii)(D)(3) and (k).

[~~(6) Final decision. The determination made by the ARO is the final administrative determination to be afforded the institution and the responsible principals and responsible individuals.~~]

[~~(7) Record of result of administrative reviews. TDA shall maintain searchable records of all reviews and their disposition for three years.~~]

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 September 17, 2012.

TRD-201204909
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 463-4075

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.8

The Railroad Commission of Texas (Commission) proposes to amend §3.8, relating to Water Protection, to authorize certain recycling activities, clarify permitting of other recycling activities, and update the rule.

At its open meeting on February 28, 2012, the Commission directed staff to circulate draft proposed amendments, solicit informal comments, and hold a workshop with interested parties to get feedback on certain proposed amendments to the Commission's commercial recycling rules found in 16 TAC Chapter 4, Subchapter B. The existing rules in Chapter 4 contemplate two categories of commercial recycling facilities: mobile facilities and stationary facilities. Since adoption of the rules in 2006, the Commission has received an increasing number of applications for permits for facilities that fit neither category. Therefore, the Commission proposed to create a third category--a semi-mobile commercial recycling facility--to accommodate such requests. Commission staff subsequently posted the draft proposed amendments on the Commission's website with a request for informal comments and held a public workshop on March 16, 2012.

After consideration of the informal and workshop comments, the Commission now proposes to amend §3.8 to authorize on-lease, non-commercial recycling of produced water and/or hydraulic fracturing flowback fluid, and to clarify requirements for off-lease or centralized non-commercial recycling of produced water and/or hydraulic fracturing flowback fluid. In addition to these proposed amendments to §3.8, the Commission proposes concurrent amendments to Chapter 4, Subchapter B, in a separate rulemaking action.

The Commission proposes to amend existing definitions and add new definitions in §3.8(a). The Commission proposes to amend the definition of collecting pit to delete the phrase "prior to disposal at a tidal disposal facility, or pit used for storage of saltwater" because tidal discharge is now prohibited.

The Commission proposes to amend the definition of "completion/workover pit" to clarify that such a pit may contain hydraulic fracturing flowback fluids.

The Commission proposes to amend the definition of "fresh makeup water pit" to allow use of such a pit in conjunction with hydraulic fracturing of an oil or gas well for the storage of fresh water or treated hydraulic fracturing flowback fluid used to make up hydraulic fracturing fluid for use in a new well.

The Commission proposes to amend the definition of a "skimming pit" to delete the reference to tidal disposal, which is now prohibited.

The Commission proposes to add new definitions for the terms "hydraulic fracturing flowback fluid", "commercial recycling," "non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling," "non-commercial centralized produced water and/or hydraulic fracturing flowback fluid recycling," "non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling pit," "non-commercial off-lease or centralized produced water and/or hydraulic fracturing flowback fluid recycling pit," "recycle," "treated produced water and/or hydraulic fracturing flowback fluid," "recyclable product," and "100-year flood plain." These definitions match the definitions of these terms as proposed in the concurrent Chapter 4 amendments.

The Commission proposes to amend §3.8(d)(2) to delete a reference to current §3.8(d)(8), proposed to be deleted, and to add a reference to non-commercial centralized produced water and/or hydraulic fracturing flowback fluid recycling pits.

The Commission proposes to amend subsection (d)(3) to add new subparagraph (F), relating to non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling pit contents. The proposed new subparagraph would authorize untreated wastes and recyclable product under certain conditions. The Commission proposes to redesignate existing subparagraph (F) as subparagraph (G).

The Commission proposes to amend subsection (d)(4), relating to authorized pits, to include non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling pits. The proposed amendment would authorize such pit provided that certain conditions are met, among them, a person shall not deposit or cause to be deposited into a non-commercial on-lease recycling pit any oil field fluids or oil and gas wastes other than hydraulic fracturing flowback fluid generated on the lease or unit on which the pit is located; the pit is sufficiently large to ensure

adequate storage capacity and freeboard taking into account anticipated precipitation; the pit is designed to prevent stormwater runoff from entering the pit; a freeboard of at least two feet is maintained at all times; the pit is lined and the liner designed and installed to prevent any migration of materials from the pit into adjacent subsurface soils, ground water, or surface water at any time during the life of the pit; precautions are taken to ensure the integrity of the liner; and the pit is inspected periodically by the operator for compliance with the applicable provisions of this section.

The Commission proposes to redesignate and amend subsection (d)(4)(H), currently subsection (d)(4)(G), relating to backfill requirements, to include requirements for backfilling authorized non-commercial on-lease produced water and/or hydraulic fracturing fluid recycling pits. The Commission also proposes new subparagraph (I) to require that all authorized pits be constructed, used, operated, and maintained at all times so as to prevent pollution. The Commission proposes a requirement that non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling pits and other authorized pits not be located in a 100-year floodplain. The proposed amendments also state that, in the event of an unauthorized discharge from any pit authorized by this paragraph, the operator must take any measures necessary to stop or control the discharge and report the discharge to the district office as soon as possible.

In August 1998, the Commission implemented various regulatory cost-cutting measures. One of these measures was to increase the term of a minor permit from 30 to 60 days. Accordingly, the Commission proposes to amend subsection (d)(6)(G), relating to minor permits to update the term of such permits from 30 days to 60 days.

The Commission proposes new subsection (d)(7), relating to recycling. Proposed new subparagraph (A) states that, except for those recycling methods authorized for certain wastes by subparagraph (B) of this paragraph, no person may recycle any oil and gas wastes by any method without obtaining a permit. Proposed subparagraph (B) would authorize non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling: (1) after partial treatment for use as makeup water for a hydraulic fracturing fluid treatment, or other oilfield fluid to be used in the wellbore of an oil, gas, geothermal, or service well; or (2) after complete treatment to national drinking water standards established under the federal Safe Drinking Water Act (42 U.S.C. §300f et seq. (1974)), in any manner other than discharge to surface water or irrigation of edible crops.

The Commission proposes to delete language in current subsection (d)(7)(A) - (D) and (8), relating to existing permits and pits, because with this proposed rulemaking, the language is obsolete. The Commission proposes to renumber the remaining paragraph.

The Commission proposes new subsection (d)(7)(C), relating to permitted recycling. The proposed new language states that non-commercial centralized produced water and/or hydraulic fracturing flowback fluid recycling which uses a non-commercial centralized produced water and/or hydraulic fracturing flowback fluid recycling pit requires the generator of the waste to be treated and recycled to obtain a permit in accordance with paragraph (6) of the subsection. However, the language further states that (1) if the treated produced water and/or hydraulic fracturing flowback fluid is recycled for use as makeup water for a hydraulic fracturing fluid treatment, or as another type of oilfield fluid to be used in the wellbore of an oil, gas, geothermal, or service well, no other permit is required; and (2) if the produced water and/or hydraulic fracturing flowback fluid is treated to the national drinking water standards established under the federal Safe Drinking Water Act (42 U.S.C. §300f et seq. (1974)), the operator may use or dispose of the treated produced water and/or hydraulic fracturing flowback fluid in any manner other than discharge to surface water or irrigation of edible crops. This subparagraph would further clarify that all commercial recycling requires the commercial recycler of the oil and gas waste to obtain a permit in accordance with Chapter 4 of this title (relating to Environmental Protection), Subchapter B.

The Commission proposes to amend subsection (f), relating to oil and gas waste haulers, to clarify that a waste hauler permit is not required for non-commercial hauling of oil and gas wastes for non-commercial recycling, and to delete a sentence that is obsolete.

The Commission proposes to amend subsection (f)(1)(A)(iv) to include a requirement that the certification required in subsection (f)(1)(A) include a statement that vehicles used to haul non-solid oil and gas waste shall have totally enclosed waste storage compartments designed to transport non-solid oil and gas wastes, and shall be operated and maintained to prevent the escape of oil and gas waste. The Commission proposes conforming amendments in subsection (f)(1)(A)(ix).

The Commission proposes to amend subsection (f)(2)(A) to add references to commercial recycling facilities where appropriate, and subsection (g) to add references to recycling facilities where appropriate.

The Commission proposes to amend subsection (j), relating to consistency with the Texas Coastal Management Program, pursuant to Senate Bill 656, enacted by the 82nd Texas Legislature, which abolished the Coastal Coordination Council and transferred the council's duties to the Texas General Land Office.

Leslie Savage, Chief Geologist, Oil and Gas Division, has determined that for each year of the first five years the proposed amendments will be in effect, the fiscal implications as a result of enforcing or administering the amendments will be negligible because the proposed amendments incorporate into the rule current Commission requirements and standards, and establish requirements which, if met, authorize non-commercial recycling. There will be no fiscal implications for local governments.

Ms. Savage has determined that for each year of the first five years that the amendments will be in effect the primary public benefit will be an increase in environmental protection and in the safety of persons living and working in areas where commercial recycling facilities are located or could be located in the future. Ms. Savage further has determined that for each year of the first five years the proposed amendments will be in effect, the probable economic costs to persons required to comply will be negligible because the Commission proposal incorporates into the rule current Commission practices and standards, authorizes by rule certain practices, and updates the language in the rule.

Ms. Savage has determined that the proposed rulemaking will have no adverse effect upon local economies or local employment such as requires an impact statement pursuant to Texas Government Code, §2001.022.

Texas Government Code, §2006.002 requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the pur-

pose of the statutes under which the rule is to be adopted. Before adopting a rule that would have an adverse economic effect on small businesses, a state agency must prepare a statement of the effect of the rule on small businesses, which must include an analysis of the cost of compliance with the rule for small businesses and a comparison of that cost with the cost of compliance for the largest businesses affected by the rule, using cost for each employee, cost for each hour of labor, or cost for each $100 of sales. Ms. Savage has determined that the proposed amendments would not affect any small or micro-businesses so there would be no cost of compliance for small businesses or micro-businesses. The proposed amendments streamline the requirements for on-lease noncommercial recycling of produced water and/or hydraulic fracturing flowback fluids by authorizing such recycling under specific conditions. Currently, the Commission has issued seven permits for mobile commercial recycling of produced water and/or hydraulic fracturing flowback fluid. The permits issued for these facilities, for the most part, already comply with the proposed amendments, because the amendments generally reflect current Commission requirements or authorize activities that currently require permits. Therefore, there will be no additional cost of complying with the amendments. Other proposed changes to the rule, such as deleting obsolete language, clarifying standards for oil and gas waste hauler vehicles used to transport non-solid oil and gas waste, and updating subsection (j) relating to the Coastal Management Program do not impose a cost.

Texas Government Code, §2001.0225, requires a state agency to conduct a regulatory impact analysis if is considering adoption of a "major environmental rule" that (1) exceeds a standard set by federal law, unless the rule is specifically required by state law; (2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; (3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopts a rule solely under the general powers of the agency instead of under a specific state law. Texas Government Code, §2001.0225(g)(3), defines "major environmental rule" as a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The Commission has determined that the proposed amendments to §3.8 do not require a regulatory analysis of a major environmental rule because it is not a "major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3). In particular, the Commission has determined that the proposed amendments to §3.8 will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Further, the Commission has determined that even if the proposed amendments to §3.8 did qualify as a "major environmental rule," they do not: (1) exceed a standard set by federal law, (2) exceed an express requirement of state law, or (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) are not adopted solely under the general powers of the agency.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments should refer to Oil & Gas Docket No. O&G 20-0277739 and will be accepted until 12:00 p.m. (noon) on Tuesday, October 9, 2012, which is 32 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site at least two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes amendments to §3.8 under Texas Natural Resources Code, §33.205 and §33.2053, which direct the Commission to comply with the goals and policies of the Coastal Management Program when issuing certain types of permits; Texas Water Code, §26.131, and Texas Natural Resources Code §§91.101, 91.1011, and 91.109, which provide that the Commission is solely responsible for the prevention and abatement of water and subsurface water pollution attributable to activities the Commission regulates, and that the Commission may adopt rules related to the discharge, storage, handling, transportation, processing, or disposal of oil and gas waste, or of any other substance or material associated with operations or activities regulated by the Commission pursuant to Texas Natural Resources Code, §91.101(a)(1), (2), and (3). In addition, Texas Natural Resources Code, §91.109(a), provides that the Commission may require a bond or other form of financial security from persons applying for or acting under a Commission permit to store, handle or treat oil and gas waste.

The partially treated waste and recyclable product resulting from processing and/or treatment of oil and gas waste pursuant to a Commission permit constitutes a "substance or material associated with any operation or activity regulated by the Commission" under Texas Natural Resources Code, §91.101(a)(1), (2), and (3). The recyclable product is associated with operation or activity regulated by the Commission because it was created using oil and gas waste over which the Commission has exclusive jurisdiction, and which the Commission no longer considers to be an oil and gas waste if the recyclable product will be used as intended pursuant to permit conditions.

Texas Water Code, §26.131, and Texas Natural Resources Code, §§33.205, 33.2053, 91.101, 91.1011, and 91.109, are affected by the proposed rules.

Statutory authority: Texas Water Code, §26.131, and Texas Natural Resources Code, §§33.205, 33.2053, 91.101, 91.1011, and 91.109.

Cross-reference to statutes: Texas Water Code, §26.131, and Texas Natural Resources Code, §§33.205, 33.2053, 91.101, 91.1011, and 91.109.

Issued in Austin, Texas on September 11, 2012.

§3.8. Water Protection.

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

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

(3) Collecting pit--Pit used for storage of saltwater [~~prior to disposal at a tidal disposal facility, or pit used for storage of saltwater~~] or other oil and gas wastes prior to disposal at a disposal well or fluid injection well. In some cases, one pit is both a collecting pit and a skimming pit.

(4) Completion/workover pit--Pit used for storage or disposal of spent completion fluids (including hydraulic fracturing flowback fluids), workover fluids and drilling fluid, silt, debris, water, brine, oil scum, paraffin, or other materials which have been cleaned out of the wellbore of a well being completed or worked over.

(5) - (8) (No change.)

(9) Fresh makeup water pit--Pit used in conjunction with drilling rig for storage of water used to make up drilling fluid or used in conjunction with hydraulic fracturing of an oil or gas well for the storage of fresh water or treated hydraulic fracturing flowback fluid used to make up hydraulic fracturing fluid for use in a new well.

(10) - (13) (No change.)

(14) Skimming pit--Pit used for skimming oil off saltwater prior to disposal of saltwater at a [~~tidal disposal facility,~~] disposal well[~~,~~] or fluid injection well.

(15) - (40) (No change.)

(41) Hydraulic fracturing flowback fluid--The fluid, including spent hydraulic fracturing fluid and produced water, that returns from a well on which a hydraulic fracturing treatment has been performed.

(42) Commercial recycling--The storage, handling, treatment, and recycling of oil and gas waste from more than one operator for compensation from the generator of the waste, another receiver, or the purchaser of the recyclable product for recycling.

(43) Non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling--The recycling of produced water and/or hydraulic fracturing flowback fluid by the generator of the waste or by a contractor of the generator of the waste on the oil or gas lease or unit on which the waste was generated.

(44) Non-commercial centralized produced water and/or hydraulic fracturing flowback fluid recycling--The recycling of produced water and/or hydraulic fracturing flowback fluid by the generator of the waste or by a contractor of the generator of the waste at a centralized facility operated and controlled by the generator of the waste.

(45) Non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling pit--Pit used in conjunction with an oil or gas lease or unit that is constructed, maintained, and operated by the operator of record of the lease or unit for the storage of hydraulic fracturing flowback fluid and produced water for the purpose of non-commercial on-lease recycling or for the storage of treated produced water and/or hydraulic fracturing flowback fluid that is a recyclable product as defined in §4.204(15) of this title (relating to Definitions).

(46) Non-commercial off-lease or centralized produced water and/or hydraulic fracturing flowback fluid recycling pit--Pit used in conjunction with multiple oil or gas leases or units that is constructed, maintained, and operated by the operator of record of the lease or unit for the storage of hydraulic fracturing flowback fluid and produced water for the purpose of non-commercial centralized recycling or for the storage of treated hydraulic fracturing flowback fluid and produced water that is a recyclable product as defined in §4.204(15) of this title.

(47) Recycle--To process and/or use or re-use oil and gas wastes as a product for which there is a legitimate commercial use and the actual use of the recyclable product for the purposes authorized in this subchapter or a permit.

(48) Treated produced water and/or hydraulic fracturing flowback fluid--Produced water and/or hydraulic fracturing flowback fluid that has been treated using water treatment technologies to remove impurities such that the treated fluid can be used as a makeup fluid for a hydraulic fracturing treatment or as a makeup fluid for drilling fluid.

(49) Recyclable product--A reusable material as defined in §4.204(15) of this title.

(50) 100-year flood plain--An area that is inundated by a 100-year flood, which is a flood that has a one percent or greater chance of occurring in any given year.

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

(d) Pollution control.

(1) (No change.)

(2) Prohibited pits. No person may maintain or use any pit for storage of oil or oil products. Except as authorized by paragraph (4) or (7)(C) [~~or (8)~~] of this subsection, no person may maintain or use any pit for storage of oil field fluids, or for storage or disposal of oil and gas wastes, without obtaining a permit to maintain or use the pit. A person is not required to have a permit to use a pit if a receiver has such a permit, if the person complies with the terms of such permit while using the pit, and if the person has permission of the receiver to use the pit. The pits required by this paragraph to be permitted include, but are not limited to, the following types of pits: saltwater disposal pits; emergency saltwater storage pits; collecting pits; skimming pits; brine pits; brine mining pits; drilling fluid storage pits (other than mud circulation pits); drilling fluid disposal pits (other than reserve pits or slush pits); washout pits; non-commercial centralized produced water and/or hydraulic fracturing flowback fluid recycling pits; and gas plant evaporation/retention pits. If a person maintains or uses a pit for storage of oil field fluids, or for storage or disposal of oil and gas wastes, and the use or maintenance of the pit is neither authorized by paragraph (4) or (7)(C) [~~or (8)~~] of this subsection nor permitted, then the person maintaining or using the pit shall backfill and compact the pit in the time and manner required by the director. Prior to backfilling the pit, the person maintaining or using the pit shall, in a permitted manner or in a manner authorized by paragraph (3) of this subsection, dispose of all oil and gas wastes which are in the pit.

(3) Authorized disposal methods.

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

(F) Non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling pit contents.

(i) Untreated wastes. A person may, without a permit, dispose of untreated hydraulic fracturing flowback fluid waste by burial in a non-commercial on-lease hydraulic fracturing flowback fluid recycling pit, provided the pit has been dewatered, and provided the wastes are disposed of at the same well site where they are generated.

(ii) Recyclable product. A person may, without a permit, dispose of produced water and/or hydraulic fracturing flowback fluid that is a recyclable product by burial in a non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling pit, provided the pit has been dewatered.

(G) [~~(F)~~] Effect on backfilling. A person's choice to dispose of a waste by methods authorized by this paragraph shall not extend the time allowed for backfilling any reserve pit, mud circulation pit, or completion/workover pit whose use or maintenance is authorized by paragraph (4) of this subsection.

(4) Authorized pits. A person may, without a permit, maintain or use reserve pits, mud circulation pits, completion/workover pits, basic sediment pits, flare pits, fresh makeup water pits, fresh mining water pits, non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling pits, and water condensate pits on the following conditions.

(A) - (D) (No change.)

(E) Fresh makeup water pits and fresh mining water pits. A person shall not deposit or cause to be deposited into a fresh makeup water pit any oil and gas wastes or any oil field fluids other than water used to make up drilling fluid or treated hydraulic fracturing flowback fluid used to make up hydraulic fracturing fluid. A person shall not deposit or cause to be deposited into a fresh mining water pit any oil and gas wastes or any oil field fluids other than water used for solution mining of brine.

(F) (No change.)

(G) Non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling pits.

(i) A person shall not deposit or cause to be deposited into a non-commercial on-lease recycling pit any oil field fluids or oil and gas wastes other than produced water and/or hydraulic fracturing flowback fluid generated on the lease or unit on which the pit is located.

(ii) All pits shall be sufficiently large to ensure adequate storage capacity and freeboard taking into account anticipated precipitation.

(iii) All pits shall be designed to prevent stormwater runoff from entering the pit. If a pit is constructed with a dike or berm, the height, slope, and construction material of such dike or berm shall be such that it is structurally sound and does not allow seepage.

(iv) A freeboard of at least two feet shall be maintained at all times.

(v) All pits shall be lined. The liner shall be designed, constructed, and installed to prevent any migration of materials from the pit into adjacent subsurface soils, ground water, or surface water at any time during the life of the pit. The liner shall be installed according to standard industry practices, shall be constructed of materials that have sufficient chemical and physical properties, including thickness, to prevent failure during the expected life of the pit. All liners shall have a hydraulic conductivity that is 1.0×10^{-7} cm/sec or less. A liner may be constructed of either natural or synthetic materials.

(vi) Equipment, machinery, waste, or other materials that could reasonably be expected to puncture, tear, or otherwise compromise the integrity of the liner shall not be used or placed in lined pits.

(vii) The pit shall be inspected periodically by the operator for compliance with the applicable provisions of this section.

(H) [~~(G)~~] Backfill requirements.

(i) A person who maintains or uses a reserve pit, mud circulation pit, fresh makeup water pit, fresh mining water pit, completion/workover pit, basic sediment pit, flare pit, non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling pit, or water condensate pit shall dewater, backfill, and compact the pit according to the following schedule.

(I) Reserve pits and mud circulation pits which contain fluids with a chloride concentration of 6,100 mg/liter or less and fresh makeup water pits shall be dewatered, backfilled, and compacted within one year of cessation of drilling operations.

(II) Reserve pits and mud circulation pits which contain fluids with a chloride concentration in excess of 6,100 mg/liter shall be dewatered within 30 days and backfilled and compacted within one year of cessation of drilling operations.

(III) All completion/workover pits used when completing a well shall be dewatered within 30 days and backfilled and compacted within 120 days of well completion. All completion/workover pits used when working over a well shall be dewatered within 30 days and backfilled and compacted within 120 days of completion of workover operations.

(IV) Basic sediment pits, flare pits, fresh mining water pits, non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling pits, and water condensate pits shall be dewatered, backfilled, and compacted within 120 days of final cessation of use of the pits.

(V) If a person constructs a sectioned reserve pit, each section of the pit shall be considered a separate pit for determining when a particular section should be dewatered.

(ii) A person who maintains or uses a reserve pit, mud circulation pit, fresh makeup water pit, non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling pit, or completion/workover pit shall remain responsible for dewatering, backfilling, and compacting the pit within the time prescribed by clause (i) of this subparagraph, even if the time allowed for backfilling the pit extends beyond the expiration date or transfer date of the lease covering the land where the pit is located.

(iii) The director may require that a person who uses or maintains a reserve pit, mud circulation pit, fresh makeup water pit, fresh mining water pit, completion/workover pit, basic sediment pit, flare pit, non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling pit, or water condensate pit backfill the pit sooner than the time prescribed by clause (i) of this subparagraph if the director determines that oil and gas wastes or oil field fluids are likely to escape from the pit or that the pit is being used for improper storage or disposal of oil and gas wastes or oil field fluids.

(iv) Prior to backfilling any reserve pit, mud circulation pit, completion/workover pit, basic sediment pit, flare pit, non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling pit, or water condensate pit whose use or maintenance is authorized by this paragraph, the person maintaining or using the pit shall, in a permitted manner or in a manner authorized by paragraph (3) of this subsection, dispose of all oil and gas wastes which are in the pit.

(I) All authorized pits shall be constructed, used, operated, and maintained at all times outside of a 100-year flood plain as that term is defined in subsection (a) of this section and so as to prevent pollution. In the event of an unauthorized discharge from any pit authorized by this paragraph, the operator shall take any measures necessary to stop or control the discharge and report the discharge to the district office as soon as possible.

(5) (No change.)

(6) Permits.

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

(G) Minor permits. If the director determines that an application is for a permit to store only a minor amount of oil field fluids or to store or dispose of only a minor amount of oil and gas waste, the director may issue a minor permit provided the permit does not authorize an activity which results in waste of oil, gas, or geothermal resources or pollution of surface or subsurface water. An application for a minor permit shall be filed with the commission in the appropriate district office. Notice of the application shall be given as required by the director. The director may determine that notice of the application is not required. A minor permit is valid for 60 [~~30~~] days, but a minor permit which is issued without notice of the application may be modified, suspended, or terminated by the director at any time for good cause without notice and opportunity for hearing. Except when the provisions of this subparagraph are to the contrary, the issuance, denial, modification, suspension, or termination of a minor permit shall be governed by the provisions of subparagraphs (A) - (E) of this paragraph.

(7) Recycling.

(A) Prohibited recycling. Except for those recycling methods authorized for certain wastes by subparagraph (B) of this paragraph, no person may recycle any oil and gas wastes by any method without obtaining a permit.

(B) Authorized recycling. Non-commercial on-lease produced water and/or hydraulic fracturing flowback fluid recycling is authorized with the following conditions:

(i) Partial treatment. If the treated produced water and/or hydraulic fracturing flowback fluid is recycled for use as makeup water for a hydraulic fracturing fluid treatment, or other oilfield fluid to be used in the wellbore of an oil, gas, geothermal, or service well, no other permit is required.

(ii) Complete treatment. If the treated hydraulic fracturing flowback fluid is treated to the national drinking water standards established under the federal Safe Drinking Water Act (42 U.S.C. §300f et seq. (1974)), the operator may use or dispose of the treated hydraulic fracturing flowback fluid in any manner other than discharge to surface water or irrigation of edible crops.

(C) Permitted recycling.

(i) Non-commercial centralized produced water and/or hydraulic fracturing flowback fluid recycling which uses a non-commercial centralized produced water and/or hydraulic fracturing flowback fluid recycling pit requires the generator of the waste to be treated and recycled to obtain a permit in accordance with paragraph (6) of this subsection.

(I) Partial treatment. If the treated produced water and/or hydraulic fracturing flowback fluid is recycled for use as makeup water for a hydraulic fracturing fluid treatment, or as another type of oilfield fluid to be used in the wellbore of an oil, gas, geothermal, or service well, no other permit is required.

(II) Complete treatment. If the produced water and/or hydraulic fracturing flowback fluid is treated to the national drinking water standards established under the federal Safe Drinking Water Act (42 U.S.C. §300f et seq. (1974)), the operator may use or dispose of the treated produced water and/or hydraulic fracturing flowback fluid in any manner other than discharge to surface water or irrigation of edible crops.

(ii) All commercial recycling requires the commercial recycler of the oil and gas waste to obtain a permit in accordance with Chapter 4 of this title (relating to Environmental Protection), Subchapter B.

[~~(7) Existing permits and pits (other than existing brine mining pit permits and brine mining pits.~~]

[~~(A) Existing permits. Each permit to maintain or use a lined or unlined pit for storage or disposal of oil field brines, geothermal resource water, or other mineralized waters, which has been issued by the commission prior to the effective date of this subsection, shall expire 180 days after the effective date of this subsection. Every other permit to store oil field fluids or oil and gas wastes or to dispose of oil and gas wastes, which permit has been issued by the commission prior to the effective date of this subsection, shall remain in effect until modified, suspended, or terminated by the commission pursuant to paragraph (6)(E) of this subsection. The permits which will expire pursuant to this paragraph include, but are not limited to, permits for the following types of pits: saltwater disposal pits, emergency saltwater storage pits, skimming pits, and brine pits.~~]

[~~(B) Renewal permits. Any person holding a permit scheduled to expire pursuant to subparagraph (A) of this paragraph may apply to the commission for renewal of the permit. If a person makes timely and sufficient application for renewal of a permit, then, notwithstanding the provisions of subparagraph (A) of this paragraph, the permit shall not expire until final commission action renewing or denying renewal of the permit. An application for renewal of a permit shall be filed with the commission in Austin within 180 days of the effective date of this subsection. No notice of the application is required. The director may administratively approve an application for renewal of a permit. No hearing shall be held on an application for renewal of a permit unless the applicant requests a hearing or the director determines that a hearing is necessary. No renewal permit will be issued unless the standards for permit issuance stated in paragraph (6)(A) of this subsection have been met.~~]

[~~(C) Operating existing unpermitted pits. If, as of the effective date of this subsection, a person is maintaining or using a pit, which is required by this subsection to be permitted but which was not required to be permitted prior to the effective date of this subsection, then the person maintaining or using the pit may continue to maintain or use the pit for 180 days after the effective date of this subsection. If a person makes timely and sufficient application for a permit to maintain or use such an existing but unpermitted pit, then the person may continue to use the pit until final commission action denying the permit. An application for a permit shall be considered timely if it is filed with the commission within 180 days of the effective date of this subsection. The issuance or denial of the permit shall be governed by the provisions of paragraph (6) of this subsection. The unpermitted pits, whose use or maintenance is authorized by this subparagraph, include, but are not limited to, the following types of pits: drilling fluid storage pits, gas plant evaporation/retention pits, and washout pits.~~]

[~~(D) Backfilling existing pits. If, as of the effective date of this subsection, a person is maintaining or using a basic sediment pit which does not meet the 50-barrel size limitation of paragraph (4)(C) of this subsection, then that person shall dewater, backfill, and compact the pit or rebuild the pit to comply with the 50-barrel size limitation within 180 days of the effective date of this subsection. Any person who, as of the effective date of the subsection, is maintaining or using a lined or unlined pit for storage or disposal of oil field brines, geothermal resource waters, or other mineralized waters, which pit was permitted prior to the effective date of this subsection, shall dewater, backfill, and compact the pit within 270 days of the effective date of this subsection unless the person applies for a renewal permit pursuant to subparagraph (B) of this paragraph. If a person applies for a renewal of a permit to maintain or use a lined or unlined pit for storage or disposal~~

of oil filled brines, geothermal resource waters, or other mineralized waters, the director may extend the time for dewatering, backfilling, and compacting the pit to up to 90 days after final commission action denying renewal of the permit. If, as of the effective date of this subsection, a person is maintaining or using a pit, which is required by this subsection to be permitted but which was not required to be permitted prior to the effective date of this subsection, then the person maintaining or using the pit shall dewater, backfill, and compact the pit within 270 days of the effective date of this subsection unless the person applies for a permit to maintain or use the pit within the 180-day period allowed by subparagraph (C) of this paragraph. If a person applies for such a permit to maintain or use a previously unpermitted pit, the director may extend the time for dewatering, backfilling, and compacting the pit to up to 90 days after final commission action denying issuance of the permit. The director may require that pits required to be backfilled by this subparagraph be dewatered, backfilled, and compacted sooner than the time prescribed by this subparagraph if the director determines that oil and gas wastes are likely to escape from the pit or that the pit is being used for improper disposal of oil and gas wastes.]

[(8) Existing brine mining pit permits and brine mining pits. Existing brine mining pit permits and brine mining pits will be governed by the provisions of this paragraph rather than the provisions of paragraph (7) of this subsection.]

[(A) Existing brine mining pit permits. Any permit to maintain or use a brine mining pit, which permit has been issued by the commission prior to January 6, 1987, will remain in effect until modified, suspended, or terminated by the commission pursuant to paragraph (6)(E) of this subsection.]

[(B) Existing brine mining pits. If, as of January 6, 1987, a person is maintaining or using a brine mining pit and has not obtained a permit from the commission to maintain or use the pit, then the person may continue to use the pit through January 30, 1987. If the person makes timely and sufficient application for a permit to maintain or use the pit, then the person may continue to use the pit until final commission action denying the permit. An application for a permit to maintain or use the pit will be considered timely if it is filed with the commission by January 30, 1987. The issuance or denial of the permit will be governed by the provisions of paragraph (6) of this subsection. Unless the person maintaining or using the pit makes timely and sufficient application for a permit to maintain or use the pit, the person shall close the pit by May 1, 1987. If the person maintaining or using the pit makes timely and sufficient application for a permit to maintain or use the pit, but the permit is denied, then the person shall close the pit within 90 days after final commission action denying the permit. A pit required by this subparagraph to be closed shall be closed in accordance with a plan approved by the director. A closure plan must be submitted to the director for approval at least 60 days before the pit is required to be closed. The closure plan must describe the manner in which the pit will be dewatered or emptied, backfilled, and compacted. The director may require that a pit required to be closed by this subparagraph be closed sooner than the time prescribed by this subparagraph if the director determines that oil and gas wastes or oil field fluids are likely to escape from the pit or that the pit is being used for improper storage or disposal of oil and gas wastes or oil field fluids.]

(8) [(9)] Used oil. Used oil as defined in §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste), shall be managed in accordance with the provisions of 40 CFR, Part 279.

(e) (No change.)

(f) Oil and gas waste haulers.

(1) A person who transports oil and gas waste for hire by any method other than by pipeline shall not haul or dispose of oil and gas waste off a lease, unit, or other oil or gas property where it is generated unless such transporter has qualified for and been issued an oil and gas waste hauler permit by the commission. Hauling of inert waste, asbestos-containing material regulated under the Clean Air Act (42 USC §§7401 et seq), polychlorinated biphenyl (PCB) waste regulated under the Toxic Substances Control Act (15 USCA §§2601 et seq), or hazardous oil and gas waste subject to regulation under §3.98 of this title [(relating to Standards for Management of Hazardous Oil and Gas Waste),] is excluded from this subsection. This subsection is not applicable to the non-commercial hauling of oil and gas wastes for non-commercial recycling. For purposes of this subsection, injection of salt water or other oil and gas waste into an oil and gas reservoir for purposes of enhanced recovery does not qualify as recycling. [A person who has a salt water hauler permit does not need to apply for an oil and gas waste hauler permit until the person is scheduled to file an application for permit renewal.]

(A) Application for an oil and gas waste hauler permit will be made on the commission-prescribed form, and in accordance with the instructions thereon, and must be accompanied by:

(i) - (iii) (No change.)

(iv) a certification by the hauler that the vehicles listed on the application are designed so that they will not leak during transportation. The certification shall include a statement that vehicles used to haul non-solid oil and gas waste shall have totally enclosed waste storage compartments designed to transport non-solid oil and gas wastes, and shall be operated and maintained to prevent the escape of oil and gas waste.

(B) (No change.)

(C) Each oil and gas waste hauler shall operate in strict compliance with the instructions and conditions stated on the permit which provide:

(i) - (viii) (No change.)

(ix) Each vehicle must be operated and maintained in such a manner as to prevent spillage, leakage, or other escape of oil and gas waste during transportation. Vehicles used to haul non-solid oil and gas waste shall have totally enclosed waste storage compartments designed to transport non-solid oil and gas wastes, and shall be operated and maintained to prevent the escape of oil and gas waste.

(x) (No change.)

(2) A record shall be kept by each oil and gas waste hauler showing daily oil and gas waste hauling operations under the permitted authority.

(A) Such daily record shall be dated and signed by the vehicle driver and shall show the following information:

(i) (No change.)

(ii) identity of the disposal system or commercial recycling facility to which the oil and gas waste is delivered;

(iii) (No change.)

(iv) the type and volume of oil and gas waste transported and delivered by the hauler to the disposal system or commercial recycling facility.

(B) - (C) (No change.)

(g) Recordkeeping.

(1) Oil and gas waste. When oil and gas waste is hauled by vehicle from the lease, unit, or other oil or gas property where it is generated to an off-lease disposal or recycling facility, the person generating the oil and gas waste shall keep, for a period of three years from the date of generation, the following records:

(A) identity of the property from which the oil and gas waste is hauled;

(B) identity of the disposal system or recycling facility to which the oil and gas waste is delivered;

(C) name and address of the hauler, and permit number (WHP number) if applicable; and

(D) type and volume of oil and gas waste transported each day to disposal or recycling.

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

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

(j) Consistency with the Texas Coastal Management Program. The provisions of this subsection apply only to activities that occur in the coastal zone and that are subject to the CMP rules.

(1) (No change.)

(2) Consistency Determinations. The provisions of this paragraph apply to issuance of determinations required under Title 31, Texas Administrative Code, §505.30 (Agency Consistency Determination), for the following actions listed in Title 31, Texas Administrative Code, §505.11(a)(3): permits to dispose of oil and gas waste in a pit; permits to discharge oil and gas wastes to surface waters; and certifications of compliance with applicable water quality requirements for federal permits for development in critical areas and dredging and dredged material disposal and placement in the coastal area.

(A) (No change.)

(B) Prior to issuance of a permit or certification covered by this paragraph, the commission shall determine if the proposed activity will have a direct and significant adverse effect on any CNRA identified in the provisions of paragraph (1) of this subsection that are applicable to such activity.

(i) If the commission determines that issuance of a permit or a certification covered by this paragraph would not result in direct and significant adverse effects to any CNRA identified in the provisions of paragraph (1) of this subsection that are applicable to the proposed activity, the commission shall issue a written determination of no direct and significant adverse effect which shall read as follows: "The Railroad Commission has reviewed this proposed action for consistency with the Coastal Management Program (CMP) goals and policies, [~~in accordance with the regulations of the Coastal Coordination Council (council),~~] and has found that the proposed action will not have a direct and significant adverse affect on any coastal natural resource area (CNRA) identified in the applicable policies."

(ii) If the commission determines that issuance of a permit or certification covered by this paragraph would result in direct and significant adverse affects to a CNRA identified in the provisions of paragraph (1) of this subsection that are applicable to the proposed activity, the commission shall determine whether the proposed activity would meet the applicable requirements of paragraph (1) of this subsection.

(I) If the commission determines that the proposed activity would meet the applicable requirements of paragraph (1) of this subsection, the commission shall issue a written consistency determination which shall read as follows: "The Railroad Commission has reviewed this proposed action for consistency with the Texas Coastal Management Program (CMP) goals and policies, [~~in accordance with the regulations of the Coastal Coordination Council (council),~~] and has determined that the proposed action is consistent with the applicable CMP goals and policies."

(II) (No change.)

(3) (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 September 11, 2012.

TRD-201204770
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

CHAPTER 4. ENVIRONMENTAL PROTECTION
SUBCHAPTER B. COMMERCIAL RECYCLING

The Railroad Commission of Texas (Commission) proposes amendments to §§4.201 - 4.204, relating to Purpose; Applicability and Exclusions; Responsibility for Management of Waste to be Recycled; and Definitions; the repeal of §§4.205 - 4.226, relating to General Permit Application Requirements for Commercial Recycling Facilities; Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; Minimum Closure Information; Notice; Administrative Decision on Permit Application; Protests and Hearings; Standards for Permit Issuance; General Permit Provisions; Minimum Permit Provisions for Siting; Minimum Permit Provisions for Design and Construction; Minimum Permit Provisions for Operations; Minimum Permit Provisions for Monitoring; Minimum Permit Provisions for Closure; Permit Renewal; Exceptions; Modification, Suspension, and Termination; and Penalties; and new §§4.205 - 4.293, which will form Subchapter B, relating to Commercial Recycling.

The Commission proposes the amendments, repeals, and new rules to reorganize Subchapter B into the following six divisions: Division 1, General; Definitions; Division 2, Requirements for On-Lease Commercial Solid Oil and Gas Waste Recycling; Division 3, Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas Waste Recycling; Division 4, Requirements for Stationary Commercial Solid Oil and Gas Waste Recycling Facilities; Division 5, Requirements for Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid; and Division 6, Requirements for Stationary Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid. The Commission also proposes amendments to §3.8 of this title (relating to Water Pro-

tection) in a separate but concurrent rulemaking; the proposed amendments to §3.8 also relate to commercial recycling activities and requirements.

Informal Comments to Commercial Recycling Rule Draft

The existing rules in Subchapter B address two categories of commercial recycling facilities: mobile facilities and stationary facilities. Since adoption of the rules in 2006, the Commission has received an increasing number of applications for facility permits that fit in neither category. Therefore, the Commission proposed to create a third category - a semimobile commercial recycling facility - to accommodate such applications. At its open meeting on February 28, 2012, the Commission directed staff to circulate draft proposed amendments reflecting this change, and to solicit informal comments and hold a workshop with interested parties to get feedback. The draft proposed amendments were posted on the Commission's website with a request for informal comments. Comments were submitted electronically through the website and at the workshop held on March 16, 2012.

Most commenters recommended that the Commission separate fluid recycling and solids recycling to allow the rules to address the unique characteristics, risks, and potential uses of each separately. Many commenters also recommended that the rules encourage recycling rather than disposal of oil and gas wastes. Others recommended that the amendments provide clear guidelines for the handling or treatment of hydraulic fracturing flowback fluid and produced water that is to be re-used for hydraulic fracturing.

Several commenters requested that the Commission limit itself to one month for review and approval of permit applications for mobile or temporary recycling permits. The Commission's stated intent for reviewing the recycling rules is to clarify application and permit requirements and to streamline processing. The Commission may consider future amendments to §1.201 of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively) to include processing times for permit applications once the Commission determines a reasonable time period for processing of permit applications for recycling under the rules in Subchapter B.

One company requested that the Commission consider self-permitting for companies that have proven capable. However, the comment did not clearly state what is meant by the term, "self-permitting." The Commission proposes in concurrent amendments to §3.8 authorization for certain on-lease, non-commercial treatment and recycling, which could be construed as "self-permitting" with conditions.

One commenter stated that, if a waste stream is being treated--regardless of the extent of the process--it should require permitting. The Commission directed staff to review the Commission's recycling rules and streamline the rules. Therefore, staff is reviewing the rules to determine whether or not they should authorize certain treatment of oil and gas wastes.

One commenter stated that the rules do not adequately distinguish between permanent facilities constructed and operated by a treatment vendor (stationary systems), and facilities used temporarily by oil and gas operators. In the latter, the operator maintains ultimate responsibility for the handling and management of the materials. This commenter stated that the draft rules for informal comment and current rules appear to have some disparity in that the rules do not apply if an oil and gas operator does exactly the same thing the regulations are trying to permit, but does so entirely on their own. Further, it appears that an oil and gas operator could engage a third party to provide water treatment in a "non-commercial" agreement and also be beyond the reach and scope of the proposed amendments. This commenter stated that the rules should provide for cross-lease recycling for single and/or multiple users with the permittee required to provide proof of ownership/land lease for its purpose and that the rules provide for a lease-specific permit for operators or recyclers.

Another commenter recommended that the Commission clarify that commercial recycling rules do not apply to an oil and gas operator if the oil and gas operator is the exclusive user of a recycling facility located on the operator's lease or field. The Commission recognizes the long history of operator-contractor/service company relationships, wherein the Commission holds the operator responsible for activities performed on the operator's lease or other property and the operator holds the contractor responsible for contracted work on the operator's property. The Commission proposes to authorize by rule, with specific conditions, recycling of produced water and/or hydraulic fracturing flowback fluid that is performed for an operator by a third-party contractor or service company on the operator's lease or other property.

With respect to current §4.202(b), one commenter stated that it is not clear when a permit is required under this rule if the waste already is being permitted under §3.8. Another commenter stated that, although current §4.202(b) states "The provisions of this subchapter do not apply to recycling methods authorized for certain wastes by §3.8," it is not clear when a permit is required under Subchapter B if the waste already is being permitted under §3.8. The Commission proposes amendments to §3.8 in a separate but concurrent rulemaking to authorize on-lease, non-commercial recycling of produced water and/or hydraulic fracturing flowback fluid.

One commercial recycler stated that, because operators of mobile treatment facilities usually do not take ownership of the materials before or after treatment and have no control over their re-use by the lease operator, several permits issued by the Commission include conditions with which the permittee cannot comply. As examples, the commenter pointed to: (1) conditions limiting the maximum volume of recycled material that may be stored at the site at any given time; (2) conditions requiring the recyclable product be used or disposed of within 60 days of its creation; and (3) conditions requiring that the recyclable product only be used in the makeup of fracturing fluid at the well site in which it was generated or at another well site within the same field owned by the operator who generated the waste and any excess product not so used shall be disposed of in an authorized manner. The Commission's proposal to authorize on-lease, non-commercial recycling of produced water and/or hydraulic fracturing fluid in the separate but concurrent rulemaking effort in §3.8 should address this commenter's concerns.

One fluid recycler stated, because operators may request treatment of flowback fluid with notice of only a few hours or days, any requirement to supply site-specific information for a drill site prevents prompt dispatch for the treatment and recycling of flowback water. This commenter recommended that the rules provide for statewide permitting with a notification to Commission of the movement of mobile treating facilities to a specific site. One fluid recycler stated that the current rules create regulatory restrictions that are a disincentive to the use of mobile or non-permanent solutions. The Commission agrees and proposes authorizing on-lease, noncommercial recycling of produced water

and hydraulic fracturing flowback fluid. In addition, the Commission proposes to delete many of the site-specific requirements for mobile recyclers currently in the rules and require, instead, that notice be given when equipment is moved from site to site.

Most commenters identified problems with the draft proposal to create a new category of semi-mobile recycling facilities. One operator recommended that short-term recycling facilities that are in one location for less than one month be exempted from the permitting process under Subchapter B. This commenter requested that the rules clarify that a permit issued under Subchapter B for mobile commercial recycling facilities is valid statewide. The Commission agrees and proposes language in §4.218 to address this concern.

One fluid recycler recommended more flexibility in the placement of the recycling equipment under mobile/temporary treatment permits. Local logistics impact the economic viability of treatment. In certain cases it may be most effective to locate at a deepwell disposal facility, an oilfield lease, or a property central to operations in the area. The Commission agrees with this recommendation with respect to leases and non-commercial on-lease recycling. However, locating a recycling facility in a more centralized or off-lease location triggers additional issues that the Commission must consider, including the possibility of increased risk from greater volumes, and the possibility that the operator of the lease from which the waste water is generated may not own or lease the property on which the "mobile/temporary treatment facility" is located. The Commission generally holds the operator of a lease responsible for activities taking place on the lease. At an off-lease location, the Commission generally requires a permit from the recycling facility company, which would most often be the lessor or owner of the property.

One fluid recycler recommended that the Commission change the proposed rule language pertaining to facilities that treat wastewater streams to clarify which parts of the rule apply to mobile facilities. This commenter recommended that the Commission delete requirements in current §4.209(a) that a permit application include a plat or map with a north arrow and show the location of monitor wells, dikes, fences, and access roads. The Commission agrees and proposes to delete language that is not appropriate to mobile recycling equipment and location.

One fluid recycler recommended that the Commission allow for consolidated permitting for mobile systems that employ multiple technologies to treat fluids. The Commission did not intend that one facility employing multiple technologies would require multiple permits.

One oil and gas operator stated that §4.203(b) seems to imply that an operator who delivers water for treatment must be permitted as an oil and gas waste hauler, even if the water is delivered in a pipeline, as opposed to over-land transport. Section 3.8 does not require a waste hauler permit for a person who transports waste through a pipeline. However, because §3.8 prohibits pollution from oil and gas wastes, operators must ensure that oil and gas waste does not escape from any conveyance method for oil and gas wastes.

The Commission received numerous comments on the existing and proposed definitions in Subchapter B. One oil and gas operator recommended that the Commission revise the definition of "commercial recycling facility" to clarify that mobile recycling involves storing, handling and treating the oil and gas waste, and that it is the generator of the waste who stores and recycles it. The Commission agrees, but has addressed this issue by proposing authorization of on-lease, non-commercial recycling of produced water and/or hydraulic fracturing flowback fluid in the concurrent proposed amendments to §3.8.

Several commenters recommended that the Commission delete the proposed definitions for "hydraulic fracturing flowback fluids" and "produced water" because the term "oil and gas waste" already is defined. The Commission does not agree with this comment. Treatment and quality of treated fluid will depend on the type of oil and gas waste. Otherwise, the Commission would have to determine all possible contaminants in all types of oil and gas wastes and require analysis, which is not practical, feasible or reasonable.

Several commenters recommended changes to the terms "recycle" and "recyclable product." Two commenters recommended that the Commission replace the term "recyclable" with the term "recycled product" to read: "Use or reuse of a recyclable product as defined in a permit issued pursuant to this subchapter" because Subchapter B does not apply to products that are capable of being recycled but rather to products that are actually recycled. The Commission does not agree with this comment because Subchapter B applies to treated wastes (recyclable product) until the recyclable products are actually re-used or recycled.

The Commission proposes no changes to the current definition of "recyclable product," which means a reusable material that has been created from the treatment and/or processing of oil and gas waste as authorized by a Commission permit and that meets the environmental and engineering standards established by the permit for the intended use and is used as a legitimate commercial product. A recyclable product is not a waste, but may become a waste if it is abandoned or disposed of rather than recycled as authorized by the permit. The Commission agrees that recyclable product put to a legitimate commercial use as authorized in a permit issued under this subchapter is not a waste. The partially treated waste and recyclable product resulting from processing and/or treatment of oil and gas waste pursuant to a Commission permit constitutes a "substance or material associated with any operation or activity regulated by the Commission" under Texas Natural Resources Code, §91.101(a)(1), (2), and (3). The recyclable product is associated with operation or activity regulated by the Commission because it was created using oil and gas waste over which the Commission has exclusive jurisdiction, and which the Commission no longer considers to be an oil and gas waste if the recyclable product is used as intended pursuant to permit conditions.

One oil and gas operator recommended that the Commission clarify the wording that: "A recyclable product is not a waste, but may become a waste if it is abandoned or disposed of rather than recycled as authorized by the permit." In regard to water specifically, if the water is treated to a specific criteria and it was no longer needed for recycling in oil and gas operations under the intended purpose of this permit, could the water be re-used for other purposes because it has been treated to clean water standards? This commenter recommended that the Commission amend §3.8 to provide that if the treated water was altered to a certain criteria, that the pit storing this water would not need an permit under §3.8 but rather could qualify as an authorized pit under §3.8(d)(4). The Commission has addressed this comment in the proposed amendments to §3.8, proposed concurrently with this rulemaking.

One commenter recommended that the Commission add a definition for the term "legitimate commercial product" to mean a product that is produced as the primary business of or by a com-

mercial recycling facility in commercial volumes for the purpose of sale to any third party for use as an ingredient or feedstock to make another product or as a final commercial product. The Commission does not agree with this comment. The recyclable product may be put to legitimate commercial use without being sold to a third party.

One commercial fluid recycler recommended that the Commission change the definition of the term "mobile commercial recycling facility" to "mobile commercial treatment facility," and to define that term to mean "commercial treatment performed on an oil or gas lease or well site using a treatment process that moves from one location to another, in which all materials and wastes are treated in tanks, and restricted in the following ways: (A) a facility may only perform treatment services, it may not store, sell, transport, recycle or reuse the treated product; (B) a facility may only perform treatment operations at any one location for one year or less; (C) is not restricted by the volume of waste that may be treated by the facility at any one location; (D) a facility is restricted by the type and characteristics of the waste to be treated, and (E) a facility is not restricted in the size of the area used for treatment." The Commission does not agree with this comment.

The Commission received numerous comments regarding permit terms, particularly for mobile recycling systems. With respect to mobile systems, the Commission proposes to authorize on-lease, non-commercial mobile recycling systems for produced water and/or hydraulic fracturing flowback fluid and proposes a five-year term limit for on-lease, commercial solid oil and gas waste recycling permits.

With respect to current §4.218(b), one commenter recommended that the Commission require a flood management plan in lieu of prohibiting the location of mobile facilities in 100-year floodplains. The Commission does not agree with this comment. By virtue of its mobility, such a facility could be located in an area that would avoid 100-year floodplains.

With respect to current §4.220(b), relating to the trial run requirement, one fluid recycler stated that the requirement for a trial run and Commission approval before use of the treated water creates an impediment to the commercial viability of providing treatment for reuse and complicates again the delineation of responsibility of the operator and the treatment contractor. The Commission does not agree with this comment. The requirement for a trial run for fluid treatment is required for commercial and off-lease or centralized recycling because of the anticipated volumes of fluid and the likelihood that the treated fluids could be used for purposes outside of oil and gas activities.

One commenter recommended that the Commission delete the proposed requirement in proposed new §4.274(d), relating to compliance with the requirements of 16 TAC §3.56 (Scrubber Oil and Skim Hydrocarbons), because it could be a disincentive to recycling hydraulic fracturing flowback fluids. The Commission agrees with this comment with respect to mobile facilities. However, the Commission does not agree with respect to commercial recycling facilities that handle fluids from numerous leases. The volume of skim hydrocarbons at a commercial recycling facility is likely to be just as great as the volume collected at a commercial disposal well facility.

Proposed Amendments and New Rules

Division 1. General; Definitions

Proposed new Division 1 includes §§4.201 - 4.211, which will consolidate the requirements and conditions that are standard to all commercial recycling.

The Commission proposes amendments to §4.201, relating to Purpose, to delete references to mobile and stationary facilities.

The Commission proposes amendments to §4.202, relating to Applicability and Exclusions. The amendments delete a reference to mobile and stationary commercial recycling facilities and add references to five categories of commercial recycling covered under the subchapter: (1) on-lease commercial recycling of solid oil and gas waste; (2) off-lease or centralized commercial solid oil and gas waste recycling; (3) stationary commercial solid oil and gas waste recycling; (4) off-lease or centralized commercial recycling of produced water and/or hydraulic fracturing flowback fluid; and (5) stationary commercial recycling of produced water and/or hydraulic fracturing flowback fluid.

New subsection (c) states that the provisions of this subchapter do not apply to recycling of produced water and/or hydraulic fracturing flowback fluid on the lease from which it was produced. Such recycling is subject to the requirements of §3.8.

New subsection (d) states that the provisions of this subchapter are in addition to the permitting requirements of §3.8, which requires a permit for any pit not specifically authorized in the rule.

New subsection (e) states that the provisions of this subchapter do not authorize discharge of oil and gas waste.

Current subsection (c) is redesignated as subsection (f).

The Commission proposes to amend §4.203(b), relating to responsibility for management of waste to be recycled, to clarify that commercial hauling of oil and gas waste requires an oil and gas waste haulers permit.

The Commission proposes to amend §4.204, relating to Definitions, to add new definitions and to modify existing definitions. The Commission proposes to amend the definition of "commercial recycling facility" to delete the reference to mobile and stationary facility and to clarify that the definition does not include recycling of produced water and/or hydraulic fracturing flowback fluid on the lease from which it was produced.

The Commission proposes to add a new definition for "hydraulic fracturing flowback fluid" to mean the fluid, including the fluid from a hydraulic fracturing treatment and produced water, which returns from a well on which a hydraulic fracturing treatment has been performed.

The Commission proposes to add a new definition for "hydraulic fracturing treatment" to mean the treatment of a well by the application of hydraulic fracturing fluid under pressure for the express purpose of initiating or propagating fractures in a target geologic formation to enhance production of oil and/or natural gas. The proposed definition is the same as the definition in §3.29 of this title (relating to Hydraulic Fracturing Chemical Disclosure Requirements).

The Commission proposes to renumber the definitions for "legitimate commercial use," and "Louisiana Department of Natural Resources Leachate Test Method."

The Commission proposes to renumber and amend the definition for "mobile commercial recycling" to change the term to "on-lease commercial solid oil and gas waste recycling"; to modify the definition to indicate that all materials and wastes are stored in authorized pits and/or tanks; to clarify that such recy-

cling operations generally occur at one location for less than one year; and to state that this type of recycling is restricted in the type and characteristics of the waste.

The Commission proposes to renumber the definitions for "oil and gas wastes" and "partially treated waste."

The Commission proposes to add a new definition for "produced water" to mean formation water that is brought to the surface during production of oil and/or gas. Produced water also is referred to as "brine," "saltwater," or "formation fluid."

The Commission proposed to renumber the definition for "recyclable product."

The Commission proposes to renumber and revise the definition for "recycle" to clarify that recycling involves the processing and/or use or reuse of oil and gas wastes as a product for which there is a legitimate commercial use and the actual use of the recyclable product for the purposes authorized in this subchapter or a permit. The Commission has added an element to the definition of recycle, stating that recycling includes the actual act of using the recyclable product for its intended purpose. The Commission finds this wording is necessary based on its history with several facilities that have stockpiled vast amounts of oil and gas waste or processed material far exceeding permit limits while operating under commission-issued recycling permits. These proposed amendments emphasize the requirement to actually put the recyclable product to use by adding this element to the definition. The Commission requires a person who applies for and operates under a recycling permit to have determined there is an actual market for the product the person intends to produce, and requires the person to demonstrate regular sales and delivery of the product during the course of operating under the permit. Failure to demonstrate regular sales of the product may result in Commission determination that the operator is not engaged in recycling but rather the unlawful disposal of oil and gas waste, with its attendant consequences.

The Commission proposes to add a new definition for "off-lease or centralized commercial recycling facility" to mean a commercial recycling facility that is capable of being moved from one location to another, but which is generally in operation in one location for a period of time longer than one year, but less than two years.

The Commission proposes to add a new definition for "solid oil and gas waste" to mean oil and gas waste that is not typically capable of being injected into a disposal well without the addition of fluids.

The Commission proposes to renumber the definition for "stationary commercial recycling facility" and to add that a recycling facility located in an immobile, fixed location for a period of greater than two years is a stationary commercial recycling facility.

The Commission proposes new §4.205, relating to Exceptions, to specify how an applicant or permittee may ask for and receive an exception. The Commission will not grant any exceptions to the requirements for financial security found in §§4.239(b), 4.255(b), 4.271(b), and 4.287(b); the notice requirements found in §§4.238, 4.254, 4.270, and 4.286; and the requirements related to sampling and analysis found in §§4.221, 4.222, 4.223, 4.242, 4.243, 4.258, 4.259, 4.274, 4.275, 4.290, and 4.291.

The Commission proposes new §4.206, relating to Administrative Decision on Permit Application, with the same wording in current §4.214, with one correction to the reference to Chapter 1.

The Commission proposes new §4.207, relating to Protests and Hearings, with the same wording in current §4.215.

The Commission proposes new §4.208, relating to General Standards for Permit Issuance, using language currently contained in §4.216 and §4.217(b).

The Commission proposes new §4.209, relating to Permit Renewal, which states that permits issued pursuant to this subchapter may be renewed, but are not transferable without the written approval of the director.

The Commission proposes new §4.210, relating to Modification, Suspension, and Termination, with the same wording in current §4.225.

The Commission proposes new §4.211, relating to Penalties, with the same wording in current §4.226.

Division 2. Requirements for On-lease Commercial Solid Oil and Gas Waste Recycling.

The Commission proposes new §4.212, relating to General Permit Application Requirements for On-Lease Commercial Solid Oil and Gas Waste Recycling Facilities, which incorporate most of the wording in current §4.205, which is revised as appropriate to recycling waste from a single lease and generator on that same lease. Throughout Division 2, the Commission proposes to replace references to mobile and stationary recycling facilities with references to on-lease commercial solid oil and gas waste recycling.

The Commission proposes new §4.213, relating to Minimum Engineering and Geologic Information, to incorporate most of the wording found in current §4.206 and to delete references to geology and Texas Occupations Code, Chapter 1002.

The Commission proposes the repeal of current §4.207, relating to Minimum Siting Information, and §4.208, relating to Minimum Real Property Information. Instead, the Commission proposes some of the wording for siting restrictions in any permit for on-lease commercial solid oil and gas waste recycling in proposed new §4.219, relating to Minimum Permit Provisions for Siting, discussed later in the preamble.

The Commission proposes new §4.214, relating to Minimum Design and Construction Information, which incorporates most of the wording in current §4.209, and adds language to require a typical (rather than specific) layout and design for on-lease commercial solid oil and gas waste recycling.

The Commission proposes new §4.215, relating to Minimum Operating Information, which incorporates some of the wording in current §4.210. The Commission does not propose to retain requirements for a plan to control unauthorized access, a waste acceptance plan, and an estimated duration of operation, but adds a new provision requiring the applicant to identify all of the Commission districts within which he or she seeks authorization to recycle.

The Commission proposes new §4.216, relating to Minimum Monitoring Information, which includes most of the wording in current §4.211, except for the requirement for a plan to sample monitoring wells.

The Commission proposes new §4.217, relating to Minimum Closure Information, which includes most of the wording in current

§4.212, except for the requirement for a plan to sample and analyze soil, plug monitoring wells, and reseed the area.

The Commission proposes the repeal of §4.213, relating to Notice. Instead, the Commission proposes in new §4.218(b) to require that the operator obtain written permission from the surface owner of the lease for on-lease commercial solid oil and gas waste recycling. The Commission finds that §4.213 is not appropriate for activities performed by the operator's contractor on a lease involving the lease holder and the waste generated on that lease.

The Commission proposes new §4.218, relating to General Permit Provisions for On-Lease Commercial Solid Oil and Gas Waste Recycling. The proposed new rule includes some wording from current §4.217, but omits references to permit terms for stationary facilities. The Commission also proposes to clarify that a permit for on-lease commercial solid oil and gas waste recycling is valid for a term of not more than five years and will authorize operations at any one lease for no more than one year. The Commission also proposes to include language that states that the permit will specify the Commission districts within which the permittee is authorized to engage in recycling pursuant to this division. The Commission further proposes to add language that would require an application for transfer to be filed with the Oil and Gas Division in Austin at least 60 days before the desired transfer date. The Commission does not propose to retain the language in current §4.217(b), relating to waste, and the current language in subsection (c), relating to financial security, as that language has been moved to Division 1.

Through these proposed rules, the Commission affirms that it is the applicant's responsibility to post financial assurance in the maximum amount necessary to close the facility at any time during the permit term. If the operator accumulates more waste, partially treated material or recyclable product than is allowed by the permit, then the permittee is obligated by §3.78 of this title to amend its permit and to increase its financial assurance to meet the actual conditions at the facility. Financial assurance must match the footprint of the facility, and if the footprint of the facility is expected to change, or does change during a permit term, the operator must apply for an amendment to the permit and adjust its financial assurance concurrent with the actual changes at the facility.

The Commission proposes new §4.219, relating to Minimum Permit Provisions for Siting, which includes most of the wording of current §4.218. The Commission proposes to include permit conditions that would prohibit on-lease commercial solid oil and gas waste recycling activities in a streambed, in a sensitive area, or within 150 feet of surface water or a water well.

The Commission proposes the repeal of §4.224, relating to Exceptions; §4.225, relating to Modifications, Suspension, and Termination; and §4.226, relating to Penalties. The wording in these sections is proposed in other rules in Division 1.

The Commission proposes new §4.220, relating to Minimum Permit Provisions for Design and Construction, including some of the wording in current §4.219, to clarify that the Commission will include permit conditions that require remediation of any spills. In addition, the Commission proposes new wording in subsection (b) concerning construction and maintenance of any storage cells that is more appropriate to on-lease commercial solid oil and gas waste recycling, and in subsection (c) (currently §4.219(e)) to state that the permittee may commence operations under the permit 72 hours after notice to the appropriate district office.

The Commission proposes new §4.221, relating to Minimum Permit Provisions for Operations, including some wording in current §4.220, and add some language used currently in permits issued by the Commission for on-lease commercial solid oil and gas waste recycling, including requirements for a trial run, management of excess rainwater from bermed areas, and suitability of the recyclable product for use.

The Commission proposes new §4.222, relating to Minimum Permit Provisions for Monitoring, including much of the wording in current §4.221. The Commission proposes to include in the rule current permit conditions relating to collecting and analyzing samples of treated material. In the Figure, the Commission proposes to add zinc as a parameter for which analysis is required and to add a standard of 5.0 milligrams per liter (mg/l). The Commission also proposes wording in subsection (e) to incorporate the recordkeeping and reporting requirements that the Commission currently includes in permits for on-lease commercial solid oil and gas waste recycling.

The Commission proposes new §4.223, relating to Minimum Permit Provisions for Closure, which includes most of the wording in current §4.222, but omits the references to "facility."

The Commission proposes new §4.224, relating to Permit Renewal, with some changes from the wording in current §4.223. The Commission proposes to delete references in the current rule to various other rules with which an applicant for renewal of a permit for on-lease commercial solid oil and gas waste recycling must comply, and replace those with a requirement that the applicant include details of proposed changes to the permit or a statement that there are no changes proposed that would require amendment of the permit other than the expiration date.

Division 3. Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas Waste Recycling.

Proposed Division 3 includes new §§4.230 - 4.245, with most of the language retained from the current rules, but revised as appropriate to replace references to "mobile and stationary commercial recycling facilities" with "off-lease or centralized commercial solid oil and gas waste recycling facilities."

The Commission proposes new §4.230, relating to General Permit Application Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas Waste Recycling, with the same wording in current §4.205.

The Commission proposes new §§4.231 - 4.237, relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information. The proposed wording is the same as in the current rules, §§4.206 - 4.212, respectively.

The Commission proposes new §4.238, relating to Notice, with some of the same wording found in current §4.213, but without the language associated with stationary recycling facilities concerning publication of notice in a newspaper.

The Commission proposes new §4.239, relating to General Permit Provisions, with much of the same wording found in current §4.217; however the proposed rule language limits a permit to a term of not more than two years.

The Commission proposes new §4.240 and §4.241, relating to Minimum Permit Provisions for Siting, and Minimum Permit Provisions for Design and Construction, with similar wording in current §4.218 and §4.219, respectively.

The Commission proposes new §4.242, relating to Minimum Permit Provisions for Operations, with similar wording to that found in current §4.220.

The Commission proposes new §4.243, relating to Minimum Permit Provisions for Monitoring, with similar wording in current §4.221. In the Figure, the Commission proposes to add zinc as a parameter and to set the standard for zinc at 5.0 milligrams per liter (mg/l).

The Commission proposes new §4.244, relating to Minimum Permit Provisions for Closure, with similar wording in current §4.222.

The Commission proposes new §4.245, relating to Permit Renewal, with similar wording in current §4.224, but the Commission has conformed the references to the renumbered rules with which an applicant for renewal must comply.

Division 4. Requirements for Stationary Commercial Solid Oil and Gas Waste Recycling Facilities.

Proposed new Division 4 includes new §§4.246 - 4.261, with language similar to the current rules, but revised to update the requirements and to include in the rules the standard permit conditions for this type of facility. Throughout Division 4, the Commission proposes to replace references to mobile and stationary recycling facilities with references to stationary commercial solid oil and gas waste recycling facilities and make other conforming amendments to the existing language.

The Commission proposes new §§4.246 - 4.255, relating to General Permit Application Requirements for a Stationary Commercial Solid Oil and Gas Waste Recycling Facility; Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; Minimum Closure Information; Notice; and General Permit Provisions, with much of the same wording in the current rules §§4.205 - 4.217, respectively. The Commission has previously discussed in the preamble some of the conforming language that is proposed to be changed from the current rules.

The Commission proposes new §4.256, relating to Minimum Permit Provisions for Siting, with similar wording in current §4.218, with exception that the Commission has included restrictions for siting a stationary commercial solid oil and gas waste recycling facility with respect to streambeds, sensitive areas as defined by §3.91 of this title (relating to Cleanup of Soil Contaminated by a Crude Oil Spill), surface water, and water wells.

The Commission proposes new §4.257, relating to Minimum Permit Provisions for Design and Construction, with similar wording in current §4.219.

The Commission proposes new §4.258, relating to Minimum Permit Provisions for Operations, with much of the same wording in current §4.220, with the addition of wording regarding conditions that are generally standard to permits issued by the Commission for this type of facility.

The Commission proposes new §4.259, relating to Minimum Permit Provisions for Monitoring, with most of the same wording in current §4.221. In the Figure, the Commission proposes to add zinc as a parameter, with a standard of 5.0 mg/l.

The Commission proposes new §4.260, relating to Minimum Permit Provisions for Closure, with much of the same wording in current §4.222.

The Commission proposes new §4.261, relating to Permit Renewal, with similar wording in current §4.223, and corrects the references to the renumbered rules with which an applicant for renewal must comply.

Division 5. Requirements for Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid.

Proposed Division 5 includes new §§4.262 - 4.277, with language similar to the current rules, but revised as appropriate to replace references to "mobile and stationary commercial recycling facilities" with "off-lease or centralized commercial recycling of produced water and/or hydraulic fracturing flowback fluid. The Commission also proposes other changes from current wording appropriate to recycling of fluid wastes.

The Commission proposes new §4.262 - 4.277, relating to General Permit Application Requirements for Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid; Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; Minimum Closure Information; Notice; General Permit Provisions; Minimum Permit Provisions for Siting; Minimum Permit Provisions for Design and Construction; Minimum Permit Provisions for Operations; Minimum Permit Provisions for Monitoring; Minimum Permit Provisions for Closure; and Permit Renewal, with much of the same wording in the current rules §§4.205 - 4.223, respectively. The Commission has previously discussed in the preamble some of the conforming language that is proposed to be changed from the current rules.

Division 6. Requirements for Stationary Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid.

Proposed Division 6 includes new §§4.278 - 4.293, with language similar to the current rules, but revised as appropriate to replace references to "mobile and stationary commercial recycling facilities" with "off-lease or centralized commercial recycling of produced water and/or hydraulic fracturing flowback fluid. The Commission proposes other changes appropriate to recycling of fluid wastes.

The Commission proposes new §§4.278 - 4.293, General Permit Application Requirements for a Stationary Commercial Produced Water and/or Hydraulic Fracturing Flowback Fluid Recycling Facility; Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; Minimum Closure Information; Notice; General Permit Provisions; Minimum Permit Provisions for Siting; Minimum Permit Provisions for Design and Construction; Minimum Permit Provisions for Operations; Minimum Permit Provisions for Monitoring; Minimum Permit Provisions for Closure; and Permit Renewal, with much of the same wording in the current rules §§4.205 - 4.223, respectively. The Commission has previously discussed in the preamble some of the conforming language that is proposed to be changed from the current rules.

Leslie Savage, Chief Geologist, Oil and Gas Division, has determined that for each year of the first five years the proposed amendments, repeals, and new rules will be in effect, the fiscal implications as a result of enforcing or administering the amendments, repeals, and new rules will be negligible because the Commission proposes to incorporate many current Commission requirements and standards. There will be no fiscal implications for local governments.

Texas Government Code, §2006.002 requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Before adopting a rule that would have an adverse economic effect on small businesses, a state agency must prepare a statement of the effect of the rule on small businesses, which must include an analysis of the cost of compliance with the rule for small businesses and a comparison of that cost with the cost of compliance for the largest businesses affected by the rule, using cost for each employee, cost for each hour of labor, or cost for each $100 of sales. Ms. Savage has determined that the proposed amendments, repeals, and new rules would not affect any small or micro-businesses so there would be no cost of compliance for small businesses or micro-businesses. Currently, the Commission has issued three stationary commercial solid oil and gas waste recycling facility permits and four mobile commercial solid oil and gas waste recycling permits. The Commission also has issued seven permits for mobile commercial recycling of produced water and/or hydraulic fracturing flowback fluid and one permit for stationary commercial produced water and/or hydraulic fracturing flowback fluid recycling facilities. These facilities and the permits issued for the facilities, for the most part, already comply with this proposal because this proposal, for the most part, reflects current Commission requirements. Therefore, there will be no additional cost of complying with the amendments, repeals, and new rules.

Ms. Savage has determined that for each year of the first five years that the amendments, repeals, and new rules will be in effect the primary public benefit will be an increase in environmental protection and in the safety of persons living and working in areas where commercial recycling facilities are located or could be located in the future. Ms. Savage has further determined that for each year of the first five years the proposed amendments, repeals, and new rules will be in effect, the probable economic costs to persons required to comply will be negligible because the Commission proposes to incorporate into the rule current Commission practices and standards; authorize by rule certain practices; and update the language in the rule.

Ms. Savage has determined that the proposed rulemaking will have no adverse effect upon local economies or local employment such as requires an impact statement pursuant to Texas Government Code, §2001.022.

Texas Government Code, §2001.0225, requires a state agency to conduct a regulatory impact analysis if it is considering adoption of a "major environmental rule" that (1) exceeds a standard set by federal law, unless the rule is specifically required by state law; (2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; (3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopts a rule solely under the general powers of the agency instead of under a specific state law. Texas Government Code, §2001.0225(g)(3), defines "major environmental rule" as a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The Commission has determined that proposed amendments, repeals, and new rules do not require a regulatory analysis of a major environmental rule because they are not a "major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3). In particular, the Commission has determined that proposed amendments, repeals, and new rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Further, the Commission has determined that even if proposed amendments, repeals, and new rules did qualify as a "major environmental rule," they do not (1) exceed a standard set by federal law, (2) exceed an express requirement of state law, or (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) are not adopted solely under the general powers of the agency.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments should refer to Oil & Gas Docket No. O&G 20-0277739 and will be accepted until 12:00 p.m. (noon) on Tuesday, October 9, 2012, which is 32 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site at least two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

DIVISION 1. GENERAL; DEFINITIONS

16 TAC §§4.201 - 4.204

The Commission proposes the amendments under Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, which provide that the Commission is solely responsible for the prevention and abatement of water and subsurface water pollution attributable to activities the Commission regulates, and that the Commission may adopt rules related to the discharge, storage, handling, transportation, processing, or disposal of oil and gas waste, or of any other substance or material associated with operations or activities regulated by the Commission pursuant to Texas Natural Resources Code, §91.101(a)(1), (2), and (3). In addition, Texas Natural Resources Code, §91.109(a), provides that the Commission may require a bond or other form of financial security from person applying for or acting under a Commission permit to store, handle or treat oil and gas waste.

The partially treated waste and recyclable product resulting from processing and/or treatment of oil and gas waste pursuant to a Commission permit constitutes a "substance or material associated with any operation or activity regulated by the Commission" under Texas Natural Resources Code, §91.101(a)(1), (2), and (3). The recyclable product is associated with operation or activity regulated by the Commission because it was created using oil and gas waste over which the Commission has exclusive jurisdiction, and which the Commission no longer considers to be an oil and gas waste if the recyclable product will be used as intended pursuant to permit conditions.

Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, are affected by the proposed amendments.

Statutory authority: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Cross-reference to statutes: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Issued in Austin, Texas on September 11, 2012.

§4.201. Purpose.

(a) This subchapter establishes, for the purpose of protecting public health, public safety, and the environment within the scope of the Commission's statutory authority, the minimum permitting and operating standards and requirements for commercial recycling of [~~mobile and stationary commercial facilities that recycle~~] oil and gas wastes under the jurisdiction of the Commission.

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

§4.202. Applicability and Exclusions.

(a) The provisions of this subchapter apply to the following categories of [~~mobile and stationary~~] commercial recycling: [~~facilities.~~]

(1) on-lease commercial recycling of solid oil and gas waste;

(2) off-lease or centralized commercial solid oil and gas waste recycling;

(3) stationary commercial solid oil and gas waste recycling;

(4) off-lease or centralized commercial recycling of produced water and/or hydraulic fracturing flowback fluid; and

(5) stationary commercial recycling of produced water and/or hydraulic fracturing flowback fluid.

(b) (No change.)

(c) The provisions of this subchapter do not apply to recycling of produced water and/or hydraulic fracturing flowback fluid on the lease from which it was produced. Such recycling is subject to the requirements of §3.8 of this title.

(d) The provisions of this subchapter are in addition to the permitting requirements of §3.8 of this title, which requires a permit for any pit not specifically authorized in the rule.

(e) The provisions of this subchapter do not authorize discharge of oil and gas waste.

(f) [~~(e)~~] The provisions of this subchapter do not apply to recycling facilities regulated by the Texas Commission on Environmental Quality or its predecessor or successor agencies, another state, or the federal government.

§4.203. Responsibility for Management of Waste to be Recycled.

(a) (No change.)

(b) Hauling of waste. A waste hauler transporting and delivering oil and gas waste for [~~to a stationary~~] commercial recycling [~~facility~~] permitted pursuant to this subchapter shall be permitted by the Commission as an Oil and Gas Waste Hauler pursuant to §3.8(f) of this title, relating to Water Protection.

(c) (No change.)

§4.204. Definitions.

Unless a word or term is defined differently in this section, the definitions in §3.8 of this title, relating to Water Protection, §3.98 of this title, relating to Standards for Management of Hazardous Oil and Gas Waste, and §4.603 of this title, relating to Definitions, shall apply in this subchapter. In addition, the following words and terms when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise:

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

(3) Commercial recycling facility--A [~~mobile or stationary~~] facility whose owner or operator receives compensation from others for the storage, handling, treatment, and recycling of oil and gas wastes and the primary business purpose of the facility is to provide these services for compensation, whether from the generator of the waste, another receiver, or the purchaser of the recyclable product produced at the facility. Includes recycling of solid oil and gas wastes on or off lease. Does not include recycling of produced water and/or hydraulic fracturing flowback fluid on the lease from which it was produced.

(4) - (6) (No change.)

(7) Hydraulic fracturing flowback fluid--The fluid, including the fluid from a hydraulic fracturing treatment and produced water, which returns from a well on which a hydraulic fracturing treatment has been performed.

(8) Hydraulic fracturing treatment--The treatment of a well by the application of hydraulic fracturing fluid under pressure for the express purpose of initiating or propagating fractures in a target geologic formation to enhance production of oil and/or natural gas.

(9) [~~(7)~~] Legitimate commercial use--Use or reuse of a recyclable product as defined in a permit issued pursuant to this subchapter:

(A) as an effective substitute for a commercial product or as an ingredient to make a commercial product; or

(B) as a replacement for a product or material that otherwise would have been purchased; and

(C) in a manner that does not constitute disposal.

(10) [~~(8)~~] Louisiana Department of Natural Resources Leachate Test Method--An analytical method designed to simulate water leach effects on treated oil and gas wastes included in "Laboratory Manual for the Analysis of E&P Waste," Louisiana Department of Natural Resources, May 2005.

(11) [~~(9)~~] On-lease [~~Mobile~~] commercial solid oil and gas waste recycling--Commercial recycling performed on an oil or gas [~~a~~] lease or well site using equipment that moves from one location to another, at which all materials and wastes are stored in authorized pits and/or tanks, and restricted in the:

(A) amount of time, generally less than one year, operations occur at any one location;

(B) volume and source of the waste that may be processed at any one location; [and]

(C) the type and characteristics of the waste; and

(D) [(C)] size of the area used for recycling.

(12) [(10)] Oil and gas wastes--For purposes of this subchapter, this term means materials which have been generated in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, as that term is defined in §3.8 of this title, relating to Water Protection, and materials which have been generated in connection with activities associated with the solution mining of brine. The term "oil and gas wastes" includes, but is not limited to, saltwater, other mineralized water, sludge, spent drilling fluids, cuttings, waste oil, spent completion fluids, and other liquid, semiliquid, or solid waste material. The term "oil and gas wastes" includes waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants unless that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended (42 United States Code §6901 et seq.).

(13) [(11)] Partially treated waste--Oil and gas waste that has been treated or processed with the intent of being recycled, but which has not been determined to meet the environmental and engineering standards for a recyclable product established by the Commission in this subchapter or in a permit issued pursuant to this subchapter.

(14) Produced water--Formation water that is brought to the surface during production of oil and/or gas. Produced water also is referred to as "brine," "saltwater," or "formation fluid."

(15) [(12)] Recyclable product--A reusable material that has been created from the treatment and/or processing of oil and gas waste as authorized by a Commission permit and that meets the environmental and engineering standards established by the permit for the intended use, and is used as a legitimate commercial product. A recyclable product is not a waste, but may become a waste if it is abandoned or disposed of rather than recycled as authorized by the permit.

(16) [(13)] Recycle--To process and/or use or re-use [~~store, handle, and/or treat~~] oil and gas wastes as [~~for use or reuse as, or for processing into,~~] a product for which there is a legitimate commercial use and the actual use of the recyclable product for the purposes authorized in this subchapter or a permit.

(17) Off-lease or centralized commercial recycling facility--A commercial recycling facility that is capable of being moved from one location to another, but which is generally in operation in one location for a period of time longer than one year, but less than two years.

(18) Solid oil and gas waste--Oil and gas waste that is not typically capable of being injected into a disposal well without the addition of fluids.

(19) [(14)] Stationary commercial recycling facility--A commercial recycling facility in an immobile, fixed location for a period of greater than two years.

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 September 11, 2012.

TRD-201204772

Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

16 TAC §§4.205 - 4.211

The Commission proposes the new rules under Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, which provide that the Commission is solely responsible for the prevention and abatement of water and subsurface water pollution attributable to activities the Commission regulates, and that the Commission may adopt rules related to the discharge, storage, handling, transportation, processing, or disposal of oil and gas waste, or of any other substance or material associated with operations or activities regulated by the Commission pursuant to Texas Natural Resources Code, §91.101(a)(1), (2), and (3). In addition, Texas Natural Resources Code, §91.109(a), provides that the Commission may require a bond or other form of financial security from persons applying for or acting under a Commission permit to store, handle or treat oil and gas waste.

The partially treated waste and recyclable product resulting from processing and/or treatment of oil and gas waste pursuant to a Commission permit constitutes a "substance or material associated with any operation or activity regulated by the Commission" under Texas Natural Resources Code, §91.101(a)(1), (2), and (3). The recyclable product is associated with operation or activity regulated by the Commission because it was created using oil and gas waste over which the Commission has exclusive jurisdiction, and which the Commission no longer considers to be an oil and gas waste if the recyclable product will be used as intended pursuant to permit conditions.

Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, are affected by the proposed new rules.

Statutory authority: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Cross-reference to statutes: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Issued in Austin, Texas on September 11, 2012.

§4.205. Exceptions.

Except for the requirements related to financial security found in §§4.239(b), 4.255(b), 4.271(b), and 4.287(b) of this subchapter; the notice requirements found in §§4.238, 4.254, 4.270, and 4.286 of this subchapter; and the requirements related to sampling and analysis found in §§4.221, 4.222, 4.223, 4.242, 4.243, 4.258, 4.259, 4.274, 4.275, 4.290, and 4.291 of this subchapter, an applicant or permittee may request an exception to the provisions of this subchapter by submitting to the director a written request and demonstrating that the requested alternative is at least equivalent in the protection of public health and safety, and the environment, as the provision of this subchapter to which the exception is requested. The director shall review each written request on a case-by-case basis. If the director denies a request for an exception, the applicant or permittee may request a hearing consistent with the hearing provisions of this subchapter relating to hearings requests but may not use the requested alternative until the alternative is approved by the Commission.

§4.206. Administrative Decision on Permit Application.

(a) If the Commission does not receive a protest to an application submitted under this subchapter, the director may administratively approve the application if the application otherwise complies with the requirements of this subchapter.

(b) The director may administratively deny the application if it does not meet the requirements of this subchapter or other laws, rules, or orders of the Commission. The director shall provide the applicant written notice of the basis for administrative denial.

(c) The applicant may request a hearing upon receipt of notice of administrative denial. A request for hearing shall be made to the director within 30 days of the date on the notice. If the director receives a request for a hearing, the director shall refer the matter to the Office of General Counsel for assignment of a hearings examiner who shall conduct the hearing in accordance with Chapter 1 of this title (relating to Practice and Procedure).

§4.207. Protests and Hearings.

(a) If a person who receives notice or other affected person files a proper protest with the Commission, the director shall give the applicant written notice of the protest and of the applicant's right to either request a hearing on the application or withdraw the application. The applicant shall have 30 days from the date of the director's notice to respond, in writing, by either requesting a hearing or withdrawing the application. In the absence of a timely written response from the applicant, the director may consider the application to have been withdrawn.

(b) Even if there is no protest filed, the director may refer an application to a hearing if the director determines that a hearing is in the public interest. In determining whether a hearing is in the public interest, the director will consider the characteristics and volume of oil and gas waste to be stored, handled and treated at the facility; the potential risk posed to surface and subsurface water; and any other factor identified in this subchapter relating to siting, construction, and operation of the facility.

(c) Before a hearing on a permit application for a commercial recycling facility, the Commission shall provide notice of the hearing to all affected persons, and other persons or governmental entities who express, in writing, an interest in the application.

§4.208. General Standards for Permit Issuance.

(a) A permit for a commercial recycling facility issued pursuant to this subchapter shall provide that the facility may only receive, store, handle, treat, or recycle waste:

(1) under the jurisdiction of the Commission;

(2) that is not a hazardous waste as defined by the administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended (42 United States Code, §6901, et seq.); and

(3) that is not oil and gas naturally occurring radioactive (NORM) waste as defined in §4.603 of this title (relating to Definitions).

(b) A permit issued pursuant to this subchapter may be issued only if the director or the Commission determines that:

(1) the storage, handling, treatment, and/or recycling of oil and gas wastes and other substances and materials will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, a threat to public health and safety; and

(2) the recyclable product can meet engineering and environmental standards the Commission establishes in the permit or in this subchapter for its intended use.

§4.209. Permit Renewal.

Permits issued pursuant to this subchapter may be renewed, but are not transferable to another operator without the written approval of the director.

§4.210. Modification, Suspension, and Termination.

A permit granted pursuant to this subchapter may be modified, suspended, or terminated by the Commission for good cause after notice and opportunity for hearing. A finding of any of the following facts shall constitute good cause:

(1) pollution of surface or subsurface water is occurring or is likely to occur as a result of the permitted operations;

(2) waste of oil, gas, or geothermal resources is occurring or is likely to occur as a result of the permitted operations;

(3) the permittee has violated the terms and conditions of the permit or Commission rules;

(4) the permittee misrepresented any material fact during the permit issuance process;

(5) a material change of conditions has occurred in the permitted operations;

(6) the information provided in the application has changed materially; or

(7) the permittee failed to give the notice required by the Commission during the permit issuance or renewal process.

§4.211. Penalties.

Violations of this subchapter or a permit issued pursuant to this subchapter may subject a person to penalties and remedies specified in the Texas Natural Resources Code, Title 3, and any other statutes or rules administered by the Commission.

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

Filed with the Office of the Secretary of State on September 14, 2012.

TRD-201204883
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

DIVISION 2. REQUIREMENTS FOR ON-LEASE COMMERCIAL SOLID OIL AND GAS WASTE RECYCLING

16 TAC §§4.212 - 4.224

The Commission proposes the new rules under Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, which provide that the Commission is solely responsible for the prevention and abatement of water and subsurface water pollution attributable to activities the Commission regulates, and that the Commission may adopt rules related to the discharge, storage, handling, transportation, processing, or disposal of oil and gas waste, or of any other

substance or material associated with operations or activities regulated by the Commission pursuant to Texas Natural Resources Code, §91.101(a)(1), (2), and (3). In addition, Texas Natural Resources Code, §91.109(a), provides that the Commission may require a bond or other form of financial security from person applying for or acting under a Commission permit to store, handle or treat oil and gas waste.

The partially treated waste and recyclable product resulting from processing and/or treatment of oil and gas waste pursuant to a Commission permit constitutes a "substance or material associated with any operation or activity regulated by the by the Commission" under Texas Natural Resources Code, §91.101(a)(1), (2), and (3). The recyclable product is associated with operation or activity regulated by the Commission because it was created using oil and gas waste over which the Commission has exclusive jurisdiction, and which the Commission no longer considers to be an oil and gas waste if the recyclable product will be used as intended pursuant to permit conditions.

Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, are affected by the proposed new rules.

Statutory authority: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Cross-reference to statutes: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Issued in Austin, Texas on September 11, 2012.

§4.212. General Permit Application Requirements for On-Lease Commercial Solid Oil and Gas Waste Recycling Facilities.

(a) An application for a permit for on-lease solid oil and gas waste commercial recycling shall be filed with the Commission's headquarters office in Austin. The applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin. A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.

(b) The permit application shall contain the applicant's name; organizational report number; physical office and, if different, mailing address; telephone number; and facsimile transmission (fax) number; and the name of a contact person.

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the director. The director shall neither administratively approve an application nor refer an application to hearing unless the director has determined that the application is administratively complete. If the director determines that an application is incomplete, the director shall notify the applicant in writing and shall describe the specific information required to complete the application. An applicant may make no more than two supplemental filings to complete an application.

(d) The permit application shall contain an original signature in ink, the date of signing, and the following certification: "I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

§4.213. Minimum Engineering and Geologic Information.

(a) The director may require a permit applicant for on-lease commercial solid oil and gas waste recycling to provide the Commission with engineering, or other information which the director deems necessary to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) Engineering work products prepared by the applicant shall be sealed by a registered engineer as required by the Texas Occupations Code, Chapter 1001.

§4.214. Minimum Design and Construction Information.

A permit application for on-lease commercial solid oil and gas waste recycling shall include:

(1) the typical layout and design of receiving, processing, and storage areas and all equipment (e.g., pug mill), tanks, silos, and dikes.

(2) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if any, for all tanks, silos, pits, and storage areas/cells;

(3) a map view and two perpendicular cross-sectional views of typical pits and/or storage areas/cells to be constructed, showing the bottom, sides, and dikes, showing the dimensions of each; and

(4) a plan to control and manage storm water runoff and to retain wastes during wet weather, including the location and dimensions of dikes and/or storage basins that would collect storm water during a 25-year, 24-hour maximum rainfall event, and all calculations made to determine the required capacity and design.

§4.215. Minimum Operating Information.

A permit application for on-lease commercial solid oil and gas waste recycling shall include the following operating information:

(1) a list of Commission districts for which the applicant seeks authority for on-lease commercial solid oil and gas waste recycling;

(2) the estimated maximum volume of untreated oil and gas waste and partially treated oil and gas waste to be stored;

(3) the estimated maximum volume and time that the recyclable product will be stored;

(4) a general description of the recycling process to be employed; a flow diagram showing the process and identifying all equipment and chemicals or additives (e.g., asphalt emulsion, quicklime, Portland cement, fly ash, etc.) to be used in the process; and the Material Safety Data Sheets for any chemical or additive;

(5) a description of all inert material (e.g., brick, rock, gravel, caliche) to be stored and used as aggregate in the treatment process; and

(6) a description of any testing to be performed to demonstrate that the proposed processing will result in a recyclable product that meets the engineering and environmental standards for the proposed use.

§4.216. Minimum Monitoring Information.

A permit application for on-lease commercial solid oil and gas waste recycling shall include:

(1) a sampling plan for the partially treated waste to ensure compliance with permit conditions; and

(2) a plan and schedule for conducting periodic inspections, including plans to inspect equipment, processing, and storage areas.

§4.217. Minimum Closure Information.

A permit application for on-lease commercial solid oil and gas waste recycling shall include a detailed plan for closure of the site when operations terminate. The closure plan shall address how the applicant intends to:

(1) remove waste, partially treated waste, and/or recyclable product from the site;

(2) close all storage areas/cells;

(3) remove dikes; and

(4) contour and reseed disturbed areas.

§4.218. General Permit Provisions for On-Lease Commercial Solid Oil and Gas Waste Recycling.

(a) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division shall specify the Commission districts within which recycling is authorized, shall be valid issued for a term of not more than five years, and shall authorize operations at any one lease for no more than one year. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the director. Any request for transfer of this permit should be filed with the Oil and Gas Division in Austin at least 60 days before the permittee wishes the transfer to take place.

(b) A permit for on-lease commercial solid oil and gas waste recycling shall include a condition requiring that the permittee obtain written permission from the surface owner of the lease upon which recycling will take place and notify the appropriate Commission district office 72 hours before operations commence on each lease.

§4.219. Minimum Permit Provisions for Siting.

(a) A permit for on-lease commercial solid oil and gas waste recycling may be issued only if the director or the Commission determines that the operations will pose no unreasonable risk of pollution or threat to public health or safety.

(b) On-lease commercial solid oil and gas waste recycling permitted pursuant to this division and after the effective date of this division shall not be located:

(1) within a 100-year flood plain, in a streambed, or in a sensitive area as defined by §3.91 of this title (relating to Cleanup of Soil Contaminated by a Crude Oil Spill); or

(2) within 150 feet of surface water or public, domestic, or irrigation water wells.

(c) Factors that the Commission will consider in assessing potential risk from on-lease commercial solid oil and gas waste recycling include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) proximity to coastal natural resources, sensitive areas as defined by §3.91 of this title; and

(3) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section for on-lease commercial solid oil and gas waste recycling refer to conditions at the time the equipment and tanks used in the recycling are placed.

§4.220. Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this division for on-lease commercial solid oil and gas waste recycling shall contain any requirement that the director or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated storm water runoff, to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the permittee control and remediate spills; and

(C) requiring that the permittee make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material.

(b) All storage cells at the site shall be:

(1) located above the top of the seasonal high water table;

(2) designed to prevent stormwater runoff from entering the area; and

(3) surrounded by berms with a minimum width at base of three times the height and the berms constructed such that the height, slope, and construction material are structurally sound and do not allow seepage.

(c) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division shall require that the permittee notify the appropriate Commission district office prior to commencement of construction, including construction of any dikes, and again upon completion of construction, and that the permittee may commence operations under the permit 72 hours after notice to the appropriate district office.

§4.221. Minimum Permit Provisions for Operations.

(a) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit generated on-lease, including requirements that the permittee test incoming oil and gas waste and keep records of amounts of wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for on-lease commercial solid oil and gas waste recycling issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The permittee shall notify the Commission district office for the county in which the facility is located prior to commencement of the trial run.

(2) The permittee shall sample and analyze the partially treated waste that results from the trial run, and submit to the director

for review a report of the results of the trial run prior to commencing operations.

(3) The permittee shall demonstrate the ability to successfully process a 1,000 cubic yard batch of solid oil and gas waste.

(A) The Oil and Gas Division in Austin and the appropriate District Office must be notified in writing at least 72 hours before waste processing begins.

(B) Samples of the partially treated waste shall be collected from every 200 cubic yards of an 800 cubic yard batch and analyzed for wetting and drying durability by ASTM D 559-96, modified to provide that samples are compacted and molded from finished partially treated waste. The total weight loss after 12 cycles may not exceed 15 percent.

(C) A written report of the trial run shall be submitted to the Oil and Gas Division in Austin and the appropriate district office within 60 days of receipt of the analyses required in this section. The following information must be included:

(i) the actual volume of waste material processed;

(ii) the volume of stabilization material used;

(iii) copies of all lab analyses required by this section; and

(iv) the results of the analysis required under subparagraph (B) of this paragraph.

(D) The final processed material must meet the limitations of this section.

(4) The director shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(5) The permittee shall not use the recyclable product until the director approves the trial run report.

(c) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the site, that the Commission determines to be reasonably necessary to ensure that the permittee does not accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

(d) Excess rainwater collected within a bermed area shall be removed and disposed of in an authorized manner.

(e) Appropriate measures shall be taken to control dust at all times.

(f) Processed material meeting or exceeding process control parameters listed in §4.222(d) of this title (relating to Minimum Permit Provisions for Monitoring) is suitable for use on lease roads, drilling pads, tank batteries, compressor station pads, and county roads.

§4.222. Minimum Permit Provisions for Monitoring.

(a) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division shall include requirements the director or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the director or the Commission and included in the permit.

(b) Consistent with the requirements of §4.208 of this title (relating to General Standards for Permit Issuance), the director or the Commission shall establish and include in the permit for on-lease commercial solid oil and gas waste recycling the parameters for which the partially treated waste is to be tested, and the limitations on those parameters based on:

(1) the type of oil and gas waste; and

(2) the intended use for the recyclable product.

(c) A permit for on-lease commercial solid oil and gas waste recycling may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this subchapter or in a permit issued by the Commission.

(d) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division from which the recycled product will be used as road base or other similar uses shall include a requirement that a minimum of one sample from each 200 cubic yards of partially treated waste be collected and analyzed for every 800 cubic yard composite for the following minimum parameters and meet the following limits:
Figure: 16 TAC §4.222(d)

(e) Recordkeeping and reporting requirements.

(1) Recordkeeping requirements.

(A) Records must be kept of all waste treated for a period of three years from the date of treatment.

(B) These records must include the following:

(i) name of the generator;

(ii) source of the waste (lease number or gas I.D. number and well number, or API number);

(iii) date the waste was treated at the drill site;

(iv) volume of the waste treated at the drill site;

(v) name of the carrier;

(vi) identification of the receiving site including the lease number or gas I.D. number and well number, API number, or county road number;

(vii) documentation that the landowner of the receiving location has been notified of the use of the recyclable product on the landowner's property if used on private land; and

(viii) documentation indicating the approximate location where recyclable product is used including a topographic map showing the location of the area.

(2) Reporting requirements. The permittee shall provide the Commission, on a quarterly basis, a copy of the records required in this section.

§4.223. Minimum Permit Provisions for Closure.

A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this subchapter shall include closure standards and any requirement reasonably necessary to ensure that the permittee can meet the standards. The Commission shall determine the closure standards for a particular facility based on the type of materials stored, handled and treated. A permit may include requirements for removal of all waste, partially treated waste, and recyclable product; removal of dikes, storage, liners, and equipment; recontouring of the land; collection and analyzing of soil and groundwater samples; and post-closure monitoring.

§4.224. Permit Renewal.

Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit. An application for renewal of an existing permit issued pursuant to this division or §3.8 of this title (relating to Water Protection) shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application for renewal shall include details of proposed changes or shall state that there are no changes proposed that would require amendment of the permit other than the expiration date.

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 September 11, 2012.

TRD-201204773
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

DIVISION 3. REQUIREMENTS FOR OFF-LEASE OR CENTRALIZED COMMERCIAL SOLID OIL AND GAS WASTE RECYCLING

16 TAC §§4.230 - 4.245

The Commission proposes the new rules under Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, which provide that the Commission is solely responsible for the prevention and abatement of water and subsurface water pollution attributable to activities the Commission regulates, and that the Commission may adopt rules related to the discharge, storage, handling, transportation, processing, or disposal of oil and gas waste, or of any other substance or material associated with operations or activities regulated by the Commission pursuant to Texas Natural Resources Code, §91.101(a)(1), (2), and (3). In addition, Texas Natural Resources Code, §91.109(a), provides that the Commission may require a bond or other form of financial security from persons applying for or acting under a Commission permit to store, handle or treat oil and gas waste.

The partially treated waste and recyclable product resulting from processing and/or treatment of oil and gas waste pursuant to a Commission permit constitutes a "substance or material associated with any operation or activity regulated by the Commission" under Texas Natural Resources Code, §91.101(a)(1), (2), and (3). The recyclable product is associated with operation or activity regulated by the Commission because it was created using oil and gas waste over which the Commission has exclusive jurisdiction, and which the Commission no longer considers to be an oil and gas waste if the recyclable product will be used as intended pursuant to permit conditions.

Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, are affected by the proposed new rules.

Statutory authority: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Cross-reference to statutes: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Issued in Austin, Texas on September 11, 2012.

§4.230. General Permit Application Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas Waste Recycling.

(a) An application for a permit for off-lease or centralized commercial solid oil and gas waste recycling shall be filed with the Commission's headquarters office in Austin. The applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin. A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.

(b) The permit application shall contain the applicant's name; organizational report number; physical office and, if different, mailing address; facility address; telephone number; and facsimile transmission (fax) number; and the name of a contact person.

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the director. The director shall neither administratively approve an application nor refer an application to hearing unless the director has determined that the application is administratively complete. If the director determines that an application is incomplete, the director shall notify the applicant in writing and shall describe the specific information required to complete the application. An applicant may make no more than two supplemental filings to complete an application.

(d) The permit application shall contain an original signature in ink, the date of signing, and the following certification: "I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

§4.231. Minimum Engineering and Geologic Information.

(a) The director may require a permit applicant for off-lease or centralized commercial solid oil and gas waste recycling to provide the Commission with engineering, geological, or other information which the director deems necessary to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) Engineering and geologic work products prepared by the applicant shall be sealed by a registered engineer or geologist, respectively, as required by the Texas Occupations Code, Chapters 1001 and 1002.

§4.232. Minimum Siting Information.

A permit application for off-lease or centralized commercial solid oil and gas waste recycling shall include:

(1) a description of the proposed facility site and surrounding area;

(2) the name, physical address and, if different, mailing address; telephone number; and facsimile transmission (fax) number of every owner of the tract on which the facility is to be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner;

(3) the depth to the shallowest subsurface water and the direction of groundwater flow at the proposed site, and the source of this information;

(4) the average annual precipitation and evaporation at the proposed site and the source of this information;

(5) the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, and other pertinent characteristics, and the source of this information;

(6) a copy of a county highway map with a scale and north arrow showing the location of the proposed facility; and

(7) a complete, original 7 1/2 minute United States Geological Survey topographic quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that underlay the facility but are not included on the topographic map; and the location of the 100-year flood plain and the source of the flood plain information.

§4.233. Minimum Real Property Information.

(a) A permit application for off-lease or centralized commercial solid oil and gas waste recycling shall include a copy of the signed lease agreement between the applicant and the owner of the tract upon which the facility is to be located.

(b) A permit application for off-lease or centralized commercial solid oil and gas waste recycling shall identify the location of the facility by including a plat or plats showing:

(1) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;

(2) the site coordinates in degrees, minutes, and seconds of longitude and latitude;

(3) a clear outline of the proposed facility's boundaries;

(4) all tracts adjoining the tract upon which the facility is to be located;

(5) the name of the surface owner or owners of such adjoining tracts; and

(6) the distance from the facility's outermost perimeter boundary to water wells, residences, schools, churches, or hospitals that are within 500 feet of the boundary.

§4.234. Minimum Design and Construction Information.

(a) A permit application for an off-lease or centralized commercial solid oil and gas waste recycling facility shall include the layout and design of the facility by including a plat drawn to scale with north arrow to top of the map showing the location and information on the design and size of all receiving, processing, and storage areas and all equipment (e.g., pug mill), tanks, silos, monitor wells, dikes, fences, and access roads.

(b) A permit application for an off-lease or centralized commercial solid oil and gas waste recycling facility also shall include:

(1) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if any, for all tanks, silos, pits, and storage areas/cells;

(2) for storage areas where tanks and/or liners are not used, credible engineering and/or geologic information demonstrating that tanks or liners are not necessary for the protection of surface and subsurface water;

(3) a map view and two perpendicular cross-sectional views of pits and/or storage areas/cells to be constructed, showing the bottom, sides, and dikes, showing the dimensions of each;

(4) a plan to control and manage storm water runoff and to retain incoming wastes during wet weather, including the location and dimensions of dikes and/or storage basins that would collect storm water from the facility during a 25-year, 24-hour maximum rainfall event, and all calculations made to determine the required capacity and design; and

(5) if the application is for a stationary commercial recycling facility, a plan for the installation of monitoring wells at the facility.

§4.235. Minimum Operating Information.

A permit application for off-lease or centralized commercial solid oil and gas waste recycling shall include the following operating information:

(1) the estimated maximum volume of untreated oil and gas waste and partially treated oil and gas waste to be stored at the facility;

(2) the estimated maximum volume and time that the recyclable product will be stored at the facility;

(3) a plan to control unauthorized access to the facility;

(4) a detailed waste acceptance plan that:

(A) identifies anticipated volumes and specific types of wastes (e.g., oil-based drilling fluid and cuttings, crude oil-contaminated soils, production tank bottoms, hydraulic fracturing flowback fluid, produced water, etc.) to be accepted at the facility for treatment and recycling; and

(B) provides for testing of wastes to be processed to ensure that only oil and gas waste authorized by this division or the permit will be received at the facility;

(5) plans for keeping records of the source and volume of wastes accepted for recycling in accordance with the permit, including maintenance of records of the source of waste received by well number, API number, lease or facility name, lease number and/or gas identification number, county, and Commission district;

(6) a general description of the recycling process to be employed; a flow diagram showing the process and identifying all equipment and chemicals or additives (e.g., asphalt emulsion, quicklime, Portland cement, fly ash, etc.) to be used in the process; and the Material Safety Data Sheets for any chemical or additive;

(7) a description of all inert material (e.g., brick, rock, gravel, caliche) to be stored at the facility and used as aggregate in the treatment process;

(8) a description of any testing to be performed to demonstrate that the proposed processing will result in a recyclable product that meets the engineering and environmental standards for the proposed use; and

(9) an estimate of the duration of operation of the proposed facility.

§4.236. Minimum Monitoring Information.

A permit application for off-lease or centralized commercial solid oil and gas waste recycling shall include:

(1) a sampling plan for the partially treated waste to ensure compliance with permit conditions;

(2) a plan for sampling any monitoring wells at a stationary commercial recycling facility as required by the permit and this division; and

(3) a plan and schedule for conducting periodic inspections, including plans to inspect equipment, processing, and storage areas.

§4.237. Minimum Closure Information.

(a) A permit application for off-lease or centralized commercial solid oil and gas waste recycling shall include a detailed plan for closure of the facility when operations terminate. The closure plan shall address how the applicant intends to:

(1) remove waste, partially treated waste, and/or recyclable product from the facility;

(2) close all storage areas/cells;

(3) remove dikes; and

(4) contour and reseed disturbed areas.

(b) A permit application for a stationary commercial recycling facility also shall include in the closure plan information addressing how the applicant intends to:

(1) sample and analyze soil and groundwater throughout the facility; and

(2) plug groundwater monitoring wells.

§4.238. Notice.

(a) A permit applicant for off-lease or centralized commercial solid oil and gas waste recycling shall give personal notice and file proof of such notice in accordance with the following requirements.

(1) The applicant shall mail or deliver notice to the following persons on or after the date the application is filed with the Commission's headquarters office in Austin:

(A) the surface owner or owners of the tract upon which the commercial recycling facility will be located;

(B) the city clerk or other appropriate official, if the tract upon which the facility will be located lies within the corporate limits of an incorporated city, town, or village;

(C) the surface owners of tracts adjoining the tract on which the proposed facility will be located, unless the boundary with the adjoining tract is a distance of 1/2-mile or greater from the fence line or edge of the facility as shown on the plat required under §4.233(b) of this title (relating to Minimum Real Property Information); and

(D) any affected person or class of persons that the director determines should receive notice of a particular application.

(2) Personal notice of the permit application shall consist of:

(A) a copy of the application;

(B) a statement of the date the applicant filed the application with the Commission;

(C) a statement that a protest to the application should be filed with the Commission within 15 days of the last date of published notice, a statement identifying the publication in which published notice will appear, and the procedure for making a protest of the application to the Commission;

(D) a description of the location of the site for which the application was made, including the county in which the site is to be located, the name of the original survey and abstract number, and the direction and distance from the nearest municipality;

(E) the name of the owner or owners of the property on which the facility is to be located;

(F) the name of the applicant;

(G) the type of fluid or waste to be handled at the facility; and

(H) the recycling method proposed and the proposed end-use of the recycled material.

(3) The applicant shall submit to the Commission proof that personal notice has been given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a statement signed by the applicant that includes the names and addresses of each person to whom the notice was sent, and the date that each was notified of the application.

(b) If the director finds that a person to whom the applicant was required to give notice of an application has not received such notice, then the director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

§4.239. General Permit Provisions.

(a) A permit for an off-lease or centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall be valid issued for a term of not more than two years. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the director.

(b) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall require that, prior to operating, the facility comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by §3.78 of this title (relating to Fees and Financial Security Requirements).

(c) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility shall include a condition requiring that the permittee notify the surface owner of the tract upon which recycling will take place and the appropriate Commission district office before recycling operations commence.

§4.240. Minimum Permit Provisions for Siting.

(a) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility may be issued only if the director or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety.

(b) A an off-lease centralized commercial solid oil and gas waste recycling facility permitted pursuant to this division and after the effective date of this division shall not be located within a 100-year flood plain.

(c) Factors that the Commission will consider in assessing potential risk from an off-lease centralized commercial solid oil and gas waste recycling facility include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) surface water;

(3) depth to and quality of the shallowest groundwater;

(4) distance to the nearest property line or public road;

(5) proximity to coastal natural resources, sensitive areas as defined by §3.91 of this title (relating to Cleanup of Soil Contami-

nated by a Crude Oil Spill), or water supplies, and/or public, domestic, or irrigation water wells; and

(6) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section for an off-lease centralized commercial solid oil and gas waste recycling facility refer to conditions at the time the facility is constructed.

§4.241. Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this division for an off-lease centralized commercial solid oil and gas waste recycling facility shall contain any requirement that the director or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated storm water runoff, from the facility to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the permittee control spills at the facility; and

(C) requiring that the permittee make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material from the facility.

(b) A permit issued for a stationary commercial recycling facility pursuant to this division shall require that the permittee:

(1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4, Chapter 76, relating to Water Well Drillers and Water Well Pump Installers; and

(2) submit to the Commission's office in Austin a soil boring log and other information for each well.

(c) The soil boring log and other information required in subsection (b) of this section shall:

(1) describe the soils using the Unified Soils Classification System (equivalent to ASTM D 2487 and 2488);

(2) identify the method of drilling, total depth, and the top of the first encountered water or saturated soils;

(3) include a well completion diagram for each monitoring well;

(4) include a survey elevation for each wellhead reference point; and

(5) include a potentiometric map showing static water levels and the direction of groundwater flow.

(d) The Commission or the director may waive any or all of the requirements in subsections (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum depth of 100 feet recovers no water during a 24-hour test.

(e) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall require that the permittee notify the Commission district office for the county in which the facility is located prior to commencement of construction, including construction of any dikes, and again upon completion of construction and that the permittee may commence operations under the permit only after the facility has been inspected by the Commission to ensure that construction of all elements of the facility is consistent with the representations in the application and the requirements of the permit.

(f) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division that requires the installation of monitoring wells shall require that the permittee comply with subsections (b) and (c) of this section prior to commencing recycling operations.

§4.242. Minimum Permit Provisions for Operations.

(a) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit are received at the facility, including requirements that the permittee test incoming oil and gas waste and keep records of amounts and sources of incoming wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The permittee shall notify the Commission district office for the county in which the facility is located prior to commencement of the trial run.

(2) The permittee shall sample and analyze the partially treated waste that results from the trial run, and submit to the director for review a report of the results of the trial run prior to commencing operations.

(3) The director shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(4) The permittee shall not use the recyclable product until the director approves the trial run report.

(c) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the facility, that the Commission determines to be reasonably necessary to ensure that the permittee does not speculatively accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

§4.243. Minimum Permit Provisions for Monitoring.

(a) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall include requirements the director or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the director or the Commission and included in the permit.

(b) Consistent with the requirements of §4.208 of this title (relating to General Standards for Permit Issuance), the director or the Commission shall establish and include in the permit for an off-lease centralized commercial solid oil and gas waste recycling facility the parameters for which the partially treated waste is to be tested, and the limitations on those parameters based on:

(1) the type of oil and gas waste to be accepted at the commercial recycling facility; and

(2) the intended use for the recyclable product.

(c) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

(d) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division from which the recycled product will be used as road base or other similar uses shall include a requirement that a minimum of one sample from each 200 cubic yards of partially treated waste be collected and analyzed for every 800 cubic yards composite for the following minimum parameters and meet the following limits:
Figure: 16 TAC §4.243(d)

§4.244. Minimum Permit Provisions for Closure.

A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall include closure standards and any requirement reasonably necessary to ensure that the permittee can meet the standards. The Commission shall determine the closure standards for a particular facility based on the type of materials stored, handled and treated at the facility, and the design and construction of the facility. A permit may include requirements for removal of all waste, partially treated waste, and recyclable product; removal of dikes, storage, liners, and equipment; recontouring of the land; collection and analyzing of soil and groundwater samples from the facility property; and post-closure monitoring.

§4.245. Permit Renewal.

Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit. An application for renewal of an existing permit issued pursuant to this division or §3.8 of this title (relating to Water Protection) shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application shall comply with the requirements of §4.230 of this title (relating to General Permit Application Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas Waste Recycling), and the notice requirements of §4.238 of this title (relating to Notice). The director may require the applicant to comply with any of the requirements of §§4.231 - 4.237 of this title (relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information), depending on any changes made or planned to the construction, operation, monitoring, and/or closure of the facility.

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 September 11, 2012.

TRD-201204774
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

DIVISION 4. REQUIREMENTS FOR STATIONARY COMMERCIAL SOLID OIL AND GAS WASTE RECYCLING FACILITIES

16 TAC §§4.246 - 4.261

The Commission proposes the new rules under Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, which provide that the Commission is solely responsible for the prevention and abatement of water and subsurface water pollution attributable to activities the Commission regulates, and that the Commission may adopt rules related to the discharge, storage, handling, transportation, processing, or disposal of oil and gas waste, or of any other substance or material associated with operations or activities regulated by the Commission pursuant to Texas Natural Resources Code, §91.101(a)(1), (2), and (3). In addition, Texas Natural Resources Code, §91.109(a), provides that the Commission may require a bond or other form of financial security from persons applying for or acting under a Commission permit to store, handle or treat oil and gas waste.

The partially treated waste and recyclable product resulting from processing and/or treatment of oil and gas waste pursuant to a Commission permit constitutes a "substance or material associated with any operation or activity regulated by the Commission" under Texas Natural Resources Code, §91.101(a)(1), (2), and (3). The recyclable product is associated with operation or activity regulated by the Commission because it was created using oil and gas waste over which the Commission has exclusive jurisdiction, and which the Commission no longer considers to be an oil and gas waste if the recyclable product will be used as intended pursuant to permit conditions.

Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, are affected by the proposed new rules.

Statutory authority: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Cross-reference to statutes: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Issued in Austin, Texas on September 11, 2012.

§4.246. General Permit Application Requirements for a Stationary Commercial Solid Oil and Gas Waste Recycling Facility.

(a) An application for a permit for a stationary commercial solid oil and gas waste recycling facility shall be filed with the Commission's headquarters office in Austin. The applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin. A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.

(b) The permit application shall contain the applicant's name; organizational report number; physical office and, if different, mailing address; facility address; telephone number; and facsimile transmission (fax) number; and the name of a contact person. A permit for a stationary commercial recycling facility also shall contain the facility address.

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the director. The director shall neither administratively approve an application nor refer an application to hearing unless the director has determined that the application is administratively complete. If the director determines that an application is incomplete, the director shall notify the applicant in writing and shall describe the specific information required to complete the application. An applicant may make no more than two supplemental filings to complete an application.

(d) The permit application shall contain an original signature in ink, the date of signing, and the following certification: "I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

§4.247. Minimum Engineering and Geologic Information.

(a) The director may require a permit applicant for a stationary commercial solid oil and gas waste recycling facility to provide the Commission with engineering, geological, or other information which the director deems necessary to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) Engineering and geologic work products prepared by the applicant shall be sealed by a registered engineer or geologist, respectively, as required by the Texas Occupations Code, Chapters 1001 and 1002.

§4.248. Minimum Siting Information.

A permit application for a stationary commercial solid oil and gas waste recycling facility shall include:

(1) a description of the proposed facility site and surrounding area;

(2) the name, physical address and, if different, mailing address; telephone number; and facsimile transmission (fax) number of every owner of the tract on which the facility is to be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner;

(3) the depth to the shallowest subsurface water and the direction of groundwater flow at the proposed site, and the source of this information;

(4) the average annual precipitation and evaporation at the proposed site and the source of this information;

(5) the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, and other pertinent characteristics, and the source of this information;

(6) a copy of a county highway map with a scale and north arrow showing the location of the proposed facility; and

(7) a complete, original 7 1/2 minute United States Geological Survey topographic quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that underlay the facility but are not included on the topographic map; and the location of the 100-year flood plain and the source of the flood plain information.

§4.249. Minimum Real Property Information.

(a) A permit application for a stationary commercial solid oil and gas waste recycling facility shall include a copy of the signed lease agreement between the applicant and the owner of the tract upon which the facility is to be located.

(b) A permit application for a stationary commercial solid oil and gas waste recycling facility shall identify the location of the facility by including a plat or plats showing:

(1) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;

(2) the site coordinates in degrees, minutes, and seconds of longitude and latitude;

(3) a clear outline of the proposed facility's boundaries;

(4) all tracts adjoining the tract upon which the facility is to be located;

(5) the name of the surface owner or owners of such adjoining tracts; and

(6) the distance from the facility's outermost perimeter boundary to water wells, residences, schools, churches, or hospitals that are within 500 feet of the boundary.

§4.250. Minimum Design and Construction Information.

(a) A permit application for a stationary commercial solid oil and gas waste recycling facility shall include the layout and design of the facility by including a plat drawn to scale with north arrow to top of the map showing the location and information on the design and size of all receiving, processing, and storage areas and all equipment (e.g., pug mill), tanks, silos, monitor wells, dikes, fences, and access roads.

(b) A permit application for a stationary commercial solid oil and gas waste recycling facility also shall include:

(1) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if any, for all tanks, silos, pits, and storage areas/cells;

(2) for storage areas where tanks and/or liners are not used, credible engineering and/or geologic information demonstrating that tanks or liners are not necessary for the protection of surface and subsurface water;

(3) a map view and two perpendicular cross-sectional views of pits and/or storage areas/cells to be constructed, showing the bottom, sides, and dikes, showing the dimensions of each;

(4) a plan to control and manage storm water runoff and to retain incoming wastes during wet weather, including the location and dimensions of dikes and/or storage basins that would collect storm water from the facility during a 25-year, 24-hour maximum rainfall event, and all calculations made to determine the required capacity and design; and

(5) a plan for the installation of monitoring wells at the facility.

§4.251. Minimum Operating Information.

A permit application for a stationary commercial solid oil and gas waste recycling facility shall include the following operating information:

(1) the estimated maximum volume of untreated oil and gas waste and partially treated oil and gas waste to be stored at the facility;

(2) the estimated maximum volume and time that the recyclable product will be stored at the facility;

(3) a plan to control unauthorized access to the facility;

(4) a detailed waste acceptance plan that:

(A) identifies anticipated volumes and specific types of wastes (e.g., oil-based drilling fluid and cuttings, crude oil-contaminated soils, production tank bottoms, etc.) to be accepted at the facility for treatment and recycling; and

(B) provides for testing of wastes to be processed to ensure that only oil and gas waste authorized by this division or the permit will be received at the facility;

(5) plans for keeping records of the source and volume of wastes accepted for recycling in accordance with the permit, including maintenance of records of the source of waste received by well number, API number, lease or facility name, lease number and/or gas identification number, county, and Commission district;

(6) a general description of the recycling process to be employed; a flow diagram showing the process and identifying all equipment and chemicals or additives (e.g., asphalt emulsion, quicklime, Portland cement, fly ash, etc.) to be used in the process; and the Material Safety Data Sheets for any chemical or additive;

(7) a description of all inert material (e.g., brick, rock, gravel, caliche) to be stored at the facility and used as aggregate in the treatment process;

(8) a description of any testing to be performed to demonstrate that the proposed processing will result in a recyclable product that meets the engineering and environmental standards for the proposed use; and

(9) an estimate of the duration of operation of the proposed facility.

§4.252. Minimum Monitoring Information.

A permit application for a stationary commercial solid oil and gas waste recycling facility shall include:

(1) a sampling plan for the partially treated waste to ensure compliance with permit conditions;

(2) a plan for sampling any monitoring wells at the facility as required by the permit and this division; and

(3) a plan and schedule for conducting periodic inspections, including plans to inspect equipment, processing, and storage areas.

§4.253. Minimum Closure Information.

A permit application for a stationary commercial solid oil and gas waste recycling facility shall include a detailed plan for closure of the facility when operations terminate. The closure plan shall address how the applicant intends to:

(1) remove waste, partially treated waste, and/or recyclable product from the facility;

(2) close all storage areas/cells;

(3) remove dikes;

(4) contour and reseed disturbed areas;

(5) sample and analyze soil and groundwater throughout the facility; and

(6) plug groundwater monitoring wells.

§4.254. Notice.

(a) A permit applicant for a stationary commercial solid oil and gas waste recycling facility shall publish notice and file proof of publication in accordance with the following requirements.

(1) A permit applicant shall publish notice of the application in a newspaper of general circulation in the county in which the proposed facility will be located at least once each week for two consecutive weeks with the first publication occurring not earlier than the date the application is filed with the Commission and not later than the 30th day after the date on which the application is filed with the Commission.

(2) The published notice shall:

(A) be entitled, "Notice of Application for Commercial Solid Oil and Gas Waste Recycling Facility";

(B) provide the date the applicant filed the application with the Commission for the permit;

(C) identify the name of the applicant;

(D) state the physical address of the proposed facility and its location in relation to the nearest municipality or community;

(E) identify the owner or owners of the property upon which the proposed facility will be located;

(F) state that affected persons may protest the application by filing a protest with the Railroad Commission within 15 days of the last date of publication; and

(G) provide the address to which protests may be mailed.

(3) The applicant shall submit to the Commission proof that the applicant published notice as required by this section. Proof of publication of the notice shall consist of a sworn affidavit from the newspaper publisher that states the dates on which the notice was published and the county or counties in which the newspaper is of general circulation, and to which are attached the tear sheets of the published notices.

(b) A permit applicant for a stationary commercial solid oil and gas waste recycling facility shall give personal notice and file proof of such notice in accordance with the following requirements.

(1) The applicant shall mail or deliver notice to the following persons on or after the date the application is filed with the Commission's headquarters office in Austin:

(A) the surface owner or owners of the tract upon which the commercial recycling facility will be located;

(B) the city clerk or other appropriate official, if the tract upon which the facility will be located lies within the corporate limits of an incorporated city, town, or village;

(C) the surface owners of tracts adjoining the tract on which proposed facility will be located, unless the boundary with the adjoining tract is a distance of 1/2-mile or greater from the fenceline or edge of the facility as shown on the plat required under §4.249(b) of this title (relating to Minimum Real Property Information); and

(D) any affected person or class of persons that the director determines should receive notice of a particular application.

(2) Personal notice of the permit application shall consist of:

(A) a copy of the application;

(B) a statement of the date the applicant filed the application with the Commission;

(C) a statement that a protest to the application should be filed with the Commission within 15 days of the last date of published notice, a statement identifying the publication in which published notice will appear, and the procedure for making a protest of the application to the Commission;

(D) a description of the location of the site for which the application was made, including the county in which the site is to be located, the name of the original survey and abstract number, and the direction and distance from the nearest municipality;

(E) the name of the owner or owners of the property on which the facility is to be located;

(F) the name of the applicant;

(G) the type of fluid or waste to be handled at the facility; and

(H) the recycling method proposed and the proposed end-use of the recycled material.

(3) The applicant shall submit to the Commission proof that personal notice has been given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a statement signed by the applicant that includes the names and addresses of each person to whom the notice was sent, and the date that each was notified of the application.

(c) If the director has reason to believe that a person to whom the applicant was required to give notice of an application has not received such notice, then the director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

§4.255. General Permit Provisions.

(a) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall be issued for a term of not more than five years. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the director.

(b) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall require that, prior to operating, a stationary commercial solid oil and gas waste recycling facility comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by §3.78 of this title (relating to Fees and Financial Security Requirements).

(c) A permit for a stationary commercial solid oil and gas waste recycling facility shall include a condition requiring that the permittee notify the surface owner of the tract upon which recycling will take place and the appropriate Commission district office before recycling operations commence on each tract.

§4.256. Minimum Permit Provisions for Siting.

(a) A permit for a stationary commercial solid oil and gas waste recycling facility may be issued only if the director or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety.

(b) A stationary commercial solid oil and gas waste recycling facility permitted pursuant to this division and after the effective date of this division shall not be located:

(1) within a 100-year flood plain, in a streambed, or in a sensitive area as defined by §3.91 of this title (relating to Cleanup of Soil Contaminated by a Crude Oil Spill); or

(2) within 150 feet of surface water or public, domestic, or irrigation water wells.

(c) Factors that the Commission will consider in assessing potential risk from a stationary commercial solid oil and gas waste recycling facility include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) depth to and quality of the shallowest groundwater;

(3) distance to the nearest property line or public road;

(4) proximity to coastal natural resources, sensitive areas as defined by §3.91 of this title, or surface water and/or public, domestic, or irrigation water wells; and

(5) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section for a stationary commercial solid oil and gas waste recycling facility refer to conditions at the time the facility is constructed.

§4.257. Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this division for a stationary commercial solid oil and gas waste recycling facility shall contain any requirement that the director or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated storm water runoff, from the facility to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the permittee control and remediate spills at the facility; and

(C) requiring that the permittee make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material from the facility.

(b) A permit issued for a stationary commercial solid oil and gas waste recycling facility pursuant to this division shall require that the permittee:

(1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4, Chapter 76, relating to Water Well Drillers and Water Well Pump Installers; and

(2) submit to the Commission's office in Austin a soil boring log and other information for each well.

(c) The soil boring log and other information required in subsection (b) of this section shall:

(1) describe the soils using the Unified Soils Classification System (equivalent to ASTM D 2487 and 2488);

(2) identify the method of drilling, total depth, and the top of the first encountered water or saturated soils;

(3) include a well completion diagram for each monitoring well;

(4) include a survey elevation for each wellhead reference point; and

(5) include a potentiometric map showing static water levels and the direction of groundwater flow.

(d) The Commission or the director may waive any or all of the requirements in subsections (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum depth of 100 feet recovers no water during a 24-hour test.

(e) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall require that the permittee notify the Commission district office for the county in which the facility is located prior to commencement of construction, including construction of any dikes, and again upon completion of construction and that the permittee may commence operations under the permit only after the facility has been inspected by the Commission to ensure that construction of all elements of the facility is consistent with the representations in the application and the requirements of the permit.

(f) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division that requires the installation of monitoring wells shall require that the permittee comply with subsections (b) and (c) of this section prior to commencing recycling operations.

§4.258. Minimum Permit Provisions for Operations.

(a) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit are received at the facility, including requirements that the permittee test incoming oil and gas waste and keep records of amounts and sources of incoming wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for a stationary commercial solid oil and gas waste recycling facility issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The permittee shall notify the appropriate district office for the county in which the facility is located prior to commencement of the trial run.

(2) The permittee shall demonstrate the ability to successfully process a one thousand cubic yard batch of solid oil and gas waste.

(A) The Oil and Gas Division in Austin and the appropriate district office must be notified in writing at least 72 hours before waste processing begins.

(B) Samples of the partially treated waste must be collected and analyzed as required by §4.243 of this title (relating to Minimum Permit Provisions for Monitoring).

(C) Samples shall be collected from every 200 cubic yards of an 800 cubic yard batch and analyzed for wetting and drying durability by ASTM D 559-96, modified to provide that samples are compacted and molded from finished partially treated waste. The total weight loss after 12 cycles may not exceed 15 percent.

(3) The permittee shall sample and analyze the partially treated waste that results from the trial run, and submit to the director for review a report of the results of the trial run prior to commencing operations.

(4) The director shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(5) The permittee shall not use the recyclable product until the director approves the trial run report.

(6) A written report of the trial run shall be submitted to the Oil and Gas Division in Austin and the appropriate district office within 60 days of receipt of the analyses required in §4.243 of this title. The following information must be included:

(A) the actual volume of waste material processed;

(B) the volume of stabilization material used;

(C) copies of all lab analyses required by §4.243 of this title; and

(D) the results of the analysis required under paragraph (2)(C) of this subsection.

(7) The final recyclable material must meet the limitations of §4.243 of this title.

(c) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the facility, that the Commission determines to be reasonably necessary to ensure that the permittee does not speculatively accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

§4.259. Minimum Permit Provisions for Monitoring.

(a) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall include requirements the director or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the director or the Commission and included in the permit.

(b) Consistent with the requirements of §4.208 of this title (relating to General Standards for Permit Issuance), the director or the Commission shall establish and include in the permit for a stationary commercial solid oil and gas waste recycling facility the parameters for which the partially treated waste is to be tested, and the limitations on those parameters based on:

(1) the type of oil and gas waste to be accepted at the commercial recycling facility; and

(2) the intended use for the recyclable product.

(c) A permit for a stationary commercial solid oil and gas waste recycling facility may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

(d) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division from which the recycled product will be used as road base or other similar uses shall include a requirement that a minimum of one sample from each 200 tons of partially treated waste be collected and analyzed for every 800 ton composite for the following minimum parameters and meet the following limits:
Figure: 16 TAC §4.259(d)

(e) Groundwater monitor wells.

(1) Groundwater monitor wells, if required, must be monitored for the following parameters after installation and quarterly thereafter:

(A) static water level;

(B) benzene;

(C) total petroleum hydrocarbons (TPH);

(D) total dissolved solids (TDS);

(E) chlorides;

(F) bromides;

(G) sulfates;

(H) nitrates;

(I) carbonates;

(J) calcium;

(K) magnesium;

(L) sodium; and

(M) potassium.

(2) Copies of the sampling and analytical results shall be filed semi-annually with the Oil and Gas Division and the appropriate district office.

§4.260. Minimum Permit Provisions for Closure.

A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall include closure standards and any requirement reasonably necessary to ensure that the permittee can meet the standards. The Commission shall determine the closure standards for a particular facility based on the type of materials stored, handled and treated at the facility, and the design and construction of the facility. A permit may include requirements for removal of all waste, partially treated waste, and recyclable product; removal of dikes, storage, liners, and equipment; recontouring of the land; collection and analyzing of soil and groundwater samples from the facility property; and post-closure monitoring.

§4.261. Permit Renewal.

Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit. An application for renewal of an existing permit issued pursuant to this division or §3.8 of this title (relating to Water Protection) shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application shall comply with the requirements of §4.246 of this title (relating to General Permit Application Requirements for a Stationary Commercial Solid Oil and Gas Waste Recycling Facility), and the notice requirements of §4.254 of this title (relating to Notice). The director may require the applicant to comply with any of the requirements of §§4.247 - 4.253 of this title (relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information), depending on any changes made or planned to the construction, operation, monitoring, and/or closure of the facility.

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 September 11, 2012.

TRD-201204775
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

DIVISION 5. REQUIREMENTS FOR OFF-LEASE OR CENTRALIZED COMMERCIAL RECYCLING OF PRODUCED WATER AND/OR HYDRAULIC FRACTURING FLOWBACK FLUID

16 TAC §§4.262 - 4.277

The Commission proposes the new rules under Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, which provide that the Commission is solely responsible for the prevention and abatement of water and subsurface water pollution attributable to activities the Commission regulates, and that the Commission may adopt rules related to the discharge, storage, handling, transportation, processing, or disposal of oil and gas waste, or of any other substance or material associated with operations or activities regulated by the Commission pursuant to Texas Natural Resources Code, §91.101(a)(1), (2), and (3). In addition, Texas Natural Resources Code, §91.109(a), provides that the Commission may require a bond or other form of financial security from persons applying for or acting under a Commission permit to store, handle or treat oil and gas waste.

The partially treated waste and recyclable product resulting from processing and/or treatment of oil and gas waste pursuant to a Commission permit constitutes a "substance or material associated with any operation or activity regulated by the Commission" under Texas Natural Resources Code, §91.101(a)(1), (2), and (3). The recyclable product is associated with operation or activity regulated by the Commission because it was created using oil and gas waste over which the Commission has exclusive jurisdiction, and which the Commission no longer considers to be an oil and gas waste if the recyclable product will be used as intended pursuant to permit conditions.

Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, are affected by the proposed new rules.

Statutory authority: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Cross-reference to statutes: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Issued in Austin, Texas on September 11, 2012.

§4.262. General Permit Application Requirements for Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid.

(a) An application for a permit for Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid shall be filed with the Commission's headquarters office in Austin. The applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin. A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.

(b) The permit application shall contain the applicant's name; organizational report number; physical office and, if different, mailing address; facility address; telephone number; and facsimile transmission (fax) number; and the name of a contact person. A permit for a stationary commercial recycling facility also shall contain the facility address.

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the director. The director shall determine that the application is administratively complete prior to administratively approving an application or referring an application to hearing. If the director determines that an application is incomplete, the director shall notify the applicant in writing and shall describe the specific information required to complete the application. An applicant may make no more than two supplemental filings to complete an application.

(d) The permit application shall contain an original signature in ink, the date of signing, and the following certification: "I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

§4.263. Minimum Engineering and Geologic Information.

(a) The director may require a permit applicant for Off-Lease or Centralized Commercial of Produced Water and/or Hydraulic Fracturing Flowback Fluid to provide the Commission with engineering, geological, or other information which the director deems necessary to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) Engineering and geologic work products prepared by the applicant shall be sealed by a registered engineer or geologist, respectively, as required by the Texas Occupations Code, Chapters 1001 and 1002.

§4.264. Minimum Siting Information.

A permit application for Off-Lease or Centralized Commercial of Produced Water and/or Hydraulic Fracturing Flowback Fluid shall include:

(1) a description of the proposed facility site and surrounding area;

(2) the name, physical address and, if different, mailing address; telephone number; and facsimile transmission (fax) number of every owner of the tract on which the facility is to be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner;

(3) the depth to the shallowest subsurface water and the direction of groundwater flow at the proposed site, and the source of this information;

(4) the average annual precipitation and evaporation at the proposed site and the source of this information;

(5) the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, and other pertinent characteristics, and the source of this information;

(6) a copy of a county highway map with a scale and north arrow showing the location of the proposed facility; and

(7) a complete, original 7 1/2 minute United States Geological Survey topographic quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that underlay the facility but are not included on the topographic map; and the location of the 100-year flood plain and the source of the flood plain information.

§4.265. Minimum Real Property Information.

(a) A permit application for Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid shall include a copy of the signed lease agreement between the applicant and the owner of the tract upon which the facility is to be located.

(b) A permit application for Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid shall identify the location of the facility by including a plat or plats showing:

(1) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;

(2) the site coordinates in degrees, minutes, and seconds of longitude and latitude;

(3) a clear outline of the proposed facility's boundaries;

(4) all tracts adjoining the tract upon which the facility is to be located;

(5) the name of the surface owner or owners of such adjoining tracts; and

(6) the distance from the facility's outermost perimeter boundary to water wells, residences, schools, churches, or hospitals that are within 500 feet of the boundary.

§4.266. Minimum Design and Construction Information.

(a) A permit application for Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid shall include the layout and design of the facility by including a plat drawn to scale with north arrow to top of the map showing the location and information on the design and size of all receiving, processing, and storage areas and all equipment, tanks, silos, monitor wells, dikes, fences, and access roads.

(b) A permit application for Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid also shall include:

(1) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if any, for all tanks, silos, pits, and storage areas/cells;

(2) for storage areas where tanks and/or liners are not used, credible engineering and/or geologic information demonstrating that

tanks or liners are not necessary for the protection of surface and subsurface water;

(3) a map view and two perpendicular cross-sectional views of pits and/or storage areas/cells to be constructed, showing the bottom, sides, and dikes, showing the dimensions of each;

(4) a plan to control and manage storm water runoff and to retain incoming wastes during wet weather, including the location and dimensions of dikes and/or storage basins that would collect storm water from the facility during a 25-year, 24-hour maximum rainfall event, and all calculations made to determine the required capacity and design; and

(5) if the application is for a stationary commercial recycling facility, a plan for the installation of monitoring wells at the facility.

§4.267. Minimum Operating Information.

A permit application for Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid shall include the following operating information:

(1) the estimated maximum volume of untreated oil and gas waste and partially treated oil and gas waste to be stored at the facility;

(2) the estimated maximum volume and time that the recyclable product will be stored at the facility;

(3) a plan to control unauthorized access to the facility;

(4) a detailed waste acceptance plan that:

(A) identifies anticipated volumes and specific types of wastes (e.g., hydraulic fracturing flowback fluid and/or produced water) to be accepted at the facility for treatment and recycling; and

(B) provides for testing of wastes to be processed to ensure that only oil and gas waste authorized by this division or the permit will be received at the facility;

(5) plans for keeping records of the source and volume of wastes accepted for recycling in accordance with the permit, including maintenance of records of the source of waste received by well number, API number, lease or facility name, lease number and/or gas identification number, county, and Commission district;

(6) a general description of the recycling process to be employed; a flow diagram showing the process and identifying all equipment and chemicals or additives to be used in the process; and the Material Safety Data Sheets for any chemical or additive;

(7) a description of any testing to be performed to demonstrate that the proposed processing will result in a recyclable product that meets the environmental standards for the proposed use; and

(8) an estimate of the duration of operation of the proposed facility.

§4.268. Minimum Monitoring Information.

A permit application for Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid shall include:

(1) a sampling plan for the partially treated waste to ensure compliance with permit conditions;

(2) a plan for sampling any monitoring wells at a stationary commercial recycling facility as required by the permit and this division; and

(3) a plan and schedule for conducting periodic inspections, including plans to inspect equipment, processing, and storage areas.

§4.269. Minimum Closure Information.

A permit application for Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid shall include a detailed plan for closure of the facility when operations terminate. The closure plan shall address how the applicant intends to:

(1) remove waste, partially treated waste, and/or recyclable product from the facility;

(2) close all storage areas/cells;

(3) remove dikes and equipment;

(4) contour and reseed disturbed areas;

(5) sample and analyze soil and groundwater throughout the facility; and

(6) plug groundwater monitoring wells.

§4.270. Notice.

(a) A permit applicant for Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid shall give personal notice and file proof of such notice in accordance with the following requirements.

(1) The applicant shall mail or deliver notice to the following persons on or after the date the application is filed with the Commission's headquarters office in Austin:

(A) the surface owner or owners of the tract upon which the commercial recycling facility will be located;

(B) the city clerk or other appropriate official, if the tract upon which the facility will be located lies within the corporate limits of an incorporated city, town, or village;

(C) the surface owners of tracts adjoining the tract on which the proposed facility will be located, unless the boundary with the adjoining tract is a distance of 1/2-mile or greater from the fenceline or edge of the facility as shown on the plat required under §4.265(b) of this title (relating to Minimum Real Property Information); and

(D) any affected person or class of persons that the director determines should receive notice of a particular application.

(2) Personal notice of the permit application shall consist of:

(A) a copy of the application;

(B) a statement of the date the applicant filed the application with the Commission;

(C) a statement that a protest to the application should be filed with the Commission within 15 days of the date of receipt and the procedure for making a protest of the application to the Commission;

(D) a description of the location of the site for which the application was made, including the county in which the site is to be located, the name of the original survey and abstract number, and the direction and distance from the nearest municipality;

(E) the name of the owner or owners of the property on which the facility is to be located;

(F) the name of the applicant;

(G) the type of fluid or waste to be handled at the facility; and

(H) the recycling method proposed and the proposed end-use of the recyclable product.

(3) The applicant shall submit to the Commission proof that personal notice has been given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a statement signed by the applicant that includes the names and addresses of each person to whom the notice was sent, and the date that each person was notified of the application.

(b) If the director has reason to believe that a person to whom the applicant was required to give notice of an application has not received such notice, then the director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

§4.271. General Permit Provisions.

(a) A permit for Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid issued pursuant to this division shall be valid issued for a term of not more than two years. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the director.

(b) A permit issued pursuant to this division shall require that, prior to operating, Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by §3.78 of this title (relating to Fees and Financial Security Requirements).

(c) A permit for Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid shall include a condition requiring that the permittee notify the surface owner of the tract upon which recycling will take place and the appropriate Commission district office before recycling operations commence on each tract.

§4.272. Minimum Permit Provisions for Siting.

(a) A permit for Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid may be issued only if the director or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety.

(b) Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid permitted pursuant to this division and after the effective date of this division shall not be located:

(1) within a 100-year flood plain, in a streambed, or in a sensitive area as defined by §3.91 of this title (relating to Cleanup of Soil Contaminated by a Crude Oil Spill); or

(2) within 150 feet of surface water or public, domestic, or irrigation water wells.

(c) Factors that the Commission will consider in assessing potential risk from Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) surface water;

(3) depth to and quality of the shallowest groundwater;

(4) distance to the nearest property line or public road;

(5) proximity to coastal natural resources, sensitive areas as defined by §3.91 of this title, or water supplies, and/or public, domestic, or irrigation water wells; and

(6) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section refer to conditions at the time the facility is constructed.

§4.273. Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this division shall contain any requirement that the director or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated storm water runoff, from the facility to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the permittee control spills at the facility; and

(C) requiring that the permittee make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material from the facility.

(b) A permit issued for Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid pursuant to this Division shall require that the permittee:

(1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4, Chapter 76, relating to Water Well Drillers and Water Well Pump Installers; and

(2) submit to the Commission's office in Austin a soil boring log and other information for each well.

(c) The soil boring log and other information required in subsection (b) of this section shall:

(1) describe the soils using the Unified Soils Classification System (equivalent to ASTM D 2487 and 2488);

(2) identify the method of drilling, total depth, and the top of the first encountered water or saturated soils;

(3) include a well completion diagram for each monitoring well;

(4) include a survey elevation for each wellhead reference point; and

(5) include a potentiometric map showing static water levels and the direction of groundwater flow.

(d) The Commission or the director may waive any or all of the requirements in subsections (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum depth of 100 feet recovers no water during a 24-hour test.

(e) A permit for Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid issued pursuant to this Division shall require that the permittee notify the Commission district office for the county in which the facility is located prior to commencement of construction, including construction of any dikes, and again upon completion of construction and that the permittee may commence operations under the permit only after the facility has been inspected by the Commission to ensure that construction of all elements of the facility is consistent with the representations in the application and the requirements of the permit.

§4.274. Minimum Permit Provisions for Operations.

(a) A permit for Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit are received at the facility, including requirements that the permittee test incoming oil and gas waste and keep records of amounts and sources of incoming wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for a facility issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The permittee shall notify the Commission district office for the county in which the facility is located prior to commencement of the trial run.

(2) The permittee shall sample and analyze the partially treated waste that results from the trial run, and submit to the director for review a report of the results of the trial run prior to commencing operations.

(3) The director shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(4) The permittee shall not use the recyclable product until the director approves the trial run report.

(c) A permit issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the facility, that the Commission determines to be reasonably necessary to ensure that the permittee does not speculatively accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

(d) A permit issued pursuant to this division shall include a requirement that the operator of the facility comply with the requirements of §3.56 of this title (relating to Scrubber Oil and Skim Hydrocarbons), if applicable.

§4.275. Minimum Permit Provisions for Monitoring.

(a) A permit for Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid issued pursuant to this division shall include requirements the director or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the director or the Commission and included in the permit.

(b) A permit under this division for use of the treated produced water and/or hydraulic fracturing flowback fluid for any purpose other than re-use as makeup water for hydraulic fracturing fluids to be used in other wells may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

§4.276. Minimum Permit Provisions for Closure.

Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid issued pursuant to this division shall include closure standards and any requirement reasonably necessary to ensure that the permittee can meet the standards. The Commission shall determine the closure standards for a particular facility based on the type of materials stored, handled and treated at the facility, and the design and construction of the facility. A permit may include requirements for removal of all waste, partially treated waste, and recyclable product; removal of dikes, storage, liners, and equipment; recontouring of the land; collection and analyzing of soil and groundwater samples from the facility property; and post-closure monitoring.

§4.277. Permit Renewal.

Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit. The application for renewal of an existing permit issued pursuant to this division shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application shall comply with the requirements of §4.262 of this title (relating to General Permit Application Requirements for Off-Lease or Centralized Commercial Recycling of Produced Water and/or Hydraulic Fracturing Flowback Fluid), and the notice requirements of §4.270 of this title (relating to Notice). The director may require the applicant to comply with any of the requirements of §§4.263 - 4.269 of this title (relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information), depending on any changes made or planned to the construction, operation, monitoring, and/or closure of the facility.

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 September 11, 2012.

TRD-201204777
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

DIVISION 6. REQUIREMENTS FOR STATIONARY COMMERCIAL RECYCLING OF PRODUCED WATER AND/OR HYDRAULIC FRACTURING FLOWBACK FLUID

16 TAC §§4.278 - 4.293

The Commission proposes the new rules under Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, which provide that the Commission is solely responsible for the prevention and abatement of water and subsurface water pollution attributable to activities the Commission regulates, and that the Commission may adopt rules related to the discharge, storage, handling, transportation, processing, or disposal of oil and gas waste, or of any other substance or material associated with operations or activities regulated by the Commission pursuant to Texas Natural Resources Code, §91.101(a)(1), (2), and (3). In addition, Texas Natural Resources Code, §91.109(a), provides that the Commission may require a bond or other form of financial security from persons applying for or acting under a Commission permit to store, handle or treat oil and gas waste.

The partially treated waste and recyclable product resulting from processing and/or treatment of oil and gas waste pursuant to a Commission permit constitutes a "substance or material associated with any operation or activity regulated by the Commission" under Texas Natural Resources Code, §91.101(a)(1), (2), and (3). The recyclable product is associated with operation or activity regulated by the Commission because it was created using oil and gas waste over which the Commission has exclusive jurisdiction, and which the Commission no longer considers to be an oil and gas waste if the recyclable product will be used as intended pursuant to permit conditions.

Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, are affected by the proposed new rules.

Statutory authority: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Cross-reference to statutes: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Issued in Austin, Texas on September 11, 2012.

§4.278. General Permit Application Requirements for a Stationary Commercial Produced Water and/or Hydraulic Fracturing Flowback Fluid Recycling Facility.

(a) An application for a permit for a Stationary Commercial Produced Water and/or Hydraulic Fracturing Flowback Fluid Recycling Facility shall be filed with the Commission's headquarters office in Austin. The applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin. A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.

(b) The permit application shall contain the applicant's name; organizational report number; physical office and, if different, mailing address; facility address; telephone number; and facsimile transmission (fax) number; and the name of a contact person. A permit for a stationary commercial recycling facility also shall contain the facility address.

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the director. The director shall neither administratively approve an application nor refer an application to hearing unless the director has determined that the application is administratively complete. If the director determines that an application is incomplete, the director shall notify the applicant in writing and shall describe the specific information required to complete the application. An applicant may make no more than two supplemental filings to complete an application.

(d) The permit application shall contain an original signature in ink, the date of signing, and the following certification: "I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

§4.279. Minimum Engineering and Geologic Information.

(a) The director may require a permit applicant for a Stationary Commercial Produced Water and/or Hydraulic Fracturing Flowback Fluid Recycling Facility to provide the Commission with engineering, geological, or other information which the director deems necessary to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) Engineering and geologic work products prepared by the applicant shall be sealed by a registered engineer or geologist, respectively, as required by the Texas Occupations Code, Chapters 1001 and 1002.

§4.280. Minimum Siting Information.

A permit application for a Stationary Commercial Produced Water and/or Hydraulic Fracturing Flowback Fluid Recycling Facility shall include:

(1) a description of the proposed facility site and surrounding area;

(2) the name, physical address and, if different, mailing address; telephone number; and facsimile transmission (fax) number of every owner of the tract on which the facility is to be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner;

(3) the depth to the shallowest subsurface water and the direction of groundwater flow at the proposed site, and the source of this information;

(4) the average annual precipitation and evaporation at the proposed site and the source of this information;

(5) the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, and other pertinent characteristics, and the source of this information;

(6) a copy of a county highway map with a scale and north arrow showing the location of the proposed facility; and

(7) a complete, original 7 1/2 minute United States Geological Survey topographic quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that underlay the facility but are not included on the topographic map; and the location of the 100-year flood plain and the source of the flood plain information.

§4.281. Minimum Real Property Information.

(a) A permit application for a stationary commercial produced water and/or hydraulic fracturing flowback fluid recycling facility shall include a copy of the signed lease agreement between the applicant and the owner of the tract upon which the facility is to be located.

(b) A permit application for a stationary commercial produced water and/or hydraulic fracturing flowback fluid recycling facility shall identify the location of the facility by including a plat or plats showing:

(1) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;

(2) the site coordinates in degrees, minutes, and seconds of longitude and latitude;

(3) a clear outline of the proposed facility's boundaries;

(4) all tracts adjoining the tract upon which the facility is to be located;

(5) the name of the surface owner or owners of such adjoining tracts; and

(6) the distance from the facility's outermost perimeter boundary to water wells, residences, schools, churches, or hospitals that are within 500 feet of the boundary.

§4.282. Minimum Design and Construction Information.

(a) A permit application for a stationary commercial produced water and/or hydraulic fracturing flowback fluid recycling facility shall include the layout and design of the facility by including a plat drawn to scale with north arrow to top of the map showing the location and information on the design and size of all receiving, processing, and storage areas and all equipment, tanks, silos, monitor wells, dikes, fences, and access roads.

(b) A permit application for a commercial produced water and/or hydraulic fracturing flowback fluid recycling facility also shall include:

(1) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if any, for all tanks, silos, pits, and storage areas/cells;

(2) for storage areas where tanks and/or liners are not used, credible engineering and/or geologic information demonstrating that tanks or liners are not necessary for the protection of surface and subsurface water;

(3) a map view and two perpendicular cross-sectional views of pits and/or storage areas/cells to be constructed, showing the bottom, sides, and dikes, showing the dimensions of each;

(4) a plan to control and manage storm water runoff and to retain incoming wastes during wet weather, including the location and dimensions of dikes and/or storage basins that would collect storm water from the facility during a 25-year, 24-hour maximum rainfall event, and all calculations made to determine the required capacity and design; and

(5) a plan for the installation of monitoring wells at the facility.

§4.283. Minimum Operating Information.

A permit application for a stationary commercial produced water and/or hydraulic fracturing flowback fluid recycling facility shall include the following operating information:

(1) the estimated maximum volume of untreated oil and gas waste and partially treated oil and gas waste to be stored at the facility;

(2) the estimated maximum volume and time that the recyclable product will be stored at the facility;

(3) a plan to control unauthorized access to the facility;

(4) a detailed waste acceptance plan that:

(A) identifies anticipated volumes and specific types of wastes to be accepted at the facility for treatment and recycling; and

(B) provides for testing of wastes to be processed to ensure that only oil and gas waste authorized by this division or the permit will be received at the facility;

(5) plans for keeping records of the source and volume of wastes accepted for recycling in accordance with the permit, including maintenance of records of the source of waste received by well number, API number, lease or facility name, lease number and/or gas identification number, county, and Commission district;

(6) a general description of the treatment process to be employed; a flow diagram showing the process and identifying all equipment and chemicals or additives to be used in the process; and the Material Safety Data Sheets for any chemical or additive;

(7) a description of any testing to be performed to demonstrate that the proposed processing will result in a recyclable product that meets the standards for the proposed use; and

(8) an estimate of the duration of operation of the proposed facility.

§4.284. Minimum Monitoring Information.

A permit application for a stationary commercial produced water and/or hydraulic fracturing flowback fluid recycling facility shall include:

(1) a sampling plan for the partially treated waste to ensure compliance with permit conditions;

(2) a plan for sampling any monitoring wells at a Commercial Produced Water and/or Hydraulic Fracturing Flowback Fluid Recycling Facility as required by the permit and this division; and

(3) a plan and schedule for conducting periodic inspections, including plans to inspect equipment, processing, and storage areas.

§4.285. Minimum Closure Information.

(a) A permit application for a stationary commercial produced water and/or hydraulic fracturing flowback fluid recycling facility shall include a detailed plan for closure of the facility when operations terminate. The closure plan shall address how the applicant intends to:

(1) remove waste, partially treated waste, and/or recyclable product from the facility;

(2) close all storage areas/cells;

(3) remove dikes; and

(4) contour and reseed disturbed areas.

(b) A permit application for a stationary commercial produced water and/or hydraulic fracturing flowback fluid recycling facility also shall include in the closure plan information addressing how the applicant intends to:

(1) sample and analyze soil and groundwater throughout the facility; and

(2) plug groundwater monitoring wells.

§4.286. Notice.

(a) A permit applicant for a stationary commercial produced water and/or hydraulic fracturing flowback fluid recycling facility shall publish notice and file proof of publication in accordance with the following requirements.

(1) A permit applicant shall publish notice of the application in a newspaper of general circulation in the county in which the proposed facility will be located at least once each week for two consecutive weeks with the first publication occurring not earlier than the

date the application is filed with the Commission and not later than the 30th day after the date on which the application is filed with the Commission.

(2) The published notice shall:

(A) be entitled, "Notice of Application for Stationary Commercial Produced Water and/or Hydraulic Fracturing Flowback Fluid Recycling Facility";

(B) provide the date the applicant filed the application with the Commission for the permit;

(C) identify the name of the applicant;

(D) state the physical address of the proposed facility and its location in relation to the nearest municipality or community;

(E) identify the owner or owners of the property upon which the proposed facility will be located;

(F) state that affected persons may protest the application by filing a protest with the Railroad Commission within 15 days of the last date of publication; and

(G) provide the address to which protests may be mailed.

(3) The applicant shall submit to the Commission proof that the applicant published notice as required by this section. Proof of publication of the notice shall consist of a sworn affidavit from the newspaper publisher that states the dates on which the notice was published and the county or counties in which the newspaper is of general circulation, and to which are attached the tear sheets of the published notices.

(b) A permit applicant for a stationary commercial produced water and/or hydraulic fracturing flowback fluid recycling facility shall give personal notice and file proof of such notice in accordance with the following requirements.

(1) The applicant shall mail or deliver notice to the following persons on or after the date the application is filed with the Commission's headquarters office in Austin:

(A) the surface owner or owners of the tract upon which the commercial recycling facility will be located;

(B) the city clerk or other appropriate official, if the tract upon which the facility will be located lies within the corporate limits of an incorporated city, town, or village;

(C) the surface owners of tracts adjoining the tract on which proposed facility will be located, unless the boundary with the adjoining tract is a distance of 1/2-mile or greater from the fenceline or edge of the facility as shown on the plat required under §4.281 of this title (relating to Minimum Real Property Information); and

(D) any affected person or class of persons that the director determines should receive notice of a particular application.

(2) Personal notice of the permit application shall consist of:

(A) a copy of the application;

(B) a statement of the date the applicant filed the application with the Commission;

(C) a statement that a protest to the application should be filed with the Commission within 15 days of the last date of published notice, a statement identifying the publication in which published notice will appear, and the procedure for making a protest of the application to the Commission;

(D) a description of the location of the site for which the application was made, including the county in which the site is to be located, the name of the original survey and abstract number, and the direction and distance from the nearest municipality;

(E) the name of the owner or owners of the property on which the facility is to be located;

(F) the name of the applicant;

(G) the type of fluid or waste to be handled at the facility; and

(H) the recycling method proposed and the proposed end-use of the recycled material.

(3) The applicant shall submit to the Commission proof that personal notice has been given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a statement signed by the applicant that includes the names and addresses of each person to whom the notice was sent, and the date that each was notified of the application.

(c) If the director has reason to believe that a person to whom the applicant was required to give notice of an application has not received such notice, then the director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

§4.287. General Permit Provisions.

(a) A permit for a stationary commercial produced water and/or hydraulic fracturing flowback fluid recycling facility issued pursuant to this division shall be valid for a term of not more than five years. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the director.

(b) A permit issued pursuant to this division shall require that, prior to operating, the facility shall comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by §3.78 of this title (relating to Fees and Financial Security Requirements).

(c) A permit for a stationary commercial produced water and/or hydraulic fracturing flowback fluid recycling facility shall include a condition requiring that the permittee notify the surface owner of the tract upon which recycling will take place and the appropriate Commission district office before recycling operations commence on each tract.

§4.288. Minimum Permit Provisions for Siting.

(a) A permit for stationary a commercial produced water and/or hydraulic fracturing flowback fluid recycling facility may be issued only if the director or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety.

(b) A stationary commercial produced water and/or hydraulic fracturing flowback fluid recycling facility permitted pursuant to this division and after the effective date of this division shall not be located within a 100-year flood plain.

(c) Factors that the Commission will consider in assessing potential risk from a stationary commercial produced water and/or hydraulic fracturing flowback fluid recycling facility include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) surface water;

(3) depth to and quality of the shallowest groundwater;

(4) distance to the nearest property line or public road;

(5) proximity to coastal natural resources, sensitive areas as defined by §3.91 of this title (relating to Cleanup of Soil Contaminated by a Crude Oil Spill), or water supplies, and/or public, domestic, or irrigation water wells; and

(6) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section refer to conditions at the time the facility is constructed.

§4.289. Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this division for a stationary a commercial produced water and/or hydraulic fracturing flowback fluid recycling facility shall contain any requirement that the director or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated storm water runoff, from the facility to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the permittee control spills at the facility; and

(C) requiring that the permittee make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material from the facility.

(b) A permit issued for a stationary commercial recycling facility pursuant to this division shall require that the permittee:

(1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4, Chapter 76, relating to Water Well Drillers and Water Well Pump Installers; and

(2) submit to the Commission's office in Austin a soil boring log and other information for each well.

(c) The soil boring log and other information required in subsection (b) of this section shall:

(1) describe the soils using the Unified Soils Classification System (equivalent to ASTM D 2487 and 2488);

(2) identify the method of drilling, total depth, and the top of the first encountered water or saturated soils;

(3) include a well completion diagram for each monitoring well;

(4) include a survey elevation for each wellhead reference point; and

(5) include a potentiometric map showing static water levels and the direction of groundwater flow.

(d) The Commission or the director may waive any or all of the requirements in subsections (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum depth of 100 feet recovers no water during a 24-hour test.

(e) A permit for a stationary a commercial produced water and/or hydraulic fracturing flowback fluid recycling facility issued pursuant to this division shall require that the permittee notify the Commission district office for the county in which the facility is located prior to commencement of construction, including construction of any dikes, and again upon completion of construction and that the permittee may commence operations under the permit only after the facility has been inspected by the Commission to ensure that construction of all elements of the facility is consistent with the representations in the application and the requirements of the permit.

§4.290. Minimum Permit Provisions for Operations.

(a) A permit for a stationary commercial produced water and/or hydraulic fracturing flowback fluid recycling facility issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit are received at the facility, including requirements that the permittee test incoming oil and gas waste and keep records of amounts and sources of incoming wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for a stationary commercial produced water and/or hydraulic fracturing flowback fluid recycling facility issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The permittee shall notify the Commission district office for the county in which the facility is located prior to commencement of the trial run.

(2) The permittee shall sample and analyze the partially treated waste that results from the trial run, and submit to the director for review a report of the results of the trial run prior to commencing operations.

(3) The director shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(4) The permittee shall not use the recyclable product until the director approves the trial run report.

(c) A permit issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the facility, that the Commission determines to be reasonably necessary to ensure that the permittee does not speculatively accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

(d) A permit issued pursuant to this division shall include a requirement that the operator of the facility comply with the requirements of §3.56 of this title (relating to Scrubber Oil and Skim Hydrocarbons), if applicable.

§4.291. Minimum Permit Provisions for Monitoring.

(a) A permit issued for a stationary commercial produced water and/or hydraulic fracturing flowback fluid recycling facility pur-

suant to this division shall include requirements the director or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the director or the Commission and included in the permit.

(b) A permit under this division may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

§4.292. Minimum Permit Provisions for Closure.

A permit for a stationary commercial produced water and/or hydraulic fracturing flowback fluid recycling facility issued pursuant to this division shall include closure standards and any requirement reasonably necessary to ensure that the permittee can meet the standards. The Commission shall determine the closure standards for a particular facility based on the type of materials stored, handled and treated at the facility, and the design and construction of the facility. A permit may include requirements for removal of all waste, partially treated waste, and recyclable product; removal of dikes, storage, liners, and equipment; recontouring of the land; collection and analyzing of soil and groundwater samples from the facility property; and post-closure monitoring.

§4.293. Permit Renewal.

Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit. An application for renewal of an existing permit issued pursuant to this division or §3.8 of this title (relating to Water Protection) shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application shall comply with the requirements of §4.278 of this title (relating to General Permit Application Requirements for a Stationary Commercial Produced Water and/or Hydraulic Fracturing Flowback Fluid Recycling Facility), and the notice requirements of §4.286 of this title (relating to Notice). The director may require the applicant to comply with any of the requirements of §§4.279-4.285 of this title (relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information), depending on any changes made or planned to the construction, operation, monitoring, and/or closure of the facility.

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 September 11, 2012.

TRD-201204776
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

SUBCHAPTER B. COMMERCIAL RECYCLING

16 TAC §§4.205 - 4.226

(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 Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Commission proposes the repeals under Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, which provide that the Commission is solely responsible for the prevention and abatement of water and subsurface water pollution attributable to activities the Commission regulates, and that the Commission may adopt rules related to the discharge, storage, handling, transportation, processing, or disposal of oil and gas waste, or of any other substance or material associated with operations or activities regulated by the Commission pursuant to Texas Natural Resources Code, §91.101(a)(1), (2), and (3). In addition, Texas Natural Resources Code, §91.109(a), provides that the Commission may require a bond or other form of financial security from persons applying for or acting under a Commission permit to store, handle or treat oil and gas waste.

The partially treated waste and recyclable product resulting from processing and/or treatment of oil and gas waste pursuant to a Commission permit constitutes a "substance or material associated with any operation or activity regulated by the Commission" under Texas Natural Resources Code, §91.101(a)(1), (2), and (3). The recyclable product is associated with operation or activity regulated by the Commission because it was created using oil and gas waste over which the Commission has exclusive jurisdiction, and which the Commission no longer considers to be an oil and gas waste if the recyclable product will be used as intended pursuant to permit conditions.

Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, are affected by the proposed repeals.

Statutory authority: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Cross-reference to statutes: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Issued in Austin, Texas on September 11, 2012.

§4.205. General Permit Application Requirements for Commercial Recycling Facilities.
§4.206. Minimum Engineering and Geologic Information.
§4.207. Minimum Siting Information.
§4.208. Minimum Real Property Information.
§4.209. Minimum Design and Construction Information.
§4.210. Minimum Operating Information.
§4.211. Minimum Monitoring Information.
§4.212. Minimum Closure Information.
§4.213. Notice.
§4.214. Administrative Decision on Permit Application.
§4.215. Protests and Hearings.
§4.216. Standards for Permit Issuance.
§4.217. General Permit Provisions.
§4.218. Minimum Permit Provisions for Siting.
§4.219. Minimum Permit Provisions for Design and Construction.
§4.220. Minimum Permit Provisions for Operations.
§4.221. Minimum Permit Provisions for Monitoring.
§4.222. Minimum Permit Provisions for Closure.
§4.223. Permit Renewal.
§4.224. Exceptions.
§4.225. Modification, Suspension, and Termination.

§4.226. Penalties.

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 September 11, 2012.

TRD-201204771
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

CHAPTER 9. LP-GAS SAFETY RULES

The Railroad Commission of Texas proposes amendments, in Subchapter A, to §§9.2 - 9.4, 9.6, 9.7, 9.10, 9.13, 9.16 - 9.18, 9.21, 9.22, 9.26 - 9.28, 9.36 - 9.38, 9.41, 9.51, and 9.54, relating to Definitions; LP-Gas Report Forms; Records and Enforcement; Licenses and Fees; Application for License and License Renewal Requirements; Rules Examination; General Installers and Repairman Exemption; Hearings for Denial, Suspension, or Revocation of Licenses or Certificates; Designation and Responsibilities of Company Representatives and Operations Supervisors; Reciprocal Examination Agreements with Other States; Franchise Tax Certification and Assumed Name Certificates; Changes in Ownership, Form of Dealership, or Name of Dealership; Insurance and Self-Insurance Requirements; Application for an Exception to a Safety Rule; Reasonable Safety Provisions; Report of LP-Gas Incident/Accident; Termination of LP-Gas Service; Reporting Unsafe LP-Gas Activities; Testing of LP-Gas Systems in School Facilities; General Requirements for Training and Continuing Education; and Commission-Approved Outside Instructors; in Subchapter B, §§9.101 - 9.103, 9.107, 9.109, 9.110, 9.113 - 9.115, 9.126, 9.129, 9.130, 9.134, 9.140, 9.141, and 9.143, relating to Filings Required for Stationary LP-Gas Installations; Notice of Stationary LP-Gas Installations; Objections to Proposed Stationary LP-Gas Installations; Hearings on Stationary LP-Gas Installations; Physical Inspection of Stationary LP-Gas Installations; Emergency Use of Proposed Stationary LP-Gas Installations; Maintenance; Odorizing and Reports; Examination and Testing of Containers; Appurtenances and Equipment; Manufacturer's Nameplate and Markings on ASME Containers; Commission Identification Nameplates; Connecting Container to Piping; Uniform Protection Standards; Uniform Safety Requirements; and Bulkhead, Internal Valve, API 607 Ball Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More; in Subchapter C, §§9.201 - 9.204, 9.208, and 9.211, relating to Applicability; Registration and Transfer of LP-Gas Transports or Container Delivery Units; School Bus, Public Transportation, Mass Transit, and Special Transit Vehicle Installations and Inspections; Maintenance of Vehicles; Testing Requirements; and Markings; and in Subchapter D, §9.312, relating to Certification Requirements for Joining Methods.

The Commission proposes the amendments to update references to the former Alternative Fuels Research and Education Division (AFRED), the License and Permit Section of the Gas Services Division, and the Safety Division to clarify that these organizational units are now part of the Commission's Alternative Energy Division (AED) and to consolidate all of the division's administrative forms in a single table for convenient reference. The Commission proposes to eliminate the requirement in §9.114(d) that odorizers file LPG Form 17, Odorization Report, quarterly. LPG Form 17 is no longer needed, because it substantially duplicates information available on AFRED Form 1, Odorizer's or Importer's Report of Fees Collected.

Dan Kelly, Director, Alternative Energy Division, and James Osterhaus, Director, LP-Gas Operations, have determined that for each year of the first five years the proposed amendments will be in effect there will be no fiscal implications for state or local government. The amendments as proposed represent minor administrative changes or clarifications.

Mr. Kelly and Mr. Osterhaus have determined that there will be no cost of compliance with the proposed amendments for individuals, small businesses, or micro-businesses.

Mr. Kelly and Mr. Osterhaus have also determined that the public benefit anticipated as a result of enforcing or administering the amendments will be clarification of Commission organization and easier public access to the division's administrative forms.

The 80th Legislature (2007) adopted House Bill 3430, which amended Chapter 2006 of the Texas Government Code. As amended, Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, requires that as a part of the rulemaking process, a state agency prepare an Economic Impact Statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses, and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses.

The Commission has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses and therefore the analysis described in Texas Government Code, §2006.002, is not required.

The Commission simultaneously proposes the review and readoption of the rules in Chapter 9. The notice of proposed rule review will be published in this issue of the *Texas Register* concurrently with this proposal. As stated in the concurrent rule review, the Commission proposes to readopt these rules, with the proposed changes, in accordance with Texas Government Code, §2001.039. The agency's reasons for adopting these rules continue to exist.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until 12:00 noon on Monday, October 29, 2012, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site no later than the day after the Commission approves publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Osterhaus at (512) 463-6692. The sta-

tus of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §§9.2 - 9.4, 9.6, 9.7, 9.10, 9.13, 9.16 - 9.18, 9.21, 9.22, 9.26 - 9.28, 9.36 - 9.38, 9.41, 9.51, 9.54

The Commission proposes the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

Texas Natural Resources Code, §113.051, is affected by the proposed amendments.

Issued in Austin, Texas on September 11, 2012.

§9.2. Definitions.

In addition to the definitions in any adopted NFPA pamphlets, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) AED--The Commission's Alternative Energy Division.

(3) [~~(2)~~] AFRED--The organizational unit of the AED that administers the Commission's alternative fuels research and education program, including LP-gas certification, exempt registration, training, and continuing education programs [~~Commission's Alternative Fuels Research and Education Division~~].

(4) [~~(3)~~] AFT materials--The portion of a Commission training module consisting of the four sections of the Railroad Commission's LP-Gas Qualifying Field Activities, including General Instructions, the Task Information, the Operator Qualification Checklist, and the Railroad Commission/Employer Record.

(5) [~~(4)~~] Aggregate water capacity (AWC)--The sum of all individual container capacities measured by weight or volume of water which are placed at a single installation location.

(6) [~~(5)~~] Applicant--An individual:

(A) who is applying for a new certificate; or

(B) whose certification has lapsed for a period of less than two years and who is applying to restore certification by paying any applicable fees and by completing any applicable training or continuing education requirements.

(7) [~~(6)~~] Bobtail driver--An individual who operates an LP-gas cargo tank motor vehicle of 5,000 gallons water capacity or less in metered delivery service.

(8) [~~(7)~~] Breakaway--The accidental separation of a hose from a cylinder, container, transfer equipment, or dispensing equipment, which could occur on a cylinder, container, transfer equipment, or dispensing equipment whether or not they are protected by a breakaway device.

(9) [~~(8)~~] Categories of LPG activities--The LP-gas license categories as specified in §9.6 of this title (relating to Licenses and Fees).

(10) [~~(9)~~] Certificate holder--An individual:

(A) who has passed the required management-level qualification examination, satisfactorily completed any applicable training or continuing education requirements as specified in §9.52 of this title (relating to Training and Continuing Education Courses), and paid the applicable fee; [~~or~~]

(B) who has passed the required employee-level qualification examination, paid the applicable fees, and complied with the training or continuing education requirements in §9.52 of this title [~~(relating to Training and Continuing Education Courses)~~]; [~~or~~]

(C) who has passed the required employee-level qualification examination, has paid the applicable fee, and is required to comply with a training requirement as specified in §9.52 of this title [~~(relating to Training and Continuing Education Courses)~~]; [~~or~~]

(D) who holds a current reciprocal examination exemption pursuant to §9.18 of this title (relating to Reciprocal Examination Agreements with Other States); or

(E) who holds a current examination exemption certificate pursuant to §9.13 of this title (relating to General Installers and Repairman Exemption).

(11) [~~(10)~~] Certified--Authorized to perform LP-gas work as set forth in the Texas Natural Resources Code. Employee certification alone does not allow an individual to perform those activities which require licensing.

(12) [~~(11)~~] CETP--The Certified Employee Training Program offered by the Propane Education and Research Council (PERC), the National Propane Gas Association (NPGA), or their authorized agents or successors.

(13) [~~(12)~~] Commercial installation--An LP-gas installation located on premises other than a single family dwelling used as a residence, including but not limited to a retail business establishment, school, bulk storage facility, convalescent home, hospital, retail LP-gas cylinder filling/exchange operation, service station, forklift refueling facility, private motor/mobile fuel cylinder filling operation, a microwave tower, or a public or private agricultural installation.

(14) [~~(13)~~] Commission--The Railroad Commission of Texas.

(15) [~~(14)~~] Company representative--The individual designated to the Commission by a license applicant or a licensee as the principal individual in authority and, in the case of a licensee other than a Category P licensee, actively supervising the conduct of the licensee's LP-gas activities.

(16) [~~(15)~~] Container delivery unit--A vehicle used by an operator principally for transporting LP-gas in cylinders.

(17) [~~(16)~~] Continuing education--Courses required to be successfully completed at least every four years by certain certificate holders.

(18) Director--The director of the AED or the director's delegate.

(19) [~~(17)~~] DOT--The United States Department of Transportation.

(20) [~~(18)~~] Employee--An individual who renders or performs any services or labor for compensation, including individuals hired on a part-time or temporary basis, on a full-time or permanent basis, or, for purposes of this chapter, an owner-employee.

(21) [~~(19)~~] Interim approval order--The authority issued by the Railroad Commission of Texas following a public hearing allowing construction of an LP-gas installation.

(22) [~~(20)~~] Leak grades--An LP-gas leak that is:

(A) a Grade 1 leak that represents an existing or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous; or

(B) a Grade 2 leak that is recognized as being nonhazardous at the time of detection, but requires a scheduled repair based on a probable future hazard.

(23) [~~(21)~~] Licensed--Authorized to perform LP-gas activities through the issuance of a valid license.

(24) [~~(22)~~] Licensee--A person which has applied for and been granted an LP-gas license by the Commission, or who holds a master or journeyman plumber license from the Texas State Board of Plumbing Examiners or a Class A or B Air Conditioning and Refrigeration Contractors License from the Texas Department of Licensing and Regulation and has properly registered with the Commission.

(25) LP-Gas Operations--The organizational unit of the AED that administers the LP-gas safety program, including licensing, truck registration, installation approvals, complaint and accident investigations, inspections of stationary installations and vehicles, and code enforcement.

(26) [~~(23)~~] LP-Gas Safety Rules--The rules adopted by the Railroad Commission in the Texas Administrative Code, Title 16, Part 1, Chapter 9, including any NFPA or other documents adopted by reference. The official text of the Commission's rules is that which is on file with the Secretary of State's office and available at www.sos.state.tx.us or through the Commission's web site at www.rrc.state.tx.us.

(27) [~~(24)~~] LP-gas system--All piping, fittings, valves, and equipment, excluding containers and appliances, that connect one or more containers to one or more appliances that use or consume LP-gas.

(28) [~~(25)~~] Mass transit vehicle--Any vehicle which is owned or operated by a political subdivision of a state, city, or county, used primarily in the conveyance of the general public.

(29) [~~(26)~~] Mobile fuel container--An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(30) [~~(27)~~] Mobile fuel system--An LP-gas system, excluding the container, to supply LP-gas as a fuel to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(31) [~~(28)~~] Motor fuel container--An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an engine used to propel the vehicle.

(32) [~~(29)~~] Motor fuel system--An LP-gas system, excluding the container, which supplies LP-gas to an engine used to propel the vehicle.

(33) [~~(30)~~] MPS gas (Methylacetylene-propadiene, stabilized)--A mixture of gases in the liquid phase and as defined in Texas Natural Resources Code, Chapter 113, §113.002(4).

(34) [~~(31)~~] Noncorrosive--Corrosiveness of gas which does not exceed the limitation for Classification 1 of the American Society of Testing Material (ASTM) Copper Strip Classifications when tested in accordance with ASTM D 1834-64, "Copper Strip Corrosion of Liquefied Petroleum (LP) Gases."

(35) [~~(32)~~] Nonspecification unit--An LP-gas transport not constructed to DOT MC-330 or MC-331 specifications but which complies with the exemption in 49 Code of Federal Regulations §173.315(k). (See also "Specification unit" in this section.)

(36) [~~(33)~~] Operations supervisor--The individual who is certified by the Commission to actively supervise a licensee's LP-gas operations and is authorized by the licensee to implement operational changes.

(37) [~~(34)~~] Outlet--A site operated by an LP-gas licensee from which any regulated LP-gas activity is performed.

(38) [~~(35)~~] Outside instructor--An individual, other than a Commission employee, approved by AFRED to teach certain LP-gas training or continuing education courses.

(39) [~~(36)~~] Person--An individual, partnership, firm, corporation, joint venture, association, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, or licensee, including the definition of "person" as defined in the applicable sections of 49 CFR relating to cargo tank hazardous material regulations.

(40) [~~(37)~~] Portable cylinder--A receptacle constructed to DOT specifications, designed to be moved readily, and used for the storage of LP-gas for connection to an appliance or an LP-gas system. The term does not include a cylinder designed for use on a forklift or similar equipment.

(41) [~~(38)~~] Property line--The boundary which designates the point at which one real property interest ends and another begins.

(42) [~~(39)~~] Public transportation vehicle--A vehicle for hire to transport persons, including but not limited to taxis, buses (excluding school buses and mass transit or special transit vehicles), or airport courtesy vehicles.

(43) [~~(40)~~] Recreational vehicle--A vehicular-type unit primarily designed as temporary living quarters for recreational, camping, travel, or seasonal use that either has its own motive power or is mounted on, or towed by, another vehicle.

(44) [~~(41)~~] Register (or registration)--The procedure to inform the Commission of the use of an LP-gas transport or container delivery unit in Texas.

(45) [~~(42)~~] Repair to container--The correction of damage or deterioration to an LP-gas container, the alteration of the structure of such a container, or the welding on such container in a manner which causes the temperature of the container to rise above 400 degrees Fahrenheit.

(46) [~~(43)~~] Rules examination--The Commission's written examination that measures an examinee's working knowledge of Chapter 113 of the Texas Natural Resources Code and/or the current LP-Gas Safety Rules.

(47) [~~(44)~~] School--A public or private institution which has been accredited through the Texas Education Agency or the Texas Private School Accreditation Commission.

(48) [~~(45)~~] School bus--A vehicle that is sold or used for purposes that include carrying students to and from school or related events.

(49) [~~(46)~~] Self-service dispenser--A listed device or approved equipment in a structured cabinet for dispensing and metering LP-gas between containers that must be accessed by means of a locking device such as a key, card, code, or electronic lock, and which is operated by a certified employee of an LP-gas licensee or an ultimate consumer trained by an LP-gas licensee.

(50) [~~(47)~~] Special transit vehicle--A vehicle designed with limited passenger capacity which is used by a school or mass transit

authority for special transit purposes, such as transport of mobility impaired persons.

(51) [~~(48)~~] Specification unit--An LP-gas transport constructed to DOT MC-330 or MC-331 specifications. (See also "Nonspecification unit" in this section.)

(52) [~~(49)~~] Subframing--The attachment of supporting structural members to the pads of a container, excluding welding directly to or on the container.

(53) [~~(50)~~] Trainee--An individual who has not yet taken and passed an employee-level rules examination.

(54) [~~(51)~~] Training--Courses required to be successfully completed as part of an individual's requirements to obtain or maintain certain certificates.

(55) [~~(52)~~] Transfer--The procedure to inform LP-Gas Operations [~~the Commission~~] of a change in operator of an LP-gas transport or container delivery unit already registered with LP-Gas Operations [~~the Commission~~].

(56) [~~(53)~~] Transfer system--All piping, fittings, valves, pumps, compressors, meters, hoses, bulkheads, and equipment utilized in dispensing LP-gas between containers.

(57) [~~(54)~~] Transport--Any bobtail or semitrailer equipped with one or more containers.

(58) [~~(55)~~] Transport driver--An individual who operates an LP-gas trailer or semi-trailer equipped with a container of more than 5,000 gallons water capacity.

(59) [~~(56)~~] Transport system--Any and all piping, fittings, valves, and equipment on a transport, excluding the container.

(60) [~~(57)~~] Ultimate consumer--The person controlling LP-gas immediately prior to its ignition.

§9.3. LP-Gas Report Forms.

Under the provision of the Texas Natural Resources Code, Chapter 113, the Railroad Commission of Texas has adopted the following forms.
Figure: 16 TAC §9.3

~~[(1) LPG Form 1. Application for License.]~~

~~[(2) LPG Form lA. Branch Outlet List.]~~

~~[(3) LPG Form 3. Liquefied Petroleum Gas License.]~~

~~[(4) LPG Form 4. Liquefied Petroleum Gas Vehicle Identification.]~~

~~[(5) LPG Form 5. Manufacturer's Data Report.]~~

~~[(6) LPG Form 7. Liquefied Petroleum Gas Truck Registration.]~~

~~[(7) LPG Form 8. Manufacturer's Report of Pressure Vessel Repair, Modification, or Testing.]~~

~~[(8) LPG Form 8A. Report of DOT Cylinder Repair.]~~

~~[(9) LPG Form 16. Application for Examination.]~~

~~[(10) LPG Form 16A. Certified Employee Transfer Certification.]~~

~~[(11) LPG Form 16B. Application for Examination Exemption by a Master Journeyman Plumber or a Class A or B Air Conditioning and Refrigeration Contractor.]~~

~~[(12) LPG Form 16R. Reciprocity Examination Exemption.]~~

~~[(13) LPG Form 17. Report of Odorization of Liquefied Petroleum Gases.]~~

~~[(14) LPG Form 18. Statement of Lost or Destroyed License.]~~

~~[(15) LPG Form 18B. Statement of Lost or Destroyed LPG Form 4.]~~

~~[(16) LPG Form 19. Inventory of LP-Gas Storage Facility.]~~

~~[(17) LPG Form 20. Report of LP-Gas Incident/Accident.]~~

~~[(18) LPG Form 21. Notice of Intent to Appear.]~~

~~[(19) LPG Form 22. Report of LP-Gas Safety Rule Violations.]~~

~~[(20) LPG Form 23. Statement in Lieu of Container Testing.]~~

~~[(21) LPG Form 25. Application and Notice of Exception to the LP-Gas Safety Rules.]~~

~~[(22) LPG Form 28. Notice of Election to Self-Insure Per Rule §9.26.]~~

~~[(23) LPG Form 28A. Bank Declarations Regarding Irrevocable Letter of Credit.]~~

~~[(24) LPG Form 30. Texas School LP-Gas Leakage Test Report.]~~

~~[(25) LPG Form 500. Application for Installation.]~~

~~[(26) LPG Form 500A. Notice of Proposed LP-Gas Installation.]~~

~~[(27) LPG Form 501. Completion Report for Commercial Installations of Less than 10,000 Gallons Aggregate Water Capacity.]~~

~~[(28) LPG Form 502. Request for Commission Identification Nameplate.]~~

~~[(29) LPG Form 503. Request for Inspection of an LP-Gas System on School Bus, Public Transportation, Mass Transit, or Special Transit Vehicles.]~~

~~[(30) LPG Form 505. Testing Procedures Certification for Category B and O Licenses.]~~

~~[(31) LPG Form 506. Polyethylene Pipe/Tubing Heat-Fusion Certification.]~~

~~[(32) LPG Form 995. Certification of Political Subdivision of Self-Insurance for General Liability, Workers' Compensation, and/or Motor Vehicle Liability Insurance.]~~

~~[(33) LPG Form 996A. Certificate of Insurance, Workers' Compensation and Employer's Liability or Alternative Accident/Health Insurance.]~~

~~[(34) LPG Form 996B. Statement in Lieu of Insurance Filing Certifying Workers' Compensation Coverage, including Employer's Liability Insurance or Alternative Accident/Health Insurance.]~~

~~[(35) LPG Form 997A. Certificate of Insurance, Motor Vehicle Bodily Injury, and Property Damage Liability.]~~

~~[(36) LPG Form 997B. Statement in Lieu of Motor Vehicle Bodily Injury, and Property Damage Liability Insurance.]~~

~~[(37) LPG 998A. Certificate of Insurance, General Liability.]~~

~~[(38) LPG 998B. Statement in Lieu of General Liability Insurance and/or Completed Operations or Products Liability Insurance.]~~

[(39) LPG Form 999. Notice of Insurance Cancellation.]

§9.4. Records and Enforcement.

(a) Records. Each LP-gas licensee or registrant shall retain:

(1) (No change.)

(2) a copy of all documentation submitted for an exception to an LP-gas rule pursuant to §9.27 of this title (relating to Application for an Exception to a Safety Rule), including the LP-Gas Operations director's [Commission's] memorandum granting the exception, for as long as the exception is in use; and

(3) (No change.)

(b) Periodic inspection. LP-Gas Operations [The Safety Division] shall formulate a plan or program for periodic evaluation or inspection of records and facilities owned, operated, or serviced by LP-gas licenses or registrants for the purpose of verifying compliance with this chapter.

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

§9.6. Licenses and Fees.

(a) A prospective licensee may apply to LP-Gas Operations [the License and Permit Section of the Gas Services Division (the Section)], for one or more licenses specified in subsection (c)(1) - (16) of this section. Fees required to be paid shall be those established by the Commission and in effect at the time of licensing or renewal.

(b) (No change.)

(c) The license categories and fees are as follows.

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

(4) A Category D license for general installers and repairmen authorizes the sale, service, and installation of containers, excluding motor fuel containers, and the service, installation, and repair of piping, certain appliances as defined by rule, excluding recreational vehicle appliances and LP-gas systems, and motor fuel and recreational vehicle systems. The service and repair of an LP-gas appliance not required by the manufacturer to be vented to the atmosphere is exempt from Category D licensing. The installation of these unvented appliances to LP-gas systems by means of LP-gas appliance connectors is also exempt from Category D licensing. The original license fee is $100; the renewal fee is $70. Additionally, master or journeyman plumbers who are licensed by the Texas State Board of Plumbing Examiners or persons who are licensed with a Class A or B Air Conditioning and Refrigeration Contractors License issued by the Texas Department of Licensing and Regulation may register with AFRED [the Section] as described in §9.13 of this title (relating to General Installers and Repairman Exemption). The initial registration fee is $50; the registration renewal fee is $20.

(5) - (16) (No change.)

§9.7. Application for License and License Renewal Requirements.

(a) - (e) (No change.)

(f) An applicant for a new license shall file with LP-Gas Operations [the License and Permit Section of the Gas Services Division (the Section)]:

(1) a properly completed LPG Form 1 listing all names under which LP-gas related activities requiring licensing are to be conducted and, for licensees engaging in LP-gas product activities as defined in Texas Natural Resources Code, §113.081(a)(4), including a 24-hour emergency response telephone number. Any company performing LP-gas activities under an assumed name ("DBA" or "doing business as" name) shall file copies of the assumed name certificates which are required to be filed with the respective county clerk's office and/or the Secretary of State's office with LP-Gas Operations [the Section]; and

(2) LPG Form 16 or 16B and any of the following applicable forms:

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

(C) LPG Form 19 if the applicant will be transferring the operation of an existing bulk plant, service station, cylinder filling, or portable cylinder exchange rack installation from another owner or name; and/or

(D) any form required to comply [LPG Form 996A or 996B if the applicant is required to carry workers' compensation; and the applicant shall also comply] with §9.26 of this title (relating to Insurance and Self-Insurance Requirements);

[(E) LPG Form 997A or 997B if the applicant will operate a transport or container delivery unit; and the applicant shall also comply with §9.26; and/or]

[(F) LPG Form 998A or 998B if the applicant is required to carry general liability; and the applicant shall also comply with §9.26;]

(3) (No change.)

(g) (No change.)

(h) For license renewals, LP-Gas Operations [the Section] shall notify the licensee in writing at the address on file with LP-Gas Operations [the Section] of the impending license expiration at least 30 calendar days before the date a person's license is scheduled to expire. The renewal notice shall include copies of LPG Forms 1, 1A, and 7, whichever are applicable, showing the information currently on file. Renewals shall be submitted to LP-Gas Operations [the Section] with any necessary changes clearly marked on the forms. Licensees engaging in LP-gas product activities as defined in Texas Natural Resources Code, §113.081(a)(4), shall include on LPG Form 1 a 24-hour emergency response telephone number, if not previously submitted, along with the license renewal fee specified in §9.6 of this title (relating to Licenses and Fees) and any applicable transport registration fee specified in §9.202 of this title (relating to Registration and Transfer of LP-Gas Transports or Container Delivery Units) on or before the last day of the month in which the license expires in order for the licensee to continue LP-gas activities. Failure to meet the renewal deadline set forth in this section shall result in expiration of the license. If a person's license expires, that person shall immediately cease performance of any LP-gas activities authorized by the license. After verification, if the licensee has met all other requirements for licensing, LP-Gas Operations [the Section] shall renew the license, and the person may resume LP-gas activities.

(1) If a person's license has been expired for 90 calendar days or fewer, the person shall submit a renewal fee that is equal to 1 1/2 times the renewal fee required by §9.6 of this title [(relating to Licenses and Fees)]. Upon receipt of the renewal fee, LP-Gas Operations [the Section] shall verify that the person's license has not been suspended, revoked, or expired for more than one year. After verification, if the licensee has met all other requirements for licensing, LP-Gas Operations [the Section] shall renew the license, and the person may resume LP-gas activities.

(2) If a person's license has been expired for more than 90 calendar days but less than one year, the person shall submit a renewal fee that is equal to two times the renewal fee required by §9.6 of this title. Upon receipt of the renewal fee, LP-Gas Operations [the Section] shall verify that the person's license has not been suspended, revoked,

or expired for more than one year. After verification, if the licensee has met all other requirements for licensing, LP-Gas Operations [~~the Section~~] shall renew the license, and the person may resume LP-gas related activities.

(3) (No change.)

(4) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person shall pay to LP-Gas Operations [~~the Section~~] a fee that is equal to two times the renewal fee required by §9.6 of this title.

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

(i) Applicants for license or license renewal in the following categories shall comply with these additional requirements:

(1) An applicant for a Category A license or renewal shall file with LP-Gas Operations [~~the Section~~] for each of its outlets legible copies of:

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

(2) An applicant for a Category B or O license or renewal shall file with LP-Gas Operations [~~the Section~~] a properly completed LPG Form 505 certifying that the applicant will follow the testing procedures indicated. The company representative designated on the licensee's LPG Form 1 shall sign the LPG Form 505.

(3) An applicant for Category A, B, or O license or renewal who tests tanks, subframes LP-gas cargo tanks, or performs other activities requiring DOT registration shall file with LP-Gas Operations [~~the Section~~] a copy of any applicable current DOT registrations. Such registration shall comply with Title 49, Code of Federal Regulations, Part 107 (Hazardous Materials Program Procedures), Subpart F (Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers and Repairers and Cargo Tank Motor Vehicle Assemblers).

§9.10. Rules Examination.

(a) - (c) (No change.)

(d) Failure of any examination shall immediately disqualify the individual from performing any LP-gas related activities covered by the examination which is failed, except for activities covered by a separate examination which the individual has passed. If requested by an individual who failed the examination, AFRED shall furnish the individual with an analysis of the individual's performance on the examination.

(1) (No change.)

(2) Any subsequent examination shall be taken on another business day, unless approved by the AFRED director [~~assistant director for the AFRED Research and Technical Services Section or the assistant director's designee~~].

§9.13. General Installers and Repairman Exemption.

(a) Any individual who is currently licensed as a master or journeyman plumber by the Texas State Board of Plumbing Examiners or who is currently licensed with a Class A or B Air Conditioning and Refrigeration Contractors License issued by the Texas Department of Licensing and Regulation may register with AFRED [~~the License and Permit Section of the Gas Services Division (the Section)~~] and be granted an exemption to the Category D licensing and examination requirements (including insurance, and training and continuing education) provided the applicant:

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

(b) This exemption does not become effective until the registration/examination exemption certificate is issued by AFRED [~~the Section~~].

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

(e) In order to maintain an exemption, each individual issued a registration/examination exemption certificate shall pay a $20 annual renewal fee to AFRED [~~the Section~~] on or before May 31 of each year. Failure to pay the annual renewal fee by May 31 shall result in a lapsed exemption. If an individual's exemption lapses, that individual shall cease all LP-gas activities until the exemption has been renewed. To renew a lapsed exemption, the applicant shall pay the $20 annual renewal fee plus a $20 late-filing fee. Failure to do so shall result in the expiration of the registration/examination exemption. If an individual's registration/examination exemption has been expired for more than two years, that individual shall complete all requirements necessary to apply for a new exemption.

(f) Any individual who is issued this exemption agrees to comply with the current edition of the LP-Gas Safety Rules. In the event the exempt individual surrenders, fails to renew, or has the licensed revoked either by the Texas State Board of Plumbing Examiners or the Texas Department of Licensing and Regulation, that individual shall immediately cease performing any LP-gas activities granted by this section. The exemption certificate shall be returned immediately to AFRED [~~the Section~~] and all rights and privileges surrendered.

§9.16. Hearings for Denial, Suspension, or Revocation of Licenses or Certificates.

(a) The Commission may deny, suspend, or revoke a license or certificate for any individual who fails to comply with the LP-Gas Safety Rules.

(1) If LP-Gas Operations [~~the Commission~~] determines that an applicant for license, certificate, or renewal has not met the requirements of the LP-Gas Safety Rules, LP-Gas Operations [~~the Commission~~] shall notify the applicant in writing of the reasons for the proposed denial. In the case of an applicant for license or certificate, the notice shall advise the person that the application may be resubmitted within 30 calendar days of receipt of the denial with all cited deficiencies corrected, or, if the person disagrees with LP-Gas Operations' [~~the Commission's~~] determination, that person may request in writing a hearing on the matter within 30 calendar days of receipt of the notice of denial.

(2) If a person resubmits the application for license or license renewal within 30 calendar days of receipt of the denial with all deficiencies corrected, LP-Gas Operations [~~the License and Permit Section of the Gas Services Division, (the Section)~~] shall issue the license or license renewal.

(b) Hearing regarding denial of license or license renewal.

(1) An applicant receiving a notice of denial of a license or license renewal may request a hearing to determine whether the applicant did comply in all respects with the requirements for the category or categories of license sought. The request for hearing shall be in writing, shall refer to the specific requirements the applicant claims were met, and shall be submitted to LP-Gas Operations [~~the Section~~] within 30 calendar days of the applicant's receipt of the notification of denial.

(2) Upon receipt of a request complying with paragraph (1) of this subsection, LP-Gas Operations [~~the Section~~] shall forward the request for a hearing to the Office of General Counsel for the purpose of scheduling a hearing within 30 calendar days following the receipt of the request for hearing to determine the applicant's compliance or noncompliance with the licensing requirements for the category or categories of license sought.

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

(c) Suspension or revocation of licenses or certifications.

(1) If LP-Gas Operations [~~the Section or the Safety Division (the Division)~~] finds by means including but not limited to inspection, review of required documents submitted, or complaint by a member of the general public or any other person, a probable or actual violation of or noncompliance with the Texas Natural Resources Code, Chapter 113, or the LP-Gas Safety Rules, LP-Gas Operations [~~the Section or the Division~~] shall notify the licensee or certified person of the alleged violation or noncompliance in writing.

(2) The notice shall specify the acts, omissions, or conduct constituting the alleged violation or noncompliance and shall designate a date not less than 30 calendar days or more than 45 calendar days after the licensee or certified person receives the notice by which the violation or noncompliance shall be corrected or discontinued. If LP-Gas Operations [~~the Section or the Division~~] determines the violation or noncompliance may pose imminent peril to the health, safety, or welfare of the general public, LP-Gas Operations [~~the Section or the Division~~] may notify the licensee or certified person orally with instruction to immediately cease the violation or noncompliance. When oral notice is given, LP-Gas Operations [~~the Section or the Division~~] shall follow it with written notification no later than five business days after the oral notification.

(3) The licensee or certified person shall either report the correction or discontinuance of the violation or noncompliance within the time frame specified in the notice or shall request an extension of time in which to comply. The request for extension of the time to comply shall be received by LP-Gas Operations [~~the Section or the Division~~] within the same time frame specified in the notice for correction or discontinuance.

(d) Hearing regarding suspension or revocation of licenses and certifications.

(1) If a licensee or certified person disagrees with the determination of LP-Gas Operations [~~the Section or the Division~~] under this section, that person may request a public hearing on the matter to be conducted in compliance with the Texas Government Code, Chapter 2001, et seq., Chapter 1 of this title (relating to Practice and Procedure), and this chapter [~~the general rules of practice and procedure of the Railroad Commission of Texas, and the LP-Gas Safety Rules~~]. The request shall be in writing, shall refer to the specific rules or statutes the licensee or certified person claims to have complied with, and shall be received by LP-Gas Operations [~~the Section or the Division~~] within 30 calendar days of the licensee's or certified person's receipt of the notice of violation or noncompliance. LP-Gas Operations [~~The Section or Division~~] shall forward the request for hearing to the Office of General Counsel.

(2) If LP-Gas Operations [~~the Section or the Division~~] determines that the licensee or certified person may not comply within the specified time, LP-Gas Operations [~~the Section or the Division~~] may call a public hearing to be conducted in compliance with the Texas Government Code, Chapter 2001, et seq., Chapter 1 of this title [~~the general rules of practice and procedure of the Railroad Commission of Texas~~], and any other applicable rules.

§9.17. Designation and Responsibilities of Company Representatives and Operations Supervisors.

(a) Each licensee shall have at least one company representative for the license and, in the case of a licensee other than a Category P licensee, at least one operations supervisor for each outlet.

(1) A licensee maintaining one or more outlets shall file LPG Form 1 with LP-Gas Operations [~~the License and Permit Section of the Gas Services Division (the Section)~~] designating the company representative for the license and/or LPG Form 1A designating the operations supervisor for each outlet.

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

(5) A licensee shall immediately notify LP-Gas Operations [~~the Section~~] in writing upon termination, for whatever reason, of its company representative or any operations supervisor and shall at the same time designate a replacement by submitting a new LPG Form 1 for a new company representative or a new LPG Form 1A for a new operations supervisor.

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

(b) Company representative. A company representative shall comply with the following requirements:

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

(7) submit any additional information as deemed necessary by LP-Gas Operations [~~the Section~~].

(c) (No change.)

(d) In lieu of an operations supervisor requirement for a Category P license, the Category E, J, or other licensee providing the Category P licensee with portable cylinders for exchange shall be required to:

(1) prepare a manual containing, at a minimum, the following:

(A) - (J) (No change.)

(K) all [~~Railroad~~] Commission rules applicable to the Category P license, including the requirement that the Category P licensee is responsible for complying with all such rules;

(L) - (N) (No change.)

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

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

(g) Work experience substitution for Category E, F, G, I, and J. The AFRED director [~~assistant director for the Section~~] may, upon written request, allow a conditional qualification for a Category E, F, G, I, or J company representative or operations supervisor who passes the applicable management-level rules examination provided that the individual attends and successfully completes the next available Category E, F, G, I, or J management-level training course, or a subsequent Category E, F, G, I, or J management-level training course agreed on by the AFRED [~~assistant~~] director and the applicant. The written request shall include a description of the individual's LP-gas experience and other related information in order that the AFRED [~~assistant~~] director may properly evaluate the request. If the individual fails to complete the training requirements within the time granted by the AFRED [~~assistant~~] director, the conditional qualification shall immediately be voided and the conditionally qualified company representative or operations supervisor shall immediately cease all LP-gas activities. Applicants for company representative or operations supervisor who have less than three years' experience or experience which is not applicable to the category for which the individual is applying shall not be granted a conditional qualification and shall comply with the training requirements in §9.52 of this title (relating to Training and Continuing Education Courses) prior to AFRED [~~the Section~~] issuing a certificate.

§9.18. Reciprocal Examination Agreements with Other States.

(a) AFRED [~~The Alternative Fuels Research and Education Division (AFRED)~~] may accept the examination requirements for LP-gas transport drivers from other states provided that the qualifying

state has entered into a reciprocal agreement with Texas as specified in this section.

(b) A state that is interested in a reciprocal agreement with Texas shall provide a copy of its examination used to qualify transport drivers to AFRED. AFRED shall provide a copy of the Texas examination to the other state's LP-gas authority. The states shall review the materials to ensure that they contain substantially equivalent requirements. If each state accepts the requirements of the other state, both states shall sign the reciprocal agreement.

(1) The reciprocal agreement shall be in the form of a letter on the official letterhead of the state requesting the reciprocal agreement. The letter shall be signed and dated by an official representative of the LP-gas authority in both states. For Texas, the official representative shall be the AFRED director [~~or the director's delegate~~].

(2) - (5) (No change.)

(c) (No change.)

(d) Applicants for a reciprocal examination exemption shall provide the following information to AFRED to verify that they are properly and currently certified in their state:

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

(3) Texas applicants shall provide copies of their Commission-issued [~~AFRED-issued~~] wallet certification cards showing their annual certification as their written proof when applying to other states for reciprocal examination exemptions.

(e) - (g) (No change.)

§9.21. Franchise Tax Certification and Assumed Name Certificates.

(a) An applicant for an original or renewal license that is a corporation or limited liability company shall be in good standing with the [~~Office of the~~] Comptroller of Public Accounts of the State of Texas. The licensee shall provide a copy of the Franchise Tax Statement from the Comptroller of Public Accounts showing "In Good Standing."

(b) All applicants for license shall list on LPG Form 1 all names under which LP-gas related activities requiring licensing are to be conducted. Any company performing LP-gas activities under an assumed name ("DBA" or "doing business as" name) shall file copies of the assumed name certificates which are required to be filed with the respective county clerk's office and/or the secretary of state's office with LP-Gas Operations [~~the Section~~].

§9.22. Changes in Ownership, Form of Dealership, or Name of Dealership.

(a) Changes in ownership which require a new license.

(1) Transfer of dealership or outlet by sale, lease, or gift. The purchaser, lessee, or donee of any dealership or outlet shall have a current and valid license authorizing the LP-gas activities to be performed at the dealership or outlet or shall apply for and be issued an LP-gas license prior to engaging in any LP-gas activities which require a license. The purchaser, lessee, or donee shall notify LP-Gas Operations [~~the License and Permit Section of the Gas Services Division (the Section)~~] by filing a properly completed LPG Form 1 prior to engaging in any LP-gas activities at that dealership or outlet which require an LP-gas license.

(2) Other changes in ownership. A change in members of a partnership occurs upon the death, withdrawal, expulsion, or addition of a partner. Upon the death of a sole proprietor or partner, or the dissolution of a corporation or partnership, or any change in members of a partnership, or other change in ownership not specifically provided for in this section, an authorized representative of the previously existing dealership or of the successor in interest shall notify LP-Gas Operations [~~the Section~~] in writing and shall immediately cease all LP-gas activities of the previously existing dealership which require an LP-gas license and shall not resume until LP-Gas Operations [~~the Section~~] issues an LP-gas license to the successor in interest.

(b) Change in dealership business entity. When a dealership converts from one business entity into a different kind of business entity, the resulting entity shall have a current and valid license authorizing the LP-gas activities to be performed or shall apply for and be issued a license before engaging in any LP-gas activities which require an LP-gas license and shall immediately notify LP-Gas Operations [~~the Section~~] in writing of the change in business entity.

(c) Dealership name change. A licensee which changes its name shall not be required to obtain a new license but shall immediately notify LP-Gas Operations [~~the Section~~] as follows prior to engaging in any LP-gas activities under the new name. The licensee shall file:

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

(d) (No change.)

(e) In the event of a death of a sole proprietor or partner, the AFRED director [~~assistant director for the Section~~] may grant a temporary exception not to exceed 30 calendar days to the examination requirement for company representatives and operations supervisors. An applicant for a temporary exception shall agree to comply with all applicable safety requirements.

§9.26. Insurance and Self-Insurance Requirements.

(a) LP-gas licensees or applicants for license shall comply with the minimum amounts of insurance specified in Table 1 of this section or with the self-insurance requirements in subsection (i) of this section. Before LP-Gas Operations [~~the License and Permit Section of the Gas Services Division (the Section)~~] grants or renews a license, an applicant shall submit either:
Figure: 16 TAC §9.26(a)

(1) An [~~a valid certificate of insurance; an~~] insurance Acord™ form; or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information [~~that contains all the information required by the certificate of insurance~~]. The [~~certificates or~~] forms must be issued by an insurance company authorized or accepted by the Texas Department of Insurance; or

(2) (No change.)

(b) Each licensee shall file LPG Form 999 or other written notice with LP-Gas Operations at least [~~give the Section written notice~~] 30 calendar days before the cancellation of any insurance coverage. The 30-day period commences on the date the notice is actually received by LP-Gas Operations [~~the Section~~].

(c) A licensee or applicant for a license that does not employ or contemplate employing any employee to be engaged in LP-gas related activities in Texas may file LPG Form 996B in lieu of filing a [~~certificate of~~] workers' compensation, including employer's liability insurance, or alternative accident and health insurance coverage. The licensee or applicant for a license shall file the required insurance form [~~certificate~~] with LP-Gas Operations [~~the Section~~] before hiring any person as an employee engaged in LP-gas related work.

(d) A licensee, applicant for a license, or an ultimate consumer that does not operate or contemplate operating a motor vehicle equipped with an LP-gas cargo container or does not transport or contemplate transporting LP-gas by vehicle in any manner may file LPG Form 997B in lieu of a [~~certificate of~~] motor vehicle bodily injury and property damage insurance form, if this certificate is not

otherwise required. The licensee or applicant for a license shall file the required insurance form [~~certificate~~] with LP-Gas Operations [~~the Section~~] before operating a motor vehicle equipped with an LP-gas cargo container or transporting LP-gas by vehicle in any manner.

(e) A licensee or applicant for a license that does not engage in or contemplate engaging in any LP-gas operations that would be covered by completed operations or products liability insurance, or both, may file LPG Form 998B in lieu of a [~~certificate of~~] completed operations and/or products liability insurance form. The licensee or applicant for a license shall file the required insurance form [~~certificate~~] with LP-Gas Operations [~~the Section~~] before engaging in any operations that require completed operations and/or products liability insurance.

(f) A licensee or applicant for a license that does not engage in or contemplate engaging in any operations that would be covered by general liability insurance may file LPG Form 998B in lieu of filing a [~~certificate of~~] general liability insurance form. The licensee or applicant for a license shall file the required insurance form [~~certificate~~] with LP-Gas Operations [~~the Section~~] before engaging in any operations that require general liability insurance.

(g) (No change.)

(h) A state agency or institution, county, municipality, school district, or other governmental subdivision shall meet the requirements of this section for workers' compensation, general liability, and/or motor vehicle liability insurance by filing LPG Form 995 with LP-Gas Operations [~~the Section~~] as evidence of self-insurance, if permitted by the Texas Labor Code, Title 5, Subtitle C, and Texas Natural Resources Code, §113.097.

(i) Self-insurance requirements.

(1) (No change.)

(2) A licensee or license applicant desiring to self-insure shall file with LP-Gas Operations [~~the Section~~] a properly completed LPG Form 28, Notice of Election to Self-Insure [~~Per Rule 9.26~~] (created 11/02) and a properly completed LPG Form 28-A, Bank Declarations Regarding Irrevocable Letter of Credit (created 11/02). The licensee or license applicant shall attach to the LPG Form 28-A any documentation necessary to show that the bank issuing the irrevocable letter of credit meets the requirements in paragraph (5)(E) of this subsection.

(3) - (5) (No change.)

(6) Within 30 days of the occurrence of any incident or accident involving the business activities of a self-insured LP-gas licensee that results in property damage or loss and/or personal injuries, the licensee shall notify LP-Gas Operations [~~the Railroad Commission, Safety Division,~~] in writing of the incident. The licensee shall include in the notification a list of the names and addresses of any individuals known to the licensee who may have suffered losses in the incident. The licensee shall also provide written notice to all such individuals of the licensee's status as being self-insured and of the expiration date of the licensee's letter of credit.

(j) Each licensee shall promptly notify LP-Gas Operations [~~the Commission~~] of any change in insurance coverage or insurance carrier by filing a properly completed revised [~~certificate of insurance; insurance~~] Acord™ form; other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information [~~that contains all the information required by the certificate of insurance~~]; or documents demonstrating the applicant's compliance with the self-insurance requirements set forth in subsection (i) of this section. Failure to promptly notify LP-Gas Operations [~~the Commission~~] of a change in the status of insurance coverage or insurance carrier may result in an enforcement action and an administrative penalty.

§9.27. Application for an Exception to a Safety Rule.

(a) A person may apply for an exception to the provisions of this chapter by filing LPG Form 25 along with supporting documentation, and a $50 filing fee with LP-Gas Operations [~~the Safety Division (the Division)~~].

(b) The application shall contain the following:

(1) (No change.)

(2) the type of relief desired, including the exception requested and any information which may assist LP-Gas Operations [~~the Division~~] in comprehending the requested exception;

(3) - (7) (No change.)

(c) Notice of the application for an exception to a safety rule.

(1) The applicant shall send a copy of LPG Form 25 by certified mail, return receipt requested, or otherwise delivered to all affected entities as specified in paragraphs (2), (3), and (4) of this subsection on the same date on which the form or application is filed with or sent to LP-Gas Operations [~~the Division~~]. The applicant shall include a notice to the affected entities that any objection shall be filed with LP-Gas Operations [~~the Division~~] within 18 calendar days of postmark or other delivery of the application. The applicant shall file all return receipts with LP-Gas Operations [~~the Division~~] as proof of notice.

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

(4) LP-Gas Operations [~~The Division~~] may require an applicant to give notice to persons in addition to those listed in paragraphs (2) and (3) of this subsection if doing so will not prejudice the rights of any entity.

(d) Objections to the requested exception shall be in writing, filed at LP-Gas Operations [~~the Division~~] within 18 calendar days of the postmark of the application, and shall be based on facts that tend to demonstrate that, as proposed, the exception would have an adverse effect of public health, safety, or welfare. LP-Gas Operations [~~The Commission~~] may decline to consider objections based solely on claims of diminished property or esthetic values in the area.

(e) LP-Gas Operations [~~The Division~~] shall review the application within 21 business days of receipt of the application. If LP-Gas Operations [~~the Division~~] does not receive any objections from any affected entities as defined in subsection (c) of this section, the LP-Gas Operations director [~~of the Division or the director's delegate~~] may administratively grant the exception if the director determines that the installation, as proposed, does not adversely affect the health or safety of the public. LP-Gas Operations [~~The Division~~] shall notify the applicant in writing by the end of the 21-day review period and, if approved, the installation shall be installed within one year from the date of approval. LP-Gas Operations [~~The Division~~] shall also advise the applicant at the end of the objection period as to whether any objections were received and whether the applicant may proceed. If the LP-Gas Operations director [~~of the Division or the director's delegate~~] denies the exception, LP-Gas Operations [~~the Division~~] shall notify the applicant in writing, outlining the reasons and any specific deficiencies. The applicant may modify the application to correct the deficiencies and resubmit the application along with a $30 resubmission fee, or may request a hearing on the matter. To be granted a hearing, the applicant shall file a written request for hearing within 14 calendar days of receiving notice of the administrative denial.

(f) A hearing shall be held when LP-Gas Operations [~~the Division~~] receives an objection as set out in subsection (d) from any affected

entity, or when the applicant requests one following an administrative denial. LP-Gas Operations [~~The Division~~] shall mail the notice of hearing to the applicant and all objecting entities by certified mail, return receipt requested, at least 21 calendar days prior to the date of the hearing. Hearings will be held in accordance with the Texas Government Code, Chapter 2001, et seq., Chapter 1 of this title (relating to Practice and Procedure), and this chapter [~~the general rules of practice and procedure of the Railroad Commission of Texas, and the LP-Gas Safety Rules~~].

(g) - (h) (No change.)

(i) A request for an exception shall expire if it is inactive for three months after the date of the letter in which the applicant was notified by LP-Gas Operations [~~the Division~~] of an incomplete request. The applicant may resubmit an application request.

§9.28. Reasonable Safety Provisions.

If an LP-gas installation, equipment, or appurtenances not specifically covered by the LP-Gas Safety Rules has been or will be installed, LP-Gas Operations [~~the Safety Division~~] shall apply and require any reasonable safety provisions to ensure the LP-gas installation is safe for LP-gas service. If the affected entity disagrees with LP-Gas Operations' [~~the Division's~~] determination, the entity may request a hearing. The installation shall not be placed into LP-gas operation until the Commission has determined that the installation is safe for LP-gas service.

§9.36. Report of LP-Gas Incident/Accident.

(a) At the earliest practical moment or within two hours following discovery, a licensee owning, operating, or servicing the equipment of an installation shall notify LP-Gas Operations [~~the Safety Division~~] by telephone of any event involving LP-gas which:

(1) - (7) (No change.)

(b) (No change.)

(c) Following the initial telephone report, the LP-gas licensee who made the telephone report shall submit a properly completed LPG Form 20 to LP-Gas Operations [~~the Division~~]. The report shall be postmarked within 14 calendar days of the date of initial notification to LP-Gas Operations [~~the Division~~], or within five business days of receipt of the fire department's report, whichever occurs first, unless LP-Gas Operations [~~the Division~~] grants authorization for a longer period of time when additional investigation or information is necessary.

(d) Within five business days of receipt, LP-Gas Operations [~~the Division~~] shall review LPG Form 20 and notify in writing the person submitting the LPG Form 20 if the report is incomplete and specify in detail what information is lacking or needed. Incomplete reports may delay the resumption of LP-gas activities at the involved location.

(e) In the case of an accident or incident at a Category P licensee's location, the Category P licensee shall immediately notify the Category E, J, or other licensee who supplies cylinders to the Category P licensee and the Category E, J, or other licensee shall be responsible for making the accident or incident report to LP-Gas Operations [~~the Division~~] as specified in this section.

§9.37. Termination of LP-Gas Service.

(a) If LP-Gas Operations [~~the Safety Division (the Division)~~] determines that any LP-gas container or installation constitutes an immediate danger to the public health, safety, and welfare, LP-Gas Operations [~~the Division~~] shall require the immediate removal of liquid and vapor LP-gas and/or the immediate disconnection by a properly licensed company to the extent necessary to eliminate the danger. This may include appliances, equipment, or any part of the system including the servicing container. A warning tag shall be installed by LP-Gas Operations [~~the Division~~] until the unsafe condition is remedied. Once the unsafe condition is corrected, the tag may be removed if authorized by LP-Gas Operations [~~the Division~~].

(b) If LP-Gas Operations [~~the Division~~] determines that any LP-gas container or installation does not comply with the Texas Natural Resources Code, Chapter 113, or the LP-Gas Safety Rules, but does not constitute an immediate danger to the public health, safety, and welfare, LP-Gas Operations [~~the Division~~] shall take action to ensure that the container or installation comes into compliance as soon as practicable. LP-Gas Operations [~~Division~~] action may include the placement of a warning tag. Once the container or installation complies with Texas Natural Resources Code, Chapter 113, and the LP-Gas Safety Rules, LP-Gas Operations [~~the Division~~] may remove or delegate the removal of the warning tag.

(c) If the affected entity disagrees with the removal from service and/or placement of a warning tag, the entity may request a review of LP-Gas Operations' [~~the Division's~~] decision within 10 calendar days. LP-Gas Operations [~~The Division~~] shall notify such entity of its finding, in writing, stating the deficiencies, within 10 business days. If the entity disagrees, the entity may request or LP-Gas Operations [~~the Division~~] on its own motion may call a hearing. Such installation shall be brought into compliance or removed from service until such time as the final decision is rendered by the Commission.

§9.38. Reporting Unsafe LP-Gas Activities.

(a) A person may report any unsafe or noncompliant LP-gas activities to LP-Gas Operations [~~the Safety Division (the Division)~~] by mail, telephone, electronic mail, or facsimile transmission (fax). When possible, the person shall make the report using LPG Form 22. If a person makes a report of unsafe or noncompliant LP-gas activities to LP-Gas Operations [~~the Division~~] without using LPG Form 22, LP-Gas Operations [~~the Division~~] shall complete the LPG Form 22. Within five business days of receipt of such report, LP-Gas Operations [~~the Division~~] shall notify the licensee and any other applicable persons in writing regarding the report and specify the reported violations, if any.

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

§9.41. Testing of LP-Gas Systems in School Facilities.

(a) - (e) (No change.)

(f) Commission requirements.

(1) (No change.)

(2) LP-Gas Operations [~~The Alternative Energy Division~~] shall initiate any enforcement proceedings necessary under Texas Natural Resources Code, Chapter 113.

(g) (No change.)

§9.51. General Requirements for LP-Gas Training and Continuing Education.

(a) (No change.)

(b) Applicants for new licenses or new certificates, as set forth in §9.7 and §9.8 of this title (relating to Application for License and License Renewal Requirements, and Application for a New Certificate, respectively) and persons holding existing licenses or certificates shall comply with the training or continuing education requirements in this chapter. Any individual who fails to comply with the training or continuing education requirements by the assigned deadline may regain certification by paying the nonrefundable course fee and satisfactorily completing an authorized training or continuing education course within two years of the deadline. In addition to paying the course fee, the person shall pay any fee or late penalties to AFRED [~~the Alternative Fuels Research and Education Division (AFRED)~~].

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

(c) - (g) (No change.)

§9.54. Commission-Approved Outside Instructors.

(a) (No change.)

(b) Application process. Outside instructor applicants shall submit the following to AFRED:

(1) (No change.)

(2) a copy of the applicant's Category D, E, I, or M current certification card or, in the case of Category D only, a copy of the master or journeyman plumber/class A or B registration/examination exemption certificate issued by AFRED [~~the License and Permit Section of the Gas Services Division~~];

(3) - (5) (No change.)

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

(f) Notification of approval. Within 10 business days of the outside instructor applicant's completion of the requirements of this section, AFRED shall notify the applicant in writing that the applicant is approved as an outside instructor and the outside instructor may then begin offering the approved courses [~~for which AFRED approved the outside instructor~~].

(g) - (l) (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 September 11, 2012.

TRD-201204809
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

SUBCHAPTER B. LP-GAS INSTALLATIONS, CONTAINERS, APPURTENANCES, AND EQUIPMENT REQUIREMENTS

16 TAC §§9.101 - 9.103, 9.107, 9.109, 9.110, 9.113 - 9.115, 9.126, 9.129, 9.130, 9.134, 9.140, 9.141, 9.143

The Commission proposes the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

Texas Natural Resources Code, §113.051, is affected by the proposed amendments.

Issued in Austin, Texas on September 11, 2012.

§9.101. Filings Required for Stationary LP-Gas Installations.

(a) (No change.)

(b) Commercial installations with an aggregate water capacity of less than 10,000 gallons.

(1) Within 30 calendar days following the completion of a container installation, the licensee shall submit LPG Form 501 to LP-Gas Operations [~~the Gas Services Division (the Division)~~] stating:

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

(2) (No change.)

(3) LP-Gas Operations [~~The Division~~] shall review the submitted information within 21 business days of receipt of all required information and shall notify the applicant in writing of any deficiencies. LP-gas operations may commence prior to the submission of LPG Form 501 if the facility is in compliance with the LP-Gas Safety Rules.

(c) Aggregate water capacity of 10,000 gallons or more.

(1) For installations with an aggregate water capacity of 10,000 gallons or more, the licensee shall submit the following information to LP-Gas Operations [~~the Division~~] at least 30 days prior to construction if the applicant is required to give notice as described in §9.102 of this title (relating to Notice of Stationary LP-Gas Installations):

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

(2) In addition to NFPA 58, §6.5.4 prior to the installation of any individual LP-gas container, LP-Gas Operations [~~the Division~~] shall determine whether the proposed installation constitutes a danger to the public health, safety, and welfare.

(A) LP-Gas Operations [~~The Division~~] may impose restrictions or conditions on the proposed LP-gas installation based on one or more of the following factors:

(i) - (viii) (No change.)

(B) (No change.)

(3) If an LP-gas stationary installation, equipment, or appurtenances not specifically covered by the LP-Gas Safety Rules has been or will be installed, LP-Gas Operations [~~the Division~~] shall apply and require any reasonable safety provisions to ensure the LP-gas installation is safe for LP-gas service. If the affected entity disagrees with LP-Gas Operations' [~~the Division's~~] determination, the entity may request a hearing. The installation shall not be placed into LP-gas operation until LP-Gas Operations [~~the Division~~] has determined that the installation is safe for LP-gas service.

(4) LP-Gas Operations [~~The Division~~] shall notify the applicant in writing outlining its findings. If the application is administratively denied, the applicant may modify the submission and resubmit it or request a hearing on the matter in accordance with Chapter 1 of this title (relating to Practice and Procedure) [~~the General Rules of Practice and Procedure of the Railroad Commission of Texas~~].

(5) The licensee shall not commence construction until notice is received from LP-Gas Operations [~~the Division~~]. Upon completion of a field inspection as specified in §9.109 of this title (relating to Physical Inspection of Stationary LP-Gas Installations), the operator, pending the inspection findings, may commence LP-gas operations of the facility.

(6) If the subject installation is not completed within one year from the date of LP-Gas Operations' [~~the Division's~~] completed review, the requirements of this subsection shall be resubmitted for LP-Gas Operations' [~~the Division's~~] review.

(d) - (e) (No change.)

(f) In addition, LP-Gas Operations [~~the Division~~] may request [~~LPG Form 5,~~] LPG Form 8, a Manufacturer's Data Report, or any other

documentation or information pertinent to the installation in order to determine compliance with the LP-Gas Safety Rules.

§9.102. Notice of Stationary LP-Gas Installations.

(a) For a proposed installation with an aggregate water capacity of 10,000 gallons or more, an applicant shall send a copy of the filings required under §9.101(c) of this title (relating to Filings Required for Stationary LP-Gas Installations) by certified mail, return receipt requested or otherwise delivered, to all owners of real property situated within 500 feet of any proposed container location at the same time the originals are filed with LP-Gas Operations [~~the License and Permit Section of the Gas Services Division (the Section)~~]. LP-Gas Operations [~~The Section~~] shall consider the notice to be sufficient when the applicant has provided evidence that copies of a complete application have been mailed or otherwise delivered to all real property owners. The applicant may obtain names and addresses of owners from current county tax rolls.

(b) An applicant shall notify owners of real property situated within 500 feet of any proposed container location if:

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

(3) LP-Gas Operations [~~the Section~~] considers notice to be in the public interest.

(c) (No change.)

§9.103. Objections to Proposed Stationary LP-Gas Installations.

(a) Each owner of real property situated within 500 feet of the proposed location of any LP-gas containers of 10,000 gallon aggregate water capacity or more receiving notice of a proposed installation shall have 18 calendar days from the date the notice is postmarked to file a written objection using the LPG Form 500A sent to them by the applicant as described in §9.102 of this title (relating to Notice of Stationary LP-Gas Installations) [~~§9.107(a)(1) of this title (relating to Hearings on Stationary LP-Gas Installations)~~] with LP-Gas Operations [~~the License and Permit Section of the Gas Services Division (the Section)~~]. An objection is considered timely filed when it is actually received by the Commission.

(b) LP-Gas Operations [~~The Section~~] shall review all objections within 10 business days of receipt. An objection shall be in writing and shall include a statement of facts showing that the proposed installation:

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

(c) Upon review of the objection, LP-Gas Operations [~~the Section~~] shall either:

(1) (No change.)

(2) notify the objecting party in writing within 10 business days of receipt requesting further information for clarification and stating why the objection is being returned. The objecting entity shall have 10 calendar days from the postmark of LP-Gas Operations' [~~the Section's~~] letter to file its corrected objection. Clarification of incomplete or nonsubstantive objections shall be limited to two opportunities. If new objections are raised in the objecting party's clarification, the new objections shall be limited to one notice of correction.

§9.107. Hearings on Stationary LP-Gas Installations.

(a) Reason for hearing. LP-Gas Operations [~~The License and Permit Section of the Gas Services Division (the Section)~~] shall call a public hearing if:

(1) (No change.)

(2) LP-Gas Operations [~~the Section~~] receives an objection that complies with §9.103 of this title (relating to Objections to Proposed Stationary LP-Gas Installations); or

(3) LP-Gas Operations [~~the Section~~] determines that a hearing is necessary to investigate the impact of the installation.

(b) Notice of public hearing. LP-Gas Operations [~~The Section~~] shall give notice of the public hearing at least 21 calendar days prior to the date of the hearing to the applicant and to all real property owners who were required to receive notice of the proposed installation under §9.102 of this title (relating to Notice of Stationary LP-Gas Installations).

(c) (No change.)

§9.109. Physical Inspection of Stationary LP-Gas Installations.

(a) Aggregate water capacity of 10,000 gallons or more. The applicant shall notify LP-Gas Operations [~~the Safety Division (the Division)~~] in writing when the installation is ready for inspection. If LP-Gas Operations [~~the Division~~] does not physically inspect the facility within 30 calendar days of receipt of notice that the facility is ready for inspection, the facility may operate conditionally until the initial complete inspection is made. If any safety rule violations exist at the time of LP-Gas Operations' [~~the Division's~~] initial inspection, the installation may be required to cease LP-gas operations until the violations are corrected.

(b) Aggregate water capacity of less than 10,000 gallons. After receipt of LPG Form 501, LP-Gas Operations [~~the Division~~] shall conduct an inspection as soon as possible to verify that the installation described is in compliance with the LP-Gas Safety Rules. The facility may be operated prior to inspection if it is in compliance with the LP-Gas Safety Rules. If any LP-gas statute or safety rule violation exists at the time of the first inspection at a commercial installation, the subject container, including any piping, appliances, appurtenances, or equipment connected to it may be immediately removed from LP-gas service until the violations are corrected.

(c) Material variances. If LP-Gas Operations [~~the Division~~] determines the completed installation varies materially from the application originally accepted, correction of the variance and notification to LP-Gas Operations [~~the Division~~] or resubmission of the application is required. The review of such resubmitted application shall comply with §9.101 of this title (relating to Filings Required for Stationary LP-Gas Installations).

(d) In the event an applicant has requested an inspection and LP-Gas Operations [~~the Division~~] inspection identifies violations requiring modifications by the applicant, LP-Gas Operations [~~the Division~~] shall consider the assessment of an inspection fee to cover the costs associated with any additional inspection, including mileage and per diem rates set by the legislature.

§9.110. Emergency Use of Proposed Stationary LP-Gas Installations.

When there is an immediate need for LP-gas supply under emergency circumstances, LP-Gas Operations [~~the Safety Division (the Division)~~] may waive the requirement for the initial complete inspection for a limited time period in order to meet the emergency need. LP-gas shall not be introduced into the container and it shall not be placed into LP-gas service until LP-Gas Operations [~~the Division~~] grants permission to do so.

§9.113. Maintenance.

All LP-gas storage containers, valves, dispensers, accessories, piping, transfer equipment, gas utilization equipment, and appliances shall be maintained in safe working order and in accordance with the manufacturer's instructions and the LP-Gas Safety Rules. If any one of

the LP-gas storage containers, valves, dispensers, accessories, piping, transfer equipment, gas utilization equipment, and appliances is not in safe working order, LP-Gas Operations [~~the Safety Division~~] may require that the installation be immediately removed from LP-gas service and not be operated until the necessary repairs have been made.

§9.114. Odorizing and Reports.

(a) (No change.)

(b) If LP-Gas Operations [~~the Commission~~] determines that there shall be insufficient odorization, LP-Gas Operations [~~the Commission~~] may require testing as deemed necessary to determine its sufficiency. If testing is deemed necessary, LP-Gas Operations [~~the Commission~~] shall notify the necessary parties in writing as soon as possible. The written notification will advise which entity is responsible for having the tests performed and paying for the tests to be conducted. The testing shall be performed by a recognized testing laboratory equipped for and experienced in testing of odorization and, if requested, a copy of the test results shall be provided to LP-Gas Operations [~~the Commission~~].

(c) The person or facility odorizing the gas or the operator of an automatic loading rack shall be responsible for the odorization [~~and for filing LPG Form 17 with the Commission~~].

~~[(d) Each person or facility who odorizes LP-gas shall file with the Commission a completed LPG Form 17 after each quarter of the Railroad Commission's fiscal year. The Railroad Commission's fiscal year begins on September 1 of one year and ends on August 31 of the next year. The reports are due as follows:]~~

~~[(1) The report for the quarter ending on November 30 shall be postmarked by December 31.]~~

~~[(2) The report for the quarter ending on February 28 (or February 29 in the case of a leap year) shall be postmarked by March 31.]~~

~~[(3) The report for the quarter ending on May 31 shall be postmarked by June 30.]~~

~~[(4) The report for the quarter ending on August 31 shall be postmarked by September 30.]~~

~~[(5) If a specified due date falls on a Saturday, Sunday, or holiday, the report shall be postmarked by 5:00 p.m. on the next business day following the Saturday, Sunday, or holiday.]~~

§9.115. Examination and Testing of Containers.

(a) In order to determine the safety of a container, LP-Gas Operations [~~the Safety Division (the Division)~~] may require that the licensee or operator of the container send a copy of the manufacturer's data report on that container to LP-Gas Operations [~~the Division~~]. LP-Gas Operations [~~The Division~~] may also require that the container and equipment be examined by a Category A, B, or O licensee, with a comprehensive report on the findings submitted to LP-Gas Operations [~~the Division~~] for its consideration. This subsection may be applied even though an acceptable LPG Form 23 has been received.

(b) Any stationary ASME LP-gas container previously in LP-gas service which has not been subject to continuous LP-gas vapor pressure shall be retested by an authorized Category A, B, or O licensed entity utilizing recognized ASME test methods to determine if the container is safe for LP-gas use in Texas, and the test results shall be submitted to LP-Gas Operations [~~the Division~~] on LPG Form 8.

(c) Any stationary ASME LP-gas container which has been subject to continuous LP-gas vapor pressure is not required to be tested prior to installation, provided the licensee or operator of the container files a properly completed LPG Form 23 with LP-Gas Operations [~~the Division~~] at the time LPG Form 500 is submitted for any facility requiring submission of a site plan in accordance with §9.101 of this title (relating to Filings Required for Stationary LP-Gas Installations).

(d) Any stationary ASME LP-gas container brought into Texas from out-of-state and intended for stationary LP-gas installation in Texas at any facility requiring submission of a site plan shall be tested in accordance with subsection (b) of this section prior to review approval being granted by LP-Gas Operations [~~the Division~~], unless that container is owned by a valid licensee. In this case, LP-Gas Operations [~~the Division~~] may determine that such tests are not necessary upon the receipt of an acceptable LPG Form 23 from the licensee.

§9.126. Appurtenances and Equipment.

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

(c) The licensee or operator of the appurtenances or the equipment shall maintain documentation sufficient to substantiate any claims regarding the safety of any valves, fittings, and equipment and shall, upon request, furnish copies to LP-Gas Operations [~~the Safety Division~~].

§9.129. Manufacturer's Nameplate and Markings on ASME Containers.

(a) LP-gas shall not be introduced into an ASME container unless the container is equipped with an original nameplate or at least one of the nameplates defined in this subsection permanently attached to the container.

(1) Commission identification nameplate--A nameplate issued under the procedures specified in §9.130 of this title (relating to Commission Identification Nameplates) and attached by an authorized representative of the [~~Railroad~~] Commission for the purpose of identifying an ASME stationary container when the original nameplate is lost or illegible.

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

(b) - (e) (No change.)

(f) Any replacement nameplate issued by an original container manufacturer for containers constructed prior to September 1, 1984, shall be stainless steel and shall be affixed in accordance with ASME Code. The owner or operator of the container shall ensure that a copy of LPG Form 8 is filed with LP-Gas Operations [~~the Safety Division (the Division)~~] when a replacement nameplate is affixed.

(g) - (h) (No change.)

(i) LP-Gas Operations [~~The Division~~] may remove a container from LP-gas service or require ASME acceptance of a container at any time if LP-Gas Operations [~~the Division~~] determines that the nameplate, in any form defined in subsection (a)(1) - (4) of this section, is loose, unreadable, or detached, or if it appears to be tampered with or damaged in any way and does not contain at a minimum the items defined in subsection (d) of this section.

§9.130. Commission Identification Nameplates.

(a) Prior to an original ASME nameplate or any manufacturer-issued nameplate becoming unreadable or detached from a stationary container with a water capacity of 4,001 gallons or more, the owner or operator of the container may request an identification nameplate from LP-Gas Operations [~~the Commission~~]. Commission identification nameplates shall be issued only for containers which can be documented as being in continuous LP-gas service in Texas from a date prior to September 1, 1984. The container's serial number and manufacturer on the original or manufacturer-issued nameplate shall be clearly readable at the time the Commission identification nameplate is attached.

(1) (No change.)

(2) LP-Gas Operations [~~The Safety Division (the Division)~~] shall review LPG Form 502 and the supporting documentation. LP-Gas Operations [~~The Division~~] shall have the manufacturer's data report on file for the container or the licensee shall provide a copy to LP-Gas Operations [~~the Division~~]. The Commission identification nameplate shall not be issued unless the manufacturer's data report is reviewed. Upon review of submitted documents and confirmation of the manufacturer's data report, LP-Gas Operations [~~the Division~~] shall mail a letter to the owner or operator of the container stating the estimated costs, which will be based on the following:

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

(3) The owner or operator of the container shall pay the total estimated costs to LP-Gas Operations [~~the Division~~] before LP-Gas Operations [~~the Division~~] will proceed. Within 15 business days of receipt of all required documents and fees, LP-Gas Operations [~~the Division~~] shall:

(A) (No change.)

(B) inspect the container to ensure that the container is not dented, pitted, or otherwise damaged, and complies with other applicable LP-Gas Safety Rules, unless additional time is necessary as determined by the LP-Gas Operations director [~~of the Safety Division~~]; and

(C) advise the owner or operator that the container shall be tested if it appears to be pitted or otherwise damaged.

(i) (No change.)

(ii) If the container passes the test, LP-Gas Operations [~~the Division~~] shall proceed with the attachment of the nameplate.

(D) Within the 15-day period, LP-Gas Operations [~~the Division~~] shall notify the applicant in writing, in clear and specific language, of the outcome of LP-Gas Operations' [~~the Division's~~] review.

(4) Following LP-Gas Operations' [~~the Division's~~] review of any required tests and payment of all other amounts due in addition to the previously-paid estimated costs, and when all requirements have been met, LP-Gas Operations [~~the Division~~] shall issue an identification nameplate for the container.

(5) - (6) (No change.)

(b) (No change.)

(c) Commission identification nameplates shall not be valid until LP-Gas Operations [~~the Division~~] has received the final paperwork from [~~for~~] the Commission employee who attached the nameplate. LP-Gas Operations [~~The Division~~] shall mail a letter to the owner or operator of the container stating the date on which the nameplate is valid.

(d) If at any time during the Commission identification nameplate request or approval process, the original ASME nameplate becomes completely unreadable or detached, the owner or operator of the container shall immediately remove the container from service and no Commission identification nameplate shall be issued or attached. In addition, LP-Gas Operations [~~the Division~~] may remove such a container from service as specified in §9.129(i) of this title (relating to Manufacturer's Nameplate and Markings on ASME Containers).

(e) (No change.)

(f) Fees charged for the Commission identification nameplate are nonrefundable except as described in this subsection [~~section~~]. The cost of the nameplate is refundable only if the Commission employee finds upon actual inspection of the container that the original nameplate has become totally detached or unreadable, or that the container is pitted, dented, or otherwise damaged, therefore prohibiting attachment of the nameplate. The fees charged relating to LP-Gas Operations' [~~the Division's~~] travel and research costs will be refunded only if LP-Gas Operations' [~~the Division's~~] research shows that the nameplate cannot be issued. Otherwise, these fees will be nonrefundable if these activities have taken place before the Commission employee inspects a container and finds that a nameplate cannot be issued.

§9.134. Connecting Container to Piping.

LP-gas piping shall be installed only by a licensee authorized to perform such installation, a registrant authorized by §9.13 of this title (relating to General Installers and Repairman Exemption), or an individual exempted from licensing as authorized by Texas Natural Resources Code, §113.081. A licensee shall not connect an LP-gas container or cylinder to a piping installation made by a person who is not licensed to make such installation, except that connection may be made to piping installed by an individual on that individual's single family residential home. A licensee may connect to piping installed by an unlicensed person provided the licensee has performed a pressure test, verified that the piping has been installed according to the LP-Gas Safety Rules, and filed a properly-completed LPG Form 22 with LP-Gas Operations [~~the Safety Division~~], identifying the unlicensed person who installed the LP-gas piping.

§9.140. Uniform Protection Standards.

(a) (No change.)

(b) In addition to NFPA 58, §§6.18.4.2, 6.19.3.2, 6.24.3.7, 7.2.3.8, 8.2.1.1, and 8.4.2.1. fencing at LP-gas installations shall comply with the following:

(1) Fencing material shall be chain link with wire at least 12 1/2 American wire gauge in size, or industrial-type fencing, or material providing equivalent protection as determined by LP-Gas Operations [~~the Safety Division~~].

(2) - (7) (No change.)

(c) Containers which are exempt from the fencing requirements include:

(1) ASME containers or manual dispensers originally manufactured to or modified to be considered by LP-Gas Operations [~~the Safety Division (the Division)~~] as self-contained units. Self-contained units shall be protected as specified in subsection (d) of this section;

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

(d) In addition to NFPA 58, §§6.6.1.2, 6.6.6.1(a) - (d), 6.6.6.2(6), 6.18.4.2, 6.24.3.12, and 8.4.2, guardrails at LP-gas installations, except as noted in subsection (a) of this section, shall comply with the following:

(1) In addition to NFPA 58 §6.18.4.2(c), where fencing is not used to protect the installation as specified in subsection (b) of this section, locks for the valves or other suitable means shall be provided to prevent unauthorized withdrawal of LP-gas, and guardrailing specified in paragraphs (2) - (6) of this subsection, or protection considered by LP-Gas Operations [~~the Division~~] to be equivalent, shall be required.

(2) - (6) (No change.)

(e) (No change.)

(f) If exceptional circumstances exist or will exist at an installation which would require additional protection such as larger-diameter guardrailing, then the licensee or operator shall install such additional protection. In addition, LP-Gas Operations [~~the Division~~] at its

own discretion may require an installation to be protected with added safeguards to adequately protect the health, safety, and welfare of the general public. LP-Gas Operations [~~The Division~~] shall notify the person in writing of the additional protection needed and shall establish a reasonable time period during which the additional protection shall be installed. The licensee shall ensure that any necessary extra protection is installed. If a person owning or operating such an installation disagrees with LP-Gas Operations' [~~the Division's~~] determination made under this subsection, that person may request a public hearing on the matter. The installation shall either be protected in the manner prescribed by LP-Gas Operations [~~the Division~~] or removed from service with all product withdrawn from it until LP-Gas Operations' [~~the Division's~~] final decision.

(g) - (h) (No change.)

(i) Self-service dispensers shall be protected against vehicular damage by:

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

(3) where routine traffic patterns expose only the approach end of the dispenser to vehicular damage, support columns, concrete barriers, bollards, inverted U-shaped guard posts anchored in concrete, or other protection acceptable to LP-Gas Operations [~~the Safety Division~~], provided:

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

(4) (No change.)

§9.141. Uniform Safety Requirements.

(a) In addition to NFPA 58, §6.6.1.4, containers shall be painted as follows:

(1) (No change.)

(2) If LP-Gas Operations [~~the Safety Division (the Division)~~] disapproves of a certain color, the licensee or ultimate consumer shall provide to LP-Gas Operations [~~the Division~~] information from the container or paint manufacturer stating specific reasons why the color is heat-reflective and should be approved. The LP-Gas Operations director [~~of the Division~~] shall make the final determination and shall notify the licensee or ultimate consumer.

(b) - (f) (No change.)

(g) Any container that may have contained product other than LP-gas shall be thoroughly cleaned and purged prior to introducing LP-gas into such container. Only grades of LP-gas determined to be noncorrosive may be introduced into any container. LP-gas may not contain anhydrous ammonia, hydrogen sulfide, or any other contaminant.

(1) If it is known or suspected that the LP-gas has been or may be contaminated, the person responsible for the contamination shall have one or more of the tests contained in "Liquefied Petroleum Gas Specifications for Test Methods, Gas Processors Association (GPA) 2140" performed by a testing laboratory or individual qualified to perform the tests. LP-Gas Operations [~~The Division~~] may request information necessary to determine the qualification of any testing laboratory or individual.

(2) (No change.)

(3) Based on the results of the tests, LP-Gas Operations [~~the Division~~] may require that the LP-gas be removed immediately from the container or that the container be removed immediately from LP-gas service.

(h) (No change.)

§9.143. Bulkhead, Internal Valve, API 607 Ball Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.

(a) - (c) (No change.)

(d) Bulkheads, whether horizontal or vertical, shall comply with the following requirements:

(1) - (8) (No change.)

(9) LP-Gas Operations [~~The Division~~] may require additional bulkhead protection if the installation is subject to exceptional circumstances or located in an unusual area where additional protection is necessary to protect the health, safety, and welfare of the general public.

(e) - (g) (No change.)

(h) If necessary to increase LP-gas safety, LP-Gas Operations [~~the Division~~] may require a pneumatically-operated internal valve equipped for remote closure and automatic shutoff through thermal (fire) actuation to be installed for certain liquid and/or vapor connections with an opening of 3/4 inch or one inch in size.

(i) (No change.)

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

Filed with the Office of the Secretary of State on September 11, 2012.

TRD-201204810
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

SUBCHAPTER C. VEHICLES AND VEHICLE DISPENSERS

16 TAC §§9.201 - 9.204, 9.208, 9.211

The Commission proposes the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

Texas Natural Resources Code, §113.051, is affected by the proposed amendments.

Issued in Austin, Texas on September 11, 2012.

§9.201. Applicability.

(a) This subchapter applies to transport containers and moveable fuel storage tenders such as farm carts constructed to MC-330 or MC-331 Department of Transportation (DOT) specifications, nonspecification units, container delivery units, school buses, mass transit vehicles, special transit vehicles, and public transportation vehicles.

(1) (No change.)

(2) An LP-gas transport shall not be joined to manifold piping or to a stationary container for use as an auxiliary storage container at any stationary installation except with prior approval from LP-Gas Operations [~~the Safety Division~~].

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

§9.202. Registration and Transfer of LP-Gas Transports or Container Delivery Units.

(a) A person who operates a transport equipped with LP-gas cargo tanks or any container delivery unit, regardless of who owns the transport or unit, shall register such transport or unit with LP-Gas Operations [~~the License and Permit Section of the Gas Services Division (the Section)~~] in the name or names under which the operator conducts business in Texas prior to the unit being used in LP-gas service.

(1) To register a unit previously unregistered in Texas, the operator of the unit shall:

(A) pay to LP-Gas Operations [~~the Section~~] the $270 registration fee for each bobtail truck, semitrailer, container delivery unit, or other motor vehicle equipped with LP-gas cargo tanks; and

(B) file a properly completed LPG Form 7.

(2) To register an MC-330/MC-331 specification unit which was previously registered in Texas but for which the registration has expired, the operator of the unit shall:

(A) pay to LP-Gas Operations [~~the Section~~] the $270 registration fee;

(B) - (C) (No change.)

(3) (No change.)

(b) LP-Gas Operations [~~The Section~~] may also request that an operator registering or transferring any unit:

(1) file a copy of the Manufacturer's Data Report; or

(2) have the unit tested by a test other than those required by §9.208 of this title (relating to Testing Requirements).

(c) When all registration or transfer requirements have been met, LP-Gas Operations [~~the Section~~] shall issue LPG Form 4 which shall be properly affixed in accordance with the placement instructions on the form. LPG Form 4 shall authorize the licensee or ultimate consumer to whom it has been issued and no other person to operate such unit in the transportation of LP-gas and to fill the transport containers.

(1) A person shall not operate an LP-gas transport unit or container delivery unit in Texas unless the LPG Form 4 has been properly affixed or unless its operation has been specifically approved by LP-Gas Operations [~~the Section~~].

(2) A person shall not introduce LP-gas into a transport container unless that unit bears an LPG Form 4 or unless specifically approved by LP-Gas Operations [~~the Section~~].

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

(5) LP-Gas Operations [~~The Section~~] shall not issue an LPG Form 4 if:

(A) LP-Gas Operations [~~the Section~~] or a Category A, B, or O licensee determines that the transport is unsafe for LP-gas service;

(B) LP-Gas Operations [~~the Section~~] does not have an inspection record of the transport or cylinder delivery unit by a Commission representative within four years of its initial registration on or after January 1, 2006; or

(C) LP-Gas Operations [~~the Section~~] has not inspected the transport or cylinder delivery unit at least once within a four-year cycle thereafter.

(6) If an LPG Form 4 decal on a unit currently registered with LP-Gas Operations [~~the Section~~] is destroyed, lost, or damaged, the operator of that vehicle shall obtain a replacement decal by filing LPG Form 18B and a $50 replacement fee with LP-Gas Operations [~~the Section~~].

§9.203. School Bus, Public Transportation, Mass Transit, and Special Transit Vehicle Installations and Inspections.

(a) After the manufacture of or the conversion to an LP-gas system on any vehicle to be used as a school bus, mass transit, public transportation, or special transit vehicle, the manufacturer, licensee, or ultimate consumer making the installation or conversion shall notify LP-Gas Operations [~~the Safety Division (the Division)~~], in writing on LPG Form 503 that the applicable LP-gas powered vehicles are ready for a complete inspection to determine compliance with the LP-Gas Safety Rules.

(b) If LP-Gas Operations [~~the Division~~] initial complete inspection finds the vehicle in compliance with the LP-Gas Safety Rules and the statutes, the vehicle may be placed into LP-gas service. For fleet installations of identical design, an initial inspection shall be conducted prior to the operation of the first vehicle, and subsequent vehicles of the same design may be placed into service without prior inspections. Inspections shall be conducted within a reasonable time frame to ensure the vehicles are operating in compliance with the LP-Gas Safety Rules. If violations exist at the time of the initial complete inspection, the vehicle shall not be placed into LP-gas service and the manufacturer, licensee, or ultimate consumer making the installation or conversion shall correct the violations. For public transportation vehicles only, either manufactured to use or converted to LP-gas, if LP-Gas Operations [~~the Division~~] does not conduct the initial inspection of such vehicle within 30 business days of receipt of LPG Form 503, the vehicle may be operated in LP-gas service if it complies with the LP-Gas Safety Rules. The manufacturer, licensee, or ultimate consumer shall file with LP-Gas Operations [~~the Division~~] documentation demonstrating compliance with the LP-Gas Safety Rules, or LP-Gas Operations [~~the Division~~] shall conduct another complete inspection before the vehicle may be placed into LP-gas service.

(c) (No change.)

(d) If the requested LP-Gas Operations [~~Division~~] inspection identifies violations requiring modifications by the manufacturer, licensee, or ultimate consumer, LP-Gas Operations [~~the Division~~] shall consider the assessment of an inspection fee to cover the costs associated with any additional inspection, including mileage and per diem rates set by the legislature.

§9.204. Maintenance of Vehicles.

All LP-gas vehicles and vehicle containers, valves, dispensers, accessories, piping, transfer equipment, gas container, gas utilization equipment, and appliances shall be maintained in safe working order and in accordance with the manufacturer's instructions and the LP-Gas Safety Rules. If any of the LP-gas vehicles and vehicle containers, valves, dispensers, accessories, piping, transfer equipment, gas containers, gas utilization equipment, or appliances is not in safe working order, LP-Gas Operations [~~the Safety Division~~] may require that the vehicle be immediately removed from LP-gas service and not be operated until the necessary repairs have been made.

§9.208. Testing Requirements.

Each transport container unit required to be registered with LP-Gas Operations [~~the License and Permit Section of the Gas Services Division (the Section)~~] shall be tested in accordance with 49 CFR 180.407, relating to requirements for test and inspection of specification cargo tanks.

The tests shall be conducted by any individual authorized by the United States Department of Transportation through a DOT "CT" number to conduct such tests. This section shall not apply to the initial transfer of unregistered units that are tested and transferred from another state. If the test results show any unsafe condition, or if the transport unit does not comply with 49 CFR Parts 100 - 185, the transport container unit shall be immediately removed from LP-gas service and shall not be returned to LP-gas service until all necessary repairs have been made and LP-Gas Operations [~~the Section~~] authorizes in writing its return to service.

§9.211. Markings.

In addition to NFPA 58 §9.4.6.2, each LP-gas transport and container delivery unit in LP-gas service shall be marked on each side and the rear with the name of the licensee or the ultimate consumer operating the unit. Such lettering shall be legible and at least two inches in height and in sharp color contrast to the background. LP-Gas Operations [~~The Safety Division~~] shall determine whether the name marked on the unit is sufficient to properly identify the licensee or ultimate consumer.

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 September 11, 2012.

TRD-201204811
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

SUBCHAPTER D. ADOPTION BY REFERENCE OF NFPA 54 (NATIONAL FUEL GAS CODE)

16 TAC §9.312

The Commission proposes the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

Texas Natural Resources Code, §113.051, is affected by the proposed amendments.

Issued in Austin, Texas on September 11, 2012.

§9.312. Certification Requirements for Joining Methods.

(a) In addition to the requirements in NFPA 54, §5.6.4, and NFPA 58, §5.9.5, and in addition to other LP-gas certification requirements, prior to performing heat-fusion on polyethylene pipe or tubing, an individual shall be certified by the manufacturer or the manufacturer's authorized representative [~~by either the Safety Division (the Division) or a person or certification school authorized by the Division~~]. The certification shall confirm that the individual has a working knowledge of heat-fusion methods and the ability to properly perform the heat-fusion activity.

(b) - (c) (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 September 11, 2012.

TRD-201204812
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

CHAPTER 13. REGULATIONS FOR COMPRESSED NATURAL GAS (CNG)

The Railroad Commission of Texas proposes amendments in Subchapter A, to §13.3 and §13.4, relating to Definitions; and CNG Forms; in Subchapter B, to §§13.24, 13.25, 13.35, 13.36, and 13.38, relating to Filings Required for School Bus, Mass Transit, and Special Transit Installations; Filings Required for Stationary CNG Installations; Application for an Exception to a Safety Rule; Report of CNG Incident/Accident; and Removal from CNG Service; in Subchapter C, to §§13.61 - 13.65, 13.67 - 13.72, and 13.75, relating to Licenses, Related Fees, and Licensing Requirements; Insurance Requirements; Qualification as Self-Insured; Qualification by Irrevocable Letter of Credit; Statements in Lieu of Insurance Certificates; Changes in Ownership and/or Form of Dealership; Dealership Name Change; Registration and Transfer of CNG Transports and CNG Form 1004 Decal or Letter of Authority; Examination Requirements and Renewals; Denial, Suspension, or Revocation of Licenses or Certifications and Hearings; Designation of Operations Supervisor (Branch Manager); Franchise Tax Certification and Assumed Name Certificate; in Subchapter D, §13.93 and §13.94, relating to General; and Location of Installations; and in Subchapter E, to §13.141, relating to System Testing.

The Commission proposes the amendments to update references to the former Alternative Fuels Research and Education Division (AFRED), the License and Permit Section of the Gas Services Division, and the Safety Division to clarify that these organizational units are now part of the Commission's Alternative Energy Division (AED). Other proposed amendments delete references to some forms that are no longer used or update the titles of other forms.

James Osterhaus, Director, LP-Gas Operations, Alternative Energy Division, has determined that for each of the first five years the proposed amendments will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. The amendments as proposed represent minor administrative changes or clarifications.

Mr. Osterhaus has determined that there will be no cost of compliance with the proposed amendments for individuals, small businesses, or micro-businesses.

Mr. Osterhaus has also determined that the public benefit anticipated as a result of enforcing or administering the amendments will be clarification of Commission organization and requirements.

The 80th Legislature (2007) adopted HB 3430, which amended Chapter 2006 of the Texas Government Code. As amended, Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, requires that as a part of the rulemaking process, a state agency prepare an Economic Impact Statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses.

The Commission has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses and therefore the analysis described in Texas Government Code, §2006.002, is not required.

The Commission simultaneously proposes the review and readoption of the rules in Chapter 13. The notice of proposed review will be filed with the *Texas Register* concurrently with this proposal. As stated in the concurrent rule review, the Commission proposes to readopt these rules, with the proposed changes, in accordance with Texas Government Code, §2001.039. The agency's reasons for adopting these rules continue to exist.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments will be accepted until 12:00 noon on Monday, October 29, 2012, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the amendments are nonsubstantive clarifications; additionally, the proposal, as well as an online comment form, will be available on the Commission's web site no later than the day after the Commission approves publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Osterhaus at (512) 463-6692. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

SUBCHAPTER A. SCOPE AND DEFINITIONS

16 TAC §13.3, §13.4

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross reference to statute: Texas Natural Resources Code, Chapter 116, §116.012.

Issued in Austin, Texas on September 11, 2012.

§13.3. Definitions.

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

(1) AED--The Commission's Alternative Energy Division.

(2) [~~(1)~~] AFRED--The organizational unit of the AED that administers the Commission's alternative fuels research and education program, including CNG certification, exempt registration, and training [~~Alternative Fuels Research and Education Division~~].

(3) [~~(2)~~] ANSI--American National Standards Institute.

[~~(3) Approved--Authorized by a Division or the Commission.~~]

(4) - (14) (No change.)

(15) Commission--The Railroad Commission of Texas [~~or an operating division of the Commission or a division's employees~~].

(16) - (19) (No change.)

(20) Director--The director of the AED or the director's delegate.

(21) [~~(20)~~] Dispensing area or dispensing installation--A CNG installation that dispenses CNG from any source by any means into fuel supply cylinders installed on vehicles or into portable cylinders.

(22) [~~(21)~~] DOT--United States Department of Transportation.

(23) [~~(22)~~] Flexible metal hose--Metal hose made from continuous tubing that is corrugated for flexibility and, if used for pressurized applications, has an external wire braid.

(24) [~~(23)~~] Fuel supply cylinder--A cylinder mounted upon a vehicle for storage of CNG as fuel supply to an internal combustion engine.

(25) [~~(24)~~] Interim approval order--The authority issued by the Railroad Commission of Texas following a public hearing allowing construction of a CNG installation.

(26) [~~(25)~~] Location--A site operated by a CNG licensee at which the licensee carries on an essential element of its CNG activities, but where the activities of the site alone do not qualify the site as an outlet.

(27) LP-Gas Operations--The organizational unit of the AED that administers the CNG safety program, including licensing, truck registration, installation approvals, complaint and accident investigations, inspections of stationary installations and vehicles, and code enforcement.

(28) [~~(26)~~] Manifold--The assembly of piping and fittings used to connect cylinders.

(29) [~~(27)~~] Mass transit vehicle--Any vehicle which is owned or operated by a political subdivision of a state, city, or county and primarily used in the conveyance of the general public.

(30) [~~(28)~~] Metallic hose--Hose in which the strength of the hose depends primarily on the strength of metallic parts, including liners or covers.

(31) [~~(29)~~] Mobile fuel container--A CNG container mounted on a vehicle to store CNG as the fuel supply for uses other than motor fuel.

(32) [~~(30)~~] Mobile fuel system--A CNG system which supplies natural gas fuel to an auxiliary engine other than the engine used to propel the vehicle or for other uses on the vehicle.

(33) [~~(31)~~] Motor fuel container--A CNG container mounted on a vehicle to store CNG as the fuel supply to an engine used to propel the vehicle.

(34) [~~(32)~~] Motor fuel system--A CNG system excluding the container which supplies CNG to an engine used to propel the vehicle.

(35) [~~(33)~~] Motor vehicle--A self-propelled vehicle licensed for highway use or used on a public highway.

(36) [~~(34)~~] Outlet--A site operated by a CNG licensee at which the business conducted materially duplicates the operations for which the licensee is initially granted a license.

(37) [~~(35)~~] Person--An individual, sole proprietor, partnership, firm, joint venture, association, corporation, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, or licensee.

(38) [~~(36)~~] Point of transfer--The point where the fueling connection is made.

(39) [~~(37)~~] Pressure-filled--A method of transferring CNG into cylinders by using pressure differential.

(40) [~~(38)~~] Pressure relief valve--A device designed to prevent rupture of a normally charged cylinder.

(41) [~~(39)~~] Public transportation vehicle--A vehicle for hire to transport persons, including but not limited to taxis, buses (excluding school buses, mass transit, or special transit vehicles), or airport courtesy cars.

(42) [~~(40)~~] Pullaway--The accidental separation of a hose from a cylinder, container, transfer equipment, or dispensing equipment, which could occur on a cylinder, container, transfer equipment, or dispensing equipment whether or not they are protected by a pull-away device.

~~[(41) Railroad Commission of Texas--The members of the Railroad Commission of Texas.]~~

(43) [~~(42)~~] Representative--The individual designated by an applicant or licensee as the principal individual in authority who is responsible for actively supervising the licensee's CNG activities.

(44) [~~(43)~~] Residential fueling facility--An assembly and its associated equipment and piping at a residence used for the compression and delivery of natural gas into vehicles.

(45) [~~(44)~~] School--A public or private institution which has been accredited through the Texas Education Agency or the Texas Private School Accreditation Commission.

(46) [~~(45)~~] School bus--A vehicle that is sold or used for purposes that include carrying students to and from school or related events.

(47) [~~(46)~~] Settled pressure--The pressure in a container at 70 degrees Fahrenheit, which cannot exceed the marked service or design pressure of the cylinder.

(48) [~~(47)~~] Special transit vehicle--A vehicle designed with limited passenger capacity which is used by a school or mass transit authority for special transit purposes, such as transport of mobility impaired persons.

(49) [~~(48)~~] Transport--Any vehicle or combination of vehicles and CNG cylinders designed or adapted for use or used principally as a means of moving or delivering CNG from one place to another, including but not limited to any truck, trailer, semitrailer, cargo tank, or other vehicle used in the distribution of CNG.

(50) [~~(49)~~] Ultimate consumer--The person controlling CNG immediately prior to its ignition.

§13.4. CNG Forms.

Under the provisions of the Texas Natural Resources Code, Chapter 116, the Railroad Commission of Texas has designated the following forms for use:

Figure: 16 TAC §13.4

~~[(1) CNG Form 1001. Application for License;]~~

~~[(2) CNG Form 1001A. Branch Outlet List;]~~

~~[(3) CNG Form 1003. Compressed Natural Gas License;]~~

~~[(4) CNG Form 1004. Compressed Natural Gas Vehicle Identification;]~~

~~[(5) CNG Form 1007. Compressed Natural Gas Transport Registration;]~~

~~[(6) CNG Form 1008. Manufacturer's Report of Retest or Repair;]~~

~~[(7) CNG Form 1016. Application for Examination;]~~

~~[(8) CNG Form 1016B. Application for Examination Exemption by a Master/Journeyman Plumber or a Class A or B Air Conditioning and Refrigeration Contractor;]~~

~~[(9) CNG Form 1018. Statement of Lost or Destroyed License;]~~

~~[(10) CNG Form 1018B. Statement of Lost or Destroyed CNG Form 1004;]~~

~~[(11) CNG Form 1019. Inventory of Compressed Natural Gas Cylinders;]~~

~~[(12) CNG Form 1020. Report of Compressed Natural Gas Incident/Accident;]~~

~~[(13) CNG Form 1021. Notice of Intent to Appear;]~~

~~[(14) CNG Form 1025. Application and Notice of Exception to the Regulations for Compressed Natural Gas;]~~

~~[(15) CNG Form 1026. Franchise Tax Certification and Assumed Name Certificate;]~~

~~[(16) CNG Form 1027. Application for Qualification as Self-Insurer;]~~

~~[(17) CNG Form 1028. Application to use Irrevocable Letter of Credit as an Alternative to Insurance;]~~

~~[(18) CNG Form 1500. Application for Construction Approval of a CNG System Installation;]~~

~~[(19) CNG Form 1501. Completion Report for Commercial Installations Having an Aggregate Storage Capacity of 240 Standard Cubic Feet Water Volume or Less;]~~

~~[(20) CNG Form 1503. Application to Install a CNG System on School Bus, Mass Transit, or Special Transit Vehicles;]~~

~~[(21) CNG Form 1504. Notice of Subsequent Installation or Conversion by the Same Ultimate Consumer or Applicant;]~~

~~[(22) CNG Form 1505. Testing Procedures Certification;]~~

~~[(23) CNG Form 1995. Certification of Political Subdivision of Self-Insurance for General Liability, Workers' Compensation, and/or Motor Vehicle Liability Insurance;]~~

~~[(24) CNG Form 1996A. Certificate of Insurance, Workers' Compensation and Employer's Liability or Alternative Accident/Health Insurance;]~~

[(25) CNG Form 1996B. Statement in Lieu of Insurance Filing Certifying Workers' Compensation Coverage, including Employer's Liability Coverage or Alternative Accident/Health Insurance;]

[(26) CNG Form 1997A. Insurance Filing Certifying Motor Vehicle Bodily Injury and Property Damage Liability Insurance;]

[(27) CNG Form 1997B. Statement in Lieu of Insurance Filing Certifying Motor Vehicle Bodily Injury Insurance and Property Damage Liability Insurance;]

[(28) CNG Form 1998A. Insurance Filing Certifying General Liability Insurance;]

[(29) CNG Form 1998B. Statement in Lieu of Insurance Filing Certifying General Liability Insurance;]

[(30) CNG Form 1999. Notice of Insurance Cancellation.]

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 September 11, 2012.

TRD-201204804
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

SUBCHAPTER B. GENERAL RULES FOR COMPRESSED NATURAL GAS (CNG) EQUIPMENT QUALIFICATIONS

16 TAC §§13.24, 13.25, 13.35, 13.36, 13.38

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross reference to statute: Texas Natural Resources Code, Chapter 116, §116.012.

Issued in Austin, Texas on September 11, 2012.

§13.24. Filings Required for School Bus, Mass Transit, and Special Transit Installations.

(a) After the manufacture of or the conversion to a CNG system on any vehicle to be used as a school bus, mass transit, public transportation, or special transit vehicle, the manufacturer, licensee, or ultimate consumer making the installation or conversion shall notify LP-Gas Operations [the Commission] in writing on CNG Form 1503 that the applicable CNG-powered vehicles are ready for a complete inspection to determine compliance with the rules in this chapter [Regulations for Compressed Natural Gas].

(b) If LP-Gas Operations' [the Commission's] initial complete inspection finds the vehicle in compliance with the rules in this chapter [Regulations for Compressed Natural Gas] and the statutes, the vehicle may be placed into CNG service. For fleet installations of identical design, an initial inspection shall be conducted prior to the operation of the first vehicle, and subsequent vehicles of the same design may be placed into service without prior inspections. Subsequent inspections shall be conducted within a reasonable time frame to ensure the vehicles are operating in compliance with the rules in this chapter [Regulations for Compressed Natural Gas]. If violations exist at the time of the initial complete inspection, the vehicle shall not be placed into CNG service and the manufacturer, licensee, or ultimate consumer making the installation or conversion shall correct the violations. The manufacturer, licensee, or ultimate consumer shall file with LP-Gas Operations [the Commission] documentation demonstrating compliance with the rules in this chapter [Regulations for Compressed Natural Gas], or LP-Gas Operations [the Commission] shall conduct another complete inspection before the vehicle may be placed into CNG service.

(c) The manufacturer, licensee, or ultimate consumer making the installation or conversion shall be responsible for compliance with the rules in this chapter [Regulations for Compressed Natural Gas], statutes, and any other local, state, or federal requirements.

(d) If the requested LP-Gas Operations [Commission] inspection identifies violations requiring modifications by the manufacturer, licensee, or ultimate consumer, LP-Gas Operations [the Commission] shall consider the assessment of an inspection fee to cover the costs associated with any additional inspection, including mileage and per diem rates set by the legislature.

§13.25. Filings Required for Stationary CNG Installations.

(a) No CNG container shall be placed into CNG service or an installation operated or used in CNG service until the requirements of this section, as applicable, are met and the facility is in compliance with the rules in this chapter and all applicable [Regulations for Compressed Natural Gas and] statutes, in addition to any applicable requirements of the municipality or the county where an installation is or will be located.

(b) Aggregate storage capacity in excess of 240 standard cubic feet water volume. For installations with an aggregate storage capacity in excess of 240 cubic feet water volume, the licensee shall submit the following to LP-Gas Operations [the Commission] at least 30 days prior to construction:

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

(c) LP-Gas Operations [The Commission] shall notify the applicant in writing outlining its findings. If the application is administratively denied, the applicant may modify the submission and resubmit it or may request a hearing in accordance with the general rules of practice and procedure of the Railroad Commission of Texas in Chapter 1 of this title (relating to Practice and Procedure).

(d) If the Railroad Commission finds after a public hearing that the proposed installation complies with the rules in this chapter [Regulations for Compressed Natural Gas] and the statutes of the State of Texas, and does not constitute a danger to the public health, safety, and welfare, the Railroad Commission shall issue an interim approval order. The construction of the installation and the setting of the container shall not proceed until the applicant has received written notification of the interim approval order. Any interim approval order shall include a provision that such approval may be suspended or revoked if:

(1) (No change.)

(2) a physical inspection of the installation indicates that it is not installed in compliance with the submitted plat drawing for the installation, the rules in this chapter [Regulations for Compressed Natural Gas], or the statutes of the State of Texas; or

(3) (No change.)

(e) If a CNG stationary installation, equipment, or appurtenances not specifically covered by the rules in this chapter [~~Regulations for Compressed Natural Gas~~] has been or will be installed, LP-Gas Operations [~~the Commission~~] shall apply and require any reasonable safety provisions to ensure the CNG installation is safe for CNG service. If the affected entity disagrees with LP-Gas Operations' [~~the Commission's~~] determination, the entity may request a hearing. The installation shall not be placed in CNG operation until LP-Gas Operations [~~the Commission~~] has determined the installation is safe for CNG service.

(f) Aggregate storage capacity of less than 240 standard cubic feet water volume.

(1) Within 10 calendar days following the completion of container installation, the licensee shall submit CNG Form 1501 to LP-Gas Operations [~~the Commission~~] stating:

(A) the installation fully complies with the statutes and the rules in this chapter [~~Regulations for Compressed Natural Gas~~];

(B) - (C) (No change.)

(2) (No change.)

(g) Notice of complete or incomplete form. LP-Gas Operations [~~The Commission~~] shall review all applications within 21 business days of receipt of all required information and shall notify the applicant in writing of any deficiencies.

(h) Expiration of application; extension.

(1) When LP-Gas Operations notifies an applicant [~~is notified~~] of an incomplete CNG Form 1500, the applicant has 120 calendar days from the date of the notification letter to resubmit the corrected application or the application will expire. After 120 days, a new application shall be filed should the applicant wish to reactivate LP-Gas Operations [~~commission~~] review of the proposed installation.

(2) If the applicant requests an extension of the 120-day time period in writing, postmarked or physically delivered to LP-Gas Operations [~~the Commission~~] before the expiration date, the application may be renewed for up to 90 days as determined by LP-Gas Operations [~~the Commission~~].

(3) If the subject installation is not completed within one year from the date of LP-Gas Operations' [~~the Commission's~~] completed review, the applicant shall resubmit the application for LP-Gas Operations' [~~the Commission's~~] review.

(i) Physical inspection of stationary installations.

(1) Aggregate storage capacity in excess of 240 standard cubic feet water volume. The applicant shall notify LP-Gas Operations [~~the Commission~~] when the installation is ready for inspection. If LP-Gas Operations [~~the Commission~~] does not physically inspect the facility within 30 calendar days of receipt of notice that the facility is ready for inspection, the applicant may operate the facility conditionally until the initial complete inspection is made. If any safety rule violations exist at the time of the initial inspection, the applicant may be required to cease CNG operation until the applicant corrects the violations.

(2) Aggregate storage capacity of less than 240 standard cubic feet water volume. After receipt of CNG Form 1501, LP-Gas Operations [~~the Commission~~] shall conduct an inspection as soon as possible to verify the installation described complies with the rules in this chapter [~~Regulations for Compressed Natural Gas~~]. The applicant may operate the facility prior to inspection if the facility fully complies with the rules in this chapter [~~Regulations for Compressed Natural Gas~~]. If any CNG statute or safety rule violations exist at the time of the initial inspection at a commercial installation, LP-Gas Operations [~~the Commission~~] may immediately remove the subject container, including any piping, appliances, appurtenances, or equipment connected to it from CNG service until the applicant corrects the violations.

(j) Material variances. If LP-Gas Operations [~~the Commission~~] determines the completed installation varies materially from the application originally accepted, the applicant shall correct the variance and notify LP-Gas Operations [~~the Commission~~] of the correction of the variance or resubmit the application. LP-Gas Operations' [~~The Commission's~~] review of such resubmitted application shall comply with the procedure described in this section.

(k) In the event an applicant has requested an inspection and LP-Gas Operations' [~~the Commission~~] inspection identifies violations requiring modifications by the applicant, LP-Gas Operations [~~the Commission~~] may assess an inspection fee to cover the costs associated with any additional inspection, including mileage and per diem rates set by the legislature.

(l) Appurtenances and equipment.

(1) All appurtenances and equipment placed into CNG service shall be certified, marked, or listed by a nationally recognized [~~testing~~] laboratory such as Underwriters Laboratory (UL), Factory Mutual (FM), CSA International, [~~American Gas Association (AGA), or Canadian Gas Association (CGA),~~] or such other laboratories approved by LP-Gas Operations [~~the Commission~~] unless:

(A) it is specifically prohibited for use by another section of this chapter [~~the Regulations for Compressed Natural Gas~~]; or

(B) (No change.)

(2) Appurtenances and equipment that cannot be listed but are not prohibited for use by the rules in this chapter [~~Regulations for Compressed Natural Gas~~] shall be acceptable for CNG service provided the appurtenances and equipment are installed in compliance with the applicable rules in this chapter [~~Regulations for Compressed Natural Gas~~].

(3) The licensee or operator of the appurtenances or equipment shall maintain documentation sufficient to substantiate any claims made regarding the safety of any valves, fittings, and equipment and shall, upon request, furnish copies to LP-Gas Operations [~~the Commission~~].

(4) (No change.)

§13.35. Application for an Exception to a Safety Rule.

(a) A person may apply for an exception to the provisions of this chapter by filing CNG Form 1025 along with supporting documentation and a $50 filing fee with LP-Gas Operations [~~the Safety Division (Division)~~].

(b) The application shall contain the following:

(1) (No change.)

(2) the type of relief desired, including the exception requested and any information which may assist LP-Gas Operations [~~the Division~~] in comprehending the requested exception;

(3) - (7) (No change.)

(c) Notice of the application for an exception to a safety rule.

(1) The applicant shall send a copy of CNG Form 1025 by certified mail, return receipt requested, to all affected entities as specified in paragraphs (2), (3), and (4) of this subsection on the same date on which the form is filed with or sent to LP-Gas Operations [~~the Division~~]. The applicant shall include a notice to the affected entities

that any objection shall be filed with LP-Gas Operations [~~the Division~~] within 18 calendar days of the date of postmark. The applicant shall file all return receipts with LP-Gas Operations [~~the Division~~] as proof of notice.

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

(4) LP-Gas Operations [~~The Division~~] may require an applicant to give notice to persons in addition to those listed in paragraphs (2) and (3) of this subsection if doing so will not prejudice the rights of any entity.

(d) Objections to the requested exception shall be in writing, filed with LP-Gas Operations [~~the Division~~] within 18 calendar days of the postmark of the application, and shall be based on facts that tend to demonstrate that, as proposed, the exception would have an adverse effect on public health, safety, or welfare. LP-Gas Operations [~~The Commission~~] may decline to consider objections based solely on claims of diminished property or esthetic values in the area.

(e) LP-Gas Operations [~~The Division~~] shall review the application within 21 business days of receipt of the application. If LP-Gas Operations [~~the Division~~] does not receive any objections from any affected entities as defined in subsection (c) of this section, the LP-Gas Operations director [~~of the Division or the director's delegate~~] may administratively grant the exception if the LP-Gas Operations director determines that the installation, as proposed, does not adversely affect the health or safety of the public. LP-Gas Operations [~~The Division~~] shall notify the applicant in writing by the end of the 21-day review period and, if approved, the installation shall be installed within one year from the date of approval. LP-Gas Operations [~~The Division~~] shall also advise the applicant at the end of the objection period as to whether any objections were received and whether the applicant may proceed. If the LP-Gas Operations director [~~of the Division or the director's delegate~~] denies the exception, LP-Gas Operations [~~the Division~~] shall notify the applicant in writing, outlining the reasons and any specific deficiencies. The applicant may modify the application to correct the deficiencies and resubmit the application along with a $30 resubmission fee, or may request a hearing on the matter. To be granted a hearing, the applicant shall file a written request for hearing within 14 calendar days of receiving notice of the administrative denial.

(f) A hearing shall be held when LP-Gas Operations [~~the Division~~] receives an objection as set out in subsection (d) of this section from any affected entity, or when the applicant requests one following an administrative denial. LP-Gas Operations [~~The Division~~] shall mail the notice of hearing to the applicant and all objecting entities by certified mail, return receipt requested, at least 21 calendar days prior to the date of the hearing. Hearings will be held in accordance with the Texas Government Code, Chapter 2001, et seq., Chapter 1 of this title (relating to Practice and Procedure), and this chapter [~~the general rules of practice and procedure of the Railroad Commission of Texas, and the Regulations for Compressed Natural Gas~~].

(g) - (h) (No change.)

(i) Temporary exception. For good cause shown, LP-Gas Operations [~~the division~~] may grant a temporary exception, which shall not exceed 30 days, to the examination requirements for representatives and operations supervisors. Good cause shall include the death of a sole proprietor or partner. An applicant for a temporary exception shall comply with all applicable safety requirements and LP-Gas Operations [~~the division~~] shall obtain information showing that the exception will not be hazardous to the public.

(j) A request for an exception shall expire if it is inactive for 90 calendar days [~~three months~~] after the date of the letter in which the applicant was notified by LP-Gas Operations [~~the Division~~] of an incomplete request. The applicant may resubmit an exception request.

§13.36. Report of CNG Incident/Accident.

(a) In case of an incident involving single release of compressed natural gas (CNG) during or following CNG transfer or during container transportation, or an accident at any location where CNG is the cause or is suspected to be the cause, the licensee owning, operating, or servicing the equipment or the installation shall notify LP-Gas Operations [~~the Safety Division. This notification shall be~~] by telephone within two hours of discovery [~~as soon as possible~~] after the licensee has knowledge of the incident or accident. Any loss of CNG which is less than 1.0% of the gross amount delivered, stored, or withdrawn need not be reported. However, any loss occurring as a result of a pullaway shall be reported. Any individual reporting shall leave his or her name, and telephone number where he or she can be reached for further information.

(b) The telephone notification required by this section shall be made to the Railroad Commission's 24-hour emergency line at (512) 463-6788 and shall include the following information: [~~Information which shall be reported to the Safety Division includes:~~]

(1) date and time of the incident or accident;

(2) type of structure or equipment involved;

(3) resident's or operator's name;

(4) physical location;

(5) number of injuries and/or fatalities;

(6) whether fire, explosion, or gas leak has occurred;

(7) whether gas is leaking; and

(8) whether immediate assistance from LP-Gas Operations [~~the division~~] is requested. [~~Any individual reporting shall leave his or her name, and telephone number where he or she can be reached for further information.~~]

(c) Any transport unit required to be registered with LP-Gas Operations [~~the Gas Services Division~~] in accordance with §13.69 of this title (relating to Registration and Transfer of CNG Transports and CNG Form 1004 Decal or Letter of Authority) which is involved in an accident where there is damage to the tank, piping or appurtenances, or any release of CNG resulting from an accident shall be reported to LP-Gas Operations [~~the Safety Division~~] in accordance with this section regardless of the accident location. Any CNG powered motor vehicle used for school transportation or mass transit including any state owned vehicle which is involved in an accident resulting in a substantial release of CNG or damage to the CNG conversion equipment shall be reported to LP-Gas Operations [~~the Safety Division~~] in accordance with this section regardless of accident location.

(d) Following the initial telephone report, a CNG Form 1020, Report of CNG Incident/Accident, shall be submitted to LP-Gas Operations [~~the Safety Division~~]. The report shall be postmarked within 14 calendar days of the date of initial notification to LP-Gas Operations [~~the division~~].

§13.38. Removal from CNG Service.

(a) If LP-Gas Operations [~~the Safety Division (the Division)~~] determines that any compressed natural gas (CNG) cylinder constitutes an immediate danger to the public health, safety, and welfare, LP-Gas Operations [~~the Division~~] shall require the immediate removal of the CNG by a properly licensed company to the extent necessary to eliminate the danger. If LP-Gas Operations [~~the Division~~] determines that

any CNG appliance, equipment, or system constitutes an immediate danger to the public health, safety, and welfare, LP-Gas Operations [~~the Division~~] shall require the immediate disconnection by a properly licensed company of such appliance, equipment, or system from the CNG cylinder it services.

(b) If the affected entity disagrees with the placement of a warning tag, or with LP-Gas Operations' [~~the Division's~~] findings in subsection (a) of this section, the entity may request an investigation into the matter. LP-Gas Operations [~~The Division~~] shall notify such entity of its finding. If the entity disagrees, the entity may request or LP-Gas Operations [~~the Division~~] on its own motion may call a hearing. Such installation shall be brought into compliance or removed from service until such time as the final decision is rendered.

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 September 11, 2012.

TRD-201204805
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

SUBCHAPTER C. CLASSIFICATION, REGISTRATION, AND EXAMINATION

16 TAC §§13.61 - 13.65, 13.67 - 13.72, 13.75

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross reference to statute: Texas Natural Resources Code, Chapter 116, §116.012.

Issued in Austin, Texas on September 11, 2012.

§13.61. Licenses, Related Fees, and Licensing Requirements.

(a) A prospective licensee may apply to LP-Gas Operations [~~the License and Permit Section of the Gas Services Division (the Section)~~] for one or more licenses specified in subsection (b)(1) - (6) of this section. Fees required to be paid shall be those established by the Commission and in effect at the time of licensing or renewal. A person shall not engage in CNG activities unless that person has obtained a license as specified in this section. If a license expires or lapses, the person shall immediately cease CNG operations.

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

(i) For license renewals, LP-Gas Operations [~~the Section~~] shall notify the licensee in writing at the address on file with LP-Gas Operations [~~the Section~~] of the impending license expiration at least 30 calendar days before the date the license is scheduled to expire. Renewals shall be submitted to LP-Gas Operations [~~the Section~~] along with the license renewal fee specified in subsection (b) of this section on or before the last day of the month in which the license expires in order for the licensee to continue CNG activities. Failure to meet the renewal deadline set forth in this section shall result in expiration of the license. If a person's license expires, that person shall immediately cease performance of any CNG activities.

(1) If a person's license has been expired for 90 calendar days or fewer, the person shall submit a renewal fee that is equal to 1 1/2 times the renewal fee required in subsection (b) of this section. Upon receipt of the renewal fee, LP-Gas Operations [~~the Section~~] shall verify that the person's license has not been suspended, revoked, or expired for more than one year. After verification, if the licensee has met all other requirements for licensing, LP-Gas Operations [~~the Section~~] shall renew the license, and the person may resume CNG activities.

(2) If a person's license has been expired for more than 90 calendar days but less than one year, the person shall submit a renewal fee that is equal to two times the renewal fee required in subsection (b) of this section. Upon receipt of the renewal fee, LP-Gas Operations [~~the Section~~] shall verify that the person's license has not been suspended, revoked, or expired for more than one year. After verification, if the licensee has met all other requirements for licensing, LP-Gas Operations [~~the Section~~] shall renew the license, and the person may resume CNG activities.

(3) (No change.)

(4) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application, may obtain a new license without reexamination. The person shall pay to LP-Gas Operations [~~the Section~~] a fee that is equal to two times the renewal fee required by subsection (b) of this section.

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

(j) Applicants for license or license renewal shall file with LP-Gas Operations [~~the Section~~] CNG Form 1001 designating a company representative who shall be an owner or employee of the licensee, and shall be directly responsible for actively supervising CNG operations of the licensee. A licensee may have more than one company representative.

(1) An applicant for license shall not engage in CNG activities governed by the Texas Natural Resources Code, Chapter 116, and the Regulations for Compressed Natural Gas, until its company representative has successfully completed the management examination administered by AFRED [~~the Alternative Fuels Research and Education Division~~].

(2) The licensee shall notify LP-Gas Operations [~~the Section~~] in writing upon termination of its company representative of record and shall at the same time designate a replacement by submitting a new CNG Form 1001.

(3) (No change.)

(k) In addition to complying with other licensing requirements set out in the Texas Natural Resources Code and the Regulations for Compressed Natural Gas, applicants for license or license renewal in the following categories shall comply with the specified additional requirements.

(1) An applicant for a Category 1 license or renewal shall file with LP-Gas Operations [~~the Commission~~] for each of its outlets legible copies of:

(A) (No change.)

(B) its current ASME Code, Section VIII certificate of authorization or "R" certificate. If ASME is unable to issue a renewed certificate of authorization prior to the expiration date, the licensee may request in writing an extension of time not to exceed 60 calendar days

past the expiration date. The licensee's request for extension shall be received by LP-Gas Operations [~~the Commission~~] prior to the expiration date of the ASME certificate of authorization referred to in this section, and shall include a letter or statement from ASME that the agency is unable to issue the renewal certificate of authorization prior to expiration and that a temporary extension will be granted for its purposes. A licensee shall not continue to operate after the expiration date of an ASME certificate of authorization until the licensee files a current ASME certificate of authorization with LP-Gas Operations [~~the Commission~~], or LP-Gas Operations [~~the Commission~~] grants a temporary exception.

(2) An applicant for a Category 4 license or renewal shall file a properly completed CNG Form 1505 with LP-Gas Operations [~~the Commission~~], certifying that the applicant will follow the testing procedures indicated. CNG Form 1505 shall be signed by the appropriate CNG company representative designated on CNG Form 1001.

§13.62. Insurance Requirements.

(a) CNG licensees or applicants for license shall comply with the minimum amounts of insurance [~~Pursuant to the Texas Natural Resources Code, Chapter 116, the Railroad Commission of Texas has adopted the minimum amounts of insurance required of those persons or businesses licensed by the License and Permit Section of the Gas Services Division (the Section) to do business in Texas. The minimum amounts of insurance and other insurance requirements are~~] specified in Table 1 of this section.
Figure: 16 TAC §13.62(a)

(b) Before LP-Gas Operations [~~the Section~~] grants or renews a license, the applicant shall submit either:

(1) An [~~a valid certificate of insurance; an~~] insurance Acord™ form; or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information [~~that contains all the information required by the certificate of insurance~~]. The [~~certificates or~~] forms must be issued by an insurance company authorized or accepted by the Texas Department of Insurance; or

(2) (No change.)

(c) (No change.)

(d) Except as provided in the column relating to Statements in Lieu of Required Insurance Filing [~~Certificates~~] in Table 1, [~~in~~] subsection (a) of this section, and paragraphs (1) - (5) of this subsection, the types and amounts of insurance specified in subsection (a) of this section are required while engaging in any of the activities set forth in this section or any activity incidental thereto.

(1) A Category 3 licensee or applicant for license or ultimate consumer that does not operate or contemplate the operation of a CNG transport and does not transport or contemplate the delivery of CNG cylinders by vehicle in any manner may file a CNG Form 1997B in lieu of filing [~~a certificate of~~] motor vehicle bodily injury and property damage liability insurance form. The licensee or applicant for a license must file the required insurance form [~~certificate~~] with LP-Gas Operations [~~the Section~~] before operating a motor vehicle equipped with a CNG cargo container or transporting CNG by vehicle in any manner.

(2) A licensee or applicant for a license that does not engage in or contemplate engaging in any operations which would be covered by general liability insurance [~~for a period of time~~] may file a CNG Form 1998B in lieu of filing a [~~certificate of~~] general liability insurance form. The licensee or applicant for a license must file the required insurance form [~~certificate~~] with LP-Gas Operations [~~the Section~~] before engaging in any operations that require general liability insurance.

(3) A licensee or applicant for license that does not employ or contemplate the hiring of an employee or employees to be engaged in CNG related activities in Texas may file a CNG Form 1996B in lieu of filing a [~~certificate or~~] workers' compensation insurance form, including employer's liability insurance or alternative accident and health insurance coverage. The licensee or applicant for a license must file the required insurance form [~~certificate~~] with LP-Gas Operations [~~the Section~~] before hiring any person as an employee engaged in CNG related work.

(4) A licensee or applicant for a license that does not engage in or contemplate engaging in any CNG operations that would be covered by completed operations or products liability insurance, or both, may file CNG Form 1998B in lieu of a [~~certificate of~~] completed operations and/or products liability insurance form. The licensee or applicant for a license shall file the required insurance form [~~certificate~~] with LP-Gas Operations [~~the Section~~] before engaging in any operations that require completed operations and/or products liability insurance.

(5) (No change.)

(e) As evidence that required insurance has been secured and is in force, [~~certificates of~~] insurance forms which are approved by the Texas Department of Insurance [~~Section~~] shall be filed with LP-Gas Operations [~~the Section~~] before licensing, license renewal, and during the entire period that the license is in effect. Any document filed with LP-Gas Operations [~~the Section~~] in a timely manner which is not completed in accordance with the instructions indicated on the insurance [~~certificate~~] forms supplied by LP-Gas Operations [~~the Section~~], but which complies with the substantive requirements of this section and with the rules adopted under this section, may be considered by LP-Gas Operations [~~the Section~~] to be evidence that required insurance has been secured and is in force for a temporary period not to exceed 45 days. During this temporary period, a licensee shall file with LP-Gas Operations [~~the Section~~] an amended certificate of insurance which complies with all procedural and substantive requirements of this section and this chapter [~~the rules adopted hereunder~~].

(f) All certificates filed under this section shall be continuous in duration and shall remain on file with LP-Gas Operations during the entire period that the license is in effect.

(g) Each licensee shall file CNG Form 1999 or other written notice with LP-Gas Operations at least [~~give the Section written notice~~] 30 calendar days before the cancellation of any insurance coverage. The 30-day period commences on the date the notice is actually received by LP-Gas Operations [~~the Section~~].

(h) A state agency or institution, county, municipality, school district, or other governmental subdivision may meet the requirements relating to general liability and/or motor vehicle liability insurance or workers' compensation coverage by filing CNG Form 1995 with LP-Gas Operations as evidence of self-insurance, if permitted by the Texas Labor Code, Title 5, Subtitle C, and Texas Natural Resources Code, §116.036 [~~submitting evidence of self-insurance that complies with the requirements of §13.63 of this title (relating to Qualification as Self-Insured)~~].

(i) Each licensee shall promptly notify LP-Gas Operations [~~the Commission~~] of any change in insurance coverage or insurance carrier by filing a properly completed revised [~~certificate of insurance; insurance~~] Acord™ form; other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier

containing all required information [~~that contains all the information required by the certificate of insurance~~]; or documents demonstrating the applicant's compliance with the self-insurance requirements set forth in §13.63 of this title (relating to Qualification as Self-Insured). Failure to promptly notify LP-Gas Operations [~~the Commission~~] of a change in the status of insurance coverage or insurance carrier may result in an enforcement action and an administrative penalty.

§13.63. Qualification as Self-Insured.

(a) General qualifications. LP-Gas Operations [~~The commission will give consideration to and~~] may approve the application of a CNG [~~compressed natural gas (CNG)~~] licensee to qualify as a self-insurer if such licensee furnishes a true and accurate statement of its financial condition and other evidence which establishes to the satisfaction of LP-Gas Operations [~~the commission~~] the ability of such licensee to satisfy its obligations for the minimum insurance requirements specified in §13.62 of this title (relating to Insurance Requirements). This section shall not apply to LP-Gas Operations' [~~the division's~~] licensing requirements for worker's compensation insurance, including employer's liability coverage.

(b) Applicant guidelines. In addition to filing a CNG Form 1027, Application for Qualification as Self-Insurer, an applicant applying for self-insurer status covering general liability, including premises and operations coverage, shall submit materials that will allow LP-Gas Operations [~~the commission~~] to determine whether:

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

(c) Other securities or agreements. LP-Gas Operations [~~The commission~~] may consider applications for approval of other securities or agreements, or may require any other document(s) which may be necessary to ensure such application satisfies that the security or agreement offered will afford adequate security for protection of the public.

(d) Periodic reports. Semiannual reports and annual statements reflecting the applicant's financial condition and status of its self-insurance program shall be filed with LP-Gas Operations [~~the commission~~] during the period of its self-insurer status by March 10 and September 10 of each year.

(e) Duration of self-insurer status. LP-Gas Operations [~~The commission~~] may approve the applicant as a self-insurer for any specific time period, or for an indefinite period until revoked by LP-Gas Operations [~~the commission~~].

(f) Revocation of a self-insurer status. LP-Gas Operations [~~The commission~~] may at any time, upon 10 days notice to the applicant, require the applicant to appear and demonstrate that it continues to have adequate financial resources to pay all general liability, including premises and operations coverage claims, and that it remains in compliance with the other requirements of this section. If the applicant fails to so demonstrate, its self-insurer status shall be revoked and it may be ineligible for self-insurance in the future.

(g) A state agency or institution, county, municipality, school district, or other governmental subdivision may meet the requirements for general liability and/or motor vehicle liability insurance or workers' compensation coverage of §13.62 of this title [~~(relating to Insurance Requirements)~~] if permitted by the Texas Workers' Compensation Act, Texas Labor Code, Title 5, Subtitle A; and the Texas Natural Resources Code, §116.036, by submitting a CNG Form 1995 to LP-Gas Operations [~~the commission~~].

§13.64. Qualification by Irrevocable Letter of Credit.

When an applicant submits a CNG Form 1028, Application to use Irrevocable Letter of Credit, as an alternative to insurance, letters of credit shall be subject to the following conditions:

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

(4) this section shall not apply to LP-Gas Operations' [~~the division's~~] licensing requirements for worker's compensation insurance, including employer's liability coverage.

§13.65. Statements in Lieu of Insurance Certificates.

(a) A Category 3 or 6 licensee or applicant for license that does not operate or contemplate the operation of a CNG transport and does not transport or contemplate the delivery of CNG cylinders by vehicle in any manner, may [~~make and~~] file with LP-Gas Operations a CNG Form 1997B [~~the division a statement to that effect~~] in lieu of filing a certificate of motor vehicle bodily injury and property damage liability insurance.

(b) A licensee or applicant for a license that does not engage in or contemplate engaging in any operations which would be covered by general liability insurance for a period of time may [~~make and~~] file with LP-Gas Operations a CNG Form 1998B [~~the division a statement to that effect~~] in lieu of filing a certificate of general liability insurance.

(c) A licensee or applicant for license that does not employ or contemplate the hiring of an employee or employees to be engaged in CNG related activities in Texas may [~~make and~~] file with LP-Gas Operations a CNG Form 1996B [~~the division a statement to that effect~~] in lieu of filing a certificate of worker's compensation insurance including employer's liability insurance.

(d) (No change.)

§13.67. Changes in Ownership and/or Form of Dealership.

(a) Transfer of dealership outlet or location by sale, lease, or gift.

(1) (No change.)

(2) Notice. After the transfer of any dealership outlet or location, the new operator/owner or the authorized representative thereof, shall notify LP-Gas Operations [~~the License and Permit Section of the Gas Services Division (the Section)~~] of the completed transfer of such dealership by certified mail immediately upon the completion of said transfer, and file with LP-Gas Operations [~~the Section~~] all forms of application for licensing or registration required by this subchapter.

(b) Other changes in ownership.

(1) (No change.)

(2) Notice. The successor in interest shall notify LP-Gas Operations [~~the Section~~] by certified mail of the death of a sole proprietorship or partner, the dissolution of a corporation or partnership, any change in partnership members, or other changes in ownership not specifically provided for [~~elsewhere~~] in this section.

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

(c) Changes in dealership business form.

(1) (No change.)

(2) Notice. An authorized representative of the original entity or of the new entity shall notify LP-Gas Operations [~~the Section~~] by certified mail of an accomplished change in business form immediately upon the completion of such conversion, and shall cause to be filed with LP-Gas Operations [~~the Section~~] all forms of applications for licensing or registration required by this subchapter.

§13.68. Dealership Name Change.

(a) Duty to report. A licensee shall file the following forms evidencing any change in the licensee's name with LP-Gas Operations [~~the License and Permit Section of the Gas Services Division (the Sec-~~

tion)] prior to engaging in operations that require a CNG license under a new business form:

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

(3) any other forms required by LP-Gas Operations [the Section].

(b) Duty to register. A licensee operating under a changed name shall cause the reregistration of any CNG transport unit from the old name to the changed name of the license by filing an amended CNG Form 1007, Compressed Natural Gas Transport Registration, with LP-Gas Operations [the Section] prior to the use of any such unit in the transport or delivery of CNG in the State of Texas.

§13.69. Registration and Transfer of CNG Transports and CNG Form 1004 Decal or Letter of Authority.

(a) A person who operates a transport equipped with CNG cargo tanks or any cylinder delivery unit, regardless of who owns the transport or unit, shall register such transport or unit with LP-Gas Operations [the License and Permit Section of the Gas Services Division (the Section)] in the name or names under which the operator conducts business in Texas prior to the transport or unit being used in CNG service.

(1) To register a unit previously unregistered in Texas, the operator of the unit shall:

(A) pay to LP-Gas Operations [the Section] the $270 registration fee for each bobtail truck, semitrailer, cylinder delivery unit, or other motor vehicle equipped with CNG cargo tanks; and

(B) (No change.)

(2) To register a specification unit which was previously registered in Texas but for which the registration has expired, the operator of the unit shall:

(A) pay to LP-Gas Operations [the Section] the $270 registration fee;

(B) - (C) (No change.)

(3) (No change.)

(b) LP-Gas Operations [The Section] may also request that an operator registering or transferring any unit to file a copy of the Manufacturer's Data Report.

(c) When all registration or transfer requirements have been met, LP-Gas Operations [the Section] shall issue CNG Form 1004 or letter of authority which shall be properly affixed as instructed on the decal or letter or maintained on the bobtail or transport trailer. CNG Form 1004 or letter of authority shall authorize the licensee or ultimate consumer to whom it has been issued and no other person to operate such unit in the transportation of CNG and to fill the transport containers.

(1) A person shall not operate a CNG transport unit or cylinder delivery unit or introduce CNG into a transport container in Texas unless the CNG Form 1004 or letter of authority has been properly affixed as instructed on the decal or the letter or maintained on the bobtail or transport trailer or unless its operation has been specifically approved by LP-Gas Operations [the Section].

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

(4) LP-Gas Operations [The Section] shall not issue a CNG Form 1004 or letter of authority if LP-Gas Operations [the Section] or a Category 1 or 4 licensee determines that the transport is unsafe for CNG service.

(5) If a CNG Form 1004 decal or letter of authority on a unit currently registered with LP-Gas Operations [the Section] is destroyed, lost, or damaged, the operator of that vehicle shall obtain a replacement by filing CNG Form 1018B and a $50 replacement fee with LP-Gas Operations [the Section].

§13.70. Examination Requirements and Renewals.

(a) Examination general provisions.

(1) No individual may work or be employed in any capacity which requires contact with CNG or CNG systems until that individual has submitted to and successfully completed an [a Commission] examination which measures the competency of that individual to perform the CNG related activities anticipated, and tests working knowledge of the Texas Natural Resources Code and the regulations for compressed natural gas related to the type of CNG work anticipated. Table 1 of this section sets forth specific requirements for examination for each category of license. This section applies to all licensees and their employees who perform CNG related activities, and also applies to any ultimate consumer who has purchased, leased, or obtained other rights in any vessel defined as a CNG transport by this chapter and any employee of such ultimate consumer if that employee drives or in any way operates such a CNG transport. Driving a motor vehicle powered by CNG or fueling of motor vehicles for an ultimate consumer by the ultimate consumer or its employees do not in themselves constitute CNG related activities. Only paragraph (2) of this subsection applies to an employee of an ultimate consumer or a state agency or institution, county, municipality, school district, or other governmental subdivision.

Figure: 16 TAC §§13.70(a)(1) (No change.)

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

(2) Each individual who performs CNG activities as an employee of an ultimate consumer or a state agency, county, municipality, school district, or other governmental subdivision shall be properly supervised by his or her employer. Any such individual who is not certified by AFRED [the Commission] to perform such CNG activities shall be properly trained by a competent person in the safe performance of such CNG activities.

(3) Each person wishing to submit to examination [by the commission] shall file a CNG Form 1016 with AFRED.

(4) (No change.)

(5) Within 15 days of the date an individual takes an examination, AFRED shall notify the individual of the results of the examination.

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

(C) Any individual who fails an [Failure of any] examination shall be immediately disqualified [disqualify the individual] from performing any CNG related activities covered by the examination [which is failed]. Any individual who fails an examination administered by AFRED [the Commission] at the Austin location only may retake the same examination only one additional time during a business day. Any subsequent examinations shall be taken on another business day, unless approved by the AFRED director [assistant director for the AFRED Research and Technical Services Section or the assistant director's designee]. If requested by an individual who failed the examination, AFRED shall furnish the individual with an analysis of the individual's performance on the examination.

(6) (No change.)

(b) General installers and repairmen exemption.

(1) Any individual who is currently licensed as a master or journeyman plumber by the Texas State Board of Plumbing Examiners or who is currently licensed with a Class A or B air conditioning and refrigeration contractors license issued by the Department of Licensing and Regulation may apply for and be granted an exemption to the Category 2 and 3 service and installation employee examination requirements by submitting to AFRED [~~the License and Permit Section of the Gas Services Division~~] the following information:

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

(C) any information AFRED [~~the Section~~] may reasonably require.

(2) This exemption does not become effective until the examination exemption card is issued by AFRED [~~the Section~~].

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

(5) In order to maintain an exemption, each individual issued an examination exemption card shall pay a $20 annual renewal fee to AFRED [~~the Section~~] on or before May 31 of each year. Failure to pay the annual renewal fee by May 31 shall result in a lapsed exemption. If an individual's exemption lapses, that individual shall cease performing all CNG related activities granted by this exemption until that individual renews the exemption. To renew a lapsed exemption, the individual shall pay the $20 annual renewal fee plus a $20 late-filing fee. Failure to do so shall result in the expiration of the examination exemption. If the individual's examination exemption has been expired for one year or longer, the individual shall complete all requirements necessary to apply for a new exemption.

(6) Any individual who is issued this exemption agrees to comply with the current edition of the regulations for compressed natural gas. In the event the exempt individual surrenders, fails to renew, or has the license revoked either by the Texas State Board of Plumbing Examiners or Texas Department of Licensing and Regulation, that individual shall immediately cease performing any CNG activity granted by this section. The examination exemption card shall be returned immediately to AFRED [~~the Section~~] and all rights and privileges surrendered.

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

§13.71. Hearings for Denial, Suspension, or Revocation of Licenses or Certifications [~~and Hearings~~].

(a) The Commission may deny, suspend, or revoke a license or certificate for any individual who fails to comply with this chapter.

(1) If LP-Gas Operations [~~the Commission~~] determines that an applicant for license, certificate, or license renewal has not met the requirements of this chapter, LP-Gas Operations [~~the Commission~~] shall notify the applicant in writing of the reasons for the proposed denial. In the case of an applicant for license or certificate, the notice shall advise the applicant that the application may be resubmitted within 30 calendar days of receipt of the denial with all cited deficiencies corrected, or, if the applicant disagrees with LP-Gas Operations' [~~the Commission's~~] determination, the applicant may request a hearing in writing on the matter within 30 calendar days of receipt of the notice of denial.

(2) If the applicant resubmits the application for license or license renewal within 30 days of receipt of the denial with all deficiencies corrected, LP-Gas Operations [~~the Commission~~] shall issue the license or license renewal.

(b) Hearing regarding denial of license or license renewal.

(1) An applicant receiving a notice of denial of a license or license renewal may request a hearing to determine whether the applicant did comply in all respects with the requirements for the category or categories of license sought. The request for hearing must be in writing, must refer to the specific requirements the applicant claims were met, and must be received in the Commission's Austin office within 30 days of the applicant's receipt of the notification of denial.

(2) Upon receipt of a request complying with paragraph (1) of this subsection, LP-Gas Operations [~~the Railroad Commission of Texas~~] shall forward the request for a hearing to the Office of General Counsel for the purpose of scheduling [~~schedule~~] a hearing within 30 calendar days following the receipt of the request for hearing to determine the applicant's compliance or noncompliance with the licensing requirements for the category or categories of license sought.

(3) If, after hearing, the [~~Railroad~~] Commission [~~of Texas~~] finds the applicant's claim has been supported, the Commission may [~~it shall~~] enter an order in its records to that effect, noting the category or categories of license for which the applicant is entitled to be licensed, and the license(s) or renewal(s) shall be issued.

(4) If, after hearing, the [~~Railroad~~] Commission [~~of Texas~~] finds that the applicant is not qualified for the license or license renewal in the category or categories of license sought, the Commission may [~~it shall likewise~~] enter an order in its records to that effect, and no license or renewal may be issued to the applicant.

(c) Suspension and revocation of licenses and certifications.

(1) If LP-Gas Operations [~~the commission~~] finds by means including, but not limited to, inspection, review of required documents submitted, or complaint by a member of the general public or any other person, a probable or actual violation of or noncompliance with the Texas Natural Resources Code, Chapter 116, or this chapter [~~the regulations for compressed natural gas~~], LP-Gas Operations [~~it~~] shall notify the licensee or certified person of the alleged violation or noncompliance in writing.

(2) The notice shall specify the acts, omissions, or conduct constituting the alleged violation or noncompliance and shall designate a date not less than 30 calendar days or more than 45 calendar days after the licensee or certified person receives the notice by which the violation or noncompliance must be corrected or discontinued. If LP-Gas Operations [~~the commission~~] determines the violation or noncompliance may pose imminent peril to the health, safety, or welfare of the general public, LP-Gas Operations [~~the commission~~] may notify the licensee or certified person orally with instruction to immediately cease the violation or noncompliance. When oral notice is given, LP-Gas Operations [~~the commission~~] shall follow it with written notification no later than five business days after the oral notification.

(3) The licensee or certified person shall either report the correction or discontinuance of the violation or noncompliance within the time frame specified in the notice or request an extension of time in which to comply. The request for extension of the time to comply must be received by LP-Gas Operations [~~the commission~~] within the same time frame specified in the notice for correction or discontinuance.

(d) Hearing regarding suspension or revocation of licenses and certifications.

(1) If a licensee or certified individual disagrees with the determination of LP-Gas Operations [~~the Commission~~] under this section, that licensee or certified individual may request a public hearing on the matter to be conducted in compliance with the Texas Government Code, Chapter 2001, Chapter 1 of this title (relating to Practice and Procedure) [~~the general rules of practice and procedure of the Railroad Commission of Texas in Chapter 1 of this title, relating to Practice and Procedure~~], and any other applicable rules. The request shall be in writing, shall refer to the specific rules or statutes the licensee or

certified individual claims were met, and shall be received by LP-Gas Operations [~~the Commission~~] within 30 calendar days of the licensee's or certified individual's receipt of the notice of violation or noncompliance.

(2) If, after hearing, the Commission finds that the licensee or certified individual may not comply within the specified time, the Railroad Commission of Texas may enter an order calling a public hearing to be conducted in compliance with the Texas Government Code, Chapter 2001, the general rules of practice and procedure of the Railroad Commission of Texas in Chapter 1 of this title[~~, relating to Practice and Procedure~~], and any other applicable rules.

§13.72. Designation of Operations Supervisor (Branch Manager).

(a) (No change.)

(b) A licensee maintaining more than one outlet shall file CNG Form 1001A with LP-Gas Operations [~~the commission~~] designating an operations supervisor (branch manager) at each outlet. The operations supervisor shall pass the management examination as administered by LP-Gas Operations [~~the commission~~] before commencing or continuing the licensee's operations at the outlet.

(c) An operations supervisor (branch manager) may be a company representative of the licensee; however, unless specific approval is granted by LP-Gas Operations [~~the commission~~], an individual may be designated as an operations supervisor (branch manager) at each outlet.

(d) (No change.)

§13.75. Franchise Tax Certification and Assumed Name Certificate.

(a) An applicant for an original or renewal license that is a corporation or limited liability company shall be in good standing with the Comptroller of Public Accounts. An original license applicant shall provide a copy of the Franchise Tax Statement from the Comptroller of Public Accounts showing "In Good Standing." [~~Any applicant for an original or renewal license that is a corporation or limited liability company must file a CNG Form 1026 with the License and Permit Section of the Gas Services Division (the Section) prior to the issuance of such license, certifying that its Texas franchise taxes are current or such taxes are not applicable to the company. An applicant may file a Certificate of Account Status issued by the office of the Comptroller of Public Accounts as an alternative to filing the CNG Form 1026. Making a false statement as to franchise tax status is grounds for the denial, suspension, or revocation of the license granted by the Section.~~]

(b) Any applicant for license must list all names on CNG Form 1001 under which CNG related activities requiring licensing are to be conducted. Any company performing CNG activities under an assumed name (dba) must file with LP-Gas Operations [~~this office~~] copies of the assumed name certificates which are required to be filed with the respective county clerk's office and/or the Office of the Secretary of State [~~secretary of state's office~~].

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 September 11, 2012.

TRD-201204806
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

SUBCHAPTER D. CNG COMPRESSION, STORAGE, AND DISPENSING SYSTEMS

16 TAC §13.93, §13.94

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross reference to statute: Texas Natural Resources Code, Chapter 116, §116.012.

Issued in Austin, Texas on September 11, 2012.

§13.93. General.

(a) Equipment related to a compression, storage, or dispensing installation, excluding automatic dispensers and residential fueling facilities, shall be protected from tampering and damage and the protection shall be maintained in good condition at all times and in accordance with one of the three standards set forth in paragraphs (1) - (3) of this subsection. Automatic dispensers for general public use shall be protected against collision damage in accordance with subsection (d) of this section.

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

(5) The provisions of this section notwithstanding, LP-Gas Operations [~~the commission~~] may require an installation to be protected in accordance with subsection (a) of this section when evidence exists that because of exceptional circumstances, added safeguards are needed to adequately protect the health, safety, and welfare of the general public. If a person owning or operating such an installation disagrees with the determination of LP-Gas Operations [~~the commission~~] made under this subsection, then that person may request a public hearing on the matter. However, until a determination is issued subsequent to a hearing on the matter, the subject automatic dispenser(s) shall be either protected in the manner described by LP-Gas Operations [~~the commission~~] or removed from CNG service and/or all of the product withdrawn from it.

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

(d) The authorized automatic dispenser shall have the following features.

(1) (No change.)

(2) All appurtenances, metering equipment, and other related equipment installed on an automatic dispenser shall meet all applicable requirements of the rules in this chapter [~~Regulations for Compressed Natural Gas~~].

(3) - (8) (No change.)

(e) (No change.)

§13.94. Location of Installations.

(a) - (c) (No change.)

(d) Compression, storage, and dispensing equipment shall be located aboveground and installed according to the distances specified in Table 1 of this section. The compression, storage, and dispensing equipment shall not be placed in any area directly beneath an electric transmission or distribution line(s) (excluding a customer service line) and that area which is six feet to either side of the line. If this distance is not adequate to prevent the broken ends of the electric transmission

or distribution line(s) and voltage from contacting the CNG equipment in the event of breakage of any conductor, then other suitable means of protection designed and constructed so as to prevent such contact with the equipment may be used if approved by LP-Gas Operations [~~the Commission~~] prior to installation. The request for approval must be in writing and specify the manner in which the equipment will be protected from contact, including specifications for materials used. If approval is not granted, the equipment must be located the distance required by this section from the transmission line to prevent such contact.

Figure: 16 TAC §13.94(d) (No change.)

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

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

Filed with the Office of the Secretary of State on September 11, 2012.

TRD-201204807
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

SUBCHAPTER E. ENGINE FUEL SYSTEMS

16 TAC §13.141

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross reference to statute: Texas Natural Resources Code, Chapter 116, §116.012.

Issued in Austin, Texas on September 11, 2012.

§13.141. System Testing.

(a) - (c) (No change.)

(d) When a compressed natural gas (CNG) cylinder is involved in an accident or fire causing damage to the cylinder, the cylinder shall be replaced or removed and returned to a currently licensed Category 1 licensee (manufacturer) or Category 4 licensee (tester) to be inspected and retested in accordance with the originally manufactured specifications. Before being returned to service, a CNG Form 1008, Manufacturers Report of Retest or Repair, shall be sent to LP-Gas Operations [~~the Safety Division~~].

(e) (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 September 11, 2012.

TRD-201204808
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

SUBCHAPTER A. SCOPE AND DEFINITIONS

16 TAC §13.10

(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 Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Railroad Commission of Texas proposes the repeal of §13.10, relating to CNG Advisory Committee. The Commission proposes the repeal because, by the terms of the rule, the CNG advisory committee was abolished on August 31, 2006, and the rule is no longer necessary.

James Osterhaus, Director, LP-Gas Operations, Alternative Energy Division, has determined that for each of the first five years the proposed repeal will be in effect there will be no fiscal implications for state or local governments.

Mr. Osterhaus has determined that there will be no cost of compliance with the proposed repeal for individuals, small businesses, or micro-businesses.

Mr. Osterhaus has also determined that the public benefit anticipated as a result of enforcing or administering the repeal will be clarification of Commission rules.

The 80th Legislature (2007) adopted HB 3430, which amended Chapter 2006 of the Texas Government Code. As amended, Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, requires that as a part of the rulemaking process, a state agency prepare a Economic Impact Statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses, and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses.

The Commission has determined that the proposed repeal will not have an adverse economic effect on small businesses or micro-businesses and therefore the analysis described in Texas Government Code, §2006.002, is not required.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments will be accepted until 12:00 noon on Monday, October 29, 2012, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site no later than the day after the Commission approves publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Osterhaus

at (512) 463-6692. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes the repeal under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross reference to statute: Texas Natural Resources Code, Chapter 116, §116.012.

Issued in Austin, Texas on September 11, 2012.

§13.10. CNG Advisory Committee.

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 September 11, 2012.

TRD-201204803
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

CHAPTER 14. REGULATIONS FOR LIQUEFIED NATURAL GAS (LNG)

The Railroad Commission of Texas proposes amendments, in Subchapter A, to §§14.2004, 14.2007, 14.2010, 14.2013, 14.2016, 14.2019, 14.2022, 14.2025, 14.2028, 14.2031, 14.2034, 14.2037, 14.2040, 14.2043, 14.2046, 14.2049, and 14.2052, relating to Applicability, Severability, and Retroactivity; Definitions; LNG Report Forms; Licenses and Related Fees; Licensing Requirements; Certification Requirements; Denial, Suspension, or Revocation of Licenses or Certifications, and Hearing Procedure; Designation of Outlet and Operations Supervisor (Branch Manager); Franchise Tax Certification and Assumed Name Certificates; Insurance Requirements; Self-Insurance Requirements; Components of LNG Stationary Installations Not Specifically Covered; Filings and Notice Requirements for Stationary LNG Installations; Temporary Installations; Filings Required for School Bus, Mass Transit, and Special Transit Vehicles; Report of LNG Incident/Accident; and Application for an Exception to a Safety Rule; in Subchapter B, to §§14.2101, 14.2104 and 14.2110, relating to Uniform Protection Requirements; Uniform Safety Requirements; and LNG Container Installation Distance Requirements; in Subchapter D, to §§14.2307, 14.2310, 14.2313, 14.2316, and 14.2319, relating to Indoor Fueling; Emergency Refueling; Fuel Dispensing Systems; Filings Required for Installation of Fuel Dispensers; and Automatic Fuel Dispenser Safety Requirements; in Subchapter E, to §14.2416 and §14.2437, relating to Installation of Valves; and Pressure and Relief Valves in Piping; in Subchapter G, to §14.2607 and §14.2640, relating to Vehicle Fuel Containers; and System Testing; and in Subchapter H, to §§14.2704, 14.2705, 14.2707, 14.2710, 14.2746, and 14.2749, relating to Registration and Transfer of LNG Transports; Decals or Letters of Authority and Fees; Testing Requirements; Markings; Delivery of Inspection Report to Licensee; and Issuance of LNG Form 2004 Decal.

In most of the proposed amendments, the Commission proposes to update references to the former Alternative Fuels Research and Education Division (AFRED), the License and Permit Section of the Gas Services Division, and the Safety Division to clarify that these organizational units are now part of the Commission's Alternative Energy Division (AED). In other amendments, the Commission proposes some new definitions in §14.2007 for "AED," "Director," and "LP-Gas Operations." In §14.2010, the Commission proposes a new table to list the forms, their creation or revision dates, and the applicable rule numbers; after these amendments are effective, any form changes will be proposed through an amendment to the table in §14.2010. The forms are published in this issue of the *Texas Register* concurrently with this proposal. Other proposed amendments delete references to some forms that are no longer used or update the titles of other forms.

James Osterhaus, Director, LP-Gas Operations, Alternative Energy Division, has determined that for the first five years that the proposed amendments will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. The amendments as proposed represent minor administrative changes or clarifications.

Mr. Osterhaus has also determined that there will be no cost of compliance with the proposed amendments for individuals, small businesses, or micro-businesses.

Mr. Osterhaus has also determined that the public benefit anticipated as a result of enforcing or administering the sections as amended will be clarification of Commission organization and requirements.

The 80th Legislature (2007) adopted House Bill 3430, which amended Chapter 2006 of the Texas Government Code. As amended, Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, requires that as a part of the rulemaking process, a state agency prepare an Economic Impact Statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses, and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses.

The Commission has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses and therefore the analysis described in Texas Government Code, §2006.002, is not required.

The Commission simultaneously proposes the review and readoption of the rules in Chapter 14. The notice of proposed review is published in this issue of the *Texas Register* concurrently with this proposal. As stated in the concurrent rule review, the Commission proposes to readopt these rules, with the proposed changes, in accordance with Texas Government Code, §2001.039. The agency's reasons for adopting these rules continue to exist.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments will be accepted until 12:00 p.m. (noon) on Monday, October 29,

2012, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the amendments are nonsubstantive clarifications; additionally, the proposal and an online comment form will be available on the Commission's website no later than the day after the Commission approves publication of the proposal, giving interested persons more than two additional weeks to review and analyze the proposal and to draft and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Osterhaus at (512) 463-6692. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

SUBCHAPTER A. GENERAL APPLICABILITY AND REQUIREMENTS

16 TAC §§14.2004, 14.2007, 14.2010, 14.2013, 14.2016, 14.2019, 14.2022, 14.2025, 14.2028, 14.2031, 14.2034, 14.2037, 14.2040, 14.2043, 14.2046, 14.2049, 14.2052

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

Issued in Austin, Texas, on September 11, 2012.

§14.2004. Applicability, Severability, and Retroactivity.

(a) This chapter is [~~The Regulations for Liquefied Natural Gas are~~] intended to apply to the design, installation, and operation of liquefied natural gas (LNG) dispensing systems, the design and installation of LNG engine fuel systems on vehicles of all types and their associated fueling facilities, and the construction and operation of equipment for the storage, handling, and transportation of LNG. This chapter does [~~These standards do~~] not apply to locomotives, railcar tenders, marine terminals, or to the transportation, loading, or unloading of LNG on ships, barges, or other types of watercraft, or to any fuel cell approved by the Federal Aviation Administration and intended to be used solely as a fuel cell for aircraft, including hot air balloons, or to an installation or connection that is part of a distribution or pipeline system that is covered by Title 49, Code of Federal Regulations, Part 192. From the point at which LNG in a system has been vaporized and converted to compressed natural gas (CNG), the equipment and components must comply with the Commission's Regulations for Compressed Natural Gas in Chapter 13 of this title (relating to Regulations for Compressed Natural Gas (CNG)).

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

(d) Unless otherwise stated, the rules in this chapter [~~Regulations for Liquefied Natural Gas~~] are not retroactive; however, the Railroad Commission of Texas has jurisdiction over all LNG installations in Texas and installations placed into operation after October 1, 1996, shall comply with this chapter [~~these regulations~~]. All other LNG installations in operation prior to October 1, 1996, shall be maintained and operated in a safe manner as determined by the Railroad Commission of Texas. Persons engaged in LNG activities on the effective date of this chapter [~~these rules~~] shall comply with licensing and examination requirements by February 1, 1997.

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

§14.2007. Definitions.

The following words and terms when used in this chapter [~~the Regulations for Liquefied Natural Gas~~] shall have the following meanings unless the context clearly indicates otherwise.

(1) AED--The Commission's Alternative Energy Division.

(2) [~~(1)~~] AFRED--The organizational unit of the AED that administers the Commission's alternative fuels research and education program, including LNG certification, exempt registration, and training [~~Commission's Alternative Fuels Research and Education Division~~].

(3) [~~(2)~~] Aggregate water capacity--The sum of all individual container capacities as measured by weight or volume of water when the containers in a battery at an installation are full.

(4) [~~(3)~~] ANSI--American National Standards Institute.

(5) [~~(4)~~] API--American Petroleum Institute.

[~~(5) Approved--Authorized by a Division or the Commission.~~]

(6) - (12) (No change.)

(13) Commission--The Railroad Commission of Texas [~~or an operating division of the Commission or a division's employees~~].

(14) - (19) (No change.)

(20) Director--The director of the AED or the director's delegate.

(21) [~~(20)~~] Dispensing system--That combination of valves, meters, hoses, piping, electrical connections, and fuel connections used to distribute LNG to mobile or motor fuel containers.

(22) [~~(21)~~] DOT--The United States Department of Transportation.

(23) [~~(22)~~] Employee--Any individual who renders or performs any services or labor for compensation, including individuals hired on a part-time or temporary basis, full-time or permanent basis; independent contractors; and owner-employees.

(24) [~~(23)~~] Failsafe--Design features which provide for safe conditions in the event of a malfunction of control devices or an interruption of an energy source or an emergency shutdown.

(25) [~~(24)~~] Final approval--The authority issued by LP-Gas Operations [~~a division or the Railroad Commission~~] allowing the introduction of LNG into a container and system.

(26) [~~(25)~~] Fired equipment--Any equipment in which the combustion of fuels takes place.

(27) [~~(26)~~] Fixed-length dip tube--A pipe with a fixed open end positioned inside a container at a designated elevation to measure a liquid level.

[~~(27) General Rules of Practice and Procedure of the Railroad Commission of Texas--Chapter 1 of this title (relating to Practice and Procedure).~~]

(28) - (30) (No change.)

(31) Interim approval order--The authority issued by the Railroad Commission of Texas following a public hearing allowing construction of an LNG installation.

(32) - (33) (No change.)

(34) Licensed--Authorized to perform LNG activities through the issuance of a valid license by LP-Gas Operations [~~the Gas Services Division~~].

(35) Licensee--An applicant that has been granted an LNG license by LP-Gas Operations [~~the Gas Services Division~~].

(36) - (39) (No change.)

(40) LP-Gas Operations--The organizational unit of the AED that administers the LNG safety program, including licensing, truck registration, installation approvals, complaint and accident investigations, inspections of stationary installations and vehicles, and code enforcement.

(41) [~~(40)~~] Mass transit vehicle--Any vehicle which is owned or operated by a political subdivision of a state, city, or county, and which is used primarily in the conveyance of the general public.

(42) [~~(41)~~] Maximum allowable working pressure--The maximum gauge pressure permissible at the top of completed equipment, containers, or vessels in their operating position for a design temperature.

(43) [~~(42)~~] Mobile fuel container--An LNG container mounted on a vehicle and used to store LNG as the fuel supply for uses other than motor fuel.

(44) [~~(43)~~] Mobile fuel system--An LNG system to supply fuel to an auxiliary engine other than the engine used to propel the vehicle or for other uses on the vehicle.

(45) [~~(44)~~] Motor fuel container--An LNG container mounted on a vehicle and used to store LNG as the fuel supply to an engine used to propel the vehicle.

(46) [~~(45)~~] Motor fuel system--An LNG system to supply LNG as a fuel for an engine used to propel the vehicle.

(47) [~~(46)~~] NEC--National Electric Code (NFPA 70).

(48) [~~(47)~~] NFPA--National Fire Protection Association.

(49) [~~(48)~~] Noncombustible material--A solid material which in no conceivable form or combination with other material will ignite.

(50) [~~(49)~~] Nonlicensee--A person not required to be licensed, but which shall comply with all other applicable rules in this chapter [~~Regulations for Liquefied Natural Gas~~].

(51) [~~(50)~~] Operations supervisor--An individual who actively supervises LNG operations at an outlet.

(52) [~~(51)~~] Outlet--A site operated by an LNG licensee at which the business conducted materially duplicates the operation for which the licensee is initially granted a license.

(53) [~~(52)~~] Person--An individual, sole proprietor, partnership, firm, joint venture, corporation, association, or any other business entity, state agency or institution, county, municipality, school district, or other governmental subdivision.

(54) [~~(53)~~] Point of transfer--The point at which a connection is made to transfer LNG from one container to another.

(55) [~~(54)~~] Pressure relief valve--A valve which is designed both to open automatically to prevent a continued rise of internal fluid pressure in excess of a specified value (set pressure) and to close when the internal fluid pressure is reduced below the set pressure.

(56) [~~(55)~~] Pressure vessel--A container or other component designed in accordance with the ASME Code.

(57) [~~(56)~~] Property line--That boundary which designates the point at which one real property interest ends and another begins.

(58) [~~(57)~~] PSIG--Pounds per square inch gauge.

(59) [~~(58)~~] Public transportation vehicle--A vehicle for hire or service to the general public including but not limited to taxis, buses, and airport courtesy cars.

[~~(59) Railroad Commission of Texas--The members of the Railroad Commission of Texas.~~]

(60) - (64) (No change.)

(65) Tentative approval--The authority issued by LP-Gas Operations [~~the Gas Services Division~~] without a hearing allowing construction of an LNG installation.

(66) - (75) (No change.)

§14.2010. LNG Report Forms.

Under the provisions of the Texas Natural Resources Code, Chapter 116, the Commission has designated the following forms for use.
Figure: 16 TAC §14.2010

[~~(1) LNG Form 2001. Application for License.~~]

[~~(2) LNG Form 2001A. Branch Outlet List.~~]

[~~(3) LNG Form 2003. Liquefied Natural Gas License.~~]

[~~(4) LNG Form 2004. Liquefied Natural Gas Transport Vehicle Identification.~~]

[~~(5) LNG Form 2005. Manufacturer's Data Report.~~]

[~~(6) LNG Form 2007. Liquefied Natural Gas Truck Registration.~~]

[~~(7) LNG Form 2008. Manufacturer's Report of Pressure Vessel Repair, Modification, or Testing.~~]

[~~(8) LNG Form 2016. Application for Examination.~~]

[~~(9) LNG Form 2016A. Certified Employee Transfer Certification.~~]

[~~(10) LNG Form 2018. Statement of Lost or Destroyed License.~~]

[~~(11) LNG Form 2018B. Statement of Lost or Destroyed LNG Form 2004.~~]

[~~(12) LNG Form 2019. Transfer of Liquefied Natural Gas Bulk Storage Plants.~~]

[~~(13) LNG Form 2020. Report of LNG Incident/Accident.~~]

[~~(14) LNG Form 2021. Notice of Intent to Appear.~~]

[~~(15) LNG Form 2023. Statement in Lieu of Container Testing.~~]

[~~(16) LNG Form 2025. Application and Notice of Exception to the Regulations for Liquefied Natural Gas.~~]

[~~(17) LNG Form 2026. Franchise Tax Certification.~~]

[~~(18) LNG Form 2027A. Application for Qualification as Self-Insurer, Motor Vehicle Liability.~~]

[~~(19) LNG Form 2027B. Application for Qualification as Self-Insurer, General Liability.~~]

[~~(20) LNG Form 2028. Application to Use Irrevocable Letter of Credit.~~]

[~~(21) LNG Form 2500. Application for Installation.~~]

[(22) LNG Form 2500A. Notice of Proposed LNG Installation.]

[(23) LNG Form 2501. Completion Report for Commercial Installations of Less Than 15,540 Gallons Aggregate Capacity.]

[(24) LNG Form 2503. Application to Install an LNG System on School Bus, Mass Transit, or Special Transit Vehicles.]

[(25) LNG Form 2504. Notice of Subsequent Installation or Conversion.]

[(26) LNG Form 2505. Testing Procedures Certification.]

[(27) LNG Form 2995. Certification of Political Subdivision of Self-Insurance for General Liability, Workers' Compensation, and/or Motor Vehicle Liability Insurance.]

[(28) LNG Form 2996A. Certificate of Insurance, Workers' Compensation and Employer's Liability or Alternative Accident/Health Insurance.]

[(29) LNG Form 2996B. Statement in Lieu of Filing Certifying Workers' Compensation Coverage, Including Employer's Liability Insurance or Alternative Accident/Health Insurance.]

[(30) LNG Form 2997A. Certificate of Insurance, Motor Vehicle Bodily Injury, and Property Damage Liability.]

[(31) LNG Form 2997B. Statement in Lieu of Motor Vehicle Bodily Injury, and Property Damage Liability Insurance.]

[(32) LNG Form 2998A. Certificate of Insurance, General Liability.]

[(33) LNG Form 2998B. Statement in Lieu of General Liability Insurance and/or Completed Operations and Products Liability Insurance.]

§14.2013. Licenses and Related Fees.

(a) A prospective licensee may apply to LP-Gas Operations [the commission] for one or more licenses specified in subsection (b)(1) - (8) of this section. Fees required to be paid shall be those established by the Commission [commission] and in effect at the time of licensing or renewal.

(b) (No change.)

(c) An original manufacturer of a new motor vehicle powered by LNG, or a subcontractor of a manufacturer who produces a new LNG powered motor vehicle for the manufacturer, is not subject to the licensing requirements of this title, but shall comply with all other rules in this chapter [Regulations for Liquefied Natural Gas].

(d) (No change.)

§14.2016. Licensing Requirements.

(a) Applicants for a license or license renewal shall file with LP-Gas Operations [the Commission] LNG Form 2001 designating a company representative who shall be an owner or employee of the licensee, and shall be directly responsible for actively supervising LNG operations of the licensee. A licensee may have more than one company representative.

(1) An applicant for license shall not engage in LNG activities until its company representative has successfully completed the management examination administered by AFRED [the Commission].

(2) The licensee shall notify LP-Gas Operations [the commission] in writing upon termination of its company representative and shall at the same time designate a replacement by submitting a new LNG Form 2001.

(3) The licensee shall cease LNG activities if, at the termination of its company representative, there is no other qualified company representative of the licensee acknowledged and recorded by LP-Gas Operations [the commission]. The licensee shall not resume operation until such time as it has a qualified company representative, unless it has been granted an extension of time in which to comply as specified in §14.2052 of this title (relating to Application for an Exception to a Safety Rule).

(b) (No change.)

(c) Persons engaged in LNG activities, including licensees and non-licensees, shall maintain a copy of the current version of the rules in this chapter [Regulations for Liquefied Natural Gas] adopted by the Commission and shall provide at least one copy to each company representative and operations supervisor. The copies shall be available to employees during business hours.

(d) (No change.)

(e) In addition to complying with other licensing requirements set out in the Texas Natural Resources Code and the rules in this chapter [Regulations for Liquefied Natural Gas], applicants for license or license renewal in the following categories shall comply with the specified additional requirements:

(1) A Category 15 licensee shall file with LP-Gas Operations [the commission] for each of its outlets legible copies of:

(A) (No change.)

(B) its current ASME Code, Section VIII certificate of authorization. If ASME is unable to issue a renewed certificate of authorization prior to the expiration date, the licensee may request in writing an extension of time from LP-Gas Operations [the commission] not to exceed 60 calendar days past the expiration date. The licensee's request for extension shall be received by LP-Gas Operations [the commission] prior to the expiration date of the ASME certificate of authorization and shall include a letter or statement from ASME that ASME is unable to issue the renewal certificate of authorization prior to expiration and that a temporary extension will be granted for its purposes. A licensee shall not continue to operate after the expiration date of an ASME certificate of authorization until the licensee files a current ASME certificate of authorization with LP-Gas Operations [the commission], or LP-Gas Operations [the commission] grants a temporary extension.

(2) A Category 15 or 20 licensee making repairs on ASME containers shall file with LP-Gas Operations [the commission] a legible copy of its current "U" certificate of authorization for the repair of ASME containers by the National Board of Boiler and Pressure Vessel Inspectors.

(3) A Category 15, 20, or 50 licensee shall file a properly completed LNG Form 2505 with LP-Gas Operations [the Commission], certifying that the applicant will follow the testing procedures indicated. The LNG Form 2505 shall be signed by the company representative designated on LNG Form 2001.

(f) For license renewals, LP-Gas Operations [the Commission] shall notify the licensee in writing at the address on file with LP-Gas Operations [the Commission] of the impending license expiration at least 30 calendar days prior to the expiration date. Renewals shall be submitted to LP-Gas Operations [the Commission] along with the license renewal fee specified in §14.2013 of this title (relating to Licenses and Related Fees) on or before the last day of the month in which the license expires renewal date in order for the licensee to continue LNG activities. Failure to meet the renewal deadline shall result in expiration of the license. If a person's license expires, that

person shall immediately cease performance of any LNG activities authorized by that license.

(1) If a person's license has been expired for 90 calendar days or fewer, the person shall submit a renewal fee that is equal to 1 1/2 times the renewal fee required in §14.2013 of this title [~~(relating to Licenses and Related Fees)~~]. Upon receipt of the renewal fee, LP-Gas Operations [~~the Commission~~] shall verify that the person's license has not been suspended, revoked, or expired for more than one year. After verification, if the licensee has met all other requirements for licensing, LP-Gas Operations [~~the Commission~~] shall renew the license, and the person may resume LNG activities authorized by the license.

(2) If a person's license has been expired for more than 90 calendar days but less than one year, the person shall submit a renewal fee that is equal to two times the renewal fee required in §14.2013 of this title [~~(relating to Licenses and Related Fees)~~]. Upon receipt of the renewal fee, LP-Gas Operations [~~the Commission~~] shall verify that the person's license has not been suspended, revoked, or expired for more than one year. After verification, if the person has met all other requirements for licensing, LP-Gas Operations [~~the Commission~~] shall renew the license, and the person may resume LNG activities authorized by the license.

(3) (No change.)

(4) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application, may obtain a new license without reexamination. The person shall pay to LP-Gas Operations [~~the Commission~~] a fee that is equal to two times the renewal fee required by §14.2013 of this title [~~(relating to Licenses and Related Fees)~~].

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

§14.2019. Certification Requirements.

(a) This section applies to all licensees and their employees who perform LNG activities, and to any ultimate consumer who has purchased, leased, or obtained other rights in any vessel defined by this chapter as an LNG transport, including any employee of such ultimate consumer if that employee drives or in any way operates such an LNG transport. Only paragraph (2) of this subsection applies to an employee of a state agency or institution, county, municipality, school district, or other governmental subdivision. Driving a motor vehicle powered by LNG or fueling of motor vehicles for an ultimate consumer by the ultimate consumer or its employees do not in themselves constitute LNG activities.

(1) No individual may work or be employed in any capacity which requires contact with LNG or LNG systems until that individual has submitted to and passed an [~~a commission~~] examination measuring the competence of that individual to perform the LNG activities anticipated and the individual's working knowledge of the Texas Natural Resources Code and the rules in this chapter [~~Regulations for Liquefied Natural Gas~~] related to the type of LNG work anticipated. Table 1 of this section specifies which requirements, indicated with an asterisk, apply to each category of license.

(2) Each individual who performs LNG activities as an employee of an ultimate consumer or a state agency, county, municipality, school district, or other governmental subdivision shall be properly supervised by his or her employer. Any such individual who is not certified by AFRED [~~the Commission~~] to perform such LNG activities shall be properly trained by a competent person in the safe performance of such LNG activities.

(3) An individual wishing to submit to examination [~~by the commission~~] shall file LNG Form 2016 along with the appropriate fee listed in subsection (c) of this section with AFRED.
Figure: 16 TAC §14.2019(a)(3)

(4) (No change.)

(5) Within 15 days of the date an individual takes an examination, AFRED shall notify the individual of the results of the examination. The individual shall pass the rules examination with a score of at least 75%.

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

(C) Any individual who fails an examination shall be immediately disqualified from performing any LNG activities covered by that examination. If requested by an individual who failed the examination, AFRED shall furnish the individual with an analysis of the individual's performance on the examination. Any individual who fails an examination administered by AFRED [~~the Commission~~] at the Austin location only may retake the same examination one additional time during a business day. Any subsequent examination shall be taken on another business day, unless approved by the AFRED [~~assistant~~] director [~~for the AFRED Research and Technical Services Section or the assistant director's delegate~~].

(6) (No change.)

(b) - (e) (No change.)

§14.2022. Denial, Suspension, or Revocation of Licenses or Certifications, and Hearing Procedure.

(a) The Commission may deny, suspend, or revoke a license or certificate for any individual who fails to comply with the requirements of this chapter. If LP-Gas Operations [~~the Commission~~] determines that an applicant for a new license or certificate, or renewal of a license or certificate has not met the requirements of this chapter, LP-Gas Operations [~~the Commission~~] shall notify the applicant in writing of the reasons for the proposed denial. In the case of an applicant for license or certificate, the notice shall advise the applicant:

(1) that the application may be resubmitted within 30 calendar days of receipt of the denial, with all cited deficiencies corrected. If an applicant resubmits the application for a new license or certificate, or renewal of a license or certificate within 30 calendar days of receipt of the denial with all deficiencies corrected, LP-Gas Operations [~~the Commission~~] shall issue the new license or certificate, or the renewal of the license or certificate; or

(2) if the applicant disagrees with LP-Gas Operations' [~~the Commission's~~] determination, the applicant may request a hearing in writing within 30 calendar days of receiving the notice of denial.

(b) An applicant receiving a notice of denial of a license, certificate, or license or certificate renewal may request a hearing to determine whether the applicant did comply in all respects with the requirements for the category or categories of license or certification sought.

(1) Upon receipt of a written request for hearing, LP-Gas Operations [~~the Commission~~] shall forward the request for a hearing to the Office of General Counsel for the purpose of scheduling [~~schedule~~] a hearing within 30 calendar days following the receipt of the request for hearing to determine the applicant's compliance or noncompliance with the licensing or certification requirements for each category of license or certification sought. The Commission shall conduct the hearing in compliance with the Texas Government Code, Chapter 2001, [~~the general rules of practice and procedure of the Railroad Commission of Texas in~~] Chapter 1 of this title (relating to Practice and Procedure), and any other applicable rules.

(2) (No change.)

(c) If LP-Gas Operations [~~the Commission~~] finds through means including but not limited to inspection, review of documents, or complaint by a member of the general public or any other person, that a license or certificate shall be suspended or revoked because of a probable or actual violation of or noncompliance with Chapter 116 of the Texas Natural Resources Code or the rules in this chapter [~~Regulations for Liquefied Natural Gas~~], LP-Gas Operations [~~the Commission~~] shall notify the licensee or certified individual in writing of the alleged violation or noncompliance.

(1) The notice shall specify the acts, omissions, or conduct constituting the alleged violation or noncompliance, and shall designate a date at least 30 days but less than 45 days after the licensee or certified individual receives the notice by which the violation or noncompliance shall be corrected or discontinued. If LP-Gas Operations [~~the Commission~~] determines the violation or noncompliance may pose imminent peril to the health, safety, or welfare of the general public, LP-Gas Operations [~~the Commission~~] may notify the licensee or certified individual orally with instruction to immediately cease the violation or noncompliance. When oral notice is given, LP-Gas Operations [~~the Commission~~] shall follow it with written notification no later than five days after the oral notice.

(2) The licensee or certified individual shall either report the correction or discontinuance of the violation or noncompliance within the time frame specified in the notice or request in writing an extension of time in which to comply. The request for extension of the time to comply shall be received by LP-Gas Operations [~~the Commission~~] within the same time frame specified in the notice for correction or discontinuance.

§14.2025. Designation of Outlet and Operations Supervisor (Branch Manager).

(a) (No change.)

(b) A licensee maintaining more than one outlet shall file LNG Form 2001A with LP-Gas Operations [~~the Commission~~] designating an operations supervisor (branch manager) at each outlet. The operations supervisor shall pass the management examination administered by LP-Gas Operations [~~the Commission~~] before commencing or continuing the licensee's operations at the outlet.

(c) An operations supervisor may be a company representative of the licensee; however, an individual may be designated as an operations supervisor at only one outlet unless approved by LP-Gas Operations [~~the Commission~~].

(d) (No change.)

§14.2028. Franchise Tax Certification and Assumed Name Certificates.

(a) An applicant for an original or renewal license that is a corporation or limited liability company shall be in good standing with the Comptroller of Public Accounts of the State of Texas. An original license applicant shall provide a copy of the Franchise Tax Statement from the Comptroller of Public Accounts showing "In Good Standing." [~~Corporations or limited liability companies applying for an original or renewal license shall file LNG Form 2026 with the Commission prior to the issuance of such license certifying that its Texas franchise taxes are either current or are not applicable to the company. An applicant may file a Certificate of Account Status issued by the office of the Comptroller of Public Accounts with the Commission as an alternative to filing the LNG Form 2026. Making a false statement as to franchise tax status is grounds for denial, suspension, or revocation of the license granted by the Commission.~~]

(b) Any applicant for license shall list all names on LNG Form 2001 under which LNG activities requiring licensing are to be conducted. Any company performing LNG activities under an assumed ("doing business as" or "DBA") name shall file with LP-Gas Operations [~~the Commission~~] copies of the assumed name certificates which are required to be filed with the respective county clerk's office and/or the Secretary of State's office.

§14.2031. Insurance Requirements.

(a) LNG licensees or applicants for license shall comply with the minimum amounts of insurance [~~Pursuant to the Texas Natural Resources Code, Chapter 116, the Commission has adopted the minimum amounts of insurance for LNG licensees authorized by the State of Texas~~] specified in Table 1 of this section.
Figure: 16 TAC §14.2031(a)

(b) Before LP-Gas Operations [~~the License and Permit Section of the Gas Services Division (the Section)~~] grants or renews a license, the applicant shall submit either:

(1) [~~a valid certificate of insurance;~~] an insurance Acord™ form[~~;~~] or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier and contains all required information [~~that contains all the information required by the certificate of insurance~~]. The [~~certificates or~~] forms must be issued by an insurance company authorized or accepted by the Texas Department of Insurance; or

(2) (No change.)

(3) Certificates of insurance shall be continuous in duration and shall remain on file with LP-Gas Operations [~~the Commission~~] during the entire period that the license is in effect.

(4) Documentation other than a certificate of insurance may be accepted by LP-Gas Operations [~~the Commission~~] as evidence of required insurance provided that the documentation contains the same information as required on a certificate of insurance. The alternative documentation may be accepted for a period not to exceed 45 days. During the temporary period, a licensee shall file with LP-Gas Operations [~~the Commission~~] an amended certificate of insurance which complies with the requirements of this section.

(c) Each licensee shall file LNG Form 2999 or other written notice with LP-Gas Operations at least [~~give the Section written notice~~] 30 calendar days before the cancellation of any insurance coverage. The 30-day period commences on the date the notice is actually received by LP-Gas Operations [~~the Section~~].

(d) [~~A licensee or applicant for a license that employs or contemplates employing any employees in LNG activities shall file LNG Form 2996A with the Commission.~~] A licensee or applicant for a license that does not employ or contemplate employing any employees to be engaged in LNG-related activities in Texas [~~in LNG activities~~] shall file LNG Form 2996B in lieu of filing a [~~certificate of~~] workers' compensation insurance form, including employers' liability insurance, or alternative accident and health insurance coverage. The licensee or applicant for a license shall file the required [~~insurance certificate and~~] forms with LP-Gas Operations [~~the Commission~~] before hiring any person as an employee engaged in LNG-related work [~~employee~~].

(e) [~~A Category 25 or 35 licensee or applicant for a license or ultimate consumer that operates or contemplates operating a motor vehicle equipped with an LNG transport container shall file LNG Form 2997A with the Commission.~~] A Category 25 or 35 licensee, [~~or~~] applicant for a license, or an ultimate consumer that does not operate or contemplate operating a motor vehicle equipped with an LNG cargo [~~transport~~] container or does not transport or contemplate transporting LNG by vehicle in any manner shall file LNG Form 2997B in lieu of a

[~~certificate of~~] motor vehicle bodily injury and property damage insurance form, if this certificate is not otherwise required. The licensee or applicant for a license shall file the required [~~insurance certificate and~~] forms with LP-Gas Operations [~~the Commission~~] before operating a motor vehicle equipped with an LNG cargo container or transporting LNG by vehicle in any manner.

(f) [~~A Category 15 licensee or applicant for a license that engages in or contemplates engaging in any LNG operations that would be covered by completed operations and product liability insurance shall file LNG Form 2998A with the Commission.~~] A Category 15 licensee or applicant for a license that does not engage in or contemplate engaging in any LNG-related [~~LNG~~] operations in Texas that would be covered by completed operations and product liability insurance shall file LNG Form 2998B in lieu of filing a [~~certificate of~~] completed operations and product liability insurance form. The licensee or applicant for a license shall file the required [~~insurance certificate and~~] forms with LP-Gas Operations [~~the Commission~~] before engaging in any operations that require completed operations and product liability insurance.

(g) [~~A licensee or applicant for a license that engages in or contemplates engaging in any operations that would be covered by general liability insurance shall file LNG Form 2998A with the Commission.~~] A licensee or applicant for a license that does not engage in or contemplate engaging in any LNG-related operations that would be covered by general liability insurance shall file LNG Form 2998B in lieu of a [~~certificate of~~] general liability insurance form. The licensee or applicant for a license shall file the required [~~insurance certificate and~~] forms with LP-Gas Operations [~~the Commission~~] before engaging in any operations that require general liability insurance.

(h) (No change.)

(i) Each licensee shall promptly notify LP-Gas Operations [~~the Commission~~] of any change in insurance coverage or insurance carrier by filing a properly completed revised certificate of insurance; insurance Acord™ form; other form prepared and signed by the insurance carrier that contains all the information required by the certificate of insurance; or documents demonstrating the applicant's compliance with the self-insurance requirements set forth in §14.2034 of this title (relating to Self-Insurance Requirements). Failure to promptly notify LP-Gas Operations [~~the Commission~~] of a change in the status of insurance coverage or insurance carrier may result in an enforcement action and an administrative penalty.

§14.2034. Self-Insurance Requirements.

(a) (No change.)

(b) A licensee applying for self-insurance shall file LNG Form 2027 with LP-Gas Operations [~~the Commission~~], along with materials which will allow LP-Gas Operations [~~the Commission~~] to determine whether:

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

(c) LP-Gas Operations [~~The Commission~~] may consider applications for approval of other securities or agreements, or may require any other information which may be necessary to ensure the application satisfies that the security or agreement offered will afford adequate security for protection of the public.

(d) LP-Gas Operations [~~The Commission~~] may approve a licensee's application for self-insurance if the licensee demonstrates to LP-Gas Operations [~~the Commission~~] its ability to satisfy its obligations for the minimum insurance requirements specified in [§]§14.2031 of this title (relating to Insurance Requirements). LP-Gas Operations [~~The Commission~~] may approve the licensee as a self-insurer for a specific time period or for an indefinite period until further action is taken by LP-Gas Operations [~~the Commission~~].

(e) The applicant shall file semi-annual reports and annual statements with the applicant's financial status and status of its self-insurance program with LP-Gas Operations [~~the Commission~~] during the period of its self-insurer status by March 10 and September 10 of each year.

(f) After ten days' notice to the applicant, LP-Gas Operations [~~the Commission~~] may require the applicant to appear and demonstrate that it continues to have adequate financial resources to pay all general liability, including premises and operations coverage, claims, and that it remains in compliance with the other requirements of this section. If the applicant fails to do so, LP-Gas Operations [~~the Commission~~] shall revoke its self-insurer status and may order that the licensee is ineligible for self-insurance in the future.

(g) A state agency or institution, county, municipality, school district, or other governmental subdivision may meet the requirements for workers' compensation coverage or general liability and/or motor vehicle liability insurance if permitted by the Texas Workers' Compensation Act, Texas Labor Code, Title 5, Subtitle A; and Texas Natural Resources Code, §116.036, by submitting LNG Form 2995 to LP-Gas Operations [~~the Commission~~].

(h) (No change.)

§14.2037. Components of LNG Stationary Installations Not Specifically Covered.

Components of LNG stationary installations which are not specifically covered by the rules in this chapter [~~Regulations for Liquefied Natural Gas~~] shall not be placed into LNG service until LP-Gas Operations [~~the Commission~~] has determined the installation complies with the rules in this chapter. LP-Gas Operations [~~The Commission~~] may require any change to a proposed stationary installation which the Commission may consider necessary to ensure the LNG installation is safe for LNG service. If the affected party disagrees with LP-Gas Operations' [~~the Commission's~~] determination, the party may request a hearing as described in §14.2022 of this title (relating to Denial, Suspension, or Revocation of Licenses or Certifications, and Hearing Procedure). However, the installation shall not be placed into LNG operation until LP-Gas Operations [~~the Commission~~] has determined the installation complies with the rules in this chapter.

§14.2040. Filings and Notice Requirements for Stationary LNG Installations.

(a) No LNG container shall be placed into LNG service or an installation operated or used in LNG service until the requirements of this section, as applicable, are met and the facility is in compliance with all applicable rules in this chapter and all statutes, in addition to any applicable requirements of the municipality or the county where an installation is or will be located. A person who purchases an existing LNG installation shall file LNG Form 2019 with LP-Gas Operations [~~the Commission~~] within 10 calendar days of the purchase in order for the installation to remain in LNG service.

(b) Prior to the construction of a stationary installation which would result in an aggregate water capacity of 15,540 gallons or more, the applicant shall submit LNG Form 2500 and a non-refundable $50 application fee to LP-Gas Operations [~~the Commission~~] including site plans and plans and specifications for the installation at least 30 calendar days prior to construction.

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

(3) If the applicant modifies the plans and specifications before tentative or interim approval is granted by LP-Gas Operations or

the Commission, respectively, the plans and specifications shall be re-sealed by a registered professional engineer licensed to practice in the State of Texas and resubmitted to LP-Gas Operations [~~the Commission~~]. A non-refundable fee of $30 shall be required for any resubmission.

(c) Prior to the installation of an LNG container resulting in an aggregate water capacity of 15,540 gallons or more, the applicant or licensee shall send a copy of LNG Form 2500, LNG Form 2500A, and a plat by certified mail, return receipt requested, to all owners of real property situated within 500 feet of the proposed container location(s). The applicant or licensee shall submit LNG Form 2500 to LP-Gas Operations [~~the Commission~~] at the same time LNG Form 2500 and LNG Form 2500A are mailed to the real property owners.

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

(5) Objections shall be filed with LP-Gas Operations [~~the Commission~~] within 18 days of the postmarked date on the notice letter. If LP-Gas Operations [~~the Commission~~] finds that the objection is not proper, LP-Gas Operations [~~the Commission~~] shall notify the property owner and the property owner shall have ten days from the date of LP-Gas Operations' [~~the Commission's~~] postmarked letter to correct the objection. If one or more of the adjoining property owners files an objection and a written request with LP-Gas Operations for a hearing [~~with the Commission~~], the hearing shall be conducted as soon as possible and a recommendation presented to the Railroad Commission within 90 days following the hearing. When possible, the hearing shall be held in a location near the proposed site.

(A) LP-Gas Operations [~~The Commission~~] shall review all objections within 10 business days of receipt. An objection shall be in writing and shall include a statement of facts showing that the proposed installation:

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

(iii) constitutes a danger to the public health, safety, and welfare, specifying the exact nature of the danger. For purposes of this section, "danger" means an imminent threat or an unreasonable risk of bodily harm, but does not mean diminished property or esthetic values in the area. The Railroad Commission does not consider public health, safety, and welfare to include such factors as the value of property adjacent to the installation, the esthetics of the proposed installation, or similar considerations.

(B) Upon review of the objection, LP-Gas Operations [~~the Commission~~] shall either:

(i) (No change.)

(ii) notify the objecting party in writing within 10 business days of receipt requesting further information for clarification and stating why the objection is being returned. The objecting entity shall have 10 calendar days from the postmark of LP-Gas Operations' [~~the Commission's~~] letter to file its corrected objection. Clarification of incomplete or non-substantive objections shall be limited to two opportunities. If new objections are raised in the objecting party's clarification, the new objections shall be limited to one notice of correction.

(6) (No change.)

(d) Unless considered to be in the public interest by LP-Gas Operations [~~the Commission~~], the applicant or licensee does not need to notify owners of real property situated within 500 feet of the proposed container location(s) of an addition to an existing LNG facility provided the current aggregate water capacity is not more than doubled in a 12-month period; however, if the resulting aggregate water capacity will exceed 214,348 gallons, the applicant or licensee shall provide notice as specified in subsection (c) of this section.

(e) LP-Gas Operations [~~The Commission~~] shall grant tentative or the Commission shall grant interim approval prior to the setting of the LNG container and construction of the LNG installation.

(f) When an LNG container is replaced with a container of the same or less overall diameter and length or height, and installed in the identical location of the existing container at an LNG storage installation of 15,540 gallons aggregate water capacity or more, the applicant shall file LNG Form 2501 with LP-Gas Operations [~~the Commission~~].

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

(3) The proposed installation shall not be operated or used in LNG service until approved by LP-Gas Operations [~~the Commission~~].

(g) Upon completion of a commercial installation having an aggregate water capacity of less than 15,540 gallons, the applicant shall submit LNG Form 2501, postmarked or physically delivered to LP-Gas Operations [~~the Commission~~], within ten calendar days after completion of such installation. LNG Form 2501 shall state that:

(1) the installation complies with the statutes and the rules in this chapter [~~Regulations for Liquefied Natural Gas~~];

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

(h) (No change.)

(i) LP-Gas Operations [~~The Commission~~] shall review all applications within 21 business days of the receipt of all required information and shall notify the applicant as follows:

(1) If LP-Gas Operations [~~the Commission~~] administratively approves the installation, LP-Gas Operations [~~the Commission~~] shall notify the applicant in writing within 21 business days.

(2) If LP-Gas Operations [~~the Commission~~] declines to administratively approve the installation, LP-Gas Operations [~~the Commission~~] shall notify the applicant in writing, specifying the deficiencies, within 21 business days. The applicant may modify the submission and resubmit it for approval, or may request a hearing on the matter in accordance with Chapter 1 of this title (relating to Practice and Procedure) [~~the General Rules of Practice and Procedure of the Railroad Commission of Texas~~].

(j) When LP-Gas Operations [~~the Commission~~] notifies an applicant of an incomplete LNG Form 2500 or LNG Form 2500A, the applicant has 120 calendar days from the date of the notification letter to resubmit the corrected application or the application will expire. After 120 days, the applicant shall file a new application to reactivate LP-Gas Operations' [~~Commission~~] review of the proposed installation.

(1) The applicant may request in writing an extension of the 120-day time period. The request shall be postmarked or physically delivered to LP-Gas Operations [~~the Commission~~] before the expiration date. LP-Gas Operations [~~The Commission~~] may extend the application period for up to an additional 90 days.

(2) (No change.)

(3) Prior to the installation of an LNG container referenced in this section in a heavily populated or congested area, LP-Gas Operations [~~the Commission~~] shall determine whether the proposed installation poses a threat to the health, safety, and welfare of the general public. LP-Gas Operations [~~The Commission~~] shall determine restrictions on LNG container capacities in accordance with the following:

(A) - (I) (No change.)

(k) LP-Gas Operations [~~The Commission~~] shall examine plans and specifications to ensure that they have been sealed by a quali-

fied professional engineer licensed to practice in the State of Texas. LP-Gas Operations [~~The Commission~~] shall review site plans to determine whether the installation complies with the distance requirements in this chapter. LP-Gas Operations [~~The Commission~~] shall determine whether the subject of the submission poses a threat to the health, safety, and welfare of the general public.

(1) If LP-Gas Operations [~~the Commission~~] declines to approve administratively the submission, LP-Gas Operations [~~the Commission~~] shall notify the applicant of this decision in writing within 21 calendar days. The applicant may modify the submission and resubmit it for approval within 21 calendar days after receiving the notice, or may request a hearing to be conducted in accordance with Chapter 1 of this title [~~the General Rules of Practice and Procedure of the Railroad Commission of Texas~~]. The subject of the submission shall not be operated or used in LNG service in this state until approved by the Commission following a hearing.

(2) [~~LNG Form 2005,~~] LNG Form 2008 or the Manufacturer's Data Report, and any other documentation pertinent to the installation, may be requested by LP-Gas Operations [~~the Commission~~] in order to further determine compliance with the rules in this chapter [~~Regulations for Liquefied Natural Gas~~].

(l) Physical inspection of stationary installations.

(1) Aggregate water capacity 15,540 gallons or more. The applicant shall notify LP-Gas Operations [~~the Commission~~] when the installation is ready for inspection. If LP-Gas Operations [~~the Commission~~] does not physically inspect the facility within 30 calendar days of receipt of notice that the facility is ready for inspection, the applicant may operate the facility conditionally until the initial complete inspection is made. If any safety rule violations exist at the time of the initial inspection, the applicant may be required to cease LNG operations until the applicant corrects the violations.

(2) Aggregate water capacity of less than 15,540 gallons. After receipt of LNG Form 2501, LP-Gas Operations [~~the Commission~~] shall conduct an inspection as soon as possible to verify the installation described complies with the rules in this chapter [~~Regulations for Liquefied Natural Gas~~]. The applicant may operate the facility prior to inspection if the facility fully complies with the rules in this chapter [~~Regulations for Liquefied Natural Gas~~]. If any LNG statute or safety rule violations exist at the time of the initial inspection at a commercial installation, LP-Gas Operations [~~the Commission~~] may immediately remove the subject container, including any piping, appliances, appurtenances, or equipment connected to it from LNG service until the applicant corrects the violations.

(m) If the Railroad Commission finds after a public hearing that the proposed installation complies with the rules in this chapter [~~Regulations for Liquefied Natural Gas~~] and the statutes of the State of Texas, and does not constitute a danger to the public health, safety, and welfare, the Railroad Commission shall issue an interim approval order. The construction of the installation and the setting of the container shall not proceed until the applicant has received written notification of the interim approval order. Any interim approval order shall include a provision that such approval may be suspended or revoked if:

(1) (No change.)

(2) a physical inspection of the installation indicates that it is not installed in compliance with the submitted plat drawing for the installation, the rules in this chapter [~~Regulations for Liquefied Natural Gas~~], or the statutes of the State of Texas; or

(3) (No change.)

(n) Material variances. If LP-Gas Operations [~~the Commission~~] determines the completed installation varies materially from the application originally accepted, the applicant shall correct the variance and notify LP-Gas Operations [~~the Commission~~] of the correction of the variance or resubmit the application. LP-Gas Operations' [~~The Commission's~~] review of such resubmitted application shall comply with the procedure described in this section.

(o) In the event an applicant has requested an inspection and LP-Gas Operations' [~~the Commission~~] inspection identifies violations requiring modifications by the applicant, LP-Gas Operations [~~the Commission~~] may assess an inspection fee to cover the costs associated with any additional inspection, including mileage and per diem rates set by the legislature.

§14.2043. Temporary Installations.

(a) Temporary installations shall comply with the following requirements:

(1) Prior to the completion of a temporary installation with an individual or aggregate water capacity of 15,540 gallons or less, the licensee or non-licensee shall file LNG Form 2501 with LP-Gas Operations, including proof of the local fire marshal's approval if the installation is within such jurisdiction.

(2) (No change.)

(b) Temporary installations shall be limited to one year. If the temporary installation needs to remain in service for more than one year, the licensee or nonlicensee responsible for the temporary installation shall inform LP-Gas Operations [~~the Safety Division (the Division)~~] of this extension of time at least 30 days prior to the expiration of the one-year period.

(c) Temporary installations shall be protected by guardrailing as specified in §14.2101(f) of this title (relating to Uniform Protection Requirements [~~Standards~~]) unless otherwise approved by LP-Gas Operations [~~the Division~~].

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

(g) LP-Gas Operations [~~The Division~~] may inspect temporary installations for compliance with this section [~~these requirements~~].

(h) Any temporary installation subject to the jurisdiction of United States Department of Transportation under 49 Code of Federal Regulations, Part 193, shall comply with the applicable DOT rules and any requirements of LP-Gas Operations [~~the Division~~].

§14.2046. Filings Required for School Bus, Mass Transit, and Special Transit Vehicles.

(a) After the manufacture of or the conversion to an LNG system on any vehicle to be used as a school bus, mass transit, public transportation, or special transit vehicle, the manufacturer, licensee, or ultimate consumer making the installation or conversion shall notify LP-Gas Operations [~~the Commission~~] in writing on LNG Form 2503 that the applicable LNG-powered vehicles are ready for a complete inspection to determine compliance with the rules in this chapter [~~Regulations for Liquefied Natural Gas~~].

(b) If LP-Gas Operations' [~~the Commission's~~] initial complete inspection finds the vehicle in compliance with the rules in this chapter [~~Regulations for Liquefied Natural Gas~~] and the statutes, the vehicle may be placed into LNG service. For fleet installations of identical design, an initial inspection shall be conducted prior to the operation of the first vehicle, and subsequent vehicles of the same design may be placed into service without prior inspections. Subsequent inspections shall be conducted within a reasonable time frame to ensure the vehicles are operating in compliance with the rules in this chapter [~~Regulations for Liquefied Natural Gas~~]. If violations exist at the

time of the initial complete inspection, the vehicle shall not be placed into LNG service and the manufacturer, licensee, or ultimate consumer making the installation or conversion shall correct the violations. The manufacturer, licensee, or ultimate consumer shall file with LP-Gas Operations [~~the Commission~~] documentation demonstrating compliance with the rules in this chapter [~~Regulations for Liquefied Natural Gas~~], or LP-Gas Operations [~~the Commission~~] shall conduct another complete inspection before the vehicle may be placed into LNG service.

(c) The manufacturer, licensee, or ultimate consumer making the installation or conversion shall be responsible for compliance with the rules in this chapter [~~Regulations for Liquefied Natural Gas~~], statutes, and any other local, state, or federal requirements.

(d) If the requested LP-Gas Operations [~~Commission~~] inspection identifies violations requiring modifications by the manufacturer, licensee, or ultimate consumer, LP-Gas Operations [~~the Commission~~] shall consider the assessment of an inspection fee to cover the costs associated with any additional inspection, including mileage and per diem rates set by the legislature.

§14.2049. Report of LNG Incident/Accident.

(a) If an incident or accident occurs during transport, as a result of a pullaway, or where LNG is or is suspected to be the cause, the licensee or nonlicensee owning, operating, or servicing the installation shall notify LP-Gas Operations [~~the Safety Division~~] by telephone within two hours of discovery [~~as soon as possible~~] after the licensee or nonlicensee has knowledge of the incident or accident if any of the following occurs:

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

(b) Any transport unit required to be registered with LP-Gas Operations [~~the Gas Services Division~~] in accordance with §14.2704 of this title (relating to Registration and Transfer of LNG Transports) which is involved in an accident where there is damage to the tank, piping appurtenances, or any release of LNG resulting from the accident shall be reported to LP-Gas Operations [~~the Safety Division~~], regardless of the accident location. Any LNG-powered motor vehicle used for school transportation or mass transit, including any state-owned vehicle, which is involved in an accident resulting in a release of LNG or damage to LNG equipment shall be reported to LP-Gas Operations [~~the Safety Division~~], regardless of the accident location.

(c) The telephone notification required by this section shall be made to the Railroad Commission's 24-hour emergency line at (512) 463-6788 and shall include the following information:

(1) - (7) (No change.)

(8) whether immediate assistance from LP-Gas Operations [~~the division~~] is requested.

(d) (No change.)

(e) Following the initial telephone report of any of the incidents or accidents described in this section, the licensee shall file LNG Form 2020 with LP-Gas Operations [~~the Safety Division~~]. The form shall be postmarked within 14 calendar days of the date of initial notification to LP-Gas Operations [~~the Safety Division~~].

§14.2052. Application for an Exception to a Safety Rule.

(a) Any person may apply for an exception to the provisions of this chapter by filing LNG Form 2025 along with supporting documentation and a $50 filing fee, with LP-Gas Operations [~~the Safety Division (the Division)~~].

(b) The application shall contain the following:

(1) (No change.)

(2) the type of relief desired, including the exception requested and information which may assist LP-Gas Operations [~~the Division~~] in comprehending the requested exception;

(3) - (7) (No change.)

(c) Notice of the application for an exception to a safety rule shall include the following items and procedures:

(1) The applicant shall send a copy of LNG Form 2025 by certified mail, return receipt requested, to all affected entities on the same date on which the form is filed with or sent to LP-Gas Operations [~~the Division~~]. The applicant shall include a notice to the affected entities that any objection shall be filed with LP-Gas Operations [~~the Division~~] within 18 calendar days of the postmark. The applicant shall file all return receipts with LP-Gas Operations [~~the Division~~] as proof of notice.

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

(4) LP-Gas Operations [~~The Division~~] may require an applicant to give notice to persons in addition to those listed in paragraphs (2) and (3) of this subsection if doing so will not prejudice the rights of any entity.

(d) Objections to the requested exception shall be in writing, filed at LP-Gas Operations [~~the Division~~] within 18 calendar days of the postmark of the application, and shall be based on facts that tend to demonstrate that, as proposed, the exception would have an adverse effect on public health, safety, or welfare. LP-Gas Operations [~~The Division~~] may decline to consider objections based solely on claims of diminished property or esthetic values in the area.

(e) LP-Gas Operations [~~The Division~~] shall review the application within 21 business days of receipt of the application. If LP-Gas Operations [~~the Division~~] does not receive any objections from any affected entities as defined in subsection (c) of this section, the LP-Gas Operations [~~division~~] director may grant administratively the exception if the LP-Gas Operations director determines that the installation, as proposed, does not adversely affect the health or safety of the public. LP-Gas Operations [~~The Division~~] shall notify the applicant in writing by the end of the 21-day review period and, if approved, the installation shall be installed within one year from the date of approval. LP-Gas Operations [~~The Division~~] shall also advise the applicant at the end of the objection period as to whether any objections were received and whether the applicant may proceed. If the LP-Gas Operations director denies the exception, LP-Gas Operations [~~the Division~~] shall notify applicant, in writing, of the reasons and any specific deficiencies. The applicant may modify the application to correct the deficiencies and resubmit the application along with a $30 resubmission fee, or may request a hearing on the matter in accordance with Chapter 1 of this title (relating to Practice and Procedure) [~~the General Rules of Practice and Procedure of the Railroad Commission of Texas~~]. To be granted a hearing, the applicant shall file a written request for hearing within 14 calendar days of receiving notice of the administrative denial.

(f) A hearing shall be held when LP-Gas Operations [~~the Division~~] receives an objection, as set out in subsection (d) of this section from any affected entity or when the applicant requests one following an administrative denial. LP-Gas Operations [~~The Division~~] shall mail the notice of hearing to the applicant and all objecting entities by certified mail, return receipt requested, at least 21 calendar days prior to the date of the hearing. Hearings will be held in accordance with the Texas Government Code, Chapter 2001, et seq., Chapter 1 of this title [~~the general rules of practice and procedure of the Railroad Commission~~], and the rules in this chapter.

(g) - (h) (No change.)

(i) For good cause shown, LP-Gas Operations [~~the division~~] may grant a temporary exception of 30 days or less to the examination requirements for company representatives and operations supervisors. Good cause includes but is not limited to death of a sole proprietor or partner. Applicants for temporary exceptions shall comply with applicable safety requirements and LP-Gas Operations [~~the division~~] shall obtain information showing that the exception will not be hazardous to the public.

(j) A request for an exception shall expire if it is inactive for three months after the date of the letter in which the applicant was notified by LP-Gas Operations [~~the Division~~] of an incomplete request.

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

Filed with the Office of the Secretary of State on September 11, 2012.

TRD-201204797
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

SUBCHAPTER B. GENERAL RULES FOR ALL STATIONARY LNG INSTALLATIONS

16 TAC §§14.2101, 14.2104, 14.2110

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

Issued in Austin, Texas, on September 11, 2012.

§14.2101. Uniform Protection Requirements.

(a) (No change.)

(b) Protection shall be maintained in good condition at all times in accordance with the standards set forth in this section [~~subsection~~]. LP-Gas Operations [~~The Commission~~] may impose additional requirements to ensure the safety of personnel and the general public.

(c) - (g) (No change.)

(h) At least two monitoring sensors shall be installed at all stationary installations to detect hazardous levels of LNG. Sensors shall activate at not more than 25% of the lower flammability [~~flammable~~] limit of LNG. If the level exceeds one-fourth of the LFL, the sensor shall either shut the system down or activate an audible and visual alarm. The number of sensors to be installed shall comply with the area of coverage for each sensor and the size of the installation. The sensors shall be installed and maintained in accordance with the manufacturer's instructions.

§14.2104. Uniform Safety Requirements.

(a) In order to determine the safety of a container, LP-Gas Operations [~~the Commission~~] may request the manufacturer's data report on that container. LP-Gas Operations [~~The Commission~~] may also request that containers and assemblies be examined by a Category 15, 20, or 50 licensee equipped for and experienced in the testing of LNG containers and equipment. The Category 15, 20, or 50 licensee shall file a comprehensive report on its findings with LP-Gas Operations [~~the Commission~~]. This requirement may be applied even though an acceptable LNG Form 2023 is on file with LP-Gas Operations [~~at the Commission~~].

(b) Any stationary LNG container previously in LNG service which has not been subject to continuous LNG pressure or inert gas pressure shall be inspected by a currently licensed Category 15, 20, or 50 licensee to determine if the container shall be leak-tested or re-certified. A copy of the inspector's written report shall be filed with LP-Gas Operations [~~the Commission~~]. The container shall not be used until LP-Gas Operations [~~the Commission~~] grants approval.

(c) Any stationary LNG container which has been subject to continuous LNG or inert gas pressure need not be tested prior to installation provided an acceptable LNG Form 2023 is filed with LP-Gas Operations [~~the Commission~~] when LNG Form 2500 is submitted for any facility requiring submission of plans and specifications.

(d) (No change.)

§14.2110. LNG Container Installation Distance Requirements.

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

(c) Stationary LNG containers and piping shall not be placed in the area directly beneath or above an electric transmission, distribution, or customer service line and the area six feet to either side of that line. If this distance is not adequate to prevent the line and the associated voltage from contacting the LNG container in the event of breakage of any conductor, then other suitable means of protection designed and constructed to prevent such contact with the container may be used if approval is received from LP-Gas Operations [~~the Commission~~]. The request for approval shall be in writing and shall specify the manner in which the container will be protected from contact, including specifications for the materials to be used. If LP-Gas Operations [~~the Commission~~] does not approve the proposed protection, then the container shall be located a sufficient distance from the line to prevent such contact.

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 September 11, 2012.

TRD-201204798
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

SUBCHAPTER D. GENERAL RULES FOR LNG FUELING FACILITIES

16 TAC §§14.2307, 14.2310, 14.2313, 14.2316, 14.2319

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commis-

sion to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

Issued in Austin, Texas, on September 11, 2012.

§14.2307. Indoor Fueling.

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

(c) LNG Form 2500, including plans and specifications, shall be filed with LP-Gas Operations [~~the Commission~~], as specified in §14.2040 of this title (relating to Filings and Notice Requirements [~~Required~~] for Stationary LNG Installations).

§14.2310. Emergency Refueling.

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

(c) Prior to the mobile refueling vehicle being placed into service, the licensee or non-licensee shall file with LP-Gas Operations [~~the Safety Division (the Division)~~] a drawing showing the mounting, type of container, water capacity of the container, type of vehicle to be used, and the method of mounting. The vehicle shall not be placed into service until LP-Gas Operations [~~the Division~~] ensures that it complies with the applicable rules.

(d) Emergency refueling vehicles are not required to be registered with LP-Gas Operations [~~the License and Permit Section of the Gas Services Division~~].

§14.2313. Fuel Dispensing Systems.

(a) (No change.)

(b) Appurtenances and equipment placed into LNG service shall be listed by a Category 15, 20, or 50 licensee unless:

(1) the appurtenances or equipment are specifically prohibited for use by another section of the rules in this chapter [~~Regulations for Liquefied Natural Gas~~]; or

(2) (No change.)

(c) Appurtenances and equipment that are labeled but not listed and are not prohibited for use by the rules in this chapter [~~Regulations for Liquefied Natural Gas~~] shall be acceptable and safe for LNG service over the full range of pressures and temperatures to which they will be subjected under normal operating conditions.

(d) LP-Gas Operations [~~The Commission~~] may require any documentation sufficient to substantiate any claims made regarding the safety of any valves, fittings, and equipment.

(e) - (o) (No change.)

§14.2316. Filings Required for Installation of Fuel Dispensers.

After the installation of a fuel dispenser, LNG Form 2501 shall be filed with LP-Gas Operations [~~the Commission~~] along with the required fees set forth in §14.2040 of this title (relating to Filings and Notice Requirements [~~Required~~] for Stationary LNG Installations). Site plans shall detail the area within 150 feet of the dispenser and the fuel storage container or to the facility's property line, whichever is less. Tentative approval shall be granted if the site plans indicate the installation will meet the requirements of the rules in this chapter [~~Regulations for Liquefied Natural Gas~~] and the Texas Natural Resources Code. Final approval shall be issued only after a field inspection confirms that the installed dispenser meets all the requirements of the rules in this chapter [~~Regulations for Liquefied Natural Gas~~].

§14.2319. Automatic Fuel Dispenser Safety Requirements.

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

(c) Valves, metering equipment, and other related equipment installed on a automatic dispensers shall meet all applicable requirements of the rules in this chapter [~~Regulations for Liquefied Natural Gas~~].

(d) - (j) (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 September 11, 2012.

TRD-201204799
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

SUBCHAPTER E. PIPING SYSTEMS AND COMPONENTS FOR ALL STATIONARY LNG INSTALLATIONS

16 TAC §14.2416, §14.2437

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

Issued in Austin, Texas, on September 11, 2012.

§14.2416. Installation of Valves.

(a) - (f) (No change.)

(g) Container connections larger than one-inch pipe size through which liquid can escape shall be equipped with:

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

(3) a fail-closed [~~fail-close~~] valve; or

(4) (No change.)

(h) - (j) (No change.)

§14.2437. Pressure and Relief Valves in Piping.

(a) - (c) (No change.)

(d) Discharge from the valves shall be directed to minimize hazard to personnel or equipment and the discharge location shall be approved by LP-Gas Operations [~~the Commission~~].

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

Filed with the Office of the Secretary of State on September 11, 2012.

TRD-201204800
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

SUBCHAPTER G. ENGINE FUEL SYSTEMS

16 TAC §14.2607, §14.2640

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

Issued in Austin, Texas, on September 11, 2012.

§14.2607. Vehicle Fuel Containers.

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

(c) Repair or alteration of containers shall comply with the Code under which that container was fabricated. Licensees making repairs or alterations shall file LNG Form 2008 with LP-Gas Operations [~~the Commission~~].

(d) - (j) (No change.)

§14.2640. System Testing.

(a) - (c) (No change.)

(d) If an LNG container is involved in an accident or fire causing damage to the container, the container shall be replaced or removed and returned to a currently licensed Category 15, 20, or 50 licensee to be inspected and retested in accordance with the original manufacturer's specifications. The licensee who performs any repair, modification, or testing of a container shall file LNG Form 2008 with LP-Gas Operations [~~the Commission~~] before the container is returned to service.

(e) (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 September 11, 2012.

TRD-201204801
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

SUBCHAPTER H. LNG TRANSPORTS

16 TAC §§14.2704, 14.2705, 14.2707, 14.2710, 14.2746, 14.2749

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

Issued in Austin, Texas, on September 11, 2012.

§14.2704. Registration and Transfer of LNG Transports.

(a) A person who operates an LNG transport as defined in this chapter, regardless of who owns the transport, shall register the transport with LP-Gas Operations [~~the Commission~~] in the name or names under which the operator conducts business in Texas prior to the transport being used in LNG service in Texas.

(1) To register a unit previously unregistered in Texas, the operator of the unit shall:

(A) pay to LP-Gas Operations [~~the Commission~~] the $270 registration fee for each transport truck, semi-trailer, or other motor vehicle equipped with an LNG cargo tank; and

(B) (No change.)

(2) To register a unit which was previously registered in Texas but for which the registration has expired, the operator of the unit shall:

(A) pay to LP-Gas Operations [~~the Commission~~] the $270 registration fee;

(B) - (C) (No change.)

(3) (No change.)

(b) LP-Gas Operations [~~The Commission~~] may also request an operator registering or transferring any unit to file a copy of the Manufacturer's Data Report or [~~of~~] a copy of the DOT certification issued by the manufacturer and/or subframer who prepared the unit for road use, or any other documentation to show the container complies with MC-338.

(c) When all registration or transfer requirements have been met, LP-Gas Operations [~~the Commission~~] shall issue LNG Form 2004 or letter of authority which shall be properly affixed as instructed on the decal or letter or maintained on the bobtail or transport trailer. LNG Form 2004 or letter of authority shall authorize the licensee or ultimate consumer to whom it has been issued and no other person to operate such unit in the transportation of LNG and to fill the transport containers.

(1) A person shall not operate an LNG transport unit or introduce LNG into a transport container in Texas unless the LNG Form 2004 or letter of authority has been properly affixed as instructed on the decal or the letter or maintained on the bobtail or transport trailer or unless its operation has been specifically approved by LP-Gas Operations [~~the Commission~~].

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

(4) LP-Gas Operations [~~The Commission~~] shall not issue an LNG Form 2004 or letter of [~~or~~] authority if LP-Gas Operations [~~the Commission~~] or a Category 15 or 50 licensee determines that the transport is unsafe for LNG service.

§14.2705. Decals or Letters [~~Letter~~] of Authority and Fees.

If an LNG Form 2004 decal or letter of [~~or~~] authority on a unit currently registered with LP-Gas Operations [~~the Commission~~] is destroyed, lost,

or damaged, the operator of that vehicle shall obtain a replacement decal or letter of authority by filing LNG Form 2018B and a $50 replacement fee with LP-Gas Operations [~~the Commission~~].

§14.2707. Testing Requirements.

(a) Transport container units required to be registered with LP-Gas Operations [~~the Commission~~] shall be tested at least once every five years by a Category 15, 20, or 50 licensee.

(1) (No change.)

(2) The results of any test required under this section shall clearly indicate whether the transport container unit is safe for LNG service. The Category 15, 20, or 50 licensee shall mail LNG Form 2008 to LP-Gas Operations [~~the Commission~~] within 30 calendar days of the due date of any tests required under this section.

(3) If evidence of any unsafe condition is discovered as a result of any tests performed under this section, the transport container unit shall be immediately removed from LNG service and shall not be returned to LNG service until LP-Gas Operations [~~the Commission~~] notifies the licensee in writing that the transport container unit may be returned to LNG service.

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

§14.2710. Markings.

(a) LNG transports and container delivery units in LNG service shall be marked with the name of the licensee or the ultimate consumer operating the unit. The name shall be in letters at least two inches in height and in sharp color contrast to the background. LP-Gas Operations [~~The Commission~~] will determine whether the marking is sufficient to properly identify the operator.

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

§14.2746. Delivery of Inspection Report to Licensee.

The transport driver of any transport unit receiving an inspection report from LP-Gas Operations [~~the Commission~~] shall deliver that report to the licensee in whose name the transport unit is registered.

§14.2749. Issuance of LNG Form 2004 Decal.

(a) An LNG Form 2004 decal or letter of authority shall not be issued to any transport that has not been tested as required by §14.2707 of this title (relating to Testing Requirements) at least once in the preceding five years. An LNG Form 2004 decal or letter of authority shall not be issued to any transport that has been determined to be unsafe for LNG service by LP-Gas Operations [~~the Commission~~] or a Category 15, 20, or 50 licensee in accordance with §14.2707 of this title [~~(relating to Testing Requirements)~~].

(b) An LNG Form 2004 decal or letter of authority, when issued by LP-Gas Operations [~~the Commission~~] and properly affixed as instructed by the decal or letter, or maintained on the bobtail or transport trailer, shall authorize the person to whom it has been issued to operate such unit in the transportation of LNG and to fill the transport containers.

(c) No person or ultimate consumer shall operate an LNG transport or introduce LNG into such unit in this state unless an LNG Form 2004 decal or letter of authority authorizing its operation has been affixed in accordance with placement instructions on the decal or letter, or maintained in readable condition, or unless such operation has been specifically approved by LP-Gas Operations [~~the Commission~~].

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

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

Filed with the Office of the Secretary of State on September 11, 2012.

TRD-201204802
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

CHAPTER 15. ALTERNATIVE FUELS RESEARCH AND EDUCATION DIVISION

The Railroad Commission of Texas (Commission) proposes amendments, in Subchapter A, to §§15.1, 15.3, 15.5, 15.30, 15.41, 15.45, 15.50, 15.55, 15.60, 15.65, 15.70, and 15.100, relating to Purpose; General Provisions; AFRED Forms; Propane Alternative Fuels Advisory Committee; Definitions; Registration of Odorizers, Odorizer Agents, Importers and Importer Agents; Fee on Delivery of Odorized LPG; Report and Remittance of Fees; Exemptions; Odorizer or Importer Refunds; Commission Refund; and Interpretation and Application; in Subchapter B, to §§15.101, 15.105, 15.110, 15.125, 15.150, 15.155, and 15.160, relating to Purpose; Definitions; Establishment; Duration; Application; Assignment of Rebate; Compliance; and Complaints; and in Subchapter C, to §§15.201, 15.205, 15.210, 15.215, 15.220, 15.235, and 15.240, relating to Purpose; Definitions; Establishment; Duration; Eligibility; Application; Compliance; and Complaints.

The Commission also proposes the repeal of the rules in Subchapter D, §§15.301, 15.305, 15.310, 15.315, 15.320, 15.325, 15.330, 15.335, 15.340, 15.345, and 15.350, relating to Purpose; Definitions; Establishment; Duration; Operation; Eligibility; Application; Conditions of Receipt of Rebate; Rebate Amount; Verification; Disallowance; Refund; Compliance; Complaints; and Penalties; and in Subchapter E, §§15.401, 15.405, 15.410, 15.415, 15.420, 15.425, 15.430, 15.435, 15.440, 15.445, and 15.450, relating to Purpose; Definitions; Establishment; Duration; Incentive Amount; Limitations; Eligibility; Application Procedure; Payment of Incentive; Assignment of Incentive; Compliance; Complaints; and Penalties. The two programs outlined in these two subchapters, relating to highway signage and manufactured housing rebates, have been inactive for several years, and the rules are no longer needed.

In most of the proposed amendments, the Commission proposes to update references to the former Alternative Fuels Research and Education Division (AFRED) and the License and Permit Section of the Gas Services Division to clarify that these administrative units are now part of the Commission's Alternative Energy Division (AED). In other amendments, the Commission proposes a new table in §15.5 to list the forms, their creation or revision dates, and the applicable rule numbers; after these amendments are effective, any form changes will be proposed through an amendment to the table in §15.5. The forms are published in this issue of the *Texas Register* concurrently with this proposal.

The Commission proposes to consolidate definitions which apply to the entire chapter or to several subchapters in the main definitions rule, §15.41. In §15.30, the Commission proposes to delete some definitions which are also found in §15.41. In §15.41, the Commission proposes new definitions for "AED" and "AFRED,"

and other clarifying changes. In §15.105 and §15.205, the Commission proposes to delete redundant definitions.

In §15.160, the Commission proposes to amend the title of the director of LP-Gas Operations.

Dan Kelly, Director, AFRED, has determined that for the first five years that the proposed amendments and repeals will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments or repeals. The amendments and repeals as proposed represent nonsubstantive administrative changes or clarifications.

Mr. Kelly has also determined that there will be no cost of compliance with the proposed amendments or repeals for individuals, small businesses, or micro-businesses.

Mr. Kelly has also determined that the public benefit anticipated as a result of enforcing or administering the sections as amended will be clarification of Commission organization.

The 80th Legislature (2007) adopted House Bill 3430, which amended Chapter 2006 of the Texas Government Code. As amended, Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, requires that as a part of the rulemaking process, a state agency prepare an Economic Impact Statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses, and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses.

The Commission has determined that the proposed amendments or repeals will not have an adverse economic effect on small businesses or micro-businesses and therefore the analysis described in Texas Government Code, §2006.002, is not required.

The Commission simultaneously proposes the review and readoption of the rules in Chapter 15, with the exception of Subchapters D and E, which are proposed for repeal. The notice of proposed rule review is published in this issue of the *Texas Register* concurrently with this proposal. As stated in the concurrent rule review, the Commission proposes to readopt these rules, with the proposed changes, in accordance with Texas Government Code, §2001.039. The agency's reasons for adopting these rules continue to exist.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments will be accepted until 12:00 p.m. (noon) on Monday, October 29, 2012, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the amendments are nonsubstantive clarification; additionally, the proposal, as well as an online comment form, will be available on the Commission's web site no later than the day after the Commission approves publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Kelly at (512) 463-7291. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

SUBCHAPTER A. GENERAL RULES

16 TAC §§15.1, 15.3, 15.5, 15.30, 15.41, 15.45, 15.50, 15.55, 15.60, 15.65, 15.70, 15.100

The Commission proposes the amendments under the Texas Natural Resources Code, §113.243, which authorizes the Commission to research, develop, and implement marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers; and §113.2435, which authorizes the Commission to establish consumer rebate programs for purchasers of appliances and equipment fueled by LP-gas or other environmentally beneficial alternative fuels for the purpose of achieving energy conservation and efficiency and improving the quality of air in this state.

Statutory authority: Texas Natural Resources Code, §113.243 and §113.2435.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on September 11, 2012.

§15.1. Purpose.

The commission through the employees of the Alternative Energy [~~Fuels Research and Education~~] Division and other divisions as from time to time may be appropriate or necessary administers the Alternative Fuels Research and Education program pursuant to Texas Natural Resources Code, §§113.241, et seq., and the rules in this chapter. This chapter is [~~adopted pursuant thereto, 16 Texas Administrative Code, §§15.1, et seq. These rules are~~] promulgated to establish clearly:

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

§15.3. General Provisions.

(a) (No change.)

(b) In computing any period of time prescribed in this chapter [~~§§15.1-15.100 of this title (relating to General Rules)~~], the last day of the period being computed shall be included, unless it is a Saturday, Sunday, or an official state holiday, in which event the period shall continue to run until 5:00 p.m. on the next day that is not a Saturday, Sunday, or an official state holiday.

§15.5. AFRED Forms.

[~~(a)~~] Under the provisions of the Texas Natural Resources Code, §§113.241 - 113.250, inclusive, the [~~Railroad~~] Commission [~~of Texas~~] adopts the following forms for use by the Alternative Energy [~~Fuels Research and Education~~] Division.

Figure: 16 TAC §15.5

[~~(1) AFRED Form 1. Odorizer's or Importer's Report of Fees Collected.~~]

[~~(2) AFRED Form 1A. Schedule A: Schedule of Refund Amounts.~~]

[~~(3) AFRED Form 2. Load Exemption: Certificate of LPG Destined for Export.~~]

[~~(4) AFRED Form 3. Fee on Delivery of Odorized LPG: Refund Request to Commission.~~]

[~~(5) AFRED Form 4. Blanket Exemption.~~]

[~~(6) AFRED Form 5. Refund Request to Odorizer or Importer.~~]

[(7) AFRED Form 6. Odorizer or Importer Registration.]

[(8) AFRED Form 6A. Odorizer or Importer Designation of Agent.]

[(b) The commission delegates to the director the authority to amend the AFRED forms listed in subsection (a) of this section as necessary to enable the commission to fulfill its duties under Texas Natural Resources Code, §§113.241-113.250, inclusive.]

§15.30. Propane Alternative Fuels Advisory Committee.

(a) Definitions. The following words and terms, when used in this section and in addition to the definitions in §15.41 of this title (relating to Definitions), shall have the following meanings, unless the context clearly indicates otherwise.

[(1) Commission--The Railroad Commission of Texas.]

(1) [(2)] Committee--The Propane Alternative Fuels Advisory Committee of the Railroad Commission of Texas.

(2) [(3)] Consumer representative--A member of the committee who is not engaged in the business of producing, distributing or retailing propane and who is not engaged in the business of designing, manufacturing, distributing or retailing propane equipment, but who is an end-user of odorized propane fuel, including but not limited to a consumer of odorized propane as a residential or commercial heating or water-heating fuel, as an automotive or other transportation fuel, or as an agricultural or industrial fuel.

[(4) Division--The Alternative Fuels Research and Education Division of the Railroad Commission of Texas.]

(3) [(5)] Fiscal year--September 1 of a year through August 31 of the following year.

(4) [(6)] Industry representative--A member of the committee who is engaged in the business of producing, distributing or retailing propane or who is engaged in the business of designing, manufacturing, distributing or retailing propane equipment.

(5) [(7)] Member--An industry representative, a consumer representative, or the president of the Texas Propane Gas Association, who serves on the Propane Alternative Fuels Advisory Committee of the Railroad Commission of Texas.

(6) [(8)] Presiding officer--The chairman of the Propane Alternative Fuels Advisory Committee of the Railroad Commission of Texas.

[(9) Propane--Liquefied petroleum gas (LPG), as that term is defined in Texas Natural Resources Code, Chapter 113.]

(b) (No change.)

(c) Purpose and duties. The purpose of the committee is to give the commission the benefit of the members' collective business, environmental, and technical expertise and experience to help the commission increase the use of propane, improve air quality, and develop the economy of this state. The committee's sole duty is to advise the commission. The committee has no executive or administrative powers or duties with respect to the operation of AFRED [the division]. All such powers and duties rest solely with the commission.

(d) (No change.)

(e) Nominations for committee membership. Any person may nominate a candidate or candidates for membership on the committee. Nominations must be in writing and may be submitted by August 1 of each year to the commission, a commissioner, or the AFRED director [of the division] for transmission to the commission.

(f) - (i) (No change.)

(j) Committee records. AFRED [The division] staff shall record and maintain the originals of the minutes of each committee meeting. AFRED [The division] shall maintain a record of actions taken by the committee and shall distribute copies of approved minutes and other committee documents to the commission and the committee members.

(k) Evaluation of committee costs and benefits. By October 1 of each year, the AFRED [division] director shall evaluate for the previous fiscal year and report to the commission:

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

(l) (No change.)

§15.41. Definitions.

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

(1) AED--The Alternative Energy Division.

(2) [(1)] AFRED--The organizational unit of the AED that administers the Commission's alternative fuels research and education program, including the consumer rebate and media rebate programs [Alternative Fuels Research and Education Division of the Railroad Commission of Texas].

(3) [(2)] Cargo tank--Any receptacle mounted on a transport vehicle, including but not limited to a rail car, bobtail or semitrailer, designed and used for the transportation or storage of liquefied petroleum gas.

(4) [(3)] Commission--The Railroad Commission of Texas.

(5) [(4)] Continuous movement--Movement of odorized LPG in the same transport vehicle from the time of odorization or import to a destination outside Texas. The term does not apply to odorized LPG that is offloaded in Texas from the transport vehicle into a storage facility, to LPG that is commingled in Texas with other LPG, or to partial loads.

(6) [(5)] Delivery--The first introduction of odorized LPG into a means of conveyance or the first import of odorized LPG into Texas, regardless whether a sale occurs simultaneously.

(7) Delivery date--The date of postmark of a mailed application or the date that a hand-delivered application is stamped in at the Austin offices of AFRED.

(8) [(6)] Director--The director of AFRED [executive head of AFRED appointed by the commission to administer the AFRED program pursuant to Texas Natural Resources Code, §§113.241, et seq., and the rules adopted pursuant thereto, §§15.1, et seq. of this title,] or the director's delegate.

[(7) Division--The Alternative Fuels Research and Education Division (AFRED) of the Railroad Commission of Texas.]

(9) [(8)] Importer--A person who causes odorized LPG to be moved into Texas from a location outside Texas, or a supplier who has been designated as the agent of such person on AFRED Form 6A.

(10) [(9)] Liquefied petroleum gas or LPG--Any material that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, or butylenes.

(11) LP-Gas Operations--The organizational unit of the AED that administers the LP-gas safety program, including licensing, truck registration, installation approvals, complaint and accident investigations, inspections of stationary installations and vehicles, and code enforcement.

(12) [~~(10)~~] Marketer or LPG marketer--A person engaged in the business of buying and selling odorized LPG to wholesale or retail customers.

(13) [~~(11)~~] Means of conveyance--Any transport vehicle, including but not limited to a rail car, bobtail or semitrailer, designed and used for the transportation of LPG.

(14) [~~(12)~~] Odorizer--A person who adds odorant to LPG within Texas, including but not limited to an LPG supplier, terminal operator, loading rack operator, or a person subject to filing odorization reports with the commission and complying with the commission's odorization rule, §9.114 of this title (relating to Odorizing and Reports), or a supplier who has been designated as the agent of such person on AFRED Form 6A.

(15) [~~(13)~~] Owner of LPG at the time of import--The person holding legal title to odorized LPG at the time of its import into Texas, including but not limited to an LPG marketer or supplier.

(16) [~~(14)~~] Owner of LPG at the time of odorization--The person holding legal title to odorized LPG immediately after odorant has been added to the LPG, including but not limited to an LPG marketer.

(17) [~~(15)~~] Person--An individual, partnership, firm, corporation, joint venture, association, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, including but not limited to an LPG supplier or LPG marketer.

(18) Propane--Liquefied petroleum gas (LPG), as that term is defined in Texas Natural Resources Code, Chapter 113.

(19) [~~(16)~~] Sold and placed into commerce--Sold or otherwise transferred to a reseller or end user for eventual resale or consumption, including but not limited to a sale or other transfer to a marketer; to an industrial, commercial, agricultural or other business; to a federal or state agency; to a political subdivision; or to a nonprofit organization.

(20) [~~(17)~~] Supplier--A person engaged in the business of selling or otherwise transferring bulk quantities of LPG to an LPG marketer or other customer to be sold and placed into commerce.

(21) [~~(18)~~] Time of import--The time of first entry of odorized LPG into Texas from another state or from outside the United States.

(22) [~~(19)~~] Time of odorization--The time of the first delivery of odorized LPG into a means of conveyance located in Texas.

§15.45. Registration of Odorizers, Odorizer Agents, Importers and Importer Agents.

(a) (No change.)

(b) Each person subject to this section shall register with AFRED [~~the commission~~] by filing AFRED Form 6 or AFRED Form 6A as follows:

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

(c) Odorizers may delegate the duties related to administration of delivery fees under Texas Natural Resources Code, §§113.241 - 113.250, inclusive, and §15.50 and §15.55 of this title (relating to Fee on Delivery of Odorized LPG, and Report and Remittance of Fees), to one or more suppliers if:

(1) (No change.)

(2) the odorizer and supplier execute and file [~~with the commission~~] AFRED Form 6A, which makes the supplier legally responsible for performing the odorizer's duties related to administration of delivery fees under Texas Natural Resources Code, §§113.241 - 113.250, inclusive, and §15.50 and §15.55 of this title [~~(relating to Fee on Delivery of Odorized LPG and Report and Remittance of Fees)~~] at a specific facility where LPG is odorized. The odorizer and supplier shall execute and file [~~with the commission~~] a separate AFRED Form 6A for each facility at which the supplier acts as agent for the odorizer. The execution of an AFRED Form 6A shall be voluntary on the part of the supplier and shall not be a condition of the supplier doing business with an odorizer. The execution of an AFRED Form 6A makes the supplier subject to all obligations of an odorizer under this subchapter, including [~~§§15.1-15.100 of this title, inclusive, which include~~], among other things, retaining documents and permitting audit by the commission.

(3) (No change.)

(d) Importers may delegate the duties related to administration of delivery fees under Texas Natural Resources Code, §§113.241 - 113.250, inclusive, and §15.50 and §15.55 of this title [~~(relating to Fee on Delivery of Odorized LPG, and Report and Remittance of Fees)~~], to one or more suppliers if:

(1) the importer and supplier execute and file [~~with the commission~~] AFRED Form 6A, which makes the supplier legally responsible for performing the importer's duties related to administration of delivery fees under Texas Natural Resources Code, §§113.241 - 113.250, inclusive, and §15.50 and §15.55 of this title [~~(relating to Fee on Delivery of Odorized LPG, and Report and Remittance of Fees)~~] at a specific facility where LPG is odorized. The importer and supplier shall execute and file [~~with the commission~~] a separate AFRED Form 6A for each facility at which the supplier acts as agent for the importer. The execution of AFRED Form 6A shall be voluntary on the part of the supplier and shall not be a condition of the supplier doing business with an importer. The execution of AFRED Form 6A makes the supplier subject to all obligations of an importer under this subchapter, including [~~§15.1-15.100 of this title, inclusive, which include~~], among other things, retaining documents and permitting audit by the commission.

(2) (No change.)

(e) - (g) (No change.)

§15.50. Fee on Delivery of Odorized LPG.

(a) The odorizer or importer shall be responsible for collecting the fee and remitting the fee to AFRED [~~the commission~~].

(b) (No change.)

§15.55. Report and Remittance of Fees.

On or before the 25th day of each month, or the first business day after the 25th day of each month in which the 25th falls on a Saturday, Sunday, or a legal holiday, each odorizer and importer shall file a report and remit to AFRED [~~the commission~~] all fees due on odorized LPG delivered into a means of conveyance in the previous month. Fees are due to AFRED [~~the commission~~] on all LPG delivered into a means of conveyance in the previous month, regardless of whether the fees were actually collected from persons responsible for paying the fees in that month. The report shall be prepared on AFRED Form 1, Odorizer's or Importer's Report of Fees Collected, shall be filed by mailing the completed form and fees to AFRED, and shall be postmarked on or before the deadline for filing. Late filings or failure to file as required will subject the odorizer or importer to additional fees or penalties under

§15.75 and §15.80 of this title (relating to Penalty for Failure To Report as Required, and Civil Penalties).

§15.60. Exemptions.

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

(c) AFRED Form 2, Load Exemption: Certificate of LPG Destined for Export, or another form specifically approved in advance in writing as equivalent by the AFRED director [~~division~~], shall be completed by any person certifying that a particular load of LPG is exempt from the fee.

(d) AFRED Form 4, Blanket Exemption, or another form specifically approved in advance in writing as equivalent by the AFRED director [~~division~~], shall be completed by any person obtaining an exemption for all LPG purchased and filed annually with the odorizer or importer. Each odorizer or importer shall keep all exemption forms on file for a minimum of four years and readily available in a convenient and organized manner for commission inspection.

§15.65. Odorizer or Importer Refunds.

Any person who pays a fee to an odorizer or importer on a load of LPG that is exempt under §15.60 of this title (relating to Exemptions) may apply to the odorizer or importer for a refund of the amount paid. To apply for the refund, the person shall complete AFRED Form 5, Refund Request to Odorizer or Importer, and return it to the odorizer or importer that collected the fee. Any odorizer or importer that refunds a fee based on receipt of AFRED Form 5 shall report the amount of the refund on AFRED Form 1 in the block labeled Adjustment for Refunds; complete Schedule A (AFRED Form 1A, Schedule of Refund Amounts); and submit the completed forms to AFRED [~~the division~~]. All amounts refunded and reported in this manner may be deducted from the total amount of fees collected to arrive at the total amount of fees to be remitted [~~to the commission~~]. An odorizer or importer shall maintain on file for a minimum of four years the refund request forms for all refunds reported [~~to the commission~~], and shall make these forms readily available for commission inspection.

§15.70. Commission Refund.

An odorizer or importer may petition [~~the commission~~] for refund of fees remitted in a previous month [~~to the commission~~] in error. An odorizer or importer seeking a refund shall complete AFRED Form 3, Fee on Delivery of Odorized LPG: Refund Request to Commission; shall include a statement of the reason for the refund and all supporting export and fee-payment documents; and shall file the request [~~with the commission~~] by mailing the completed form and all supporting documents to AFRED [~~the division~~]. Supporting export documents include, but are not limited to, bills of lading, shipping manifests and load tickets. Supporting fee-payment documents include, but are not limited to, invoices, ledgers and journal entries tied to export documents. In lieu of issuing a warrant, AFRED [~~the commission~~] may permit an odorizer or importer to deduct the amount of an approved refund from the total amount of fees remitted [~~to the commission~~] in a subsequent month.

§15.100. Interpretation and Application.

(a) The fact situations in subsections (b) and (c) of this section illustrate the commission's interpretation and application of Texas Natural Resources Code, §§113.241, et seq., and the rules in this chapter [~~adopted pursuant thereto, §§15.1, et seq. of this title~~], and demonstrate how the commission will determine which entities are responsible for paying and for collecting and remitting the fee.

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

(d) Refunds. Refunds of LPG delivery fees paid in error typically involve either an odorizer or supplier reimbursing a marketer or the commission reimbursing an odorizer, supplier, or importer.

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

(3) Commission reimburses supplier, odorizer, or importer. A supplier, odorizer, or importer that has remitted a delivery fee to the commission in error may apply to the commission for a refund. The person claiming the refund shall send AFRED [~~the division~~] a completed AFRED Form 3, and attach a bill of lading, shipping manifest or load ticket documenting that the load was exempt, and an invoice, ledger, or journal entry tied to the load and documenting that a fee was previously paid on the load. In lieu of issuing a warrant, the commission may permit an odorizer or importer to deduct the amount of an approved refund from the total amount of fees remitted to the commission in a subsequent month.

(e) The fact situations in subsections (b), (c), and (d) of this section are illustrative only. In all situations, the commission will apply the provisions of Texas Natural Resources Code, §§113.241, et seq., and the rules in this chapter [~~adopted pursuant thereto, §§15.1, et seq. of this title~~], to achieve the intended statutory purpose of assessing the fee on LPG, not otherwise exempt, that is either odorized in Texas or imported in odorized form into Texas.

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

Filed with the Office of the Secretary of State on September 11, 2012.

TRD-201204778
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

SUBCHAPTER B. PROPANE CONSUMER REBATE PROGRAM

16 TAC §§15.101, 15.105, 15.110, 15.125, 15.150, 15.155, 15.160

The Commission proposes the amendments under the Texas Natural Resources Code, §113.243, which authorizes the Commission to research, develop, and implement marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers; and §113.2435, which authorizes the Commission to establish consumer rebate programs for purchasers of appliances and equipment fueled by LP-gas or other environmentally beneficial alternative fuels for the purpose of achieving energy conservation and efficiency and improving the quality of air in this state.

Statutory authority: Texas Natural Resources Code, §113.243 and §113.2435.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on September 11, 2012.

§15.101. Purpose.

The purpose of this subchapter [~~§§15.101, 15.105, 15.110, 15.115, 15.120, 15.125, 15.130, 15.135, 15.140, 15.145, 15.150, 15.152, 15.155, 15.160, and 15.165 of this title (relating to the Alternative~~

Fuels Research and Education Division)] is to establish for purchasers of eligible LPG appliances and equipment a consumer rebate program that achieves energy conservation and efficiency or improves the quality of air in this state. This subchapter outlines [These sections outline] the eligibility requirements for equipment and consumer applicants; application requirements; administrative procedures; and other program terms.

§15.105. Definitions.

The following words and terms, when used in this subchapter [chapter (relating to the Alternative Fuels Research and Education Division)] shall have the following meanings, unless the context clearly indicates otherwise.

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

[(4) Commission--The Railroad Commission of Texas.]

(4) [(5)] Consumer--A person who is the legal owner of eligible equipment installed in an eligible installation.

[(6) Delivery date--The date of postmark of a mailed application or the date that a hand-delivered application is stamped in at the Austin offices of the division.]

[(7) Division--The Alternative Fuels Research and Education Division of the Railroad Commission of Texas.]

(5) [(8)] Eligible equipment--Propane-fueled appliances or equipment that is approved by AFRED [the Commission] and that achieves energy conservation and efficiency or improves air quality in this state [the State].

(6) [(9)] Eligible installation--An installation of eligible equipment that takes place on property owned by the applicant and located in this state and that occurs no earlier than the effective date of this subchapter [rule] and no later than the date of termination of the program established under this subchapter [rule].

(7) [(10)] Installation date--The date on which propane service for eligible equipment is established.

[(11) Person--An individual, sole proprietorship, partnership, corporation or other legal entity.]

[(12) Propane--Liquefied petroleum gas (LPG), as that term is defined in Texas Natural Resources Code, Chapter 113.]

(8) [(13)] Propane dealer--A person who:

(A) has been issued a current Category E license from the LP-Gas Operations section of AED [Gas Services Division, License and Permit Section of the commission,] or is an active company representative or operations supervisor on file with the LP-Gas Operations section [the Section]; [and]

(B) operates or manages a retail business, including any branch outlet or outlets, delivering odorized propane to consumers; [and]

(C) has completed and submitted the form prescribed by the commission for dealer participation in the rebate program; and

(D) is a regular supplier or a potential regular supplier of propane to an applicant.

(9) [(14)] Propane equipment supplier--A person who:

(A) has been issued a current Category L or other applicable LP-gas license from the LP-Gas Operations section of AED [Gas Services Division, License and Permit Section of the commission,] or is an active company representative or operations supervisor on file with the LP-Gas Operations section [the Section]; [and]

(B) operates or manages a retail business, including any branch outlet or outlets, selling, leasing or servicing eligible equipment to or for consumers; [and]

(C) has completed and submitted the form prescribed by the commission for propane equipment supplier participation in a rebate or incentive program; and

(D) is a regular supplier or a potential regular supplier of eligible equipment to an applicant.

(10) [(15)] Safety inspection--An on-site inspection, including any necessary pressure tests, of an operating eligible installation by a propane dealer, a propane dealer's designated agent, a propane equipment supplier, or a propane equipment supplier's designated agent for the purpose of verifying that the LP-gas system, including all equipment, is or was installed in compliance with this subchapter [the propane consumer rebate program rules] and with all applicable commission LP-gas safety rules and is in safe operating condition.

§15.110. Establishment; Duration.

The rebate program is hereby established on the effective date of this subchapter [(relating to the Alternative Fuels Research and Education Division)]. The commission may terminate this rebate program at any time.

§15.125. Application.

(a) (No change.)

(b) Payment. AFRED [The commission] may approve payment of a rebate to an applicant subject to the availability of funds. Applicants have no legal right or other entitlement to receive rebates under this program, and receipt of a complete and correct application does not bind AFRED [the commission] to approve payment of a rebate to any applicant.

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

(e) Acceptance. Applications will be accepted no earlier than the effective date of this rule and no later than the date of termination of the program. An application for a rebate on domestic equipment, such as an appliance, must be received by AFRED [at the Commission] no later than 30 days following the date of the eligible installation to be eligible for a rebate. An application for a rebate on a motor vehicle, industrial lift truck, or other industrial equipment must be received by AFRED [at the Commission] no later than 60 days following the date of the eligible installation to be eligible for a rebate. Applications may be mailed [or hand-delivered] to the Railroad Commission of Texas, Alternative Energy [Fuels Research and Education] Division, [1701 North Congress Avenue, Room 11-170O,] P.O. Box 12967, Austin, Texas 78711-2967, or hand-delivered to the Commission at 1701 North Congress Avenue, Austin, Texas 78701. Applications may also be scanned and submitted electronically or submitted by facsimile transmission (FAX).

(f) (No change.)

(g) Completeness. Applicants must furnish completely and correctly all information required on the official rebate application. No application may be considered complete until all required information is correct and all forms and required supporting documentation are received by AFRED [the division].

(h) Incomplete applications. Applicants have 30 days from the date AFRED [the division] sends notice to correct any errors or omissions on the application. If a complete, correct application is not received by AFRED [in the division] within 30 days after notice has been sent, the application shall be void.

§15.150. Assignment of Rebate.

AFRED [~~The commission~~] may authorize payment of a rebate to a propane dealer or propane equipment supplier only by assignment from a consumer. Rebate amounts assigned shall be those in effect on the installation date of eligible equipment. A consumer may apply to assign a rebate to a propane dealer or propane equipment supplier by completing and submitting the form prescribed for that purpose [~~by the commission~~]. A propane dealer, propane equipment supplier, or applicant who submits false information pertaining to the assignment of a rebate is subject to criminal and civil penalties under §15.165 of this title (relating to Penalties).

§15.155. Compliance.

(a) An applicant, propane dealer or propane equipment supplier may be suspended from or declared ineligible to participate in the rebate program if, in the judgment of the AFRED [~~division~~] director, the applicant, dealer or equipment supplier has submitted false information or otherwise violated this subchapter [~~rebate program rules~~].

(b) Within 30 days after the AFRED [~~division~~] director mails a notice of suspension or ineligibility to an applicant, propane dealer or equipment supplier, the applicant, propane dealer or equipment supplier may appeal the suspension or declaration of ineligibility in writing to the director [~~commission~~]. Actions taken by the director [~~commission~~] with respect to such appeals are final.

§15.160. Complaints.

(a) Any person may file a complaint about an applicant, a propane dealer or another person regarding alleged violations of this subchapter [~~the rebate program rules~~]. Complaints should be sent in writing to the [~~division~~] director at the address set forth in §15.125(e) [~~§15.125(d)~~] of this title (relating to Application).

(b) Complaints that an installation does not comply with the commission's LP-gas safety rules should be sent in writing to the [~~assistant~~] director of LP-Gas Operations [~~the Gas Services Division, License and Permit Section of the commission~~] at the same address.

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 September 11, 2012.

TRD-201204779
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

SUBCHAPTER C. MEDIA REBATE PROGRAM

16 TAC §§15.201, 15.205, 15.210, 15.215, 15.220, 15.235, 15.240

The Commission proposes the amendments under the Texas Natural Resources Code, §113.243, which authorizes the Commission to research, develop, and implement marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers; and §113.2435, which authorizes the Commission to establish consumer rebate programs for purchasers of appliances and equipment fueled by LP-gas or other environmentally beneficial alternative fuels for the purpose of achieving energy conservation and efficiency and improving the quality of air in this state.

Statutory authority: Texas Natural Resources Code, §113.243 and §113.2435.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on September 11, 2012.

§15.201. Purpose.

The purpose of this subchapter [~~chapter (relating to the Alternative Fuels Research and Education Division)~~] is to establish for Texas retail propane dealers a media rebate program that achieves increased public awareness and assists in the marketing of propane as an environmentally beneficial alternative fuel. This subchapter outlines the [~~These sections outline the commission's~~] mechanisms for determining the eligibility of applicants, application requirements, administrative procedures, rebate amounts and adjustments, terms of compliance, penalties for violations, and program termination.

§15.205. Definitions.

The following words and terms, when used in this subchapter[~~, relating to the Alternative Fuels Research and Education Division~~], shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

[~~(2) Commission--The Railroad Commission of Texas.~~]

(2) [~~(3)~~] Commission advertising--Advertising produced or approved by AFRED [~~the division~~], including, but not limited to, print advertisements, billboards, written radio copy or radio or television commercials.

[~~(4) Delivery date--The date of postmark of a mailed application or the date that a hand-delivered application is stamped in at the Austin offices of the division.~~]

[~~(5) Division--The Alternative Fuels Research and Education Division of the Railroad Commission of Texas.~~]

(3) [~~(6)~~] Eligible media outlet--A media outlet, including, but not limited to, a radio or television station or cable franchise licensed by the Federal Communications Commission; a weekly or daily published newspaper; a weekly, monthly or bi-monthly magazine; a provider of billboard advertising; or a publisher of an annual or seasonal special events program that regularly accepts paid advertising from the public and whose target audience and message are consistent with the goals of the commission. The media outlet must be approved by AFRED [~~the commission~~] in advance of purchase of advertising. The term does not include dealer-published newsletters, fliers or specialty advertising. A highway sign is eligible, provided the sign:

(A) is permanently affixed to a building, structure, or the ground and designed or constructed in such a manner that it cannot be moved or relocated without major structural or support changes; and

(B) the final design of the sign has been approved in advance in writing by AFRED [~~the division~~].

(4) [~~(7)~~] Eligible media purchase--Any payment for commission advertising displayed or broadcast in or on eligible media.

[~~(8) Person--An individual, sole proprietorship, partnership, corporation or other legal entity.~~]

[~~(9) Propane--Liquefied petroleum gas (LPG), as that term is defined in Texas Natural Resources Code, Chapter 113.~~]

(5) [~~(10)~~] Propane dealer--A person who:

(A) has been issued a current Category E license from the LP-Gas Operations section of AED [~~Gas Services Division, License and Permit Section of the commission,~~] or is an active company representative or operations supervisor on file with the LP-Gas Operations section [~~Section~~]; [~~and~~]

(B) operates or manages a retail business, including any branch outlet or outlets, delivering odorized propane to consumers; and

(C) has completed and submitted the form prescribed by the commission for dealer participation in the media rebate program.

(6) [~~(11)~~] Retail propane delivery truck--Any bobtail truck, semitrailer, or other motor vehicle equipped with an LP-gas cargo container and each trailer, semitrailer, or other motor vehicle used principally for transporting LP-gas in portable containers that:

(A) has aggregate water capacity of 4,999 gallons or less; and

(B) is currently registered with the LP-Gas Operations section of AED [~~Gas Services Division, License and Permit Section of the commission~~].

§15.210. Establishment; Duration.

The media rebate program is hereby established on the effective date of this subchapter [~~(relating to the Alternative Fuels Research and Education Division)~~]. The commission may terminate this rebate program at any time.

§15.215. Eligibility.

(a) (No change.)

(b) Existing commission advertising that is altered in form, content, or both form and content may be eligible for a rebate if written approval is obtained from the AFRED [~~division~~] director prior to use of the advertising.

(c) The commission may, at its sole discretion, find non-commission advertising eligible for a rebate if the advertising complements existing commission advertising and promotes propane and the propane industry generally, and if written approval is obtained from the AFRED [~~division~~] director prior to use of the advertising.

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

§15.220. Application.

(a) - (c) (No change.)

(d) Acceptance. Applications will be accepted no earlier than the effective date of this rule and no later than the date of termination of the program. An application must be received by AFRED [~~at the commission~~] no later than 60 days following the date of the eligible media purchase to be eligible for rebates. Applications may be mailed [~~or hand-delivered~~] to the Railroad Commission of Texas, Alternative Energy [~~Fuels Research and Education~~] Division, [~~1701 North Congress Avenue, Room 11-170,~~] P.O. Box 12967, Austin, Texas 78711-2967, or hand-delivered to the Commission at 1701 North Congress Avenue, Austin, Texas 78701. Applications may also [~~not~~] be submitted electronically or by facsimile transmission (FAX).

(e) (No change.)

(f) Completeness. Applicants must furnish completely and correctly all information required on the official media rebate application. No application may be considered complete until all required information is correct and all forms and required supporting documentation are received by AFRED [~~the division~~].

(g) Incomplete applications. Applicants have 30 days from the date AFRED [~~the division~~] sends notice to correct any errors or omissions on the application. If a complete, correct application is not received by AFRED [~~in the division~~] within 30 days after notice has been sent, the application shall be void.

§15.235. Compliance.

(a) An applicant may be suspended from or declared ineligible to participate in the rebate program if, in the judgment of the AFRED [~~division~~] director, the applicant has submitted false information or otherwise violated this subchapter [~~media rebate program rules~~].

(b) Within 30 days after the AFRED [~~division~~] director mails a notice of suspension or ineligibility to an applicant, the applicant may appeal the suspension or declaration of ineligibility in writing to the division director [~~commission~~]. Actions taken by the division director [~~commission~~] with respect to such appeals are final.

§15.240. Complaints.

Any person may file a complaint about a media outlet, a propane dealer or another person regarding alleged violations of this subchapter [~~the rebate program rules~~]. Complaints should be sent in writing to the AFRED [~~division~~] director at the address set forth in §15.220 of this title (relating to Application).

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 September 11, 2012.

TRD-201204780
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

SUBCHAPTER D. HIGHWAY SIGNAGE REBATE PROGRAM

16 TAC §§15.301, 15.305, 15.310, 15.315, 15.320, 15.325, 15.330, 15.335, 15.340, 15.345, 15.350

(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 Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Commission proposes the repeals under the Texas Natural Resources Code, §113.243, which authorizes the Commission to research, develop, and implement marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers; and §113.2435, which authorizes the Commission to establish consumer rebate programs for purchasers of appliances and equipment fueled by LP-gas or other environmentally beneficial alternative fuels for the purpose of achieving energy conservation and efficiency and improving the quality of air in this state.

Statutory authority: Texas Natural Resources Code, §113.243 and §113.2435.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on September 11, 2012.

§15.301. Purpose.
§15.305. Definitions.
§15.310. Establishment; Duration; Operation.
§15.315. Eligibility.
§15.320. Application.
§15.325. Conditions of Receipt of Rebate.
§15.330. Rebate Amount.
§15.335. Verification; Disallowance; Refund.
§15.340. Compliance.
§15.345. Complaints.
§15.350. Penalties.

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 September 11, 2012.

TRD-201204781
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

SUBCHAPTER E. MANUFACTURED HOUSING INCENTIVE PROGRAM

16 TAC §§15.401, 15.405, 15.410, 15.415, 15.420, 15.425, 15.430, 15.435, 15.440, 15.445, 15.450

(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 Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Commission proposes the repeals under the Texas Natural Resources Code, §113.243, which authorizes the Commission to research, develop, and implement marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers; and §113.2435, which authorizes the Commission to establish consumer rebate programs for purchasers of appliances and equipment fueled by LP-gas or other environmentally beneficial alternative fuels for the purpose of achieving energy conservation and efficiency and improving the quality of air in this state.

Statutory authority: Texas Natural Resources Code, §113.243 and §113.2435.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on September 11, 2012.

§15.401. Purpose.
§15.405. Definitions.
§15.410. Establishment;Duration.
§15.415. Incentive Amount; Limitations.
§15.420. Eligibility.
§15.425. Application Procedure.
§15.430. Payment of Incentive.
§15.435. Assignment of Incentive.
§15.440. Compliance.
§15.445. Complaints.
§15.450. Penalties.

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 September 11, 2012.

TRD-201204782
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1295

♦ ♦ ♦

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §25.109

The Public Utility Commission of Texas (commission) proposes an amendment to §25.109, relating to Registration of Power Generation Companies and Self-Generators. The proposed amendment will clarify the registration procedure for power generation companies and self-generators. Project Number 40601 is assigned to this proceeding.

Jennifer Hubbs, Infrastructure Policy Analyst, Infrastructure and Reliability Division, has determined that for each year of the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Ms. Hubbs has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be a more streamlined procedure for generating companies to register. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this amendment. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Ms. Hubbs has also determined that for each year of the first five years the proposed amendment is in effect there should be no effect on a local economy and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's

offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Friday, November 16, 2012. The request for a public hearing must be received by Monday, October 29, 2012.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by Monday, October 29, 2012. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted by Tuesday, November 13, 2012. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendment. The commission will consider the costs and benefits in deciding whether to adopt the amendment. All comments should refer to Project Number 40601.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, PURA §39.351 which requires the commission to register power generation companies and grants the commission authority to collect information on generation facilities.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.351.

§25.109. Registration of Power Generation Companies and Self-Generators.

(a) Application.

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

(3) [~~A person that owned such generating facility prior to September 1, 2000 shall register after September 1, 2000 and before January 1, 2001.~~] A person that becomes subject to this section after September 1, 2000 must register on or before the first date of generating electricity.

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

(d) Registration requirements for power generation companies and self-generators. To register as a power generation company or self-generator, a person shall provide all of the following information:

(1) A description of the location of the facility used to generate electricity;

(2) A description of the types of services provided by the registering party that pertain to the generation of electricity;

(3) For any application filed with the Federal Energy Regulatory Commission (FERC) after the effective date of this section, copies of any information, excluding responses to interrogatories, that was filed in connection with the FERC registration, and any order issued by the FERC pursuant thereto. Such registrations shall include, for example, determination of exempt wholesale generator (EWG) or QF status; and

(4) Any information requested on the commission-prescribed form.

[~~(1) The legal name of the registering party.~~]

[~~(2) The Texas business address and principal place of business of the registering party.~~]

[~~(3) The name, title, address, telephone number, facsimile transmission number, and e-mail address of the person to whom communications relating to the self-generator should be addressed.~~]

[~~(4) For each generating facility that is located in the state, the following information:~~]

[~~(A) Name;~~]

[~~(B) Location by county, utility service area, control area, power region, and reliability council; and~~]

[~~(C) Capacity rating in megawatts.~~]

[~~(e) Registration requirement for power generation companies. To register as a PGC, a person shall provide the following information:~~]

[~~(1) The legal name of the registering party as well as any trade or commercial name(s) under which the registering party intends to operate.~~]

[~~(2) The registering party's Texas business address and principal place of business.~~]

[~~(3) The name, title, address, telephone number, facsimile transmission number, and e-mail address of the person to whom communications should be addressed.~~]

[~~(4) The names and types of business of the registering party's corporate parent companies, along with percentages of ownership.~~]

[~~(5) A description of the types of services provided by the registering party that pertain to the generation of electricity.~~]

[~~(6) The name and corporate relationship of each affiliate that buys and sells electricity at wholesale in Texas, sells electricity at retail in Texas, or is an electric or municipally owned utility in Texas.~~]

[~~(7) For each generation facility or electric energy storage equipment or facility that is located in the state, the following information:~~]

[~~(A) Name;~~]

[~~(B) Location by county, utility service area, control area, power region, and reliability council; and~~]

[~~(C) Capacity rating in megawatts.~~]

[~~(8) For any application filed with the Federal Energy Regulatory Commission (FERC) after the effective date of this section, copies of any information, excluding responses to interrogatories, that was filed in connection with the FERC registration, and any order issued by the FERC pursuant thereto. Such registrations shall include, for example, determination of exempt wholesale generator (EWG) or QF status.~~]

[~~(9) An affidavit by an authorized person attesting that the registering party:~~]

[~~(A) Generates electricity that is intended to be sold at wholesale;~~]

[~~(B) Does not own a transmission or distribution facility in this state other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under §25.5 of this title; and~~]

[~~(C) Does not have a certificated service area.~~]

(e) [~~(f)~~] Registration procedures. The following procedures apply to the registration of PGCs and self-generators.

(1) Registration shall be made by completing the commission-prescribed form [~~approved by the commission~~], which shall be verified by oath or affirmation and signed by an owner, partner, or officer of the registering party. Registration forms may be obtained from the Central Records division of the Public Utility Commission of Texas during normal business hours, or from the commission's Internet site. Each registering party shall file its registration form with the commission's Filing Clerk in accordance with the commission's procedural rules, Chapter 22, Subchapter E of this title (relating to Pleadings and Other Documents).

(2) The commission staff shall review the submitted form for completeness. Within 15 business days of receipt of an incomplete form, the commission staff shall notify the registering party in writing of the deficiencies in the request. The registering party shall have ten business days from the issuance of the notification to cure the deficiencies. If the deficiencies are not cured within ten business days, the staff will notify the registering party that the registration request is rejected without prejudice.

(3) The registering party may designate answers or documents that it believes to contain proprietary or confidential information. Information designated as proprietary or confidential will be treated in accordance with the standard protective order issued by the commission applicable to registration information for PGCs and self-generators.

[~~(g) Post registration requirements for self-generators. Self-generators shall report any material change during the preceding year in the information provided on the registration form by February 28 of each year.~~]

(f) [~~(h)~~] Post-registration requirements for power generation companies and self-generators. PGCs and self-generators shall report any [~~material~~] change in the information provided on the registration form within 45 days of the change. [~~A material change would include, for example, a merger or consolidation with another owner of electric generation facilities that offers electricity for sale in this state.~~] PGCs shall comply with the reporting requirements of §25.91 of this title (relating to Generating Capacity Reports) [~~the commission's rules implementing the Public Utility Regulatory Act (PURA) §39.155(a)~~].

(g) [~~(i)~~] Suspension and revocation of power generation company registration and administrative penalty. Pursuant to PURA §39.356, registrations of PGCs pursuant to this section are subject to suspension and revocation for significant violations of PURA or rules adopted by the commission. The commission may also impose an administrative penalty for a significant violation at its discretion. Significant violations may include the following:

(1) Failure to comply with the reliability standards and operational criteria duly established by the independent organization that is certified by the commission;

(2) For a PGC operating in the Electric Reliability Council of Texas (ERCOT), failure to observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent system operator in ERCOT;

(3) Providing false or misleading information to the commission;

(4) Engaging in fraudulent, unfair, misleading, deceptive or anti-competitive practices;

(5) A pattern of failure to meet the conditions of this section, other commission rules, regulations or orders;

(6) Suspension or revocation of a registration, certification, or license by any state or federal authority;

(7) Failure to operate within the applicable legal parameters established by PURA §39.351; and

(8) Failure to respond to commission inquiries or customer complaints in a timely fashion.

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 September 13, 2012.

TRD-201204840
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 936-7223

♦ ♦ ♦

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

SUBCHAPTER B. POWERS AND RESPONSIBILITIES

16 TAC §60.24

The Texas Department of Licensing and Regulation (Department) proposes amendments to 16 TAC Chapter 60, Subchapter B, §60.24, regarding the duration of advisory committees/boards/councils governed by the Texas Commission of Licensing and Regulation (Commission).

These proposed amendments are necessary to comply with Texas Government Code, §2110.008, which authorizes a state agency that has established an advisory committee to designate the date on which the committee will automatically be abolished. The designation must be by rule. The committee may continue in existence after that day only if the agency amends the rule to provide for a different abolishment date.

The proposed amendments to §60.24 add the Dog or Cat Breeders Program Advisory Committee (Committee), created by House Bill 1451, 82nd Legislature, Regular Session, 2011, to the list of advisory boards and designate the date on which the committee will be abolished automatically.

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

Mr. Kuntz has determined that for each year of the first five-year period the amendments are in effect, the public benefit anticipated will be an opportunity to receive technical knowledge and expert advice from the Committee on matters related to the Dog or Cat Breeders Program that are critical to the Commission's protection of public health, safety, and welfare, and to fulfill statutory requirements and duties applicable to the Committee.

The Commission does not anticipate any adverse economic effect to small or micro-businesses, or other persons as a result of the proposed rule changes.

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

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

The amendments are proposed under Texas Occupations Code, Chapter 51, §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department, and Texas Government Code, Chapter 2110, §2110.008, which authorizes state agencies to continue the existence of an advisory committee beyond the four year period following the date of creation of the committee.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51 and Chapter 802. No other statutes, articles, or codes are affected by the proposal.

§60.24. Advisory Boards.

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

(c) In accordance with Texas Government Code, §2110.008, the commission establishes the following periods during which the advisory boards listed will continue in existence. The automatic abolishment date of each advisory board will be the date listed for that board unless the commission subsequently establishes a different date:

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

(7) Dog or Cat Breeders Program Advisory Committee--09/01/2015;

(8) [~~(7)~~] Electrical Safety and Licensing Advisory Board--09/01/2014;

(9) [~~(8)~~] Elevator Advisory Board--09/01/2014;

(10) [~~(9)~~] Licensed Court Interpreter Advisory Board--09/01/2014;

(11) [~~(10)~~] Medical Advisory Committee--09/01/2014;

(12) [~~(11)~~] Polygraph Advisory Committee--09/01/2014;

(13) [~~(12)~~] Property Tax Consultants Advisory Council--09/01/2014;

(14) [~~(13)~~] Texas Tax Professional Advisory Committee--09/01/2014;

(15) [~~(14)~~] Towing, Storage, and Booting Advisory Board--09/01/2014;

(16) [~~(15)~~] Used Automotive Parts Recycling Advisory Board--09/01/2014;

(17) [~~(16)~~] Vehicle Protection Product Warrantor Advisory Board--09/01/2014;

(18) [~~(17)~~] Water Well Drillers Advisory Council--09/01/2014; and

(19) [~~(18)~~] Weather Modification Advisory Committee--09/01/2014.

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 September 17, 2012.

TRD-201204898
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-4879

♦ ♦ ♦

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 62. COMMISSIONER'S RULES CONCERNING THE EQUALIZED WEALTH LEVEL

19 TAC §62.1071

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §62.1071(a) is not included in the print version of the Texas Register. The figure is available in the on-line version of the September 28, 2012, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes an amendment to §62.1071, concerning the equalized wealth level. The section establishes provisions relating to wealth equalization requirements. The proposed amendment would adopt as a part of the Texas Administrative Code (TAC) the *Manual for Districts Subject to Wealth Equalization 2012-2013 School Year.* The manual contains the processes and procedures that the TEA uses in the administration of the provisions of the Texas Education Code (TEC), Chapter 41, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 41, must meet.

Legal counsel with the TEA has advised that the procedures contained in each annual manual for districts subject to wealth equalization be adopted as part of the TAC. The intent is to annually update 19 TAC §62.1071 to refer to the most recently published manual. Manuals adopted for previous school years will remain in effect with respect to those school years.

The proposed amendment to 19 TAC §62.1071, Manual for Districts Subject to Wealth Equalization, would adopt in rule the official TEA publication *Manual for Districts Subject to Wealth Equalization 2012-2013 School Year* as Figure: 19 TAC §62.1071(a).

Each annual manual for districts subject to wealth equalization explains how districts subject to wealth equalization are identified; the fiscal, procedural, and administrative requirements those districts must meet; and the consequences for not meeting requirements. The manual also provides information on

using the online Foundation School Program (FSP) System to fulfill certain requirements.

Significant changes to the *Manual for Districts Subject to Wealth Equalization 2012-2013 School Year* from the *Manual for Districts Subject to Wealth Equalization 2011-2012 School Year* include the following.

Section 2

Procedures specific to districts that need to proceed early with tax ratification processes would be added.

Section 3

Information on defaults related to prior school years would be clarified.

Appendix C

Language in the Option 3 agreement for districts opting to net their recapture against their Additional State Aid for Tax Reduction (ASATR) would be updated to 1) reflect that the state will reduce a district's ASATR by its estimated recapture amount and 2) describe what happens if, at near-final, a district does not have enough ASATR to cover the cost of recapture.

The proposed amendment would place the specific procedures contained in the *Manual for Districts Subject to Wealth Equalization 2012-2013 School Year* in the TAC. The TEA administers the wealth equalization provisions of the TEC, Chapter 41, according to the procedures specified in each annual manual for districts subject to wealth equalization. Data reporting requirements are addressed primarily through the online FSP System.

The proposed amendment would have no locally maintained paperwork requirements.

Shirley Beaulieu, associate commissioner for finance/chief financial officer, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

Ms. Beaulieu has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to continue to inform the public of the existence of an annual publication specifying requirements for school districts subject to wealth equalization. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

The public comment period on the proposal begins September 28, 2012, and ends October 29, 2012. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 28, 2012.

The amendment is proposed under the TEC, §41.006, which authorizes the commissioner of education to adopt rules necessary for the implementation of the TEC, Chapter 41.

The amendment implements the TEC, §41.006.

§62.1071. Manual for Districts Subject to Wealth Equalization.

(a) The processes and procedures that the Texas Education Agency (TEA) uses in the administration of the provisions of the Texas Education Code (TEC), Chapter 41, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 41, must meet are described in the official TEA publication *Manual for Districts Subject to Wealth Equalization 2012-2013 ~~[2011-2012]~~ School Year,* provided in this subsection.
Figure: 19 TAC §62.1071(a)
[~~Figure: 19 TAC §62.1071(a)~~]

(b) The specific processes, procedures, and requirements used in the manual for districts subject to wealth equalization are established annually by the commissioner of education and communicated to all school districts.

(c) School district actions and inactions in previous school years and data from those school years will continue to be subject to the annual manual for districts subject to wealth equalization with respect to those years.

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 September 17, 2012.

TRD-201204899
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-1497

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 71. APPLICATIONS AND APPLICANTS

22 TAC §71.13

(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 Board of Chiropractic Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of §71.13, relating to Chiropractic Specialties. The Board proposes the repeal to allow time for procedures for recognizing chiropractic specialties in the state of Texas to be revised. Additional stakeholder input is necessary before a new §71.13 can be proposed.

Nationally, numerous chiropractic specialties exist in different fields. Doctors practicing in each specialty hold a doctorate de-

gree in chiropractic and also complete post-graduate work and in some cases attain a diplomate or fellow status from national specialty certifying boards. The Board will in the future pursue how they will recognize these national specialties in the state of Texas and regulate use of the term "specialty" and/or "specialist." During the period of time that additional stakeholder input is gathered, the Board feels that the public interest is best served by repealing the existing §71.13.

Yvette Yarbrough, Executive Director, has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal will have no fiscal impact on state or local governments.

Ms. Yarbrough has determined that there will be no material economic costs to persons who are required to comply with the repeal, nor does the proposed repeal have any anticipated adverse effect on small or micro-businesses.

Ms. Yarbrough has also determined that for each year of the first five-year period the repeal is in effect the public benefit will be an improvement in recognition of chiropractic specialties, given additional stakeholder and public input.

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

This repeal is proposed under Texas Occupations Code §201.152. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

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

§71.13. Chiropractic Specialties.

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 September 14, 2012.

TRD-201204892
Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 305-6716

♦ ♦ ♦

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.17

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §75.17, relating to Scope of Practice, to address several matters. First, the Board has recognized the need to define additional terms in order to improve the clarity of the rule. Second, the Board is clarifying that cosmetic treatments, needle electromyography, and manipulation under anesthesia are not within the scope of practice.

The Board proposes adding definitions for biomechanics, cosmetic treatment, and subluxation in subsection (b). These terms are not defined in the Chiropractic Act, and as such, the Board proposes these definitions.

Next, the Board proposes deleting subsection (c)(3)(A) and its subparts that deal with needle electromyography (needle EMG). The 3rd Circuit Court of Appeals recently ruled that this procedure is outside of the chiropractic scope of practice due to its incisive nature. Although the Texas Medical Association filed a Petition for Review with the Supreme Court of Texas in this case, the Board feels that proposing the amendment at this time is in the best interest of the public.

The Board also deletes subsection (e)(2)(O) "manipulation under anesthesia" (MUA) as a treatment procedure and service that is within the scope of practice for chiropractors in Texas. This amendment is in response also to the 3rd Circuit Court of Appeals decision ruling that MUA is outside the chiropractic scope of practice due to its surgical nature. Again, while the Texas Medical Association filed a Petition for Review with the Supreme Court of Texas in this case, the Board feels that proposing the amendment at this time is in the best interest of the public

Finally, in subsection (e)(3)(D) the Board adds cosmetic treatments to treatment procedures and services that are outside the scope of practice for chiropractors in Texas. This addition is in response to the Board's Enforcement Committee noticing an increase in the number of complaints involving licensees advertising and/or performing cosmetic treatments.

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

Ms. Yarbrough has also determined that, for each year of the first five years this amendment will be in effect, the public benefit of this amendment will be to clarify the scope of practice for chiropractors in Texas.

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

The amendment is proposed under Texas Occupations Code §201.152 and §201.1525. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.1525 requires that the Board adopt rules clarifying what activities are included within the scope of practice of chiropractic and what activities are outside of that scope.

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

§75.17. Scope of Practice.

(a) Aspects of Practice.

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

(3) Needles may be used in the practice of chiropractic under standards set forth by the Board but may not be used for procedures that are incisive or surgical.

[(A) The use of a needle for a procedure is incisive if the procedure results in the removal of tissue other than for the purpose of drawing blood.]

[(B) The use of a needle for a procedure is surgical if the procedure is listed in the surgical section of the CPT Codebook.]

(4) (No change.)

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Biomechanics--the interaction of components of the human musculoskeletal system (such as the bones, muscles, ligaments, tendons, and joint capsules) with each other and with the nervous system that allows a body or part of a body to move from one place or position to another or to maintain position.

(2) [(1)] Board--the Texas Board of Chiropractic Examiners.

(3) [(2)] CPT Codebook--the American Medical Association's annual Current Procedural Terminology Codebook (2004). The CPT Codebook has been adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services as Level I of the common procedure coding system.

(4) Cosmetic treatment--a treatment that is primarily intended by the licensee to address the outward appearance of a patient.

(5) [(3)] Incision--a [A] cut or a surgical wound; also, a division of the soft parts made with a knife or hot laser.

(6) [(4)] Musculoskeletal system--the [The] system of muscles and tendons and ligaments and bones and joints and associated tissues and nerves that move the body and maintain its form.

(7) [(5)] On-site--the presence of a licensed chiropractor in the clinic, but not necessarily in the room, while a patient is undergoing an examination or treatment procedure or service.

(8) [(6)] Practice of chiropractic--the description and terms set forth under Texas Occupations Code §201.002, relating to the practice of chiropractic.

(9) Subluxation--a lesion or dysfunction in a joint or motion segment in which alignment, movement integrity and/or physiological function are altered, although contact between joint surfaces remains intact. It is essentially a functional entity, which may influence biomechanical and neural integrity.

(10) [(7)] Subluxation complex--a neuromusculoskeletal condition that involves an aberrant relationship between two adjacent articular structures that may have functional or pathological sequelae, causing an alteration in the biomechanical and/or neuro-physiological reflections of these articular structures, their proximal structures, and/or other body systems that may be directly or indirectly affected by them.

(c) Examination and Evaluation.

(1) (No change.)

(2) To evaluate and examine individual patients or patient populations, licensees of this board are authorized to use:

(A) physical examinations;

(B) diagnostic imaging;

(C) laboratory examination;

(D) electro-diagnostic testing, other than an incisive procedure;

(E) sonography; and

(F) other forms of testing and measurement.

(3) Examination and evaluation services which require a license holder to obtain additional training or certification, in addition to the requirements of a basic chiropractic license, include:

[(A) Electro-neuro Diagnostic Testing training requirements and standards (paraspinal surface electromyography excluded) include:]

[(i) Board approved training consisting of one hundred and twenty (120) hours of initial clinical and didactic training in the technical and professional components of the procedures or completion of a neurology diplomate program with sixty (60) hours of certification training in the technical and professional components of the procedures (these hours may be applied to a doctor's annual continuing education requirement);]

[(ii) The professional component of these procedures may not be delegated to a technician and must be directly performed by a qualified and licensed doctor of chiropractic who must be on-site during the technical component of the procedures;]

[(iii) The technical component of these procedures may be delegated to a technician if, said technician meets the training requirements of this section and is a licensed health care provider authorized to provide those services under Texas law;]

[(iv) The technical component of surface (non-needle) procedures may be delegated to a technician that has successfully completed Board approved training consisting of sixty (60) hours of initial clinical and didactic training in the technical component of the procedures; and]

[(v) Procedures must be performed in a manner consistent with generally accepted parameters, including clean needle techniques, standards of the Center for Communicable Disease, and meet safe and professional standards.]

(A) [(B)] Performance of radiologic procedures, which are authorized under the Texas Chiropractic Act, Texas Occupations Code, Chapter 201, may be delegated to an assistant who meets the training requirements set forth under §78.1 of this title (relating to Registration of Chiropractic Radiologic Technologists).

(B) [(C)] Technological Instrumented Vestibular-Ocular-Nystagmus Testing may be performed by a licensee with a diplomate in chiropractic neurology and that has successfully completed 150 hours of clinical and didactic training in the technical and professional components of the procedures as part of coursework in vestibular rehabilitation including the successful completion of a written and performance examination for vestibular specialty or certification. The professional component of these procedures may not be delegated to a technician and must be directly performed by a qualified licensee.

(4) (No change.)

(d) (No change.)

(e) Treatment Procedures and Services.

(1) (No change.)

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

(A) osseous and soft tissue adjustment and manipulative techniques;

(B) physical and rehabilitative procedures and modalities;

(C) acupuncture and other reflex techniques;

(D) exercise therapy;

(E) patient education;

(F) advice and counsel;

(G) diet and weight control;

(H) immobilization;

(I) splinting;

(J) bracing;

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

(L) durable medical goods and devices;

(M) homeopathic and botanical medicines, including vitamins, minerals; phytonutrients, antioxidants, enzymes, neutraceuticals, and glandular extracts;

(N) non-prescription drugs;

~~[(O) manipulation under anesthesia;]~~

(O) [~~(P)~~] referral of patients to other doctors and health care providers; and

(P) [~~(Q)~~] other treatment procedures and services consistent with the practice of chiropractic.

(3) The treatment procedures and services provided by a licensee which are outside of the scope of practice include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials; [~~or~~]

(D) cosmetic treatments; or

(E) [~~(D)~~] other treatment procedures and services that are inconsistent with the practice of chiropractic and with the treatment procedures and services described under this subsection.

(f) (No change.)

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

Filed with the Office of the Secretary of State on September 17, 2012.

TRD-201204907
Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 305-6716

♦ ♦ ♦

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 108. PROFESSIONAL CONDUCT
SUBCHAPTER E. BUSINESS PROMOTION

22 TAC §§108.50 - 108.61

(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 State Board of Dental Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The State Board of Dental Examiners (SBDE) proposes the repeal of §§108.50 - 108.61. On April 15, 2011, the Presiding Officer of SBDE announced the formation of an ad hoc committee to review and revise existing rules relating to advertising by licensees. New §§108.50 - 108.63, addressing advertising, are being proposed and published concurrently in the *Texas Register.*

Mr. Glenn Parker, Executive Director, has determined that for each year of the first five years these sections are repealed, there will be no fiscal implications for local or state government.

Mr. Parker has also determined that for each year of the first five years the sections are repealed, the public benefit anticipated as a result of enforcing the new sections will be protection of the public through updated advertising and business promotion rules that protect the public from false, deceptive, and misleading advertising.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002 the Board has determined that the proposed repeal will not have an adverse economic effect on any small or micro-business required to comply with the proposal because it does not impose new requirements on any business nor require increased staff or equipment to comply with the repeal. There is no anticipated economic cost to regulated persons to whom the proposed repeal applies.

Takings Impact Assessment. The Board has determined that this proposed repeal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Comments on the proposal may be submitted to Nycia Deal, Staff Attorney, State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701 (by mail), (512) 463-7452 (by fax), or *nycia@tsbde.texas.gov* (by email). To be considered, comments must be in writing and received by the State Board of Dental Examiners no later than 30 days from the date that the sections are published in the *Texas Register.*

The repeal is proposed under Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The repeal affects Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

§108.50. Objectives of Rules.
§108.51. Advertisements.
§108.52. False or Misleading Communication.
§108.53. Professional Announcements.

§108.54. Announcement of Services.

§108.55. Announcement of Credentials in Non-Specialty Areas.

§108.56. Specialty Announcement.

§108.57. Specialist Announcement of Credentials in Non-Specialty Areas.

§108.58. Degrees.

§108.59. Testimonials.

§108.60. False, Misleading or Deceptive Referral Schemes.

§108.61. Unlicensed Clinicians.

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 September 17, 2012.

TRD-201204900
Glenn Parker
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-0977

♦ ♦ ♦

22 TAC §§108.50 - 108.63

The State Board of Dental Examiners (SBDE) proposes new §108.50, relating to Objectives of Rules; §108.51, relating to Definitions; §108.52, relating to Names and Responsibilities; §108.53, relating to Fees; §108.54, relating to Advertising of Specialties; §108.55, relating to Advertising for General Dentists; §108.56, relating to Certifications, Degrees, Fellowships, Memberships and Other Credentials; §108.57, relating to False, Misleading or Deceptive Advertising; §108.58, relating to Solicitation, Referrals and Gift Schemes; §108.59, relating to Website Disclosures; §108.60, relating to Record Keeping of Advertisements; §108.61, relating to Grounds and Procedures for Disciplinary Action for Advertising Violations; §108.62, relating to Awards, Honors and Recognitions; and §108.63, relating to Advertisement and Education by Unlicensed Clinicians.

The SBDE's Advertising Rules Ad-Hoc Committee was convened to update the agency's advertising rules based on emerging technologies and issues in the business promotion of dentistry and dental practices. The committee met on August 4, 2011; October 7, 2011; November 10, 2011; January 27, 2012; March 9, 2012; and July 13, 2012.

The new sections developed by the committee (§§108.50 - 108.63) were written to update existing advertising rules (§§108.50 - 108.61) that are presently proposed for repeal. The rules proposed for adoption are modeled in part after the American Association of Dental Boards' (AADB) Guidelines on Advertising. In addition to the generally accepted guidelines promulgated by the AADB, the rules address the communication of specialty practices and dental credentials to the public, the inclusion of professional awards and honors in advertisements, and the recommendations regarding website publications. A significant change in the rules is that the publication of patient testimonials will be allowed under the proposed rules.

Mr. Glenn Parker, Interim Executive Director, has determined that for each year of the first five years the new sections are in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the sections.

Mr. Parker has also determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of enforcing the new sections will be protection of the public through updated advertising and business promotion rules that protect the public from false, deceptive, and misleading advertising.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. Approximately 14,000 dentists hold active licenses to practice dentistry in Texas granted by SBDE. The Texas Comptroller estimates approximately 6,800 dental offices in the state of Texas hold a small or micro-business classification. As required by the Government Code §2006.002 the Board has determined whether the proposed rules will have an adverse economic effect on any small or micro-business required to comply with the proposal. The Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. The economic cost of compliance with the proposed rules is minimal. Regulated entities who were in compliance with the prior rules may sustain minimal costs to update their advertising materials with any required explanations or disclosures. Any alternative method to achieve protection of the public from deceptive advertisement would introduce greater restriction and greater cost.

Takings Impact Assessment. The Board has determined that these proposed new sections do not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Comments on the proposal may be submitted to Nycia Deal, Staff Attorney, State Board of Dental Examiners, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701 (by mail), (512) 463-7452 (by fax), or *nycia@tsbde.texas.gov* (by email). To be considered, comments must be in writing and received by the State Board of Dental Examiners no later than 30 days from the date that the sections are published in the *Texas Register.*

The new sections are proposed under Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The new sections affect Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

§108.50. Objectives of Rules.

(a) The purpose of this subchapter is to provide guidelines for communications to the public, including but not limited to advertising, professional communications and referral services.

(b) As professionals, dentists have the duty to communicate truthfully and without deception to the public.

(c) It is hereby declared that the sections, clauses, sentences and parts of this subchapter are severable, are not matters of mutual essential inducement, and any of them shall be removed if this subchapter would otherwise be unconstitutional or ineffective. If any one

or more sections, clauses, sentences or parts shall for any reasons be questioned in any court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

§108.51. Definitions.

The following words and terms when used in this subchapter shall have the following meanings unless the contents clearly indicate otherwise.

(1) Advertisements--Information communications made directly or indirectly by publication, dissemination, solicitation, endorsement or circulation or in any other way to attract directly or indirectly any person to enter into an express or implied agreement to accept dental services or treatment related thereto. Advertising may include oral, written, broadcast and other types of communications disseminated by or at the behest of a dentist. The communications include, but are not limited to, those made to patients, prospective patients, professionals or other persons who might refer patients, and to the public at large. Advertisements include electronic media and print media.

(2) Electronic Media--Radio, television and the Internet.

(3) Patient of Record--A patient who has been examined and diagnosed by a licensed dentist and whose treatment has been planned by a licensed dentist.

(4) Print Media--Newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, flyers and other similar documents or comparable publications, the content of which is disseminated by means of the printed word. "Printed media" shall also include stationery and business cards.

(5) Testimonial--An attestation or implied attestation to the competence of a dentist's services or treatment.

§108.52. Names and Responsibilities.

(a) Disclosure of Full Name.

(1) Any person who practices dentistry under any name or trade name must provide full and outward disclosure of his full name as it appears on his license or renewal certificate issued by the board, or his commonly used name.

(2) Any person who conducts, maintains, operates, owns, or provides a dental office in the state of Texas, either directly or indirectly, under any name or trade name must provide full and outward disclosure of his full name as it appears on his license or renewal certificate issued by the board, or his commonly used name.

(3) Any person who holds himself out to the public, directly or indirectly, as soliciting patronage or as being qualified to practice dentistry in the state of Texas under any name or trade name must provide full and outward disclosure of his full name as it appears on his license or renewal certificate issued by the board, or his commonly used name.

(4) Any person who operates, manages, or is employed in any facility where dental service is rendered or conducted under any name or trade name must provide full and outward disclosure of his full name as it appears on the license or renewal certificate issued by the board, or his commonly used name.

(5) Any person who practices dentistry must display his full name as it appears on his license or renewal certificate issued by the board, or his commonly used name, outside the primary entry of each location at which he practices dentistry.

(6) If the names of auxiliary personnel, such as dental hygienists or dental assistants, are displayed in any manner or in any advertising, the auxiliary personnel must be clearly identified by title, along with the name of a supervising dentist.

(b) Name of Practice.

(1) Each dental office shall post at or near the entrance of the office in an area visible to the public, the name of, each professional degree received by and each school attended by each dentist practicing in the office.

(2) The name of the owner shall be prominently displayed and only the names of the dentists who are engaged in the practice of the profession at a particular location shall be used.

(3) The name of a deceased or retired dentist leaving a practice shall not be used at such location more than one (1) year following departure from the practice.

(4) The name of a dentist who transfers or sells his practice to another dentist may be used by the acquiring dentist for no more than forty (40) days following the transfer. However, if the transferring dentist remains actively engaged in the practice of dentistry in the transferred practice, the acquiring dentist may continue using the name of the transferring dentist.

(5) A licensed Texas dentist, in any professional communication concerning dental services, shall include the dentist's dental degree or the words "general dentist," "general dentistry," or an ADA approved dental specialty if the dentist is a specialist in the field designated.

(6) A licensed Texas dentist who is also authorized to practice medicine in Texas may use the initials "M.D." or "D.O." along with the dentist's dental degree.

(c) Use of Trade Name.

(1) A dentist may practice under his or her own name, or use a corporation, company, association or trade name as provided by §259.003 of the Occupations Code.

(2) A dentist practicing under a corporation, company, association or trade name shall give each patient the name and license number of the treating dentist, in writing, either before or after each office visit, upon request of a patient.

(3) An advertisement under a corporation, company, association or trade name must include prominently the name of the owner(s) and at least one dentist actually engaged in the practice of dentistry under that trade name at each location advertised.

(4) Each dentist practicing under a corporation, company, association or trade name shall file notice with the board of every corporation, company, association or trade name under which that dentist practices upon initial application for licensure and annual license renewal.

(5) Since the name under which a dentist conducts his or her practice may be a factor in the selection process of the patient, the use of a trade name or an assumed name that is false or misleading in any material respect is unethical.

(d) Responsibility. The responsibility for the form and content of an advertisement offering services or goods by a dentist shall be jointly and severally that of each licensed professional who is an owner, principal, partner, or officer of the firm or entity identified in the advertisement.

§108.53. Fees.

(a) General. Dentists shall not represent or advertise the fees they charge in a false or misleading manner. Dentists shall state availability and price of goods, appliances or services in a clear and non-deceptive manner and include all material information to fully inform members of the general public about the nature of the goods, appliances or services offered at the announced price.

(b) Fee-Splitting. No dentist or any other licensee or registrant shall divide, share, split or allocate, either directly or indirectly, any fee for dental services, appliances, or materials with another dentist or with a physician, except upon a division of services or responsibility and with the prior knowledge and written approval of the patient.

(c) Disclosures. An advertisement which includes the price of dental services shall disclose:

(1) the professional service being offered in the advertisement;

(2) any related services which are usually required in conjunction with the advertised services and for which additional fees may be charged;

(3) a disclaimer statement that the fee is a minimum fee and that the charges may increase depending on the treatment required;

(4) the dates upon which the advertised service will be available at the advertised price;

(5) when a service is advertised at a discount, the standard fee of the service and whether the discount is limited to a cash payment; and

(6) if the advertisement quotes a range of fees for a service, the advertisement shall contain all the basic considerations upon which the actual fee shall be determined.

(d) A dentist shall not:

(1) represent that health care insurance deductibles or copayments may be waived or are not applicable to dental services to be provided if the deductibles or copayments are required;

(2) represent that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;

(3) refer to a fee for dental services without disclosing that additional fees may be involved in individual cases, if the possibility of additional fees may be reasonably predicted;

(4) offer a discount for dental services without disclosing the total fee to which the discount will apply; and

(5) represent that services are "free" when there is remuneration by a third-party payor, including Medicaid or Medicare.

§108.54. Advertising of Specialties.

(a) Recognized Specialties. A dentist may advertise as a specialist or use the terms "specialty" or "specialist" to describe professional services in recognized specialty areas that are:

(1) recognized by a board that certifies specialists in the area of specialty; and

(2) accredited by the Commission on Dental Accreditation of the American Dental Association.

(b) The following are recognized specialty areas and meet the requirements of subsection (a)(1) and (2) of this section:

(1) Endodontics;

(2) Oral and Maxillofacial Surgery;

(3) Orthodontics and Dentofacial Orthopedics;

(4) Pediatric Dentistry;

(5) Periodontics;

(6) Prosthodontics;

(7) Dental Public Health;

(8) Oral and Maxillofacial Pathology; and

(9) Oral and Maxillofacial Radiology.

(c) A dentist who wishes to advertise as a specialist or a multiple-specialist in one or more recognized specialty areas under subsection (a)(1) and (2) and subsection (b)(1) - (9) of this section shall meet the criteria in one or more of the following categories:

(1) Educationally qualified is a dentist who has successfully completed an educational program of two or more years in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the Council on Dental Education of the American Dental Association.

(2) Board certified is a dentist who has met the requirements of a specialty board referenced in subsection (a)(1) and (2) of this section, and who has received a certificate from the specialty board, indicating the dentist has achieved diplomate status, or has complied with the provisions of §108.56(a) and (b) of this subchapter (relating to Certifications, Degrees, Fellowships, Memberships and Other Credentials).

(3) A dentist is authorized to use the term 'board certified' in any advertising for his/her practice only if the specialty board that conferred the certification is referenced in subsection (a)(1) and (2) of this section, or the dentist complies with the provisions of §108.56(a) and (b) of this subchapter.

(d) Dentists who choose to communicate specialization in a recognized specialty area as set forth in subsection (b)(1) - (9) of this section should use "specialist in" or "practice limited to" and should limit their practice exclusively to the advertised specialty area(s) of dental practice. Dentists may also state that the specialization is an "ADA recognized specialty." At the time of the communication, such dentists must have met the current educational requirements and standards set forth by the American Dental Association for each approved specialty. A dentist shall not communicate or imply that he/she is a specialist when providing specialty services, whether in a general or specialty practice, if he or she has not received a certification from an accredited institution. The burden of responsibility is on the practice owner to avoid any inference that those in the practice who are general practitioners are specialists as identified in subsection (b)(1) - (9) of this section.

§108.55. Advertising for General Dentists.

(a) A dentist whose license is not limited to the practice of an ADA recognized specialty identified under §108.54(b)(1) - (9) of this subchapter (relating to Advertising of Specialties), may advertise that the dentist performs dental services in those specialty areas of practice, but only if the advertisement also includes a clear disclosure that he/she is a general dentist.

(b) Any advertisement of any dental service or services by a general dentist shall include the notation "General Dentist" or "General Dentistry" directly after the name of the dentist. The notation shall be in a font size no smaller than the largest font size used to identify the specific dental services being advertised. For example, a general dentist who advertises "ORTHODONTICS" and "DENTURES" and/or "IMPLANTS" shall include a disclaimer of "GENERAL DENTIST" or "GENERAL DENTISTRY" in a font size no smaller than

the largest font size used for terms 'orthodontics', 'dentures' and/or 'implants'. Any form of broadcast advertising by a general dentist (radio, television, promotional DVD's, etc) shall include either "General Dentist" or "General Dentistry" in a clearly audible manner.

(c) A general dentist is not prohibited from listing services provided, so long as the listing does not imply specialization. A listing of services provided shall be separate and clearly distinguishable from the dentist's designation as a general dentist.

(d) The provisions of this rule shall not be required for professional business cards or professional letterhead.

§108.56. Certifications, Degrees, Fellowships, Memberships and Other Credentials.

(a) Dentists may advertise credentials earned in dentistry so long as they avoid any communications that express or imply specialization in a recognized specialty, or specialization in an area of dentistry that is not recognized as a specialty, or attainment of an earned academic degree.

(b) A listing of credentials shall be separate and clearly distinguishable from the dentist's designation as a dentist. Any use of abbreviations to designate credentials shall be accompanied by a definition of the acronym. For example: John Doe, DDS, General Dentist, FAGD, Fellow Academy of General Dentistry OR John Doe, DDS, General Dentist, FAAID, Fellow American Academy of Implant Dentistry.

(c) The provisions of this rule shall not be required for professional business cards or professional letterhead.

§108.57. False, Misleading or Deceptive Advertising.

(a) A dentist has a duty to communicate truthfully. Professionals have a duty to be honest and trustworthy in their dealings with people. The dentist's primary obligations include respecting the position of trust inherent in the dentist-patient relationship, communicating truthfully and without deception, and maintaining intellectual integrity. In order to properly serve the public, dentists should represent themselves in a manner that contributes to the esteem of the profession. Dentists shall not misrepresent their training and competence in any way that would be false or misleading in any material respect. Dentists shall not advertise or solicit patients in any form of communication in a manner that is false, misleading, deceptive, or not readily subject to verification.

(b) Published Communications. A dental health article, message or newsletter published in print or electronic media under a dentist's byline to the public must make truthful disclosure of the source and authorship of the publication. If compensation was made for the published communication, a disclosure that the communication is a paid advertisement shall be made. If the published communication fails to make truthful disclosure of the source, authorship and if compensation was made, that the communication is a paid advertisement, the dentist is engaged in making a false or misleading representation to the public in a material respect. If the published communication is designed to give rise to questionable expectations for the purpose of inducing the public to utilize the services of the sponsoring dentist, the dentist is engaged in making a false or misleading representation to the public in a material respect.

(c) Examples. In addition to the plain and ordinary meaning of the provision set forth throughout these guidelines, additional examples of advertisements that may be false, misleading, deceptive, or not readily subject to verification include but are not limited to:

(1) making a material misrepresentation of fact or omitting a fact necessary to make a statement as a whole not materially misleading;

(2) intimidating or exerting undue pressure or undue influence over a prospective patient;

(3) appealing to an individual's anxiety in an excessive or unfair way;

(4) claiming to provide or perform dental work without pain or discomfort to the patient;

(5) implying or suggesting superiority of materials or performance of professional services;

(6) comparing a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(7) communicating an implication, prediction or suggestion of any guarantee of future satisfaction or success of a dental service or otherwise creating unjustified expectations concerning the potential result of dental treatment. The communication of a guarantee to return a fee if the patient is not satisfied with the treatment rendered is not considered false, misleading deceptive or not readily subject to verification under this rule;

(8) containing a testimonial from a person who is not a patient of record or that includes false, misleading or deceptive statements, or which is not readily subject to verification, or which fails to include disclaimers or warnings as to the identity and credentials of the person making the testimonial;

(9) referring to benefits or other attributes of dental procedures or products that involve significant risks without including realistic assessments of the safety and efficacy of those procedures or products;

(10) causing confusion or misunderstanding as to the credentials, education, or licensing of a health care professional;

(11) representing in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional;

(12) failing to make truthful disclosure of the source and authorship of any message published under a dentist's byline;

(13) communicating an implication or suggestion that a service is free or discounted when the fee is built in to a companion procedure provided to the patient and charged to the patient; and

(14) communicating statistical data, representations, or other information that is not subject to reasonable verification by the public.

(d) Photographs or other representations may be used in advertising of actual patients of record of the licensee. Written patient consent must be obtained prior to the communication of facts, data, or information which may identify the patient. The advertising must include language stating "Actual results may vary."

(e) Advertising or promotion of products from which the dentist receives a direct remuneration or incentive is prohibited unless the dentist fully and clearly discloses that he is a paid spokesman for the product, or the dentist fully and clearly discloses that he is the inventor or manufacturer of the product.

(f) Any and all advertisements are presumed to have been approved by the licensee named therein.

§108.58. Solicitation, Referrals and Gift Schemes.

(a) This rule prohibits conduct which violates §§102.001 - 102.011, and §259.008(8), of the Occupations Code. A licensee shall not offer, give, dispense, distribute or make available to any third party

or directly to a potential patient, or aid or abet another so to do, any cash, gift, premium, chance, reward, ticket, item, or thing of value for securing or soliciting patients.

(b) This rule shall not be construed to prohibit a licensee from offering, giving, dispensing, distributing or making available to any patient of record any cash premium, chance, reward, ticket, item or thing of value for the continuation of that relationship as a patient of that licensee. The cash premium, chance, reward, ticket, item or thing of value cannot be for the purpose of soliciting new patients.

(c) This rule shall not be construed to prohibit remuneration for advertising, marketing, or other services that are provided for the purpose of securing or soliciting patients, provided the remuneration is set in advance, is consistent with the fair market value of the services, and is not based on the volume or value of any patient referrals.

§108.59. Website Disclosures.

Dental practice websites should clearly disclose:

(1) ownership of the website;

(2) services provided;

(3) office addresses and contact information; and

(4) licensure and qualifications of dentist(s) and associated health care providers.

§108.60. Record Keeping of Advertisements.

(a) Retention of broadcast, print and electronic advertising. A pre-recorded copy of all broadcast advertisements, a copy of print advertisements and a copy of electronic advertisements shall be retained for four years following the final appearance or communication of the advertisement. In addition, the dentist shall document the date the dentist discovered that he or she had placed a false or misleading advertisement, as well as the date and substance of all corrective measures the dentist took to rectify false or misleading advertisements. The dentist shall maintain documentation of all corrective measures for four years following the most recent appearance or communication of the advertisement which the dentist discovered was inaccurate.

(b) The advertising dentist shall be responsible for making copies of the advertisement available to the board if requested.

§108.61. Grounds and Procedures for Disciplinary Action for Advertising Violations.

(a) In accordance with the Board's statutory and regulatory authority authorizing disciplinary action and denial of licensure for advertising violations as set forth in this subchapter, the Board may refuse to issue or renew a license, may suspend or revoke a license, may issue a warning or reprimand, restrict or impose conditions on the practice of a licensee or applicant for licensure. "Advertising violations" consist of expressions explicitly or implicitly authorized by a licensee, or applicant for licensure, which are false or misleading as otherwise referenced in this subchapter.

(b) A licensee or applicant for licensure explicitly or implicitly authorizes advertising when the individual permits or fails to correct statements that are false or misleading. Failure to attempt to retract or otherwise correct advertising violations as directed by the Board may constitute a willful violation of these provisions and may be a separate and distinct independent violation of the Board's statutory or regulatory authority. A willful violation of the Board's directive, may subject the licensee or applicant to disciplinary action, nonrenewal or denial of licensure.

(c) When determining whether an "advertising violation" has occurred, the Board shall proceed in accordance with due process and its statutory and regulatory provisions which govern investigations and contested case proceedings.

§108.62. Awards, Honors and Recognitions.

(a) A licensee may publicize the receipt of a professional award, honor, recognition, or rating in an advertisement or otherwise, if the publication is not false, misleading, or deceptive, and is subject to reasonable verification by the public. Any advertisement must comply with all laws and rules governing advertisement by licensees.

(b) The publication of an award, honor, recognition or rating must reflect truth, state the specific year or time period of receipt and clearly name the awarding organization or entity.

(1) Proper: John Doe, DDS - Included in Anytown Quarterly's Fall 2012 Top Dentists

(2) Improper: John Doe, DDS - Top Dentist

(3) Proper: John Doe, DDS - Selected as Anytown's 2012 Dentist of the Year by the Anytown

(4) Improper: John Doe, DDS - Dentist of the Year

(c) The publication must state the licensee's receipt of an award, honor, recognition or rating as inclusion or selection in a listing of other licensees, if applicable.

(1) Proper: John was selected for inclusion in 2012 Anytown Yearly's Super Dentists List

(2) Improper: John is an Anytown Super Dentist

(d) The publication may include the trademark or logo of the award, honor, recognition or rating, so long as the advertisement conforms to all laws and rules governing advertisement by licensees.

(e) The publication of an award, honor, recognition or rating is false, misleading or deceptive if the licensee compensated a third party for the inclusion of the licensee's name in the survey, ballot, or poll that determined the recipients of the award, honor, recognition or rating. This does not preclude licensees from purchasing advertisements to communicate the receipt of an award, honor, recognition or rating.

(f) The publication of an award, honor, recognition or rating is false, misleading or deceptive if the publication imputes an individual licensee's selection or inclusion to an entire practice, clinic or office. An advertisement for an entire dental practice, clinic or office at which more than one licensee engages in the practice of dentistry, must clearly denote the specific licensees within in the practice who received the award, honor, recognition or rating.

§108.63. Advertisement and Education by Unlicensed Clinicians.

(a) Any advertisement placed by a person who is not domiciled and located in this state and subject to the laws of this state may not advertise or cause or permit to be advertised, published, directly or indirectly, printed, or circulated in this state a notice, statement, or offer of any service, drug, or fee relating to the practice of dentistry, unless the advertising conspicuously discloses that the person is not licensed to practice dentistry in this state.

(b) Licensees of other jurisdictions may be permitted to demonstrate their professional technique and ability on live patients at scientific and clinical meetings upon prior approval by the State Board of Dental Examiners. The State Board of Dental Examiners must approve any and all courses, seminars, clinics, or demonstrations that involve live patients, including those pertaining to anesthesia or anesthetic agents and duties of auxiliary personnel except those sponsored by recognized dental schools, medical schools or colleges.

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 September 17, 2012.

TRD-201204901
Glenn Parker
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-0977

♦ ♦ ♦

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 279. INTERPRETATIONS

22 TAC §279.2, §279.4

The Texas Optometry Board proposes amendments to §279.2, concerning Contact Lens Prescriptions, and §279.4, concerning Spectacle and Ophthalmic Devices Prescriptions, to permit the use of electronic signatures for ophthalmic prescriptions, consistent with the safeguards imposed by the Texas State Board of Pharmacy Rule 22 TAC §291.34 for dangerous drugs prescriptions.

Chris Kloeris, Executive Director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the amendments.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated is that therapeutic optometrists will have an alternative method to sign prescriptions which may be more convenient for patients and more efficient for the therapeutic optometrist.

It is anticipated that there will be no economic costs for therapeutic optometrists who are not required to but may take advantage of the rule amendment and use programs that allow secure generation of electronic signatures. For those therapeutic optometrists choosing to use the electronic signature permitted by the rule amendment, any additional costs for the required paper should be offset by the efficiency of using electronic signatures.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

The agency licenses approximately 4,000 optometrists and therapeutic optometrists. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a micro business. The agency does not license these practices. There are no anticipated costs because of the amendments for those persons required to comply with the rule.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule 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.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The amendments are proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.359. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §351.359 as setting the requirements for an ophthalmic prescription.

§279.2. Contact Lens Prescriptions.

(a) A prescription for contact lenses is defined as a written order manually signed by the examining optometrist, therapeutic optometrist or physician, or a written order manually signed by an optometrist, therapeutic optometrist or physician authorized by the examining doctor to issue the prescription.

(1) If the prescription is signed by the examining optometrist or therapeutic optometrist, the prescription may be signed electronically, provided that the prescription is electronically signed by the practitioner using a system which electronically replicates the practitioner's manual signature on the written prescription, and provided that:

(A) the security features of the system require the practitioner to authorize each use; and

(B) the prescription is printed on paper that is designed to prevent unauthorized copying of a completed prescription and to prevent the erasure or modification of information written on the prescription by the prescribing practitioner.

(2) If the prescription is signed by a doctor other than the examining optometrist, therapeutic optometrist or physician, the prescription must contain:

(A) [~~(1)~~] the name of the examining doctor, and

(B) [~~(2)~~] the license number of both the examining doctor and the doctor signing the prescription.

(b) - (p) (No change.)

§279.4. Spectacle and Ophthalmic Devices Prescriptions.

(a) A prescription for spectacles or ophthalmic devices is defined as a written order manually signed by the examining optometrist, therapeutic optometrist or physician, or a written order manually signed by an optometrist, therapeutic optometrist or physician authorized by the examining doctor to issue the prescription. If the prescription is signed by the examining optometrist or therapeutic optometrist, the prescription may be signed electronically, provided that the prescription is electronically signed by the practitioner using a system which electronically replicates the practitioner's manual signature on the written prescription, and provided that:

(1) the security features of the system require the practitioner to authorize each use; and

(2) the prescription is printed on paper that is designed to prevent unauthorized copying of a completed prescription and to prevent the erasure or modification of information written on the prescription by the prescribing practitioner.

(b) - (d) (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 September 11, 2012.

TRD-201204783
Chris Kloeris
Executive Director
Texas Optometry Board
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 305-8502

♦ ♦ ♦

CHAPTER 280. THERAPEUTIC OPTOMETRY

22 TAC §280.5

The Texas Optometry Board proposes amendments to §280.5, concerning Prescription and Diagnostic Drugs for Therapeutic Optometry, to permit the use of electronic signatures for dangerous drug prescriptions, consistent with the safeguards imposed by the Texas State Board of Pharmacy Rule 22 TAC §291.34.

Chris Kloeris, Executive Director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the amendments.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated is that therapeutic optometrists will have an alternative method to sign prescriptions which may be more convenient for patients and more efficient for the therapeutic optometrist.

It is anticipated that there will be no economic costs for therapeutic optometrists who are not required to but may take advantage of the rule amendment and use programs that allow secure generation of electronic signatures. For those therapeutic optometrists choosing to use the electronic signature permitted by the rule amendment, any additional costs for the required paper should be offset by the efficiency of using electronic signatures.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

The agency licenses approximately 4,000 optometrists and therapeutic optometrists. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a micro business. The agency does not license these practices. There are no anticipated costs because of the amendments for those persons required to comply with the rule.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule 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.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register.*

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.358. The amendment complies with the requirements of 22 TAC §291.34. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §351.358 as authorizing therapeutic optometrists to prescribe dangerous drugs and 22 TAC §291.34 as setting the requirements for prescription drug orders by the Texas State Board of Pharmacy.

§280.5. Prescription and Diagnostic Drugs for Therapeutic Optometry.

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

(c) All prescriptions shall contain the following information:

(1) the date of issuance;

(2) the name and address of the patient for whom the drug is prescribed;

(3) the name, strength, and quantity of the drug, medicine, or device prescribed;

(4) the direction for use of the drug, medicine, or device prescribed;

(5) the name and address of the therapeutic optometrist;

(6) the manually written signature of the prescribing therapeutic optometrist; or an electronic signature provided that the prescription is electronically signed by the practitioner using a system which electronically replicates the practitioner's manual signature on the written prescription, and provided: [~~and~~]

(A) that security features of the system require the practitioner to authorize each use; and

(B) the prescription is printed on paper that is designed to prevent unauthorized copying of a completed prescription and to prevent the erasure or modification of information written on the prescription by the prescribing practitioner; and

(7) the license number of the prescribing therapeutic optometrist including the therapeutic designation.

(d) - (j) (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 September 11, 2012.

TRD-201204784

Chris Kloeris
Executive Director
Texas Optometry Board
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 305-8502

♦ ♦ ♦

PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

The Texas State Board of Examiners of Marriage and Family Therapists (board) proposes amendments to §§801.1, 801.2, 801.11 - 801.19, 801.41 - 801.56, 801.71 - 801.73, 801.91 - 801.93, 801.111 - 801.115, 801.141 - 801.143, 801.171 - 801.174, 801.201 - 801.203, 801.231 - 801.237, 801.261 - 801.268, 801.291 - 801.303, 801.331, 801.332, 801.351, and 801.361 - 801.364 and new §801.204, concerning the licensing and regulation of marriage and family therapists.

BACKGROUND AND PURPOSE

The 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 801.1, 801.2, 801.11 - 801.19, 801.41 - 801.56, 801.71 - 801.73, 801.91 - 801.93, 801.111 - 801.115, 801.141 - 801.143, 801.171 - 801.174, 801.201 - 801.203, 801.231 - 801.237, 801.261 - 801.268, 801.291 - 801.303, 801.331, 801.332, 801.351 and 801.361 - 801.364 have been reviewed, and the board has determined that the reasons for adopting the sections continue to exist in that rules concerning the licensing and regulation of marriage and family therapists are still needed; however, changes are needed as described in this preamble and are the result of the comprehensive rule review undertaken by the board and the board's staff.

In general, each section was reviewed and proposed for readoption in order to ensure appropriate subchapter, section, and paragraph organization; to ensure clarity; to improve spelling, grammar, and punctuation; to ensure that the rules reflect current legal and policy considerations; to ensure accuracy of legal citations; to eliminate unnecessary catch-titles; to delete repetitive, obsolete, unenforceable, or unnecessary language; to improve draftsmanship; and to make the rules more accessible, understandable, and usable.

The proposed new section establishes procedures for issuance of licenses to military spouses, as required by Senate Bill 1733, 82nd Legislature, 2011, amending Texas Occupations Code, Chapter 55, relating to the licensing process for military spouses.

SECTION-BY-SECTION SUMMARY

The following section-by-section summary considers only those sections which were substantially changed in language, meaning, or intent. A number of modifications are proposed for the chapter in order to meet the objectives of the rule review as described above, such as improving draftsmanship and ensuring clarity.

Nonsubstantive changes were made to various sections of the chapter, including §§801.1, 801.14, 801.15, 801.17, 801.19, 801.43, 801.46 - 801.48, 801.51, 801.53, 801.54, 801.72, 801.91, 801.111 - 801.115, 801.141, 801.143, 801.171, 801.172, 801.201, 801.203, 801.231, 801.233, 801.235, 801.236, 801.237, 801.263, 801.266, 801.267, 801.292, 801.293 - 801.296, 801.298 - 801.302, 801.331, 801.332, 801.351 and 801.361 - 801.364.

The following changes are proposed concerning Subchapter A (relating to the Introduction).

Proposed changes to §801.2 demonstrate the board no longer recognizes educational institutions registered by the California Bureau for Private Postsecondary and Vocational Education and relies instead on accredited institutions and programs of or by the Council for Higher Education (CHEA). This change potentially affects access to initial licensure in Texas and portability for those applicants who received a qualifying degree in California from a school or program which was not accredited by CHEA or one of CHEA's recognized accrediting bodies but which was registered under the California Bureau for Private Postsecondary and Vocational Education (Bureau).

Additional amendments to §801.2 clarify the correct terminology for "Associate" and expand the definition of "Client". Nonsubstantive changes were also made to various portions of §801.2.

The following changes are proposed concerning Subchapter B (relating to The Board).

Amendments to §801.11 alter the procedures for submitting an agenda item and participation during the public comment period. Additionally, changes to §801.11 recognize the board's expectation that licensees seek professional consultation and legal advice from qualified individuals for resolution of ethical dilemmas or practice issues not explicitly articulated in board law, rule or policy.

An amendment to §801.12 deletes paragraph (2) concerning rulemaking procedures as unnecessary since the provision is spelled out in Texas Government Code, §2001.021. The remaining paragraphs are renumbered accordingly.

To reflect current operational procedures, the amendment to §801.13 deletes the requirement that the executive director sign the approved minutes of each meeting.

A reference to 42 U.S.C. §1.201 *et seq.* was added to §801.16 for the Americans with Disabilities Act.

Amended §801.18 reflects the current electronic address to which applications and renewal applications are sent and processed.

The following changes are proposed concerning Subchapter C (relating to Guidelines for Professional Therapeutic Services and Code of Ethics).

Amended §801.41 adds the requirement that a licensee observe and comply with the code of ethics and standards of practice and that failure to do so is grounds for disciplinary action.

Amended §801.42 reflects that the practice of marriage and family therapy is not limited to the marital relationship but includes couples therapy; the term "marriage" is deleted in the context of describing the changing life cycle.

Amended §801.44 clarifies confidentiality provisions, specifies requirements related to soliciting and contracting with certain referral sources, prohibits a licensee from exploiting a position of trust, simplifies, removes redundancies in other subsections and reorders subsections (l) - (s) to accommodate changes. The amendment to §801.44 also adds new subsections related to exempting certain licensees from the record keeping requirements, prohibiting a licensee from knowingly offering or providing professional services to an individual concurrently receiving professional services from another mental health service provider unless special precautions are taken; changes to §801.44 also add new subsections that require an impaired licensee to refrain from providing services and require a licensee take reasonable steps to facilitate the transfer of a client. Changes to §801.44 prohibit a licensee from aiding or abetting the unlicensed practice of marriage and family therapy, require the licensee to report unlicensed practice to the board and prohibit a licensee from entering into a non-professional relationship with certain persons related to or known by a client if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.

Regarding §801.45, the board proposes several substantive changes including expanding the scope of individuals with whom the licensee may not engage in sexual conduct, deleting the previous time limitation on sexual contact and permanently barring sexual contact with a current client or a former client.

Amended §801.48 requires that a licensee also comply with Texas Health and Safety Code, Chapter 181, in addition to those statutes or rules regarding access to mental health records and confidentiality.

Amended §801.49 mandates certain written reports that must be made to the board and that the failure to do so may result in disciplinary action against the licensee.

Amended §801.50 changes the section name from "Assumed Names" to "Corporation and Business Names" to provide clarity about the intent of the section.

Changes to §801.52 modify the existing language of subsection (a) for clarity and add new subsection (e), regarding responsibility of the licensee for any use or misuse of a reproduced board-issued license.

Amended §801.53 references the exceptions to allowable advertising. Amendments to §801.55 and §801.56 make changes throughout the section to recognize the terminology "parenting coordinator."

The following changes are proposed concerning Subchapter D (relating to Application Procedures).

Amended §801.71 adds "marriage and family therapist associate" as being covered by Subchapter D of this chapter. Changes to §801.73 include the requirement that applicants report any disciplinary actions taken by other jurisdictions on the application form. The board also proposes edits to §801.73(a)(2) and (7) for clarity.

The following changes are proposed concerning Subchapter E (relating to the Criteria for Determining Fitness of Applicants for Examination and Licensure).

Changes to §801.92 remove the requirement that an applicant may be considered unfit for licensure only if he or she lacks the necessary skills and abilities to provide adequate marriage and family therapy in an independent practice setting.

Regarding §801.93, the board proposes a change to allow the board to discipline a licensee based upon information received after license issuance even if it determines the violation occurred prior to the license issuance date.

The proposed changes concerning Subchapter F (relating to the Academic Requirements for Examination and Licensure) are editorial for clarity and improved draftsmanship.

The following changes are proposed concerning Subchapter G (relating to the Experience Requirements for Licensure).

Regarding §801.142, the board proposes to reorganize and rework paragraph (1)(A) for clarity and consistency with current board policies related to minimum requirements for licensure for supervision and supervised experience. The deletion of subparagraph (G) of the paragraph is proposed to eliminate redundancy with the changes as proposed in paragraph (1)(A); the following subparagraphs were relettered accordingly.

The following changes are proposed concerning Subchapter H (relating to Examinations).

Section 801.171 and §801.172 specify licensure must be board approved. Section 801.173 states that when an applicant is notified of application disapproval, the notification must provide the reason for disapproval. Proposed changes to §801.174 would require an applicant to pay an examination fee to the appropriate party as dictated by the current contract or agreement rather than simply at the examination site.

The following changes are proposed concerning Subchapter I (relating to Licensing).

Amended §801.201 specifies that upon receipt and approval of application documentation and required fees, the board shall issue the person a license with a unique license number within 30 days.

Regarding §801.202, the board proposes changes to subsection (b) and the addition of subsections (c) - (e) to articulate the exceptions to the 72-month maximum time limit that an individual may hold an LMFT Associate to meet all minimum requirements for licensure as an LMFT.

New §801.204, "Licensing of Military Spouses," adds the licensing process for military spouses as required by Senate Bill 1733, 82nd Legislature (Regular Session) 2011.

The following changes are proposed concerning Subchapter J (relating to License Renewal and Inactive Status).

Proposed changes to §801.231 and §801.232 set forth the period of licensure renewal and deadlines. In the amendment to §801.234, the board proposes reducing the time frame for sending a licensure renewal form to each licensee from 60 to 30 days from license expiration date to accommodate potential logistical challenges in renewal form distribution.

The following changes are proposed concerning Subchapter K (relating to Continuing Education Requirements).

Concerning §801.261, a licensee must complete continuing education biennially or as appropriate for license renewal.

Regarding §801.264, the board proposes revisions, including reorganization, of this section that expand the types of acceptable continuing education providers and activities.

Regarding §801.265, the board proposes edits to identify the appropriate committee of the board to review continuing education

provider approval issues and clarification related to paragraphs (10) and (11).

Regarding §801.268, the board proposes deletion of subsection (c) related to acceptance of continuing education credits from providers who are not board-approved.

The following changes are proposed concerning Subchapter L (relating to Complaints and Violations).

Regarding §801.291, the board proposes modification of paragraph (1)(H) to include license or certification revocation by a governmental agency.

Regarding §801.296, the board proposes new language in subsection (c) to clarify that the board, the executive director or his/her designee may request that all relevant client records be submitted in conjunction with the investigation of an allegation. The board also proposes to clarify subsection (j) to identify that a complaint may be closed through informal measures, including a "Conditional Letter of Agreement" or other action which is not a formal disciplinary action but which would constitute a formal request of the board.

Regarding §801.297, the board proposes to add new subsections (f), (g), and (h) to specifically articulate some of the conditions of probation, the requirements for release of probation, and information about board-ordered supervision.

Regarding §801.303, the board proposes editing existing language and adding additional language related to resolution of pending complaints with actions which are not considered formal disciplinary actions.

The editorial changes concerning Subchapter M (relating to the Licensing of Persons with Criminal Backgrounds), Subchapter N (relating to Informal Conferences), and Subchapter O (relating to Formal Hearings) are to improve clarity and draftsmanship.

FISCAL NOTE

Crystal Beard, LMSW-AP, Executive Director, has determined that for each of the first five years the sections are in effect, there will not be fiscal implications to the state or local governments as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Beard 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. The proposal will not affect a local economy. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Beard 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 continue to ensure public health and safety through the effective licensing and regulation of marriage and family therapists. Finally, the restructuring of many of the rules should improve comprehension, resulting in fewer legal costs to the State and providers.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The board has determined that the proposed rules 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 Texas Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposed rules may be submitted to Crystal Beard, Executive Director, Texas State Board of Examiners of Marriage and Family Therapists, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347, or by email to mft@dshs.state.tx.us. When emailing comments, please indicate "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

SUBCHAPTER A. INTRODUCTION

22 TAC §801.1, §801.2

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 502.

§801.1. Purpose.

The purpose of this chapter is to implement the Licensed Marriage and Family Therapist Act, Texas Occupations Code, Chapter 502, concerning [~~the~~] licensure and regulation of marriage and family therapists.

§801.2. Definitions.

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

(1) Accredited institutions or programs--An institution or program which holds accreditation or candidacy status from an accreditation organization recognized by the Council for Higher Education Accreditation (CHEA) [~~or the California Bureau for Private Postsecondary and Vocational Education~~].

(2) Act--[~~The~~] Licensed Marriage and Family Therapist Act relating to the licensing and regulation of marriage and family therapists, Occupations Code, Chapter 502.

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

(5) Associate--A licensed marriage and family therapist associate. The appropriate board-approved terminology to use in reference to an Associate is: "Associate," "Licensed Marriage and Family Therapist Associate," "Licensed Marriage and Family Therapist Associate," or "LMFT Associate." Other terminology or abbreviations like "LMFT A" are not board-approved and shall not be used.

(6) (No change.)

(7) Client--An individual, family, couple, group, or organization who receives or has received services from a person identified as a marriage and family therapist who is either licensed or unlicensed by the board.

(8) - (9) (No change.)

(10) Department--[~~The Texas~~] Department of State Health Services.

(11) (No change.)

(12) Family systems--An open, on-going, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, and life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, health and temperament) and its socio-cultural and historic position in its larger environment.

(13) - (17) (No change.)

(18) Licensed marriage and family therapist (LMFT)--An individual who offers to provide marriage and family therapy for compensation.

(19) - (22) (No change.)

(23) Party--Each person, governmental agency, or officer or employee of a governmental agency named by the Administrative Law Judge (ALJ) as having an [~~a justiciable~~] interest in the matter being considered, or any person, governmental agency, or officer or employee of a governmental agency meeting the requirements of a party as prescribed by applicable law.

(24) - (27) (No change.)

(28) Supervisor--A person meeting the requirements set out in §801.143 of this title (relating to Supervisor Requirements)[~~, to supervise an associate and/or marriage and family therapist~~].

(29) - (32) (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 September 14, 2012.

TRD-201204866
Michael Miller
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 776-6972

♦ ♦ ♦

SUBCHAPTER B. THE BOARD

22 TAC §§801.11 - 801.19

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 502.

§801.11. The Board.

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

(h) Meetings.

(1) Agendas.

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

(C) Any individual wishing to be on the agenda to present [~~or speak~~] on a specified topic at a meeting of the board must provide a written request to the executive director in time to be placed on the agenda (not later than 30 days prior to the scheduled date of the meeting) which describes the topic to be addressed. The chair may limit as appropriate the time for public participation.

(2) - (5) (No change.)

(i) The board shall not be bound in any way by any statement or action on the part of any board member, subcommittee member, or staff member, except when a statement or action is in pursuance of the specific instruction of the board. Board member or staff member opinions, except when a statement or action is in pursuance of the specific instructions of the board, about ethical dilemmas or practice issues should never be substituted for appropriate professional consultation or legal advice.

(j) (No change.)

§801.12. Petition for the Adoption of a Rule.

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

(c) Consideration and disposition of the petition.

(1) (No change.)

[~~(2) Within 60 days after receipt of the petition, the board shall deny the petition or institute rulemaking procedures in accordance with the Administrative Procedure Act (APA), Government Code, §2001.021. The board may deny parts of the petition or institute rulemaking procedures on parts of the petition.~~]

(2) [~~(3)~~] If the board denies the petition, the board shall give the petitioner written notice of the board's denial, including the board's reasons for the denial.

(3) [~~(4)~~] If the board initiates rulemaking procedures, the version of the rule which the board proposes may differ from the version proposed by the petitioner.

(d) (No change.)

§801.13. Executive Director and the Department.

(a) Following consultation with the board members, the [~~The~~] department shall designate a department employee as executive director for the board [~~after consultation with the board members~~].

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

§801.14. Official Records.

(a) All official records of the board, except those records [~~files~~] containing information considered confidential under the provisions of the Texas Public Information Act, shall be open for public inspection during regular office hours.

(b) (No change.)

§801.15. Impartiality and Nondiscrimination.

(a) (No change.)

(b) Any [~~A~~] board member who is unable to be impartial in the determination of an applicant's eligibility for licensure or board-approved supervisor status [~~specialty~~] or in a disciplinary action against a licensee shall so declare this to the board and shall not participate in any board proceedings involving that applicant or licensee.

§801.16. Policy on Disability Accommodations.

The board complies with the Americans with Disabilities Act (42 U.S.C. §12101 *et seq.)* in the delivery of its services to applicants and licensees. A person who needs reasonable accommodations in order to access board services shall request accommodations in writing and may be required to provide verification of the person's disability and recommendations for appropriate accommodations from a medical, mental health, rehabilitation, or educational professional or specialist qualified to make such recommendations.

§801.17. License Certificate.

(a) (No change.)

(b) Any license certificate or renewal card issued by the board remains the board's property [~~of the board~~] and must be surrendered to the board upon demand.

§801.18. Fees.

(a) - (c) (No change.)

(d) For all applications and renewal applications, the board is authorized to collect subscription and convenience fees[~~, in amounts determined by the Texas Online Authority,~~] to recover costs associated with application and renewal application processing through www.texas.gov [~~Texas Online~~]. For all applications and renewal applications, the board is authorized to collect fees to fund the Office of Patient Protection in accordance with Occupations Code, Chapter 101 (relating to Health Professions Council).

(e) (No change.)

§801.19. Request for Criminal History Evaluation Letter.

(a) In accordance with the Texas Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a license if the person:

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

(b) - (e) (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 September 14, 2012.

TRD-201204867
Michael Miller
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 776-6972

♦ ♦ ♦

SUBCHAPTER C. GUIDELINES FOR PROFESSIONAL THERAPEUTIC SERVICES AND CODE OF ETHICS

22 TAC §§801.41 - 801.56

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 502.

§801.41. Purpose.

The purpose of this subchapter is to provide guidelines regarding the provision of professional therapeutic services and to establish standards of professional and ethical conduct required of a licensee. A licensee shall observe and comply with the code of ethics and standards of practice set forth in this subchapter. Any violation of the code of ethics or standards or practice constitutes unethical conduct or conduct that discredits or tends to discredit the profession of marriage and family therapy and is grounds for disciplinary action.

§801.42. Professional Therapeutic Services.

The following are professional therapeutic services which may be provided by a Licensed Marriage and Family Therapist or a Licensed Marriage and Family Therapist Associate.[~~:~~]

(1) Marriage and couples [~~marriage~~] therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve resolution of problems associated with cohabitation and interdependence of adults living as couples through the changing [~~marriage~~] life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of either partner.[~~;~~]

(2) Sex [~~sex~~] therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies in the resolution of sexual disorders.[~~;~~]

(3) Family [~~family~~] therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective, and family systems methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of a family member.[~~;~~]

(4) Child [~~child~~] therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective and family systems methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of a child.[~~;~~]

(5) Play [~~play~~] therapy which utilizes systems, methods, and processes which include play and play media as the child's natural medium of self-expression, and verbal tracking of the child's play

behaviors as part of the therapist's role in helping children overcome their social, emotional, and mental problems.[;]

(6) Individual [~~individual~~] psychotherapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective and family systems methods and strategies to achieve mental, emotional, physical, social, moral, educational, spiritual, and career development and adjustment through the developmental life span. These family system approaches assist in stabilizing and alleviating mental, emotional or behavioral dysfunctions in an individual.[;]

(7) Divorce [~~divorce~~] therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive behavioral, developmental, psychodynamic, affective and family system methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of the partners.[;]

(8) Mediation [~~mediation~~] which utilizes systems, methods, and processes to facilitate resolution of disputes between two or more dissenting parties, including but not limited to any issues in divorce settlements, parenting plan modifications, parent-child conflicts, pre-marital agreements, workplace conflicts, and estate settlements. Mediation involves specialized therapeutic skills that foster cooperative problem solving, stabilization of relationships, and amicable agreements. Court appointed mediation requires specialized training period.[;]

(9) Group [~~group~~] therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment throughout the life span.[;]

(10) Chemical [~~chemical~~] dependency therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective methods and strategies, and 12-step methods to promote the healing of the client.[;]

(11) Rehabilitation [~~rehabilitation~~] therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve adjustment to a disabling condition and to reintegrate the individual into the mainstream of society.[;]

(12) Referral [~~referral~~] services which utilizes systems methods and processes which include evaluating and identifying needs of clients to determine the advisability of referral to other specialists, and informing the client of such judgment and communicating as requested or deemed appropriate to such referral sources. This includes social studies and family assessments of the individual within the family.[;]

(13) Diagnostic [~~diagnostic~~] assessment which utilizes the knowledge organized in the Diagnostic and Statistical Manual of Mental Disorders (DSM) as well as the International Classification of Diseases (ICD) as part of their therapeutic role to help individuals identify their emotional, mental, and behavioral problems when necessary.[;]

(14) Psychotherapy [~~psychotherapy~~] which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to assist clients in their efforts to recover from mental or emotional illness.[;]

(15) Hypnotherapy [~~hypnotherapy~~] which utilizes systems methods and processes which include the principles of hypnosis and post-hypnotic suggestion in the treatment of mental and emotional disorders and addictions.[;]

(16) Biofeedback [~~biofeedback~~] which utilizes systems methods and processes which include electronic equipment to monitor and provide feedback regarding the individual's physiological responses to stress. The therapist who uses biofeedback must be able to prove academic preparation and supervision in the use of the equipment as a part of the therapist's academic program or the substantial equivalent provided through continuing education.[;]

(17) Assessment [~~assessment~~] and appraisal which utilizes systems methods and processes which include formal and informal instruments and procedures, for which the therapist has received appropriate training and supervision in individual and group settings for the purposes of determining the client's strengths and weaknesses, mental condition, emotional stability, intellectual ability, interests, aptitudes, achievement level and other personal characteristics for a better understanding of human behavior, and for diagnosing mental problems.[;]

(18) Consultation [~~consultation~~] which utilizes systems, methods, and processes which include the application of specific principles and procedures in consulting to provide assistance in understanding and solving current or potential problems that the consultee may have in relation to a third party, whether individuals, groups, or organizations.[;]

(19) Activities [~~activities~~] under the Texas Family Code, Chapter 153, Subchapter K, pertaining to parenting plan and parenting facilitator.[;]

(20) Parent [~~parent~~] education and parent training including advice, counseling, or instructions to parents or children.[;]

(21) Life [~~life~~] coaching[;] and any related techniques or modalities.[; ~~and~~]

(22) Any [~~any~~] other related services provided by a licensee.

§801.43. Professional Representation.

(a) When providing professional therapeutic services, as defined in §801.42 of this title (relating to Professional Therapeutic Services)[,] a licensee shall indicate his or her licensure status as a Licensed Marriage and Family Therapist or a Licensed Marriage and Family Therapist Associate, including any probationary status or other restrictions placed on the licensee by the board.

(b) - (e) (No change.)

§801.44. Relationships with Clients.

(a) (No change.)

(b) A licensee shall make known to a prospective client the important aspects of the professional relationship, including but not limited[,] to, the licensee's status as a Licensed Marriage and Family Therapist, including any probationary status or other restrictions placed on the licensee by the board, office procedures, after-hours coverage, fees, and arrangements for payment (which might affect the client's decision to enter into the relationship).

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

(e) No commission or rebate or any other form of remuneration shall be given or received by a licensee for the referral of clients for professional services. A licensee employed or under contract with a chemical dependency facility or a mental health facility, shall comply with the requirements in the Texas Health and Safety Code,

§164.006, relating to soliciting and contracting with certain referral sources. Compliance with the Treatment Facilities Marketing Act, Texas Health and Safety Code, Chapter 164, shall not be considered as a violation of state law regarding illegal remuneration.

(f) A licensee shall not exploit his/her position of trust with a client or former client.

[(f) A licensee shall not use relationships with clients to promote, for personal gain or for the profit of an agency, commercial enterprises of any kind.]

(g) - (h) (No change.)

(i) A licensee shall set and maintain professional boundaries with clients, prospective clients and former clients. [A licensee shall make a reasonable effort to avoid dual relationships. A dual relationship is considered any non-therapeutic activity initiated by either the licensee or the client for the purposes of establishing a non-therapeutic relationship. It is the responsibility of the licensee to ensure the welfare of the client if a dual relationship arises.]

(j) A licensee shall [may] disclose confidential information to medical or law enforcement personnel if the licensee determines that there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client.

(k) (No change.)

(l) A licensee shall make a reasonable effort to avoid non-therapeutic relationships with clients or former clients. A non-therapeutic relationship is an activity initiated by either the licensee or the client for the purposes of establishing a non-therapeutic relationship. It is the responsibility of the licensee to ensure the welfare of the client if a non-therapeutic relationship arises.

(m) A licensee shall keep accurate records of therapeutic services to include, but not be limited to, dates of services, types of services, progress or case notes, and billing information for a minimum of 5 years for an adult client and 5 years beyond the age of 18 years of age for a minor.

(n) Records created by licensees during the scope of their employment by educational institutions; by federal, state, or local government agencies; or political subdivisions or programs are not required to comply with the requirements of subsection (m) of this section.

(o) A licensee shall bill clients or third parties for only those services actually rendered or as agreed to in writing.

(p) A licensee shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from it. Upon termination, if the client still requires mental health services, the licensee shall make reasonable efforts in writing to refer the client to appropriate services.

(q) A licensee who engages in interactive therapy via the telephone or internet must provide the client with his/her license number and information on how to contact the board by telephone or mail, and must adhere to all other provisions of this chapter.

(r) A licensee shall only offer those services that are within his or her professional competency, and the services provided shall be within accepted professional standards of practice and appropriate to the needs of the client.

(s) A licensee shall base all services on an assessment, evaluation, or diagnosis of the client.

(t) A licensee shall evaluate a client's progress on a continuing basis to guide service delivery and will make use of supervision and consultation as indicated by the client's needs.

(u) A licensee shall not promote or encourage the illegal use of alcohol or drugs by clients.

(v) A licensee shall not knowingly offer or provide professional services to an individual concurrently receiving professional services from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent professional services, the licensee shall take immediate and reasonable action to inform the other mental health services provider.

(w) A licensee shall refrain from providing services while impaired by physical health, mental health, medical condition, medication, drugs, or alcohol.

(x) Upon termination of a relationship, if professional counseling or other marriage and family therapy services are still necessary, the licensee shall take reasonable steps to facilitate the transfer to appropriate care.

(y) A licensee shall not aid or abet the unlicensed practice of marriage and family therapy services by a person required to be licensed under the Act. A licensee shall report to the board knowledge of any unlicensed practice.

(z) A licensee shall not enter into a non-professional relationship with a client's family member or any person having a personal or professional relationship with a client, if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.

[(l) A licensee shall keep accurate records of therapeutic services to include, but not be limited to, dates of services, types of services, progress or case notes, and billing information for a minimum of five years for an adult client and 5 years beyond the age of 18 years of age for a minor.]

[(m) A licensee shall bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual agreement.]

[(n) A licensee shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from it. Upon termination, if the client still requires mental health services, the licensee shall make reasonable efforts in writing to refer the client to appropriate services.]

[(o) A licensee who engages in interactive therapy via the telephone or internet must provide the client with his/her license number and information on how to contact the board by telephone or mail, and must adhere to all other provisions of this chapter.]

[(p) A licensee shall only offer those services that are within his or her professional competency, and the services provided shall be within accepted professional standards of practice and appropriate to the needs of the client.]

[(q) A licensee shall base all services on an assessment, evaluation, or diagnosis of the client.]

[(r) A licensee shall evaluate a client's progress on a continuing basis to guide service delivery and will make use of supervision and consultation as indicated by the client's needs.]

[(s) A licensee shall not promote or encourage the illegal use of alcohol or drugs by clients.]

§801.45. Sexual Misconduct.

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

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

(3) Sexual contact--

(A) deviate sexual intercourse as defined by Texas Penal Code, §21.01;

(B) sexual contact as defined by Texas Penal Code, §21.01;

(C) sexual intercourse as defined by Texas Penal Code, §21.01;

(D) (No change.)

(4) - (5) (No change.)

(b) A licensee shall not engage in sexual contact with a person who is:

(1) a client or a former client;

[~~(2) a former client with whom there has been no therapeutic contact for a minimum of two years;~~]

(2) [~~(3)~~] an associate or an intern for whom the licensee has administrative or clinical responsibility;

(3) [~~(4)~~] an intern in a marriage and family therapy graduate program in which the licensee offers professional or educational services; or

(4) [~~(5)~~] a clinical supervisor or supervisee of the licensee.

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

[~~(e) Because sexual contact with former clients are so frequently harmful to the client, and because such contacts undermine public confidence in the marriage and family therapy profession and thereby deter the public's use of needed services, marriage and family therapists do not engage in sexual contact with former clients even after a two-year interval except in the most unusual circumstances. A licensee who engages in such activity after the two years following cessation or termination of therapy bears the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including:~~]

[~~(1) the amount of time has passed since therapy terminated;~~]

[~~(2) the nature and duration of the therapy;~~]

[~~(3) the circumstances of termination;~~]

[~~(4) the client's personal history;~~]

[~~(5) the client's current mental status;~~]

[~~(6) the likelihood of adverse impact on the client and others; and~~]

[~~(7) any statements or actions made by the licensee during the course of therapy suggesting or inviting the possibility of a post termination sexual or romantic relationship with the client.~~]

(e) [~~(f)~~] It is not a defense under subsections (b) - (d) of this section, if the sexual contact, sexual exploitation, or therapeutic deception with the person occurred:

(1) with the consent of the person;

(2) outside the therapy or treatment sessions of the person; or

(3) off the premises regularly used by the licensee for the therapy or treatment sessions of the person.

(f) [~~(g)~~] The following, when done in the context of professional services, shall be considered to be sexual exploitation.[:]

(1) Sexual [~~sexual~~] harassment, sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature and:

(A) is offensive or creates a hostile environment, and the licensee knows or is told this; or

(B) is sufficiently severe or intense to be abusive to a reasonable person in the context.[;]

(2) Any [~~any~~] behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexual.[;]

(3) Inappropriate [~~inappropriate~~] sexual comments about or to a person, including making sexual comments about a person's body.[;]

(4) Making [~~making~~] sexually demeaning comments to or about an individual's sexual orientation.[;]

(5) Making [~~making~~] comments about potential sexual performance except when the comment is pertinent to the issue of sexual function or dysfunction in therapy or treatment.[;]

(6) Requesting [~~requesting~~] details of sexual history or sexual likes and dislikes when not necessary for therapy or treatment of the individual.[;]

(7) Initiating [~~initiating~~] conversation regarding the sexual likes and dislikes when not necessary for therapy or treatment of the individual.[;]

(8) Kissing [~~kissing~~] or fondling.[;]

(9) Making [~~making~~] a request for non-professional social contact.[;]

(10) Any [~~any~~] other deliberate or repeated comments, gestures, or physical acts not constituting sexual intimacies but of a sexual nature.[;]

(11) Any [~~any~~] intentional exposure of genitals, anus, or breasts.[;]

(12) Encouraging [~~encouraging~~] a client, student, associate, or former client to masturbate in the presence of the licensee.[; ~~and~~]

(13) Masturbation [~~masturbation~~] by the licensee when a client, student, associate, or former client is present.[;]

(g) [~~(h)~~] Examples of sexual contact shall include those activities and behaviors described in Texas Penal Code, §21.01.

§801.46. Testing.

(a) A licensee shall make known to clients the purposes and explicit use [~~to be made~~] of any testing done as part of a professional relationship.

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

§801.47. Drug and Alcohol Use.

A licensee shall not:

(1) use alcohol or drugs in a manner which adversely affects the licensee's ability to provide marriage and family therapy [~~treatment intervention~~] services; or

(2) use any kind of illegal drugs [~~of any kind~~].

§801.48. Record Keeping, Confidentiality and Release of Records, and Required Reporting.

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

(c) A licensee shall comply with Texas Health and Safety Code, Chapters 181 and 611 [~~Chapter 611~~], and other state or federal statutes or rules where such statutes or rules apply to a licensee's practice, concerning access to and release of mental health records and confidential information.

(d) A licensee shall report information if required by any of the following statutes:

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

(3) Texas Health and Safety Code, Chapter 161, Subchapter K, §161.131 et seq., concerning abuse, neglect, and illegal, unprofessional, or unethical conduct in an in-patient mental health facility, a chemical dependency treatment facility, or a hospital providing comprehensive medical rehabilitation services; [~~and~~]

(4) Texas Civil Practice and Remedies Code, §81.006, concerning sexual exploitation by a mental health services provider; and[~~.~~]

(5) A licensee shall comply with Texas Occupations Code, Chapter 109, relating to the release and exchange of information concerning the treatment of a sex offender.

(e) - (h) (No change.)

§801.49. Licensees and the Board.

(a) - (f) (No change.)

(g) A licensee shall make written reports to the board office within 30 days of the following situations:

(1) the licensee's arrest, deferred adjudication, or criminal conviction, other than for a Class C misdemeanor traffic offense;

(2) the filing of a criminal case against the licensee;

(3) the settlement of a judgment rendered in a civil lawsuit filed against the licensee and related to the licensee's marriage and family therapy practice; or

(4) complaints, investigations, or actions against the licensee by a governmental agency or by a licensing or certification body.

(h) Failure to make a report as required by this section is grounds for disciplinary action by the board.

§801.50. Corporation and Business Names [~~Assumed Names~~].

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

§801.51. Consumer Complaint Information.

(a) At a minimum, a [~~A~~] licensee shall inform each client of the name, address, and telephone number of the board for the purpose of directing complaints to the board:

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

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

§801.52. Display of License Certificate.

(a) A licensee shall display an original, board-issued license certificate and renewal card [~~the license certificate and annual renewal card, issued by the board,~~] in a prominent place in all locations of practice. [~~in the primary location of practice.~~]

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

(e) A licensee who elects to copy a board-issued license certificate or certificate card is responsible for the use or misuse of the reproduced license.

§801.53. Advertising and Announcements.

(a) - (c) (No change.)

(d) All advertisements or announcements of therapeutic services including telephone directory listings by a person licensed by the board shall clearly state the licensee's licensure status by the use of a title such as "Licensed Therapist," [~~or~~] "Licensed Marriage and Family Therapist," "LMFT," [~~or "L.M.F.T",~~] "Licensed Marriage and Family Therapist Associate," "LMFT Associate" [~~or "LMFT-A,"~~] or a statement such as "licensed by the Texas State Board of Examiners of Marriage and Family Therapists."

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

§801.54. Research and Publications.

(a) In research with a human subject, a licensee is responsible for the welfare of the human subject [~~subject's welfare~~] throughout a project and shall take reasonable precautions so that the human subject shall suffer no injurious emotional, physical, or social effect.

(b) A licensee shall disguise data obtained from a therapeutic relationship for the purposes of education or research to ensure full protection of the identity of the human subject client.

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

§801.55. Parenting Coordination.

(a) In accordance with the Texas Family Code, §153.601(3), "parenting coordinator" means an impartial third party:

(1) who, regardless of the title by which the person is designated by the court, performs any function described in the Texas Family Code, §153.606, in a suit affecting the parent-child relationship; and

(2) who:

(A) is appointed under Texas Family Code, Subchapter K (relating to Parenting Plan, Parenting Coordinator, and Parenting Facilitator) by the court on its own motion, or on a motion or agreement of the parties, to assist parties in resolving parenting issues through confidential procedures; and

(B) (No change.)

(b) A licensee who serves as a parenting [~~parent~~] coordinator is not acting under the authority of a license issued by the board, and is not engaged in the practice of marriage and family therapy. The services provided by the licensee who serves as a parenting [~~parent~~] coordinator are not within the jurisdiction of the board, but rather the jurisdiction of the appointing court.

(c) A licensee who serves as a parenting [~~parent~~] coordinator has a duty to provide the information in subsection (b) of this section to the parties to the suit.

(d) Records of a licensee serving as a parenting coordinator are confidential under the Texas Civil Practices and Remedies Code, §154.073. Licensees serving as a confidential parenting coordinator shall comply with the Texas Civil Practices and Remedies Code, Chapter 154, relating to the release of information.

(e) A licensee shall not provide marriage and family therapy services to any person while simultaneously providing parenting [~~parent~~] coordination services. The foregoing rule shall not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

§801.56. Parenting Facilitation.

(a) In accordance with House Bill 1012, 81st Legislature, Regular Session, 2009, and Texas Family Code, Chapter 153, this section establishes the practice standards for licensees who desire to serve as parenting facilitators.

(b) In accordance with the Texas Family Code, §153.601(3-a), a "parenting facilitator" means an impartial third party:

(1) who, regardless of the title by which the person is designated by the court, performs any function described by the Texas Family Code, §153.6061, in a suit affecting the parent-child relationship; and

(2) who:

(A) is appointed under Texas Family Code, Subchapter K (relating to Parenting Plan, Parenting Coordinator, and Parenting Facilitator) by the court on its own motion, or on a motion or agreement of the parties, to assist parties in resolving parenting issues through procedures that are not confidential; and

(B) (No change.)

(c) Notwithstanding any other provision of this chapter, licensees who desire to serve as parenting [~~parent~~] facilitators shall comply with all applicable requirements of the Texas Family Code, Chapter 153, and this section. Licensees shall also comply with all requirements of this chapter unless a provision is clearly inconsistent with the Texas Family Code, Chapter 153, or this section.

(d) In accordance with the Texas Family Code, §153.6102(e), a licensee serving as a parenting facilitator shall not provide other marriage and family therapy services to any person while simultaneously providing parenting [~~parent~~] facilitation services. The foregoing rule shall not apply if the court enters a finding that mental health services are not readily available in the location where the parties reside.

(e) In accordance with the Texas Family Code, §153.6101(b)(1), a licensed marriage and family therapist associate shall not serve as a parenting [~~parent~~] facilitator.

(f) A licensee serving as a parenting facilitator utilizes child-focused alternative dispute resolution processes, assists parents in implementing their parenting plan by facilitating the resolution of disputes in a timely manner, educates parents about children's needs, and engages in other activities as referenced in the Texas Family Code, Chapter 153.

(g) A licensee serving as a parenting [~~parent~~] facilitator shall assist the parties involved in reducing harmful conflict and in promoting the best interests of the children.

(h) (No change.)

(i) A licensee serving as a parenting [~~parent~~] facilitator shall be alert to the reasonable suspicion of acts of domestic violence directed at a parent, a current partner, or children. The parenting [~~parent~~] facilitator shall adhere to protection orders, if any, and take reasonable measures to ensure the safety of the participants, the children and the parenting [~~parent~~] facilitator, while understanding that even with appropriate precautions a guarantee that no harm will occur can be neither stated nor implied.

(j) (No change.)

(k) A licensee serving as a parenting [~~parent~~] facilitator shall be alert to the reasonable suspicion of substance abuse by parents or children, as well as mental health impairment of a parent or child.

(l) - (w) (No change.)

(x) A licensee serving as a parenting facilitator:

(1) shall comply with all mandatory reporting requirements, including but not limited to Texas Family Code, Chapter 261, concerning abuse or neglect of minors;

(2) - (5) (No change.)

(y) Records of a licensee serving as a parenting facilitator are not mental health records and are not subject to the disclosure requirements of Texas Health and Safety Code, Chapter 611. At a minimum, records shall be maintained for the period of time described in §801.48(e) of this title (relating to Record Keeping, Confidentiality and Release of Records, and Required Reporting), or as otherwise directed by the court.

(z) - (dd) (No change.)

(ee) The minimum training for a licensee serving as a parenting [~~parent~~] facilitator that is required by the Texas Family Code, §153.6101(b), and is determined by the court is:

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

(4) 16 hours of training in the laws and board rules governing parenting [~~parent~~] coordination and facilitation, and the multiple styles and procedures used in different models of service.

(ff) A licensee serving as a parenting facilitator:

(1) shall complete minimum training as required by the Texas Family Code, §153.6101, as determined by the appointing court;

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

(gg) A licensee serving as a parenting [~~parent~~] facilitator shall decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the licensee's skill or expertise.

(hh) (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 September 14, 2012.

TRD-201204868
Michael Miller
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 776-6972

♦ ♦ ♦

SUBCHAPTER D. APPLICATION PROCEDURES

22 TAC §§801.71 - 801.73

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 502.

§801.71. Purpose.

The purpose of this subchapter is to set out the application procedures for examination and licensure as a marriage and family therapist or marriage and family therapist associate.

§801.72. General.

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

(c) An application must be completed within one year of the original date of filing. An application that is not completed one year past the date an application is opened is void [~~voided~~].

§801.73. Required Application Materials.

(a) Application form. The application form shall contain:

(1) specific information regarding personal data, employment and type of practice, other state licenses and certifications held, disciplinary actions taken by other jurisdictions, felony or misdemeanor convictions, educational background including direct clinical experience, supervised experience, and references;

(2) a statement that the applicant has read the Act and the board rules and agrees to abide by the Act and the board rules [~~them~~];

(3) - (6) (No change.)

(7) official transcripts [~~an official transcript~~].

(b) - (e) (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 September 14, 2012.

TRD-201204869
Michael Miller
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 776-6972

♦ ♦ ♦

SUBCHAPTER E. CRITERIA FOR DETERMINING FITNESS OF APPLICANTS FOR EXAMINATION AND LICENSURE

22 TAC §§801.91 - 801.93

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 502.

§801.91. Purpose.

The purpose of this subchapter is to establish the criteria by which the board will determine the qualifications required of applicants for approval for examination and/or [~~and~~] licensure.

§801.92. Finding of Non-Fitness for Licensure.

The substantiation of any of the following items related to an applicant may be, as the board determines, the basis for the denial of a license:

(1) lack of the necessary skills and abilities to provide adequate marriage and family therapy services [~~in an independent practice~~];

(2) - (5) (No change.)

§801.93. Finding of Non-Fitness for Licensure Subsequent to Issuance of License.

The board may take disciplinary action based upon information received after issuance of a license, even if the violation occurred prior to issuance of the license. [~~if such information would have been the basis for denial if it had been received prior to issuance of the 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 September 14, 2012.

TRD-201204870
Michael Miller
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 776-6972

♦ ♦ ♦

SUBCHAPTER F. ACADEMIC REQUIREMENTS FOR EXAMINATION AND LICENSURE

22 TAC §§801.111 - 801.115

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 502.

§801.111. Purpose.

This subchapter establishes the academic requirements for examination and licensure for [~~as~~] a marriage and family therapist or for a marriage and family therapist associate.

§801.112. General.

(a) The board shall accept the following as meeting academic requirements for licensure as a marriage and family therapist associate [~~the following~~]:

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

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

(d) The board shall count no undergraduate level courses taken by an applicant as meeting any academic requirements unless the applicant's official transcripts [~~transcript~~] clearly shows that the course was awarded graduate credit by the school.

(e) The board shall accept no coursework which an applicant's transcripts indicate [~~transcript indicates~~] was not completed with a passing grade or for credit.

(f) - (g) (No change.)

§801.113. Academic Requirements.

(a) Persons applying for the licensure examination must have completed or be enrolled in a marriage and family therapy graduate internship program, or its equivalent, which is approved by the board.

(b) - (e) (No change.)

§801.114. Academic Course Content.

An applicant who holds a graduate degree in a mental health-related [~~health related~~] field must have course work in each of the following areas (one course is equal to [~~equals~~] three semester hours):

(1) - (7) (No change.)

§801.115. Academic Requirements and Supervised Clinical Practicum Equivalency for Applicants Currently Licensed in Another Jurisdiction.

An applicant [~~who is~~] currently licensed as a marriage and family therapist in another jurisdiction of the United States, who does not meet the academic requirements in §801.114 of this title (relating to Academic Course Content) may be considered to have met the requirements according to the following.

(1) - (3) (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 September 14, 2012.

TRD-201204871
Michael Miller
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 776-6972

♦ ♦ ♦

SUBCHAPTER G. EXPERIENCE REQUIREMENTS FOR LICENSURE

22 TAC §§801.141 - 801.143

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 502.

§801.141. Purpose.

The purpose of this subchapter establishes [~~is to set out~~] the minimum experience requirements for licensure as a marriage and family therapist.

§801.142. Supervised Clinical Experience Requirements and Conditions.

The following supervised clinical experience requirements and conditions shall apply.

(1) Supervised clinical experience accrued in Texas may only be accrued under licensure as a Licensed Marriage and Family Therapist Associate (with the exceptions [~~exception~~] noted in subparagraph (A)(i)(III) and (iii)(II) [~~(ii)(III)~~] of this paragraph.

(A) The applicant must have completed a minimum of two years of work experience in marriage and family therapy services after conferral of the master's or doctoral degree in accordance with this chapter and must include the following [~~that~~]:

(i) [~~includes at least~~] 3,000 hours of board-approved marriage and family therapy practice [~~acceptable to the board~~]:

(I) of the 3,000 required hours, [~~which at least~~] 1,500 hours must be direct clinical services, and [~~of which~~] 750 hours of the 1,500 hours shall be provided to couples or families;

(II) of the 3,000 required hours, the remaining 1,500 hours may come from related experiences that may include but not be limited to workshops, public relations, writing case notes, consulting with referral sources, etc.;

(III) (No change.)

(IV) the 3,000 hours cannot begin accumulating before the issuance date of the license, except as described in subclause (III) of this clause.

(ii) a board-approved Supervisory Agreement Form, which requires the following:

(I) submission of a Supervisory Agreement Form to the board which designates the supervisor and the location of practice and which must be submitted to the board with the license application along with a copy of the license certificate of the supervisor, indicating that the supervisor's license is current and the supervisor is a board-approved supervisor; or if one or more Supervisory Agreement Form(s) are submitted after licensure, submission of a Supervisory Agreement Form(s) within 60 days of commencement of supervised services, accompanied by a copy of the license certificate of the supervisor, indicating that the supervisor's license is current and the supervisor is a board-approved supervisor;

(II) official board approval of the completed Supervisory Agreement Form after submission, as evidenced by receipt of an associate license for which the application package included a completed Supervisory Agreement Form, or by written verification from the board; and

(III) submission of additional Supervisory Agreement Form(s) and verification of the supervisor's license and board-approved supervisor status to the board if there is more than one location of practice, if there is a change in practice location, or if supervisors are added or changed. Additional forms must be approved in writing by the board at the beginning of the supervision process.

(iii) at least 200 hours of board-approved supervision, which requires:

(I) at least 100 hours of individual supervision;

(II) no more than 100 hours being transferred from the graduate program;

(III) at least 50 hours of the post-graduate supervision must be individual supervision; and

(IV) of the 200 hours, no more than 50 hours may be by telephonic or electronic media.

[(ii) ~~the applicant must be supervised in a manner acceptable to the board, including:~~]

[(I) at least 200 hours of supervision;]

[(II) of the 200 hours, at least 100 hours must be individual supervision;]

[(III) of the 200 hours, no more than 100 hours may be transferred from the graduate program;]

[(IV) at least 50 hours of the post-graduate supervision must be individual supervision.]

(B) (No change.)

(C) During the post graduate supervision, both the supervisor and the associate may have disciplinary actions taken against their licenses for violations of the Act or this chapter [rules].

(D) - (F) (No change.)

[(G) The 200 hours of supervision must be face-to-face. The associate must receive a minimum of one hour of supervision every two weeks. A supervision hour is 45 minutes. Up to 50 hours of the 200 hours of face-to-face supervision may occur via telephonic or other electronic media, as approved by the supervisor.]

(G) [(H)] An associate may have no more than two board-approved supervisors at a time, unless given prior approval by the board or its designee.

(H) [(I)] The associate may receive credit for up to 500 clock hours toward the required 3,000 hours of supervised clinical services by providing services via telephonic or other electronic media, as approved by the supervisor.

(2) Supervision and supervised clinical experience accrued toward licensure as a Licensed Marriage and Family Therapist in another jurisdiction are accepted by endorsement only (except as noted in paragraph (1)(A)(i)(III) and (iii)(II) [(1)(A)(ii)(III)] of this section.

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

§801.143. Supervisor Requirements.

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

(e) A board-approved supervisor shall maintain and sign a record(s) to document the date of each supervision conference and document the LMFT [Licensed Marriage and Family Therapist (LMFT)] Associate's total number of hours of supervised experience accumulated up to the date of the conference.

(f) - (n) (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 September 14, 2012.

TRD-201204873
Michael Miller
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 776-6972

♦ ♦ ♦

SUBCHAPTER H. EXAMINATIONS

22 TAC §§801.171 - 801.174

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 502.

§801.171. Purpose.

The purpose of this subchapter is to establish the rules governing board-approved [the] examinations for licensure.

§801.172. Frequency.

The board, or its designee, shall administer board-approved licensure examinations at least semi-annually.

§801.173. Applying for Licensure Examination.

A person must apply for the licensure examination in accordance with Subchapter F of this chapter (relating to Academic Requirements for Examination and Licensure) and §801.73 of this title (relating to Required Application Materials). The board shall notify an applicant of application approval or disapproval. If the application is disapproved, the notification shall[, and if disapproved,] state the reason.

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

(3) An applicant who wishes to take a scheduled licensure examination must complete an examination registration form and pay appropriate examination fees [return it to the board].

§801.174. Licensure and Jurisprudence Examinations.

(a) (No change.)

(b) An applicant shall apply to take the licensure examination on a form prescribed by the board. The applicant will pay the examination fee to the appropriate party as dictated by the current examination contract or agreement. [at the examination site.]

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

(e) Procedures for failure of an applicant to pass a licensure examination, if all minimum application and other requirements are met and current, are as follows:

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

(f) - (j) (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 September 14, 2012.

TRD-201204874
Michael Miller
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 776-6972

♦ ♦ ♦

SUBCHAPTER I LICENSING

22 TAC §§801.201 - 801.204

STATUTORY AUTHORITY

The amendments and new rule are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments and new rule affect Texas Occupations Code, Chapter 502.

§801.201. General Licensing.

(a) Upon receipt and approval of application documentation and required fees, the board shall issue the person a license with a unique [~~containing a~~] license number within 30 days.

(b) (No change.)

(c) Upon the written request and payment of the license certificate duplicate fee by a licensee, the board will provide a licensee with a duplicate license within 30 days for an additional location [~~a second place~~] of practice which is designated in a licensee's file.

§801.202. Associate License.

(a) (No change.)

(b) The initial associate license will be issued for a period of 24 months and may be renewed biennially for a period not to exceed a total of 72 months. [~~The appropriate board committee may consider exceptions to the 72 month time limit.~~]

(c) The only exception to the maximum period of 72 months for an LMFT Associate to satisfy all minimum requirements for licensure as an LMFT is if the LMFT Associate has completed all minimum requirements for licensure as an LMFT at or before 72 months while licensed as an LMFT Associate, with the one exception relating to experience requirements for licensure at §801.142(1)(A)(i)(I) of this title (relating to Supervised Clinical Experience Requirements and Conditions) and the "750 hours of the 1,500 hours shall be provided to couples or families." If all other minimum requirements are met at or before 72 months, an LMFT Associate may be granted one additional biennial renewal period (for a total of not more than 96 months of licensure as an LMFT Associate) for the Associate license in order to complete the experience requirements related to couples and families.

(d) An LMFT Associate who has not met the minimum requirements for licensure as an LMFT after holding the Associate license for 72 months (or 96 months if subsection (c) of this section applies), may not reapply for licensure as an LMFT Associate for a minimum period of two years from the date of expiration of the initial LMFT Associate license.

(e) If an applicant for licensure as an LMFT Associate has previously held the Associate license but did not achieve licensure as an LMFT under the initial Associate license reapplies for licensure, the appropriate committee of the board will determine if any of the previously acquired supervised experience and supervision hours may be counted towards minimum requirements for licensure as an LMFT under a subsequently issued Associate license or under a subsequently granted reactivation of the initial LMFT Associate license.

§801.203. Provisional License.

(a) (No change.)

(b) Upon formal written request, the board may waive the requirement set out in subsection (a)(3) of this section if the board determines [~~it is determined~~] that compliance with subsection (a)(3) of this section would cause undue hardship to the applicant.

(c) The board shall issue a license to a holder of a provisional license if:

(1) (No change.)

(2) the provisional license holder provides an official graduate transcripts [~~transcript~~] meeting the requirements set forth in Subchapter F of this chapter (relating to Academic Requirements for Examination and Licensure);

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

(d) (No change.)

§801.204. Licensing of Military Spouses.

(a) This section sets out the alternative license procedure for a military spouse required under Occupations Code, Chapter 55 (relating to License While on Military Duty and for Military Spouse).

(b) The spouse of a person serving on active duty as a member of the armed forces of the United States who holds a current license issued by another state that has licensing requirements shall complete and submit an application form and fee to the department. In accordance with Occupations Code, §55.004(c), the executive director may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(c) The spouse of a person serving on active duty as a member of the armed forces of the United States who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if there are no unresolved complaints against the applicant and if there is no other bar to licensure, such as criminal background or non-compliance with a committee order.

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 September 14, 2012.

TRD-201204875
Michael Miller
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 776-6972

♦ ♦ ♦

SUBCHAPTER J. LICENSE RENEWAL AND INACTIVE STATUS

22 TAC §§801.231 - 801.237

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 502.

§801.231. Purpose.

The purpose of this subchapter is to establish [set out] the rules governing licensure renewal, late renewal, surrender of license, and inactive status.

§801.232. General.

(a) A licensee must renew the license biennially or by the expiration date, whichever comes first.

(b) - (f) (No change.)

§801.233. Staggered Renewals.

The board shall use a staggered system for licensure renewals; the [. The] renewal date of a marriage and family therapist license shall be the last day of the licensee's birth month.

§801.234. Licensure Renewal.

(a) At least 30 [60] days prior to the expiration date of a person's license, the board will send notice to the licensee of the expiration date of the license, the amount of the renewal fee due, and a licensure renewal form which the licensee must complete and return to the board with the required fee. The licensure renewal form may be completed electronically if available. Failure to receive notice does not relieve the licensee from the responsibility to timely renew.

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

§801.235. Late Renewal.

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

(c) The board may renew without re-examination an expired license of a person who was licensed as a Marriage and Family Therapist in this state, moved to another state, and is currently licensed as a Marriage and Family Therapist and has been in practice in the other state for the two years preceding application. The person must pay to the board a fee [that is] equal to the examination fee for the license.

§801.236. Inactive Status.

(a) A licensee may request that his or her license be declared inactive by written request to the board prior to the expiration of the license. Inactive status periods shall not be granted to persons whose licenses are not current and in good standing. Inactive status periods shall not exceed 24 months. Licenses on inactive status shall be renewed biennially, or in a time period as appropriate for renewal, and shall include payment of any applicable fee, such as the inactive status fee. [and may be renewed biennially. An inactive status fee is required biennially.]

(b) If a licensee fails to renew his or her license because the licensee is called to or on active duty with the armed forces of the United States, the licensee or the licensee's authorized representative may request that the license be declared inactive or be renewed. A request for inactive status shall be made in writing to the board prior to expiration of the license or within one year from the expiration date. This subsection is an exception to the requirement in subsection (a) of this section that the request be made prior to expiration of the license. A request for renewal may be made before or after the expiration date when related to active duty with the armed forces of the United States.

(1) - (8) (No change.)

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

§801.237. Surrender of License.

(a) (No change.)

(b) When a licensee has offered the surrender of his or her license after a complaint has been filed which alleges [alleging] violations of the Act or this chapter, the board shall consider whether to accept the license surrender. If the board accepts such a surrender, that surrender is deemed to be the result of a formal disciplinary action and shall be reported as formal disciplinary action. Surrender of a license without acceptance by the board shall not deprive the board of jurisdiction over the licensee in accordance with the Act or other law.

(c) (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 September 14, 2012.

TRD-201204876
Michael Miller
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 776-6972

♦ ♦ ♦

SUBCHAPTER K. CONTINUING EDUCATION REQUIREMENTS

22 TAC §§801.261 - 801.268

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 502.

§801.261. Purpose.

The purpose of this subchapter is to establish the continuing education requirements for the renewal of licensure which a licensee must complete biennially or as appropriate for licensure renewal [annually]. These requirements are intended to maintain and improve the quality of professional services in marriage and family therapy provided to the public; and keep the licensee knowledgeable of current research, techniques, and practice; and provide other resources which will improve skill and competence in marriage and family therapy. Continuing education hours must be relevant to the practice of marriage and family therapy.

§801.262. Deadlines.

Continuing education requirements for renewal shall be fulfilled during board-designated [two-year] periods beginning on the first day of a licensee's renewal period and ending on the last day of the licensee's renewal period. These renewal periods are generally biennial, but if the renewal is related to the issuance of an initial license, the period shall be for a period of 13 to 24 months, depending on the licensee's birth month.

§801.263. Requirements for Continuing Education.

A Licensed Marriage and Family Therapist must complete 30 clock hours of continuing education which is acceptable to the board each renewal period as described in §801.262 of this title (relating to Deadlines). A Licensed Marriage and Family Therapist Associate must complete 15 clock hours of continuing education which is acceptable to the board each renewal period as described in §801.262 of this title [(relating to Deadlines)]. All licensees are required to complete 6 hours

of ethics each renewal period. A board-approved supervisor must complete at least 3 hours of clinical supervision continuing education each renewal period.

§801.264. Types of Acceptable Continuing Education.

Continuing education undertaken by a licensee shall be acceptable to the board as credit hours towards licensure renewal or a request or order of the board under two circumstances [~~if it is offered by an approved sponsor(s) in the following categories~~]:

(1) if it is offered by an approved sponsor(s) in the following categories:

(A) [~~(1)~~] participation in state and national conferences such as the American Association for Marriage and Family Therapists (AAMFT) and Texas Association for Marriage and Family Therapy (TAMFT);

(B) [~~(2)~~] participation in local seminars relevant to marriage and family therapy;

(C) [~~(3)~~] completing a graduate or institute course in the field of marriage and family therapy;

(D) [~~(4)~~] presenting workshops, seminars, or lectures relevant to marriage and family therapy (the same seminar may not be used more than once biennially);

(E) [~~(5)~~] completing correspondence courses, satellite or distance learning courses, [~~and/or~~] audio-video courses, and/or other learning formats in which real-time interaction with a facilitator(s) is not possible, including a re-broadcast of a webinar conducted in the past, relative to marriage and family therapy (no more than 12 hours per renewal period);

(F) [~~(6)~~] completing the jurisprudence examination may count for one hour of the ethics requirement described in §801.263 of this title (relating to Requirements for Continuing Education); and[~~.~~]

(G) attendance at a meeting of the Ethics Committee of the board from the beginning of the meeting to the end of the meeting by individuals who are not parties to any of the complaint cases may count for two hours of the ethics requirements described in §801.263 of this title. The board shall issue a continuing education certificate for board-approved attendance. A licensee may use only two hours of ethics continuing education credits related to attendance at an Ethics Committee meeting once per biennial renewal period; and

(2) if it is provided by a board-approved provider of continuing education by the Texas State Board of Examiners of Professional Counselors, the Texas State Board of Social Worker Examiners, or the Texas State Board of Examiners of Psychologists, and it is relevant to the practice of marriage and family therapy.

§801.265. Continuing Education Sponsor.

The board is not responsible for approving individual continuing education programs. The board will approve an institute, agency, organization, association, or individual as a continuing education sponsor of continuing education units. The board will grant approval to organizations that pay the continuing education sponsor fee, which shall permit the organizations to approve continuing education units for their marriage and family therapy courses, seminars, and conferences. These organizations do not need prior permission from the board but must submit an annual list of their seminars, workshops, and courses with the presenter's name to the board. Any university, professional organization, or individual who meets the required criteria may advertise as approved sponsors of continuing education for licensed marriage and family therapists.

(1) - (8) (No change.)

(9) A sponsor whose approval is rescinded by the board may reapply for approval the 91st day following the board action. The sponsor shall be required to submit a plan of correction regarding the non-compliance that was previously identified. The sponsor's application shall be reviewed by the appropriate committee of the board [~~Complaints Committee~~].

(10) Continuing education hours received from a sponsor whose approval has been rescinded shall not be acceptable to fulfill the continuing education requirements of this subchapter[~~, even if the sponsor is approved by another licensing or approval entity~~].

(11) Continuing education hours received from a sponsor who failed to renew the sponsor's approval status shall not be acceptable to fulfill the continuing education requirements of this subchapter[~~, even if the sponsor is approved by another licensing or approval entity~~].

(12) (No change.)

§801.266. Criteria for Approval of Continuing Education Activities.

Each continuing education experience submitted by a licensee will be evaluated on the basis of the following criteria.

(1) (No change.)

(2) Completion of academic work shall be in accordance with §801.264 of this title. Official graduate transcript(s) from an accredited school showing completion of graduate hours in appropriate areas for which the licensee received at least a grade of "B" or "pass" [~~is required~~].

(3) - (5) (No change.)

§801.267. Determination of Clock Hour Credits.

The board shall credit continuing education as follows: programs[~~. Programs~~] which meet the criteria §801.264 of this title (relating to Types of Continuing Education) shall be credited on a one-for-one basis with one clock-hour credit for each clock-hour spent in the continuing education activity, unless otherwise designated in §801.266 of this title (relating to Criteria for Approval of Continuing Education Activities).

§801.268. Reporting and Auditing of Continuing Education.

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

[~~(c) Continuing education from organizations which are not approved sponsors may be accepted if relevance to marriage and family therapy can be documented.~~]

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 September 14, 2012.

TRD-201204877
Michael Miller
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 776-6972

♦ ♦ ♦

SUBCHAPTER L. COMPLAINTS AND VIOLATIONS

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 502.

§801.291. General.

The purpose of this subchapter is to establish procedures for the denial, revocation, probation, or suspension of a license, reprimand of a licensee, or imposition of an administrative penalty, and the procedures for filing complaints and allegations of statutory or rule violations.

(1) The following shall be grounds for revocation, probation or suspension of a license, imposition of an administrative penalty, refusal to renew a license, or reprimand of a licensee if a licensee has:

(A) - (G) (No change.)

(H) had a license or certification revoked by a licensing agency or by a certifying professional organization or by a governmental agency;

(I) - (L) (No change.)

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

§801.292. Criteria for Denial of a License.

The substantiation of any of the following related to an applicant may be, as the board determines, the basis for the denial of the licensure of the applicant:

(1) (No change.)

(2) misrepresentation of professional qualifications or associations [~~association~~];

(3) - (11) (No change.)

§801.293. Procedures for Revoking, Suspending, Probating or Denying a License, or Reprimanding a Licensee.

(a) The board's executive director or his/her designee shall [~~will~~] give written notice to the person that the board proposes to deny, suspend, probate, or revoke the license, impose an administrative penalty, or reprimand the licensee, after a hearing in accordance with the provisions of the Administrative Procedure Act (APA), and the board's hearing procedures in Subchapter O of this chapter (relating to Formal Hearings).

(b) (No change.)

§801.294. Violations by an Unlicensed Person.

(a) (No change.)

(b) An unlicensed person who facilitates or coordinates the provision of professional marriage and family therapy services but does not act as a licensed marriage and family therapist is not in violation of the Act.

(c) (No change.)

§801.295. Power to Sue.

The board may institute a law suit in its own name. The board may [~~and~~] avail itself of any other action, proceeding, or remedy authorized by law to enjoin a violation of the Act.

§801.296. Complaint Procedures.

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

(c) Upon receipt of a written complaint, the department staff shall send an acknowledgment letter to the complainant. The executive director or executive director's designee shall determine whether the complaint appears to be within the jurisdiction of the board. If the complaint does not appear to be within the jurisdiction of the board or if the matters alleged in the complaint would not constitute a violation of the Act or this chapter, the executive director may dismiss the complaint and give written notice of dismissal to the licensee or person against whom the complaint has been filed, the complainant, and the ethics committee. The ethics committee, upon review, may reverse or amend the decision of the executive director and reopen the case. If the complaint does appear to be within the jurisdiction of the board, the executive director shall refer the complaint for an investigation and determine whether to notify the alleged violator of the complaint by mail within 45 days and request that the alleged violator submit a written response regarding the complaint within 15 days of receipt of the notice. For any complaint, the board or executive director or his/her designee may request that all relevant client records be submitted for consideration in conjunction with the investigation of an allegation. The board may consider failure to respond to a request for a response to a complaint or failure to respond to a request for information to be evidence of failure to cooperate in an investigation. If the executive director determines that the respondent to the complaint should not be notified within 45 days by mail, an investigator of the department shall notify the respondent of the complaint by letter, by telephone, or in person.

(d) - (h) (No change.)

(i) If the ethics committee determines that there are sufficient grounds to support the finding of one or more violations, the ethics committee will consider the relevant factors identified in §801.301 of this title (relating to Relevant Factors) and the severity level and sanction guide in §801.302 of this title (relating to Severity Level and Sanction Guide) and determine what recommended action to take against the respondent to the complaint, if any. The ethics committee [~~Ethics Committee~~] will report to the board any proposed disciplinary actions to be taken against a licensee. If the respondent is not a licensee of the board or a person whose expired license is no longer renewable and is found to have violated the Texas Occupations Code, Chapter 502, the board may issue an order to cease and desist and may refer the case to the Office of Attorney General for appropriate action.

(j) If the committee determines that a violation exists and that the circumstances surrounding the violation did not involve a serious risk of or did not result in significantly affecting the health and safety of clients or other persons, the committee may resolve the complaint by informal methods such as an advisory notice, [~~or~~] warning letter, "Conditional Letter of Agreement," or other action which is not a formal disciplinary action but which constitutes a formal board request. The committee may also issue an advisory notice or a warning letter if the complaint did not result in a violation, but the circumstances surrounding the complaint are of concern of the board.

(k) If the executive director receives credible evidence that a licensee is engaging in acts that pose an immediate and significant threat of physical or emotional harm to the public, the executive director shall consult with the members of the ethics committee [~~Ethics Committee~~] for authorization for an emergency suspension of the license.

(l) Ethics committee [~~Committee~~] meetings and policy. [~~are as follows:~~]

(1) The ethics committee [~~Ethics Committee~~] will meet on a regular basis to review and recommend action on complaints filed against licensees. Additionally, the committee will hold informal hearings to review previous committee actions at the request of a respondent.

(2) - (6) (No change.)

§801.297. Monitoring of Licensees.

(a) - (e) (No change.)

(f) Probation. If probation is ordered or agreed to, the following terms may be required.

(1) General conditions of probation.

(A) The licensee shall obey all federal, state and local laws and rules governing marriage and family practice in this state.

(B) Under penalty of perjury, the licensee shall submit periodic reports as the board requests on forms provided by the board, stating whether the licensee has complied with all conditions of probation.

(C) The licensee shall comply with the board's probation monitoring program.

(D) The licensee shall appear in person for interviews with the board or its designee at various intervals and with reasonable notice.

(E) If the licensee leaves this state to reside or to practice outside the state, the licensee must notify the board in writing of the dates of departure and return. Periods of practice outside this state will not count toward the time of this probationary period. The social work licensing authorities of the jurisdiction to which the licensee is moving or has moved must be promptly notified of the licensee's probationary status in this state. The probationary period will resume when the licensee returns to the state to reside or practice.

(F) If the licensee violates probation in any respect, the board, after giving formal notice and the opportunity to be heard, may revoke the licensee's license and/or board-approved supervisor status or take other appropriate disciplinary action. The period of probation shall be extended until the matter is final.

(G) The licensee shall promptly notify in writing all settings in which the licensee practices marriage and family therapy of his or her probationary status.

(H) While on probation, the licensee shall not act as a supervisor or gain any hours of supervised practice required for any board-issued license.

(I) The licensee is responsible for paying the costs of complying with conditions of probation.

(J) The licensee shall comply with the renewal requirements in the Act and the board rules.

(K) A licensee on probation shall not practice marriage and family therapy except under the conditions described in the probation order.

(L) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:

(i) submit one supervisory plan for each practice location to the board for approval by the board or executive director/designee within 30 days of initiating supervision;

(ii) submit a current job description from the agency in which the Marriage and Family Therapist or Associate is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;

(iii) ensure that the supervisor submits reports to the board on a schedule determined by the board. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and

(iv) notify the board immediately if there is a disruption in the supervisory relationship or change in practice location, and submit a new supervisory plan within 30 days of the break or change in practice location.

(2) Special Conditions. At the board's discretion, one or more special conditions of probation may appear in the board's disciplinary order that places a licensee on probation. Those special conditions and example wording are described in the following subparagraphs of this paragraph.

(A) Actual Suspension. As part of probation, the license is suspended for a period of (example: one) year beginning the effective date of this order.

(B) Drug/Medication Use. The licensee shall abstain completely from using or possessing controlled substances and dangerous drugs as defined by law, or any drugs requiring a prescription except those medications which a licensed physician lawfully prescribes for a bona fide illness or condition.

(C) Alcohol. The licensee shall abstain completely from using alcoholic beverages.

(D) Body Fluid or Hair Follicle Testing. The licensee shall immediately submit to appropriate testing, at the licensee's cost, upon the board's written request or order.

(E) Rehabilitation Program. Within (example: 30) days of the effective date of the order, the licensee shall submit to the board for its prior approval a rehabilitation program in which the licensee shall participate at least weekly for at least (example: 50) weeks of the calendar year for the duration of probation. In the periodic reports to the board, the licensee shall document continuing participation in this program, including the dates of the weekly meetings attended and the address of each meeting. At the end of the required period, the rehabilitation program director shall document to the board that the license has completed the program and has made arrangements for appropriate follow-up.

(F) Community Service. Within (example: 60) days of the effective date of the order, the licensee shall submit to the board for its prior approval a community service program in which the licensee shall provide free regular marriage and family therapy services to a community or charitable facility or agency for at least (example: 20) hours a month for the first (example: 24) months of probation.

(G) Medical Evaluation Treatment. Within (example: 30) days of the effective date of the order, and periodically thereafter as the board or its designee may require, the licensee shall undergo a

medical evaluation by a licensed physician who shall furnish a medical report to the board or its designee. If the board or its designee requires the licensee to undergo medical treatment, the licensee shall, within (example: 30) days of the requirement notice, submit to the board for its prior approval the name and qualifications of a physician of the licensee's choice. Upon the board's approval of the treating physician, the licensee shall undergo and continue medical treatment until further notice from the board. The licensee shall have the treating physician submit periodic reports to the board as the board directs. In cases where the evidence demonstrates that medical illness or disability was a contributing cause of the violations, the licensee shall not engage in the practice of marriage and family therapy until the board notifies the licensee that the board has determined that the licensee is medically fit to practice safely.

(H) Psychosocial/Psychological/Psychiatric Evaluation. Within (example: 30) days of the effective date of the decision, and periodically thereafter as required by the board or its designee, the licensee shall undergo evaluation by a licensed professional selected by the board. The evaluator shall furnish a written report to the board or its designee regarding the licensee's judgment and ability to function independently and safely as a marriage and family therapist or associate and any other information the board may require. The licensee shall pay all evaluation costs. The licensee shall execute a release of information authorizing the evaluator to release all information to the board. The board will treat the evaluation as confidential. If the evidence demonstrates that physical illness or mental illness was a contributing cause of the violations, the licensee shall not engage in the practice of marriage and family therapy until the board determines that the licensee is medically fit to practice safely and so notifies the licensee.

(I) Ethics Course. Within (example: 60) days of the effective date of the order, the licensee shall select and submit to the board or its designee for prior approval a course in (example: ethics), which the licensee shall take and successfully complete as directed by the board.

(J) Supervision of the Licensee's Practice. Within (example: 30) days of the effective date of this order, the licensee shall submit to the board for its prior approval the name and qualifications of three proposed supervisors. Each proposed supervisor shall be licensed in good standing and be a board-approved supervisor with expertise in the licensee's field of practice. The supervisor must review and maintain a copy of the board order and must ensure that the supervisory content relates to the licensee's rehabilitation and fitness for practice. The supervisor shall submit to the board quarterly written reports (or other time periods the board may specify), verifying that the supervisor and supervisee have met together in the same geographical location to engage in required supervision of at least one hour per week (or other time periods the board may specify), in individual face-to-face meetings, and including an evaluation of the licensee's performance. The licensee will bear all supervision costs and is responsible for assuring that the required reports are filed in a timely fashion. The licensee shall give the supervisor access to the licensee's fiscal and client records. The supervisor shall be independent, with no current or prior business, professional or personal relationship with the licensee. The licensee shall not practice until the board has approved the designated supervisor and so notified the licensee. If the supervisor ceases supervision, the licensee shall not practice until the board has approved a new supervisor. The supervisor and licensee shall inform the board in writing within 10 business days of supervision termination, or any substantive change to the supervision plan; these changes are subject to the board's approval. Board-ordered supervision shall comply with relevant requirements of §801.143 of this title (relating to Supervisor Requirements) as well as all other laws and rules.

(K) Psychotherapy. Within (example: 60) days of the effective date of the order, the licensee shall submit to the board for its prior approval the name and qualifications of one or more therapists of the licensee's choice. The therapist shall possess a valid license and shall have had no current or prior business, professional or personal relationship with the licensee. Upon the board's approval, the licensee shall undergo and continue treatment, for which the licensee pays all costs, until the board determines that no further psychotherapy is necessary. The licensee shall execute a release of information authorizing the therapist to divulge information to the board, and will have the treating psychotherapist submit periodic reports as the board requires. If the therapist believes the licensee cannot safely continue to render services, the therapists will notify the board immediately.

(L) Education. The licensee shall successfully complete any remedial education the board requires.

(M) Take and Pass Licensure Examinations. The licensee shall take and pass the licensure examination currently required of new applicants for the license possessed by the licensee. The licensee shall pay the established examination fee.

(N) Peer Assistance Program. Within (example: 30) days of the effective date of the order, the licensee shall participate in a board-approved Peer Assistance Program in which the licensee shall participate at least (example: weekly) for at least (example: 50) weeks of the calendar year for the duration of probation. In the periodic reports to the board, the licensee shall document continuing participation in this program, including the dates of the meetings attended and the address of each meeting. The program shall also submit periodic progress reports and a final disposition report concerning whether the licensee completed the program and has made arrangements for appropriate follow-up. If a licensee does not complete the program, the board or board committee will determine an appropriate sanction.

(O) Other Conditions. The board may order other terms of probation as may be appropriate.

(g) Release from Probation.

(1) If the executive director believes that a licensee has satisfied the terms of probation, the executive director shall report to the ethics committee the status of the licensee's probation.

(2) If the executive director does not believe that the licensee has successfully completed probation, the executive director shall so notify the licensee and shall refer the matter to the ethics committee for review and recommendations. The licensee shall continue supervision and all requirements set forth in the board order, including periodic reports, until the ethics committee reviews and disposes of the case.

(h) Board-Ordered Supervision.

(1) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:

(A) submit one supervisory plan for each practice location to the board for approval by the board or executive director/designee within 30 days of initiating supervision;

(B) submit a current job description from the agency in which the marriage and family therapist or associate is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;

(C) ensure that the supervisor submits reports to the board on a schedule determined by the board. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and

(D) notify the board immediately if there is a disruption in the supervisory relationship or change in practice location, and submit a new supervisory plan within 30 days of the break or change in practice location.

(2) The supervisor who agrees to provide board-ordered supervision of a licensee who is under board disciplinary action must understand the board order and follow the supervision stipulations outlined in the order. The supervisor must address with the licensee those professional behaviors that led to board discipline, and must help to remediate those concerns while assisting the licensee to develop strategies to avoid repeating illegal, substandard, or unethical behaviors.

(3) Board-ordered and mandated supervision timeframes are specified in the board order.

§801.298. Default Orders.

(a) (No change.)

(b) The respondent, usually a licensee or applicant, and the complainant shall be notified of the date, time, and place of the board meeting at which the default order will be considered. Attendance is voluntary.

(c) (No change.)

§801.299. Administrative Penalties.

(a) (No change.)

(b) References in the Act to the "commissioner of health" or the "department" are references to the commissioner of health or his/her [~~his~~] designee. The board shall request that the commissioner of health appoint the executive director of the board as his/her [~~his~~] designee.

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

(e) The amount of an administrative penalty shall be based on the following criteria.

(1) The seriousness of a violation shall be categorized by one of the following severity levels:

(A) Level I--Violations [~~violations~~] that have or had an adverse impact on the health or safety of a client (or former client, where applicable);

(B) Level II--Violations [~~violations~~] that have or had the potential to cause an adverse impact on the health or safety of a client (or former client, where applicable) but did not actually have an adverse impact; or

(C) Level III--Violations [~~violations~~] that have no or minor health or safety significance.

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

§801.300. Suspension of License for Failure to Pay Child Support or Non-Compliance with Child Custody Order.

(a) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support, or failure to be in compliance with a court order relating to child custody, the executive director shall immediately determine if the board has issued a license to the obligator named on the order, and, if a license has been issued, shall:

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

(b) (No change.)

(c) The board may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Texas Family Code, Chapter 232 as added by Acts 1995, 74th Legislature Chapter 751, §85 (HB 433) and may not review, vacate, or reconsider the terms of an order.

(d) - (g) (No change.)

(h) The individual must pay a reinstatement fee set out in §801.18 [~~§801.19~~] of this title (relating to Fees) prior to issuance of the license under subsection (g) of this section.

§801.301. Relevant Factors.

When a licensee has violated the Act or this chapter, three general factors combine to determine the appropriate sanction which include [~~includes~~]: the culpability of the licensee; the harm caused or posed; and the requisite deterrence. It is the responsibility of the licensee to bring exonerating factors to the attention of the ethics committee or administrative law judge. Specific factors are to be considered as set forth herein.

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

§801.302. Severity Level and Sanction Guide.

The following severity levels and sanction guides are based on the relevant factors in §801.301 of this title (relating to Relevant Factors).

(1) Level One--Revocation [~~revocation~~] of license. These violations evidence intentional or gross misconduct on the part of the licensee and/or cause or pose a high degree of harm to the public and/or may require severe punishment as a deterrent to the licensee, or other licensees. The fact that a license is [~~ordered~~] revoked does not necessarily mean the licensee can never regain licensure.

(2) Level Two--Extended [~~extended~~] suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but may require termination of licensure for a period of not less than one year.

(3) Level Three--Moderate [~~moderate~~] suspension of license. These violations are less serious than Level Two violations, but may require termination of licensure for a period of time less than a year.

(4) Level Four--Probated [~~probated~~] suspension of licensure. These violations do not involve enough harm, misconduct, or need for deterrence to warrant termination of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Probationary terms may be ordered as appropriate.

(5) Level Five--Reprimand. [~~reprimand.~~] These violations involve inadvertent or relatively minor misconduct and/or rule violations not directly involving the health, safety and welfare of the public.

(6) (No change.)

§801.303. Other Actions.

The ethics committee may resolve pending complaints with actions which are not considered formal disciplinary actions. These include: issuance of an advisory notice, warning letter; or informal reminder; issuance of a "Conditional Letter of Agreement;" and/or other actions as deemed appropriate by the ethics committee. [~~by issuance of formal advisory letters informing licensees of their duties under the Act or this chapter, and whether the conduct or omission complained of appears~~

to violate such duties. Such advisory letters may be introduced as evidence in any subsequent disciplinary action involving acts or omissions after receipt of the advisory letters. The ethics committee or executive director, as appropriate, may also issue informal reminders to licensees regarding compliance with minor licensing matters.] The licensee is not entitled to a hearing on the matters set forth in the notice, letter, reminder, "Conditional Letter of Agreement," or other action [formal advisory letters or informal reminders,] but may submit a written response to be included [with such letters] in the complaint [licensing] record. Such actions by the ethics committee may be introduced as evidence in any subsequent disciplinary action involving acts or omissions after receipt of the notice, letter, reminder, "Conditional Letter of Agreement," or other action which is does not involve a formal disciplinary action.

(1) An advisory notice, warning letter or informal reminder. The ethics committee may resolve pending complaints by issuance of a formal advisory notice, warning letter, or informal reminder informing licensees of their duties under the Act or this chapter, whether the conduct or omission complained of appears to violate such duties, and whether the board has a concern about the circumstances surrounding the complaint.

(2) A "Conditional Letter of Agreement." The ethics committee may resolve pending complaints by issuance of a "Conditional Letter of Agreement" informing licensees of their duties under the Act or this chapter, whether the conduct or omission complained of appears to violate such duties, and creating board-ordered conditions for the long-term resolution of the issues in the complaint. This "Conditional Letter of Agreement" specifies the immediate disposition of the complaint. The licensee is issued the "Conditional Letter of Agreement" by the ethics committee, executive director, or designee; a signature of agreement by the licensee is not required. If the licensee fails to comply with all the board-ordered conditions in the specified time frame outlined in the "Conditional Letter of Agreement," the licensee will not have a right to a subsequent review of the issues in the original complaint by the ethics committee, but rather, a new complaint will be opened for the original violation(s), and notice of the violation(s) will be issued to the licensee, proposing to impose a formal disciplinary action as the resolution. The disciplinary action proposed for failure to comply with a "Conditional Letter of Agreement" will be a reprimand, unless otherwise specified by the ethics committee. "Procedures for Revoking, Suspending, Probating or Denying a License, or Reprimanding a Licensee" shall apply when a formal disciplinary action is proposed.

(3) Other actions. The ethics committee may resolve pending complaints with other actions which are not considered formal disciplinary actions.

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 September 14, 2012.

TRD-201204878
Michael Miller
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 776-6972

♦ ♦ ♦

SUBCHAPTER M. LICENSING OF PERSONS WITH CRIMINAL BACKGROUNDS

22 TAC §801.331, §801.332

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 502.

§801.331. Purpose.

The purpose of this subchapter is to comply with Texas Occupations Code, Chapter 53 (relating to Consequences of Criminal Conviction) by establishing guidelines and criteria regarding the eligibility of persons with criminal backgrounds to obtain licenses as a marriage and family therapist.

§801.332. Criminal Conviction.

(a) (No change.)

(b) In considering whether a criminal conviction directly relates to the occupation of a licensee, the board shall consider:

(1) (No change.)

(2) the relationship of the crime to the purposes for requiring a license to be a licensed marriage and family therapist or licensed marriage and family therapist associate. The following felonies and misdemeanors relate to the license of a licensed marriage and family therapist or licensed marriage and family therapist associate because these criminal offenses indicate an inability to perform as a therapist or a tendency to be unable to perform as a licensed marriage and family therapist or licensed marriage and family therapist associate:

(A) (No change.)

(B) a misdemeanor and/or a felony offense under various chapters of the Texas Penal Code:

(i) - (iv) (No change.)

(v) concerning Title 4, which relates to offenses of attempting or conspiring to commit any of the offenses [in clauses (i) - (v)] of this subparagraph; and

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

(5) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensed marriage and family therapist or licensed marriage and family therapist associate. In making this determination, the board will apply the criteria outlined in Texas Occupations Code, Chapter 53.

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 September 14, 2012.

TRD-201204879

Michael Miller
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 776-6972

♦ ♦ ♦

SUBCHAPTER N. INFORMAL CONFERENCES

22 TAC §801.351

STATUTORY AUTHORITY

The amendment is authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendment affects Texas Occupations Code, Chapter 502.

§801.351. Informal Conference.

(a) (No change.)

(b) If the executive director or the ethics committee [~~of the board~~] determines that the public interest may be served by attempting to resolve a complaint or contested case with an agreed order in lieu of a formal hearing, the provisions of this subchapter shall apply. A licensee or applicant may request an informal conference; however, the decision to hold a conference shall be made by the executive director or the ethics committee.

(c) - (y) (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 September 14, 2012.

TRD-201204880
Michael Miller
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 776-6972

♦ ♦ ♦

SUBCHAPTER O. FORMAL HEARINGS

22 TAC §§801.361 - 801.364

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

The amendments affect Texas Occupations Code, Chapter 502.

§801.361. Purpose.

The purpose of this subchapter is to establish rules governing [~~These rules cover~~] the hearing procedures and practices that are available to persons or parties who request formal hearings from the board. The intended effect of these rules is to supplement the contested case provisions of the Texas Government Code, Chapter 2001, Administrative Procedure Act (APA), the hearing procedures of the State Office of Administrative Hearings (Texas Government Code, Chapter 2003 and Rules of Procedure, 1 Texas Administrative Code, Chapter 155), and to make the public aware of these procedures and practices.

§801.362. Proper Notice.

(a) - (c) (No change.)

§801.363. Default.

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

(e) Motion to set aside and reopen. A timely motion by the respondent to set aside the default order and reopen the record may be granted if the respondent establishes that the failure to attend the hearing was neither intentional nor the result of conscious indifference, and that such failure was due to mistake, accident, or circumstances beyond the respondent's control.

(1) A motion to set aside the default order and reopen the record shall be filed with the board prior to the time that the order of the board becomes final, pursuant to the provisions of the Texas Government Code.

(2) (No change.)

(f) (No change.)

§801.364. Action after Hearing.

(a) (No change.)

(b) Final orders or decisions.

(1) (No change.)

(2) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law, either in the body of the order, by attachment, or by reference to an Administrative Law Judge's [~~ALJ's~~] proposal for decision.

(3) (No change.)

(c) - (d) (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 September 14, 2012.

TRD-201204881
Michael Miller
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 776-6972

♦ ♦ ♦

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 13. MISCELLANEOUS INSURERS AND OTHER REGULATED ENTITIES SUBCHAPTER E. HEALTH CARE COLLABORATIVES

The Texas Department of Insurance proposes new 28 Texas Administrative Code (28 TAC) Chapter 13, Subchapter E, §§13.401 - 13.404, 13.411 - 13.417, 13.421 - 13.426, 13.429, 13.431 - 13.432, 13.441, 13.451 - 13.455, 13.461, 13.471 - 13.474, 13.481 - 13.483, and 13.491 - 13.494. The department proposes this new subchapter to implement ARTICLE 4 of Senate Bill (SB) 7, enacted by the 82nd Legislature, First Called Session, effective September 28, 2011. SB 7 adds Insurance Code Chapter 848 relating to health care collaboratives (HCCs).

SB 7 provisions include legislative findings directed to health care collaboratives. The legislature found that it would benefit the State of Texas to:

(1) explore innovative health care delivery and payment models to improve the quality and efficiency of health care in this state;

(2) improve health care transparency;

(3) give health care providers the flexibility to collaborate and innovate to improve the quality and efficiency of health care; and

(4) create incentives to improve the quality and efficiency of health care.

Id. at Art. 2, §2.01(a).

The legislature further found that, "[U]se of certified health care collaboratives will increase pro-competitive effects as the ability to compete on the basis of quality of care . . . will overcome any anticompetitive effects . . . ." and that it is ". . . appropriate and necessary to authorize health care collaboratives to promote the efficiency and quality of health care." *Id.* at Art. 2, §2.01(b).

In conjunction with the creation of HCCs to provide or arrange to provide health care services under contract with a governmental or private entity, the legislature included in SB 7 a specific finding relating to state action immunity:

The legislature intends to exempt from antitrust laws and provide immunity from federal antitrust laws through the state action doctrine a health care collaborative that holds a certificate of authority . . . and that collaborative's negotiations of contracts with payors. The legislature does not intend or authorize any person or entity to engage in activities or to conspire to engage in activities that would constitute per se violations of federal antitrust laws.

Id. at Art. 2, §2.01(c).

Every initial or renewal application for an HCC certificate of authority requires independent department and attorney general antitrust review. This competition-related review must occur at least annually to ensure that: (1) no reduction of competition due to HCC size or composition occurs; (2) pro-competitive benefits outweigh anticompetitive effects of increases in market power; and (3) HCCs do not violate the enumerated rights of physicians. Review associated with the pro-competitive benefit analysis will be in accordance with established antitrust principles of market power analysis.

Other essential aspects of the department's application review focus on solvency, organization, quality, and efficiency in service delivery.

Solvency and organization review standards are necessary to ensure that the HCC maintains financial solvency through sufficient capitalization and reserves and that it complies with statutory formation and governance requirements.

Quality and efficiency review standards are necessary to ensure that the HCC provides adequate networks; increases collaboration; promotes improved outcomes, safety, and coordination of services; reduces preventable events; and contains costs without compromising the quality of patient care.

If the commissioner determines that an application for certificate of authority complies with all Chapter 848 certification requirements, the commissioner must forward the application and all items considered by the commissioner in making the determination to the attorney general. The attorney general must then conduct an independent antitrust review of the application to determine if the applicant meets the requirements of Insurance Code §848.057(a)(5) and (6). After making the determination, the attorney general must notify the commissioner of concurrence or nonconcurrence with the commissioner's determination.

Insurance Code §848.151 authorizes the commissioner and attorney general to adopt reasonable rules necessary and proper to implement the requirements of Insurance Code Chapter 848.

This proposed subchapter is also necessary to implement the requirements of Insurance Code §848.054 and §848.152, which require the commissioner to adopt rules governing the application for certificate of authority to organize and operate an HCC and to prescribe the fees to be charged and the assessments to be imposed to pay the reasonable expenses of the department and the attorney general in administering Chapter 848.

In drafting the rules that create this new type of health delivery system, the department includes a number of requirements similar to those that apply to issuers of other network-based health plans, such as health maintenance organization (HMO) and preferred provider benefit plans. The proposal also includes more expansive requirements consistent with the consideration of antitrust issues and regulations.

The following provides an overview of the proposed new rules.

Division 1. General Provisions.

Section 13.401 states the purpose of Subchapter E, which is to implement Insurance Code Chapter 848 and other Texas insurance laws that apply to HCCs. Section 13.401 also provides that the subchapter's provisions are severable and do not limit the commissioner's exercise of statutory authority. Section 13.402 contains definitions for words and terms used in the proposed new subchapter, providing for uniform application of the subchapter. Section 13.403 describes the location and method to file original or renewal HCC applications. It also identifies and adopts by reference the forms that must be used with the proposed new subchapter to facilitate review and requires completion of the forms in accordance with each form's instructions and data content requirements. Section 13.404 provides restrictions on the use of the term "HCC" by an applicant both before and after issuance of a certificate of authority to ensure that members of the public interacting with the developing or established HCC are informed of its status.

Division 2. Application for Certificate of Authority.

Section 13.411 provides that the application fees for original and renewal applications are $10,000 and $5,000, respectively, and are also nonrefundable. The section provides that each HCC

must pay an annual assessment to the department as described in §13.421(c). The annual assessment will make up any shortfall between the expenses incurred by the department and the attorney general and the funds collected through application fees, renewal fees, and examination expenses. The section also provides notice that the application is public information except as provided by Insurance Code §848.005(b).

Section 13.412 addresses procedures governing revisions during the review of an HCC application. This section also provides that a certification of the corporate secretary or president that the revision is true, accurate, and complete must accompany each revision to the basic organizational documents, bylaws, or officers' and employees' bond.

Section 13.412 also provides notice that the department will conduct examinations and notify the applicant of any necessary revisions to the application and that the department may withdraw the application on behalf of the applicant if the applicant does not make the necessary changes. The section provides that if the time required to make the corrections exceeds the time limit provided in Insurance Code §848.056(c), the applicant must: (1) request a specific amount of additional time, which may not exceed 90 days; and (2) include sufficient detail for the commissioner to determine if cause exists to grant the extension. The applicant may request additional time as needed. The commissioner may grant or deny a request under Insurance Code §848.056.

Section 13.413 addresses the contents of an application for an HCC certificate of authority.

To facilitate the department's review, §13.413(a) requires that the application include items in the order listed in §13.413, and §13.413(b) requires that nonelectronic filings include two additional copies of the application.

Section 13.413(c) requires the filing of a complete application for certificate of authority that includes an HCC representative's affirmed declaration that the HCC's collection methodology for confidential information satisfies the requirement of the rule for any confidential information included in the filing. The filing must also include the following general contents:

(1) basic organizational documents and any amendments, including an original incorporation certificate with charter number and seal;

(2) certified copies of bylaws, rules, and other documents regulating the internal affairs of the applicant;

(3) the applicant's proposed plan of operation, including specified information designed to convey the intended scope of operations and pro-competitive strategies;

(4) biographical information about officers, directors, and staff;

(5) separate organizational charts or lists identifying contractual relationships with the applicant's health care delivery system and affiliates; lists of contracts between the applicant and affiliates addressing provision of services; and a chart showing the internal organizational structure of the applicant's staff;

(6) notice of the physical address in Texas of all of the applicant's books and records; and

(7) a description of specified information items demonstrating the applicant's capacity to meet the needs of patients and participants and to comply with regulatory and contractual requirements.

Section 13.413(d) addresses financial information filing requirements, including:

(1) specified projected financial statements;

(2) a balance sheet reflecting actual assets and liabilities and net assets complying with §13.431;

(3) the form of any applicant-payor contract that addresses the applicant arranging for medical and health care services for the payor in exchange for payments in cash or kind as provided in Insurance Code Chapter 848;

(4) if applicable, insurance or other protection against insolvency;

(5) proof of maintenance of a fidelity bond or similar officer and employee antifraud protection as provided in §13.473; and

(6) authorization for disclosure to the commissioner of financial records to confirm the assets of the applicant and affiliates.

Section 13.413(e) addresses provider and service area information filing requirements. It requires:

(1) a description and map of the service area as specified;

(2) specified network configuration information and lists of participants with information detail as specified;

(3) a listing of and specific information about any integrated practice group or independent practice association to which each participant belongs;

(4) for each participating facility, the facility's name and business address, a description of services provided, and a statement about whether the facility's agreement with the HCC permits it to affiliate or contract with other HCCs;

(5) the form of specified HCC contracts or monitoring plans and applicable subcontracts; and

(6) a written description of the types of compensation arrangements made or to be made with physicians and health care providers in exchange for providing or arranging to provide health care services, including any financial incentives for physicians and health care providers.

Section 13.413(f) addresses quality assurance (QA) and quality improvement (QI) information. It requires the application to include a detailed description of policies and processes contained in the QA and QI program required by §13.482.

Section 13.413(g) requires disclosure information as specified about any accreditation the HCC has attained from a nationally recognized accrediting body.

Section 13.413(h) sets forth antitrust analysis information filing requirements. It requires the filing of the following information:

(1) disclosure, for each participant, of any known past or pending investigation, or administrative or judicial proceeding, in which it is alleged that the participant has engaged in price-fixing or other antitrust violation, or health care fraud or abuse, including any related judgments, fines, or penalties;

(2) identification of each common service provided by participants, grouped as specified;

(3) identification of the primary service area (PSA) for each common service of each participant;

(4) the HCC's calculated market share for each common service in each PSA in which two or more participants provide the common service, using the calculation steps set forth in §13.414;

(5) identification of all physicians, physician groups, or other entities the HCC applicant considers to be or have been its competitors, including its participants' competitors, in its proposed service area;

(6) a description of each pro-competitive benefit that the applicant anticipates will result from establishment of the HCC, as well as an explanation of how achievement of the benefit will be assessed; why the establishment of the HCC will help achieve the benefit; and for a benefit resulting from financial integration, a description of any alternative payment methods that will be used to create and achieve the benefit;

(7) a description of the policies and procedures the HCC will use to ensure that none of its financial incentives will result in any limitation on medically necessary services; and

(8) a description of confidentiality policies and procedures used by the HCC applicant as required by §13.426 to protect the confidential information of an HCC participant from disclosure to other HCC participants.

Section 13.413(i) provides for additional information required of an HCC applicant that does not fall within the limited filing exemption set forth in §13.414. It requires the filing of the following information:

(1) for each participant, the name of each private payor that individually accounts for five percent or more of the participant's business in the past year and completion of the Health Care Collaborative Payor Information Form to provide information related to revenue;

(2) specified business planning documents created within 24 months prior to application and relating to the applicant's or its participants' plans regarding any health care service in each service area;

(3) the name of each individual responsible for negotiating contracts on behalf of participants with payors over the last five years, the name of the participant on whose behalf that individual negotiated, the time periods for which the individual was responsible for those negotiations, and, if known, the individual's current address and phone number;

(4) documents reflecting the applicant's price lists and pricing plans, policies, forecasts, strategies, analyses, and decisions relating to any medical health care service in the service area;

(5) specified information for each individual or entity that has provided or stopped providing any competing health care service in the service area within the previous 36 months;

(6) documents reflecting participants' contribution margins or identifying or quantifying fixed or variable costs for the provision of any health care service in the service area;

(7) if the applicant believes that approval of the application is necessary for the future financial viability of one or more participants, for that participant, documents referencing its future viability, gross or net margins, ability to obtain financing for capital improvements, or other documents the applicant deems necessary for the evaluation of that participant's financial condition;

(8) all memoranda created within 24 months prior to application relating to cost savings, economies, or other efficiencies that have been or could be achieved by any participant regardless of whether the applicant establishes and operates the proposed HCC;

(9) identification of every physician or health care provider in its proposed PSA that the applicant has communicated with about contracting with the HCC within the past 12 months; and

(10) for each participant, for the previous 12 months, all agendas, minutes, summaries, handouts, and presentations made to its board of directors, executive committee, and any other specified committees.

Section 13.414 establishes a limited exemption from certain information filing requirements and provides for certain exceptions.

Section 13.414(a) provides a general purpose statement.

Section 13.414(b) states that an applicant is not required to provide information specified in §13.413(i) if, for each PSA in which two or more participants provide common services, the applicant's market share is 35 percent or less and no contract between the HCC and any participating hospital restricts either party from contracting with other HCCs, networks, hospitals, physicians, physician groups, health care providers, or private payors.

Section 13.414(c) provides that an HCC that contracts with a physician or health care provider in a rural county and does not restrict that physician or health care provider from contracting or dealing with other HCCs, networks, physicians, or health care providers does not have to provide the information specified in §13.413(i) if inclusion of the physician or health care provider is the sole reason that the HCC's share of any common service exceeds 35 percent.

Section 13.414(d) provides that an HCC that includes a rural hospital and does not restrict the hospital from contracting with other HCCs, networks, physicians, or health care providers does not have to provide the information specified in §13.413(i) if inclusion of the rural hospital is the sole reason that the HCC's share of any common service exceeds 35 percent.

Section 13.414(e) provides by categories the formula for calculating market share.

Section 13.414(f) permits an alternative method of calculating market share on a satisfactory demonstration that calculation based on the HCC's PSA for a health care specialty provides a more accurate measure of competition relating to the participant in the context of the HCC than calculation based on the participant's PSA.

Section 13.414(g) provides notice that the commissioner has discretion to require an applicant to provide any or all of the information specified in §13.413(i), §13.461, or both, when the commissioner deems the information necessary to conduct the review required by Insurance Code Chapter 848.

Section 13.415 addresses documents that must be available for examinations.

Section 13.415 specifies 18 types of documents that an HCC must provide to the department on request, make available for review at the HCC's office located in Texas, and maintain for at least five years.

Section 13.416 addresses the review of an original or renewal application.

Section 13.416(a) provides that Insurance Code §§848.056 - 848.060 and 848.153 govern the processing of the application.

Section 13.416(b) explains when examinations will be performed.

Section 13.416(c) provides that application review will include evaluation of pro-competitive benefits and anticompetitive effects of market power increase in accordance with established antitrust principles.

Section 13.416(d) sets forth by example six categories of restrictions that the commissioner has discretion to impose on an HCC applicant's certificate of authority if determined necessary to preserve competition.

Section 13.417 provides for withdrawal of an application by an applicant, or by the department on behalf of an applicant, if the department determines that the applicant has failed to timely respond to department requests for additional information on an incomplete application.

Division 3. Examinations; Regulatory Requirements for an HCC After Issuance of Certificate of Authority; and Advertising and Sales Material.

Section 13.421 addresses examinations and fees for examination expenses.

Section 13.421(a) provides that the department may conduct financial examinations, quality of care examinations, market conduct examinations, or antitrust examinations individually or in consolidation.

Section 13.421(b) states the authority of the commissioner under Insurance Code §848.152(d) to set and collect fees in an amount sufficient to pay reasonable expenses of the department, the attorney general, and their contractors in administering Insurance Code Chapter 848. It also sets forth the specific fee components associated with examination of an HCC.

Section 13.421(c) outlines specific details for imposition of an annual assessment by the department and sets forth a timetable to phase in full implementation of HCC revenue reporting requirements, as well as the assessment basis and timeframe for assessment of and assessment payment by all certified HCCs.

Section 13.421(d) provides that an HCC, on department notification of a pending examination, may request conversion to a renewal review if the request is submitted prior to issuance of any draft examination report. The subsequent renewal date for the HCC will be 12 months following the approval date of the application to renew.

Section 13.422 addresses HCC filing requirements that apply after certification.

Section 13.422(a) provides that an authorized HCC must file certain information with the commissioner, either for approval prior to effectuation or for information.

Section 13.422(b) requires the HCC to report to the department a material change in the size, composition, or control of the HCC.

Section 13.422(c) addresses the specific filings that an HCC must make.

Section 13.422(c)(1) provides that the department will not accept a filing for review until it is complete.

Section 13.422(c)(2) provides that filings requiring approval include:

(1) changes to service area;

(2) material changes to size, composition, or control of the HCC;

(3) proposed dividend payments with a distribution value that meets or exceeds 10 percent of the HCC's net asset value or net income for the prior year;

(4) new or revised loan agreements with affiliates or participants, or amendments to those loan agreements;

(5) any proposed material amendment to basic organizational documents;

(6) any material amendments to the HCC's bylaws;

(7) a change to any name or assumed name on a form specified in §13.404; and

(8) an original or renewal service contract or management agreement.

Section 13.422(c)(3) provides that an HCC must make certain filings for information on or before 30 days after an anticipated change is effective. The filings for information include deletions of and modifications to previously approved or filed operations and documents as specified, including:

(1) officers and directors data;

(2) any change in the physical address of books and records;

(3) any new trademark or service mark or changes to an existing mark;

(4) copies of forms of all new or substantively amended contracts, with revisions marked, as described in §13.413(d)(3) and (e)(5), not including management agreements filed for approval;

(5) notice of cancellation of management contracts;

(6) any insurance contracts or amendments to those contracts, or other protection against insolvency;

(7) any change in the HCC's affiliate chart;

(8) modification to any type of compensation arrangement, including any financial incentives for physicians and providers;

(9) any material change in network configuration; and

(10) the QA and QI program description.

Section 13.422(c)(4) generally addresses the approval time period and process for approving, withdrawing approval for, and rejecting forms.

Section 13.422(c)(5) specifies the filing review procedures that apply to filings under the section.

Section 13.423 addresses service area change applications.

Section 13.423(a) requires the HCC to file an application for approval before expanding or reducing an existing service area or adding a new service area.

Section 13.423(b) sets forth eight categories of items that, if changed by a service area expansion or reduction, must be submitted for approval or information, as appropriate.

Section 13.423(c) and (d) require that the application be complete before review takes place and state that an application is complete when all information reasonably necessary for a final determination by the department, including information demonstrating the HCC's compliance with the subchapter's QA, QI, and credentialing requirements, has been filed with the department.

Section 13.423(e) sets forth circumstances under which the department may require the HCC to file an application for renewal before the date required by Insurance Code §848.060(a).

Section 13.424 addresses certificate of authority renewal requirements.

Section 13.424(a) provides that the HCC must file with the commissioner an application to renew its certificate not later than 180 days before its certificate anniversary date.

Section 13.424(b) sets forth items to be included in the filing.

Section 13.424(c) operates to prevent duplicative filings by specifying that the HCC need not resubmit previously filed documents that are not amended, modified, revised, canceled, terminated, replaced, or otherwise changed since issuance of the HCC's most recent certificate of authority. Instead, the HCC must file a transmittal form identifying those documents along with an authorized HCC representative's attestation that the identified documents are unchanged.

Section 13.424(d) extends the scope of §13.424(c) to documents filed and either approved or accepted after issuance of the certificate of authority pursuant to §13.422.

Section 13.424(e) states that review of the filing will begin only when the filing is complete and sets forth content specification for notices the department will issue to advise an HCC about necessary additional submissions to complete the filing.

Section 13.424(f) provides that the review of, and official action related to, a completed renewal application will accord with Insurance Code §848.060, with the review conducted as if the application for renewal were a new application.

Section 13.425 addresses compensation arrangements.

Section 13.425(a) restates the requirement that an HCC comply with Insurance Code §848.053, concerning a compensation advisory committee and the sharing of data.

Section 13.425(b) requires that the HCC establish and enforce procedures to maintain the confidentiality of charge, fee, and payment data and information between its participants and any individual or entity outside the HCC, including information for transmittal to the department.

Section 13.425(c) prohibits a participant from using confidential charge, fee, and payment data collected by the HCC in any negotiation to which the HCC is not a party.

Section 13.426 addresses confidentiality and requires an HCC to establish and administer procedures and internal controls to safeguard and ensure against the sharing of confidential information with or among participants. The requirements include establishing and enforcing collection, custodial, retrieval, and transmittal procedures to ensure information is protected as confidential both as to entities and individuals outside the HCC, including through submission to the department or the attorney general, and between or among participants.

Section 13.429 provides that HCCs must comply with Insurance Code Chapters 541 and 542 and department rules adopted pursuant to those chapters, as applicable, in the same manner as insurance companies or HMOs.

Division 4. Financial Requirements.

Section 13.431 addresses reserves and working capital requirements.

Section 13.431(a) requires an HCC to maintain working capital that is composed of current assets and that meets the requirements of the subsection concerning unencumbered net equity and asset-liability ratio as applicable.

Section 13.431(b) requires an HCC to have reserves sufficient to operate and maintain the HCC and to arrange for services and expenses it incurs, and to compute financial reserves in accordance with Generally Accepted Accounting Principles in an amount not less than 100 percent of incurred but not paid claims of nonparticipating physicians and providers.

Section 13.431(c) specifies reserve requirements that apply to any certified HMO or insurer that contracts with an HCC under Insurance Code §848.103. The reserve must be: (1) equivalent in value to three months of prepaid funding or capitation payments; (2) phased in over a no-more-than 36-month period; (3) maintained separately from and in addition to all other reserves and liabilities of the HMO or insurer; (4) unencumbered and dedicated to assure its availability for its intended purpose; and (5) reported separately from all other reserves and liabilities of the HMO or insurer.

Section 13.431(d) provides that current assets are limited to U.S. currency, certificates of deposit with fixed terms of one year or less, money market accounts, accounts receivable from government payors, and other accounts receivable net of all allowances and 90 days or less old for purposes of meeting the section's minimum working capital requirements.

Section 13.431(e) provides that investments in capital assets, mortgages, notes, and loan-backed securities are excluded from the calculation of reserves and net equity in determining satisfaction of the section's minimum requirements.

Section 13.432 prohibits a director, member of a committee, officer, or representative of an HCC who is charged with the duty of handling or investing its funds from intentionally depositing or investing those funds other than in the corporate name of the HCC or in the name of a nominee of the HCC, or taking or receiving to his or her own use any fee, brokerage, or commission for, or on account of a loan made by or on behalf of the HCC, except for reasonable interest on amounts that the individual has loaned to the HCC.

Division 5. HCC Contract Arrangements.

Section 13.441 addresses general provisions concerning HCC contracts.

Section 13.441(a) provides that an HCC's contracts with physicians and health care providers must not impede application of provisions in the Insurance Code and Title 28 TAC that regulate HMOs and preferred provider benefit plans and that impose requirements concerning relations with physicians or health care providers.

Section 13.441(b) prohibits an HCC from using a financial incentive or making a payment to a physician or health care provider if the incentive or payment acts directly or indirectly as an inducement to limit medically necessary services.

Section 13.441(c) prohibits a dominant provider as defined in the subsection from requiring a private payor to contract exclusively with the HCC or otherwise restricting a private payor's ability to contract or deal with other HCCs, networks, physicians, or health care providers.

Division 6. Change of Control by Acquisition of or Merger with HCC.

Section 13.451 contains definitions for "control" and "voting security."

Section 13.452 addresses determination of control for this division of the subchapter, with provisions for rebutting the presumption of control, as well as commissioner determination of control.

Section 13.453 addresses filing requirements that apply in connection with a change of control of the HCC.

Section 13.453(a) specifies prohibitions that apply concerning the acquisition of ownership interest in or control of a certified HCC unless the individual or entity acquiring the interest or control has filed specified documents with the department.

Section 13.453(b) specifies the documents that the individual or entity acquiring the ownership interest or control must file under oath or affirmation.

Section 13.453(c) and (d) clarify the application of the section's requirements concerning each partner of a partnership, member of a syndicate or group, and individual or entity who controls the partner or member subject to the filing requirements of the section.

Section 13.454 provides the grounds for commissioner disapproval of a proposed acquisition of control and the timetable within which either the commissioner action is to take place or approval of the change of control is deemed.

Section 13.455 provides that for any change of control of an HCC resulting in an increase to market share for any PSA as provided in §13.414, the department may require that the HCC file an application for renewal before the date required by Insurance Code §848.060. Further, an HCC may submit an application for renewal of certificate of authority in connection with a filing under this division.

Division 7. Administrative Procedures.

Section 13.461 provides that the commissioner may require additional information from an HCC or any participant as reasonably necessary to make any determination required by Insurance Code Chapter 848, this subchapter, and applicable insurance laws and regulations, including any or all of the 24 additional information item types set forth in the section. The section does not require the creation of items listed unless required to be provided; once created, however, the HCC or participant must maintain the documents for at least five years.

Division 8. Other Requirements.

Section 13.471 requires an HCC to notify all affected payors in writing of a material change in the payment arrangement for physicians, health care providers, or both within 30 days of any change in payment arrangement type. The notification must include descriptions of the payment arrangement that has been changed and the new payment arrangement. This notice is distinct from notice requirements in Insurance Code §843.321 and §1301.136 requiring notice not later than the 90th day before an insurer or HMO effects changes to coding guidelines or fee schedules that will result in a change of payments to a physician or provider.

Section 13.472 identifies contracts with other specified providers and requires for those contracts that the HCC must submit to the department a monitoring plan to ensure the implementation of all delegated functions in compliance with all department regulatory requirements. The section also requires the HCC to conduct an on-site or desk audit of the delegated entity, delegated network, or delegated third party at least annually to verify continuing compliance with department regulatory requirements. It also requires prompt action to correct any failure by the delegated entity, delegated network, or delegated third party to comply with the department's regulatory requirements applicable to delegated functions.

Section 13.473 addresses the general organization of an HCC.

Section 13.473(a) provides that the governing body of an HCC must be ultimately responsible for the development, approval, implementation, and enforcement of essential policies and procedures related to the HCC's operations.

Section 13.473(b) specifies requirements that apply to the HCC's clinical director.

Section 13.473(c) permits the HCC to establish one or more service areas within Texas, specified by counties and ZIP codes or portions of counties, with cost center accounting for each service area to facilitate the reporting of divisional operations in financial reporting. Section 13.473 also states the requirements for network adequacy for any of the service areas that the HCC establishes in Texas.

Section 13.473(d) requires that the HCC protect against acts of fraud or dishonesty by its officers and employees in one of three ways: (1) maintaining in force in its own name a fidelity bond on its officers and employees in an amount of at least $100,000 or another amount prescribed by the commissioner; (2) maintaining in force in its own name insurance coverage in a form and amount acceptable to the commissioner; or (3) depositing with the office of the comptroller in Texas readily marketable liquid securities acceptable to the commissioner.

Section 13.474 sets forth essential requirements for an HMO's or insurer's delegation of functions to HCCs. It states that delegation of HMO or insurer functions to an HCC is governed by Insurance Code Chapter 1272 and 28 TAC Chapter 11, Subchapter AA. It further provides that if provisions of this subchapter conflict with Chapter 1272 or 28 TAC Chapter 11, Subchapter AA, this subchapter will govern. The section also requires specified disclosures in provider listings, insurance policies, and certificates distributed to insureds or enrollees if there is a delegation agreement between the HCC and an HMO or an insurer.

Division 9. Quality and Cost of Health Care Services.

Section 13.481 provides essential details for the QI structure for HCCs. It requires the HCC to develop and maintain an ongoing QI program to objectively and systematically monitor and evaluate the quality and appropriateness of health care services it arranges for or offers. It provides that the governing body ultimately is responsible for the QI program and sets forth QI duties of the governing board. It provides that board must appoint a QI committee (QIC) that must evaluate the overall effectiveness of the QI program and use multidisciplinary teams when indicated to accomplish the HCC's QI program goals. It permits the QIC to delegate QI activities to other appointed committees, which are then to submit a written report of any recommendations as a result of committee findings regarding QI.

Section 13.482 requires an HCC to establish, implement, and administer a continuous QA and QI program that includes defined policies and processes to achieve the basic legislative objectives for HCCs. The proposed new section sets forth specific program components and specifically addresses the promotion of evidence-based medicine and best practices; patient engagement; coordination of care across a continuum of care; and mea-

surement and reporting about quality of health care services and impact on cost.

Section 13.483 addresses credentialing and requires an HCC to implement a documented process for selection and retention of contracted participants. It provides that the process must comply with standards promulgated by the National Committee for Quality Assurance, URAC, or the Joint Commission on Accreditation of Hospital Organizations, as appropriate and applicable.

Division 10. Complaint Systems; Rights of Physicians; Limitations on Participation.

Section 13.491 addresses complaint systems. It requires each HCC to implement and maintain a complaint system that complies with Insurance Code §848.107 to provide reasonable procedures for resolving an oral or written complaint initiated by a complainant concerning the HCC or health care services arranged by or offered through the HCC. The section defines "complaint," requires a process for notice and appeal of a complaint initiated by or on behalf of a patient who sought or received health care services by a participant, and affirms the commissioner's authority to examine a complaint system for compliance with §848.107 and the subchapter.

Section 13.492 sets forth requirements for acknowledgement, response, investigation, and issuance of a resolution letter. It also provides for issuance of a decision letter in situations where a patient complaint has been appealed. The letter must include specific reasons for the decision and disclose that the complainant may file a complaint with the department if dissatisfied with the resolution, the appeal, or the complaint process. The section also requires maintenance of a complaint log capturing and categorizing each complaint. The HCC must maintain the log for each complaint and documentation on each complaint, complaint proceeding, and action taken until the third anniversary after the date the complaint was received.

Section 13.493 addresses rights of physicians and provides that before a complaint against a physician is resolved or a physician's association with an HCC is involuntarily terminated, the HCC must provide the physician with the opportunity to dispute the complaint or termination. The section requires that the process include written notice of the complaint or basis of termination, an opportunity for hearing and presentation of information at the hearing, and a written decision that specifies reasons for the decision.

Section 13.494 permits an HCC to limit a physician or physician group from participating in the HCC only if the limitation is based on an established development plan approved by the HCC's board of directors, a copy of which must be provided to the physician or physician group. The section also prohibits the HCC from taking a retaliatory or adverse action against a physician or health care provider that files a complaint with a regulatory authority regarding an HCC's action.

Department Outreach.

On January 30, 2012, the department held an initial stakeholder meeting to provide interested persons the opportunity to discuss anticipated rulemaking topics for development and inclusion in HCC rules. Representatives from the office of the attorney general attended the meeting. General discussion areas included: (1) the application process, including organizational and financial documents, networks, and antitrust issues; (2) the regulatory fees and assessments associated with the organization and operational processes of an HCC; and (3) the renewal process.

On April 16, 2012, the department posted a call for comments from the public on the substance and possible implementation costs of an informal working draft of the rule. In addition to receiving written comments on the draft, the department held a second stakeholder meeting on April 24, 2012, to discuss the draft and potential compliance costs. Representatives of the office of the attorney general also attended this meeting.

The department appreciates all comments received and discussions held during the drafting process.

FISCAL NOTE. Jeff Hunt, admissions officer, Company Licensing & Registration, has determined that for each year of the first five years the proposal will be in effect, there will be no measurable fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. No measurable effect on local employment or the local economy will result from the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Hunt also has determined that for each year of the first five years the proposed subchapter is in effect, public benefits anticipated as a result of the enforcement and administration of this proposal include: (1) the implementation of rules necessary to comply with SB 7; (2) the establishment of regulatory standards for the new HCCs, including standards for certification, acquisition, financial requirements, contracting, market power, advertising and sales, complaint systems, rights of physicians, and limitations on participation; (3) transparency of information for consumers using HCCs through the establishment and maintenance of advertising requirements, quality improvement program requirements, and complaint resolution requirements; and (4) the efficient regulation and operation of HCCs in Texas.

The department has drafted the proposed rules to maximize public benefits consistent with the authorizing statutes while mitigating costs.

Mr. Hunt also has determined potential compliance costs for physicians and other entities that complete an application to organize and operate an HCC, as set forth in this part.

On April 16, 2012, the department posted a call for comments on its website that included a request for comments regarding the costs of implementing the rule. As a result, the department received general input on the cost of compliance, as well as a specific single-case cost estimate. The department has modified the rule text in an effort to lessen potential costs and has developed estimated costs for compliance with the proposed rule based on the single estimate received, as well as cost components previously used by the department for similar compliance requirements. HCCs and participants that identify differing costs for those components based on their own operations will be able to calculate their particular costs using the department's cost analysis approach.

The department has identified six categories of labor reasonably necessary to implement the proposed subchapter. HCCs may calculate the total cost of labor for each category by multiplying the number of estimated hours for each cost component by the median hourly wage for each category of labor. The hourly cost of labor for each HCC might vary from the median due to factors such as additional compensation benefits paid by the HCC or variations in wages in different parts of the state. The median hourly wage for each category of labor is published online by the Texas Workforce Commission as follows:

(i) a general operations manager or functional director: $58.64 (www.texasindustryprofiles.com/apps/win/eds.php-?geocode=4801000048&indclass=8&indcode=5241&occ-code=11-1021&compare=2);

(ii) a computer programmer: $38.60 (http://www.texasindustryprofiles.com/apps/win/eds.php?geocode=4801000048&indclass=8&indcode=5241&occcode=15-1131&compare=2);

(iii) an administrative assistant: $21.69 (www.texasindustryprofiles.com/apps/win/eds.php?geocode=4801000048&indclass=8&indcode=5241&occcode=43-6011&compare=2);

(iv) a staff attorney: $51.56 (www.texasindustryprofiles.com/apps/win/eds.php?geocode=4801000048&indclass=8&indcode=5241&occcode=23-1011&compare=2);

(v) a medical director: $105.65 (www.texasindustryprofiles.com/apps/win/eds.php?geocode=4801000048&indclass=8&indcode=6221&occcode=11-1011&compare=2); and

(vi) a financial analyst: $28.76 (http://www.texasindustryprofiles.com/apps/win/eds.php?geocode=4801000048&indclass=1&indcode=000000&occcode=13-2011&compare=2).

The department anticipates that an applicant organizing an HCC under Insurance Code Chapter 848 and this new subchapter will incur costs related to printing, copying, mailing, and transmitting documents.

According to the United States Postal Service business price calculator, available at dbcalc.usps.gov, the cost to mail machinable letters in a standard business mail envelope with a weight limit of 3.3 ounces to a standard five-digit ZIP code in the United States is approximately 27 cents. With the weight limit of 3.3 ounces, approximately 18 pages could be sent per envelope for the 27 cent cost. This estimate is based on six pages of standard printing paper, which weighs one ounce. The department estimates that the cost of a standard business envelope is 1.6 cents. The department further estimates that the cost of printing or copying is between 6 and 8 cents per page.

The department is not able to estimate the total printing, copying, mailing, and transmitting costs attributable to compliance with the proposed subchapter. Several variable factors drive these costs so that reliable calculation by the department is impracticable. These variable factors include the size of the HCC's service area, the number of patients utilizing the HCC, the number of participants in the HCC, the market share of the HCC and its participants, the range of services offered by the HCC, and the number of complaints generated annually.

Each HCC formed under the new subchapter will have the information necessary to determine its individual printing, copying, mailing, and transmitting costs necessary to meet the requirements of the subchapter, and the department has identified factors for the sections that may contribute to the costs of printing, copying, mailing, and transmitting where applicable.

Section 13.411. Filing Fee; Annual Assessments; Open Records.

Section 13.411(b) imposes an original application nonrefundable filing fee of $10,000.

Section 13.411(c) imposes an annual renewal nonrefundable filing fee of $5,000.

Section 13.411(d) imposes an annual assessment as set forth in §13.421, which is discussed in further detail in a subsequent paragraph. The filing fees and assessments imposed under §13.411 will result in compliance costs for physicians and entities who choose to form an HCC.

Sections 13.413, 13.415, and 13.416. Contents of the Application, Documents to be Available for Quality of Care and Financial Examinations, and Review of Original or Renewal Application; Commissioner Discretion.

Section 13.413 provides the content requirements for the initial application. Section 13.415 specifies the documents required to be available and provided on request during an examination. Section 13.416 requires the department to process an application pursuant to Insurance Code §§848.056 - 848.060 and 848.153, review the documents required by proposed §13.413, and perform quality of care and financial examinations.

In accordance with Insurance Code §848.059, once the commissioner has determined that an application complies with all requirements, the department will forward the application and all data, documents, and analysis considered in making the determination to the attorney general for review. The attorney general will notify the department if the attorney general does not concur with the department's determination. The attorney general will request additional information if needed to make a determination.

Section 13.421 addresses the commissioner's authority to collect fees sufficient to pay the reasonable expenses of both the department and attorney general in reviewing HCC applications. This will result in a cost of compliance as described in detail in the subsequent discussion related to the §13.421 fee for expenses.

The department estimates that an HCC's administrative staff, financial analysts, computer programmers, and general operations manager will provide most of the labor necessary to assemble and file an application for approval. A general operations manager will supervise the work of the administrative staff in creating the application. For an average HCC providing a full range of medical services in one major metropolitan area, the department estimates that supervision of the application preparation will require 10 to 20 hours.

In the following figure, the department has estimated the number of other staff hours that may be necessary to create or compile the required documents for an average HCC. In some cases, staff time may be necessary to determine that the required documents do not exist and thus do not have to be produced. The creation of documents that are required pursuant to another section of the rule is analyzed in the discussion of those sections.

Figure: 28 TAC Chapter 13--Preamble

The department is unable to quantify additional time that administrative staff may require to perform miscellaneous tasks in completing the application. Additionally, an HCC may use legal assistance in applying for a certificate. For instance, an HCC might choose to employ a lawyer to assist with the compilation of application contents required in §13.413(h), relating to the broad range of antitrust analysis information required of all applicants. The use of legal counsel is discretionary, and the department is unable to quantify the time or other resource cost of legal counsel assistance with the HCC application. The department has, however, received from stakeholders a range of possible legal fee expenses associated with preparation of an HCC's application--from $5,000 to $25,000.

To provide the network information required under §13.413(e)(2), it may be reasonably necessary for an HCC to procure auto-mapping software, such as Geo-Access or

ArcGIS, to make the required maps available for review and to employ information technology staff to use the auto-mapping software. The initial cost of procuring ArcGIS software is $3,000 to $5,000. The department bases this range on cost estimates received from web-based searches conducted by department staff for software availability and price quotes. It will be reasonably necessary for an HCC's computer programmer or administrative assistant to spend an average of five to 10 hours operating the auto-mapping software, determining service areas, and printing the required maps.

Though the department has identified factors attributable to the cost of compliance with §13.413, it cannot estimate the total compliance cost that an HCC applicant could incur because several cost factors are HCC specific, including the size, composition, and complexity of the HCC and whether the HCC or a participant already holds a certificate issued by the department.

Section §13.415 requires HCCs to make available 18 categories of documents for review during an examination, as set forth in §13.415(a)(1) - (18). It will be reasonably necessary for the HCC's general operations manager to spend an average of seven to nine hours identifying and collecting the applicable documents for an examination. Additionally, it will be reasonably necessary for an administrative assistant to spend an average of four hours copying or printing and combining the required documents. The average print and copy costs necessary for compliance could vary for each HCC depending on the number of pages necessary to print or copy.

In addition, it will be reasonably necessary for an HCC to employ a general operations manager and a functional division director from each of the HCC's functional divisions to facilitate an examination in compliance with §13.415, and it will be reasonably necessary for a general operations manager and each functional division director to spend an average of six hours each per examination facilitating the examination by attending meetings with staff from the department.

The total amount of time necessary to facilitate an examination will vary, depending on the number of functional divisions in the HCC's organizational structure and the complexity of the issues that arise during the examination. Though the department has identified factors attributable to the cost of compliance with proposed §13.415, it cannot estimate the total compliance cost that an HCC applicant could incur because several cost factors are HCC specific, including the size, composition, and complexity of the HCC, and the number of additional relevant documents requested by the department during an examination. If deficiencies are noted in the documents produced, additional nonquantifiable staff time may be required to correct deficiencies. The estimated cost to comply with §13.415 represents an average size collaborative, with documents stored in electronic format, and an examination that requires the department to request few additional documents.

Section 13.421. Examination; Fee for Expenses.

Section 13.421(a) provides that in addition to the review and examinations described in §13.416, the department may conduct examinations of HCCs under Insurance Code §848.153 to determine financial condition, quality of health care services, compliance with laws affecting the conduct of business, or effect on market competition.

An exam conducted under §13.421(a)(1) to determine the financial condition of an HCC will cost an average of $10,000, based on the cost to examine entities of similar complexity. An exam conducted under §13.421(a)(2) to determine the quality of health care services provided by an HCC will cost an average of $2,450. The department is unable to estimate the cost of an average exam conducted under §13.421(a)(3) to determine an HCC's compliance with laws affecting the conduct of business because the scope of these exams varies based on the individual events precipitating the exam. The cost of an exam under §13.421(a)(4) to determine the effect on market competition will vary depending on factors that are HCC specific but generally will have costs similar to the initial review of the application under §13.416, potentially including costs on the part of both the department and attorney general staff.

These estimated processing costs represent an examination of an average size collaborative, with documents stored in electronic format, that requires the department or attorney general to request few additional documents. Though the department has identified factors attributable to the cost, it cannot estimate the total compliance cost that an HCC applicant could incur because several cost factors are HCC specific, including the size, composition, and complexity of the HCC, and the number of additional relevant documents requested by the department or the attorney general during an examination.

Section 13.421(b) addresses the commissioner's authority to collect fees in an amount sufficient to pay the reasonable expenses of both the department and attorney general, including direct and indirect expenses incurred by the department and attorney general in examining and reviewing HCCs. The following estimates relate to the costs eligible for recoupment under §13.421(b) that the department will incur as a result of the implementation of Insurance Code Chapter 848 and this proposed subchapter, thus resulting in fees that the department will need to collect pursuant to §13.421(b).

As previously noted, an original or renewal HCC application will be processed pursuant to Insurance Code §§848.056 - 848.060 and 848.153 under §13.416. After completion of the department's review of documents corresponding to an original application, the department will perform the qualifying quality of care and financial examinations. The department may also perform examinations after completion of the department's review of documents corresponding to a renewal application. These examinations will produce costs eligible for recoupment under §13.421(b).

It will be reasonably necessary for department staff to spend approximately 300 to 350 total hours reviewing and conducting an examination under §13.416 for a single application, either original or renewal, with a total cost of $9,150. These estimates are based on costs previously incurred by the department for similar compliance activities. In addition, an original or renewal application will be subject to antitrust review of information required by §13.413(h) and §13.413(i). It will be reasonably necessary for the department to contract with an independent third party to perform the required antitrust review at a cost of up to $25,000 per application for an HCC that presents material antitrust issues.

As the department has been unable to ascertain a publicly available market price for a review in light of the unique nature of the HCC statute, the department based its estimate on consultation with an independent third party attorney with extensive antitrust experience.

Insurance Code §848.059 requires the attorney general to perform an independent review of an original or renewal HCC application that the commissioner has determined to be compliant

with Chapter 848 to determine whether the attorney general concurs with the commissioner's decision. Attorney general staff estimate that the cost to review an application will vary depending largely on the complexity of the antitrust issues presented by the HCC. HCCs with no participants having over 35 percent of the market share for any common services and presenting no complex issues will usually be reviewed for a total attorney general cost of under $10,000. On the other hand, HCCs that have over 35 percent market share or present complex antitrust issues could cost $50,000 or more to review, and increased complexity of antitrust issues could result in higher costs.

These estimated processing costs represent the review and examination of an average size collaborative, with documents stored in electronic format, and an examination that requires the department to request few additional documents. Though the department has identified factors attributable to the cost, it cannot estimate the total compliance cost that an HCC applicant could incur because several cost factors are HCC specific, including the size, composition, and complexity of the HCC, the number of revisions needed during the review of an application, and the number of additional relevant documents requested by the department during the review and qualifying examination.

Section 13.421(c) provides that annually each HCC must pay an assessment to the department as set forth in §13.421(c)(1) - (6), related to the cost by fiscal year to administer Insurance Code Chapter 848 and this proposed subchapter, including direct and indirect expenses incurred by the department and the attorney general attributable to carrying out their responsibilities under Chapter 848, but excluding examination expenses billed directly to the HCC.

The assessment required of each HCC under §13.421(c) will vary depending on their adjusted revenues, since the total regulatory costs are distributed among the HCCs on a pro rata basis.

Though the department has identified factors attributable to the fiscal year cost and estimated costs based on that identification, it cannot estimate the total fiscal year cost because several nonquantifiable cost factors are HCC specific and market defined, including the size, composition, and complexity of an HCC, and the actual number of HCCs for which the department must administer Insurance Code Chapter 848 and this proposed subchapter.

Section 13.422 and §13.423. Filing Requirements that Apply After Issuance of Certificate of Authority and Service Area Change Applications.

Section 13.422(a) provides that after the issuance of a certificate of authority, each HCC must file certain information with the commissioner, either for approval prior to effectuation or for information only.

Section 13.422(b) requires an HCC to report to the department any material change in size, composition, or control of the HCC.

Section 13.422(c)(2) sets forth information filings requiring department approval before implementation. It includes by example information about any material change in size or composition of the HCC, proposed dividends, and any new or revised loan agreements evidencing loans made by the HCC to any physician or health care provider or to any affiliated individual or entity, and any guarantees of any physician's, health care provider's, or affiliated individual's or entity's obligations to any third party.

Section 13.422(c)(3) sets forth information that must be filed with the department for informational purposes within 30 days of implementation. It includes by example information about changes to: biographical data sheets; affiliate charts; compensation arrangements; and network configuration.

Section 13.423(a) requires an HCC to file an application for approval with the department before expanding or reducing an existing service area or adding a new service area. Section 13.423(b) provides that if any information required to be filed under §13.422 is changed as a result of the service area change, the new information or amendments to existing information must be filed with the department for approval or for information as specified in §13.422.

Section 13.423(e) provides that if the proposed service area change might materially affect the HCC's ability to arrange for or provide health care services, or might materially change the antitrust analysis of the HCC, the department may require the HCC to file an application for renewal before the date required by Insurance Code §848.060(a).

The department cannot accurately estimate the compliance cost amount that an HCC could incur as a result of §13.422 and §13.423, because that amount will vary by HCC depending on the frequency of creation or modification of documents or changes in service area that would trigger the filing requirements in §13.422 and §13.423, as well as the number of additional relevant documents requested by the department. However, the department estimates that any incurred costs associated with §13.422 will be similar to the costs incurred by §13.413 relating to the contents of an application based on the HCC staff assigned to prepare and file the information.

Sections 13.424, 13.425, and 13.426. Certificate of Authority Renewal Requirements, Compensation Arrangements, and Confidentiality.

Section 13.424(a) provides that not less than 180 days before its certificate anniversary date, an HCC must file an application to renew its certificate.

Section 13.424(b) provides that the application for renewal must include the Original/Renewal Application for Certificate of Authority to do the Business of a Health Care Collaborative (HCC) in the State of Texas form and the financial statements for the HCC as of the close of the preceding calendar year.

Section 13.424(c) and (d) provide that an HCC does not need to make duplicate filings of documents already on file with the department, if the documents have not changed since the department approved or accepted their filing.

Section 13.424(f) provides that an application for renewal will be reviewed under Insurance Code §848.057 as if the application for renewal were a new application.

The documents and review process required for the renewal application are generally the same as the documents and review process required for the original application and examination, which may reduce the cost of making the documents available for renewal applications under §13.424. The department's time estimates for producing documents for the original application and examination apply equally to this section for the same or similar documents. In addition, the estimated department costs attributable to the review of the original application and examination that may be recouped under §13.421(c) apply equally to this section.

Section 13.425(a) provides that an HCC must comply with the requirements of Insurance Code §848.053, relating to charges,

fees, distributions, or other compensation assessed for services provided by HCC participants and to the sharing of that data among nonparticipating physicians and health care providers.

Section 13.425(b) provides that an HCC must establish and enforce procedures to maintain the confidentiality of charge, fee, and payment data information between HCC participants and any individual or entity outside of the HCC, including information to be transmitted to the department.

Section 13.426(a) provides that an HCC must establish and administer procedures and internal controls to safeguard and ensure against the sharing of any confidential information with or among participants.

Section 13.426(b) provides that the requirements of §13.426 include establishing and enforcing collection, custodial, retrieval, and transmittal procedures to ensure that information that the HCC or its participants must maintain as confidential is protected as confidential both as to entities and individuals outside the HCC and between or among participants.

These requirements apply to confidential information that the HCC maintains as custodian and that the HCC or any of its participants submit to the department under Insurance Code §848.057 or to the attorney general under Insurance Code §848.059.

The department estimates that it will be reasonably necessary for an HCC's general operations manager to spend an average of five to 10 hours creating the policies and procedures required by §13.425 and §13.426. The department also estimates that it may be reasonably necessary for the HCC's general operations manager to consult with legal counsel during the development of these policies and procedures due to the confidentiality requirements and possible antitrust implications. The use of legal counsel is discretionary, however, and the department is unable to accurately quantify the time or other resource cost of legal counsel assistance to develop these policies and procedures.

Though the department has identified factors attributable to the cost of compliance with §13.425 and §13.426, it cannot estimate the total compliance cost that an HCC applicant could incur because several cost factors are HCC specific, including the size, composition, and complexity of the HCC. The estimated costs to comply with the new sections represent an estimate for an average size HCC. The department estimates that each HCC will have the information necessary to determine its individual costs necessary to meet the requirements of the sections.

Section 13.431. Reserves and Working Capital Requirements.

Section 13.431(a)(1) provides that HCCs consisting of physicians and one or more facilities must maintain working capital that is composed of unencumbered net equity of not less than $200,000, with a ratio of current assets to current liabilities of 1.25:1, based on the greater of the prior operating year's actual liabilities or the projected liabilities for the subsequent year. An HCC that has not been certified for more than one year must base its ratio on the projected liabilities for the subsequent year.

Section 13.431(a)(2) provides that all other HCCs must have a ratio of current assets to current liabilities of 1.25:1, based on the greater of the prior operating year's actual liabilities in the instance of an HCC that has been certified for more than one year, or the projected liabilities for the subsequent year.

Section 13.431(b) provides that an HCC must have reserves sufficient to operate and maintain the HCC and to arrange for services and expenses it incurs, computed in accordance with Generally Accepted Accounting Principles in an amount not less than 100 percent of incurred but not paid claims of nonparticipating physicians and providers.

Section 13.431(c) provides that any HMO or insurer holding a certificate of authority from the department that enters into a contract with an HCC pursuant to Insurance Code §848.103 must maintain a reserve equivalent in value to three months of prepaid funding or capitation payments, phased in over not more than a 36-month period.

Section 13.431(d) provides that for the purpose of meeting minimum working capital requirements, current assets of an HCC are limited to U.S. currency, certificates of deposit with fixed terms of one year or less, money market accounts, accounts receivable from government payors, and other accounts receivable that have remained due 90 days or less. Under §13.431(d), accounts receivable must be reported net of all allowances, and assets with a maturity period or fixed term that is greater than one year are not considered current assets.

Section 13.431(e) provides that, to meet the minimum reserve and minimum net equity requirements of the section, investments in capital assets, mortgages, notes, and loan-backed securities must be excluded from the calculation of reserves and net equity.

The department cannot accurately estimate the total compliance cost that an HCC applicant could incur in complying with §13.431 because several cost factors are HCC specific, including the size, composition, complexity, and liabilities of the HCC. The total cost for §13.431 compliance will vary among HCCs. However, the department estimates that each HCC will have the information necessary to determine its individual costs necessary to meet the requirements of the section.

Moreover, the enabling statute requires that TDI adopt rules that establish the working capital and reserve requirements applicable to HCCs.

Sections 13.453, 13.454, and 13.455. Filing Requirements, Commissioner Action, and Change of Control with Increased Market Share.

Section 13.453(a) provides that an individual or entity is prohibited from acquiring an ownership interest in an entity that holds a certificate of authority as an HCC if the individual or entity is, or after the acquisition would be, directly or indirectly in control of the certificate holder or would otherwise acquire control of or exercise any control over the certificate holder unless, in accordance with §13.453(b), the individual or entity, under oath or affirmation, files a Biographical Affidavit form for each individual by whom or on whose behalf the acquisition of control is to be effected and a Health Care Collaborative (HCC) Acquisition Form.

Section 13.454(b)(2) provides that the department may require an HCC to file an application for renewal as a result of a proposed acquisition of control. Section 13.455 provides that the department may require an HCC to file a renewal application before the date required by Insurance Code §848.060(a) as a result of any change in control of an HCC that results in an increase to its market share in any primary service area.

The time cost of completing and providing the Biographical Affidavit form required by proposed §13.453(b)(1) to the HCC's administrative staff will be one to two hours for each individual required to file the form under the proposed subsection. The time cost of preparing and filing the Health Care Collaborative (HCC) Acquisition Form required by §13.453(b)(2) will be one to

two hours of administrative staff time. The estimated costs of complying with §13.424 in relation to certificate of authority renewal requirements apply equally to §13.454(b)(2) and §13.455 regarding the department requiring an HCC to file an application for renewal.

Section 13.461. Commissioner's Authority to Require Additional Information.

Section 13.461(a) addresses the commissioner's authority to require additional information from the HCC or any participant in the HCC as reasonably necessary to make any determination required by Insurance Code Chapter 848, this subchapter, and applicable insurance laws and regulations of this state.

Section 13.461(b) provides that an HCC or participant is not required to create the information listed under §13.461(c) unless the commissioner requires the items to be provided; however, the documents must be maintained by the HCC or participant for at least five years once created.

Section 13.461(c) provides examples of the additional information the commissioner may require.

The department is unable to reliably estimate the cost of compliance with §13.461 because the information required to be submitted by the HCC will vary and is subject to the commissioner's discretion, which makes quantification by the department impracticable. However, this cost note has previously identified the potential administrative, managerial, and legal expertise needed to prepare, gather, and file the types of possible information required by §13.461.

Sections 13.471, 13.472, and 13.473. Notification of Change in Payment Arrangements, Requirements for Certain Delegation Contracts, and Organization of an HCC.

Section 13.471 requires an HCC to notify all affected payors in writing of a material change in the payment arrangement for physicians, health care providers, or both, within 30 days of any change in the type of payment arrangement for any type of service.

The notification of the change must include a description of the payment arrangement that has been changed and a description of the new payment arrangement. The HCC's general operations manager will likely supervise the work of the administrative staff in creating the notices, and that supervision will require one to two hours. It will be reasonably necessary for the HCC's administrative staff to spend two to four hours creating, printing, and mailing the notifications. Though the department has identified factors attributable to the cost of compliance with §13.471, it cannot estimate the total compliance cost that an HCC applicant could incur because several cost factors are HCC specific, including the size, composition, and complexity of the HCC and the number of payors affected by the material change in the payment arrangement.

Section 13.472 provides that an HCC that delegates responsibility by contract with a delegated entity, delegated network, or delegated third party, as those terms are defined in Insurance Code §1272.001 through reference to contracts with HMOs, must submit to the department a monitoring plan setting out how the HCC will ensure that all delegated HCC functions are implemented in a manner consistent with full compliance by the HCC with all regulatory requirements of the department. The section also requires the HCC to conduct an on-site or desk audit of the delegated entity, delegated network, or delegated third party no less frequently than annually, or more frequently on indication of material noncompliance, to obtain information necessary to verify compliance with all regulatory requirements of the department. Written documentation of each audit required by this paragraph must be made available to the department on request; and the HCC must take prompt action to correct any failure by the delegated entity, delegated network, or delegated third party to comply with regulatory requirements of the department relating to any matters delegated by the HCC and necessary to ensure the HCC's compliance with the regulatory requirements.

It will be reasonably necessary for the HCC's general operations manager to spend five to 10 hours creating the monitoring plan required by §13.472. It will also be reasonably necessary for the HCC's administrative staff to spend one to two hours printing and submitting the monitoring plan. Though the department has identified factors attributable to the cost of compliance with §13.472, it cannot accurately estimate the total compliance cost that an HCC applicant could incur because several cost factors are HCC specific, including the size, composition, and complexity of the HCC and the substance of the contracts between HCCs and health care providers.

Section 13.473(b) provides that the HCC must have a clinical director who is currently licensed in Texas or otherwise authorized to practice in this state in the field of services offered by the HCC; resides in Texas; is available at all times to address complaints, clinical issues, utilization review, and any quality of care issues on behalf of the HCC; demonstrates active involvement in all quality management activities; and is subject to the HCC's credentialing requirements, as appropriate. The estimated cost to comply with §13.473(b) is included in the subsequent discussion of the costs of compliance with the required quality improvement program provisions in §13.481 and §13.482.

For each defined service area, §13.473(c)(1) requires the HCC to provide a delivery network that is adequate and complies with Insurance Code Chapter 848 and to demonstrate to the department its ability to provide continuity, accessibility, availability, and quality of services within the HCC's service area.

The requirements under §13.473(c)(1) include that a defined service area have:

(1) participants that are sufficient in number, size, and geographic distribution to be capable of furnishing the contracted health care services;

(2) an adequate number of participants available and accessible to patients 24 hours a day, seven days a week;

(3) sufficient numbers and classes of participants to ensure choice, access, and quality of care;

(4) an adequate number of participating physicians who have admitting privileges at one or more participating hospitals to make any necessary hospital admissions; and

(5) emergency care that is available and accessible 24 hours a day, seven days a week;

(6) services sufficiently available and accessible as necessary to ensure that the distance from any point in the HCC's designated service area to a point of service is not greater than 30 miles in nonrural areas and 60 miles in rural areas for primary care and general hospital care and 75 miles for specialty care and specialty hospitals;

(7) urgent care available and accessible within 24 hours for health and behavioral health conditions;

(8) routine care available and accessible within three weeks for health conditions and within two weeks for behavioral health conditions; and

(9) preventive health services available and accessible within two months for a child, or earlier if necessary for compliance with recommendations for specific preventive care services, and within three months for an adult.

The general operations manager or functional division director will need to be responsible for developing an adequate provider network that complies with §13.473(c)(1). The department cannot accurately estimate the amount of time required to develop the network, since it will vary depending on factors such as the size and complexity of the HCC, the size and location of the HCC's service area, and the length of time a credentialing decision takes. The timeframe for the credentialing decision will depend in part on the type of credentialing system used, as described in §13.483.

The department has determined that the compliance cost would be lessened if an HCC were to contract with independent provider networks to meet network adequacy requirements. While the HCC will be ultimately responsible to ensure compliance with §13.473(c)(1), the factors and components affecting the cost of compliance with the requirements may vary for each requirement. This variation would be based on the size of the network used by an HCC, the scope of the underlying contract between the HCC and the network, and the fees charged by the network for performance of the contract.

Section 13.473(d)(1) provides that an HCC must maintain in force in its own name a fidelity bond on its officers and employees of at least $100,000, or another amount prescribed by the commissioner, issued by an insurer that holds a certificate of authority in Texas.

Section 13.473(d)(3)(A) provides that instead of obtaining a fidelity bond, an HCC may obtain and maintain in force in its own name insurance coverage subject to the same coverage amount and conditions required for a fidelity bond under §13.473(d)(1). The costs of a fidelity bond under §13.473(d)(1) or an insurance policy under §13.473(d)(3)(A) generally will range from $200 - $700 annually.

Section 13.473(d)(3)(B) provides that instead of obtaining a fidelity bond or an insurance policy, an HCC may deposit readily marketable liquid securities acceptable to the commissioner with the office of the comptroller in Texas, subject to the same coverage amount and conditions required for a fidelity bond under proposed §13.473(d)(1).

Sections 13.481, 13.482, and 13.483. Quality Improvement Structure for HCCs, Quality Assurance and Quality Improvement, and Credentialing.

Section 13.481(a) provides that an HCC must develop and maintain an ongoing QI program designed to objectively and systematically monitor and evaluate the quality and appropriateness of health care services that it arranges for or offers and to pursue opportunities for improvement.

Section 13.481(b) provides that the governing body must: (1) appoint a quality improvement committee that includes the clinical director, practicing physicians, and, if applicable, other individual health care providers, and may include one or more patients from throughout the HCC's service area; (2) approve the QI program; (3) approve an annual QI plan; (4) meet no less than semiannually to receive and review reports of the QIC or group of committees and take action when appropriate; and (5) review the annual written report on the QI program. Section 13.481(c) provides that the QIC must evaluate the overall effectiveness of the QI program and may delegate activities to other committees. All committees must collaborate and coordinate efforts to improve the quality, availability, and accessibility of health care services and meet regularly and report the findings of each meeting, including any recommendations, in writing to the QIC. If the QIC delegates any QI activity to any subcommittee, then the QIC must establish a method to oversee each subcommittee.

Section 13.482(a) requires an HCC to establish, implement, and administer a continuous QA and QI program that includes defined policies and processes to: (1) promote evidence-based medicine and best practices; (2) secure patient engagement: (3) promote coordination of care across a continuum of care; and (4) measure and report the quality of health care services and impact on cost.

Section 13.482(b) requires the QA and QI program to include appropriate practice evaluation tools, periodic review, and policies for coordinating with the HCC's QI committee to make necessary updates and adjustments.

Section 13.482(c) provides that the patient engagement process must include: (1) evaluating the health needs of its enrolled population; (2) communicating clinical knowledge to patients and patient representatives clearly and understandably; (3) promoting patient engagement, including engagement in treatment decisions; and (4) establishing written standards for patient communications.

Section 13.482(d) provides that the processes to promote coordination of care across a continuum of care must include a method or system to identify high-risk individuals and processes to manage care throughout an episode of care and during transitions.

Section 13.482(e) provides that the processes for measuring and reporting quality of health care services and impact on cost must include measurement and evaluation of health care services and processes, a process for medical peer review, and arrangements for sharing pertinent medical records between participants and ensuring confidentiality.

Section 13.483 provides that an HCC must implement a documented process for selection and retention of contracted participants.

The department has determined that the total estimated cost for an HCC to comply with the new sections could vary based on the following: (1) hiring personnel necessary to develop and maintain an ongoing QA and QI program in compliance with §13.481 and §13.482; (2) compensating members of the required quality improvement committee to comply with §13.481(b)(1) and §13.481(c) related to the committee's ongoing evaluation of the overall effectiveness of the QI program; (3) conducting semiannual meetings in compliance with §13.481(b)(4); (4) hiring a qualified credentialing organization or an in-house credentialing body to comply with the credentialing function requirements in §13.483; and (5) drafting, copying, printing, combining, and mailing.

It will be reasonably necessary for an HCC to employ a medical director to serve as clinical director for the required QA and QI program, to employ administrative staff to assist the clinical director, and to employ information technology personnel to assist with the compilation of data necessary for drafting the re-

quired work plan and written report. An HCC's clinical director might provide most of the labor necessary to develop and maintain an ongoing QA and QI program, including providing the required written description, drafting an annual work plan, drafting an annual written report, implementing the required credentialing process, overseeing the peer review process, promoting evidence-based medicine and best practices, securing patient engagement, promoting coordination of care, and measuring and reporting the quality of health care services and impact on cost. It will be reasonably necessary for a clinical director to spend between 10 and 40 hours per week developing and maintaining the QA and QI program.

An HCC's administrative staff will provide some of the labor necessary to develop and maintain an ongoing QA and QI program, including drafting, copying, printing, combining, and mailing. It will be reasonably necessary for an administrative assistant to spend an average of six hours per week assisting the clinical director with the work plan, written report, and other required administrative tasks.

It will be reasonably necessary for an HCC to employ a computer programmer to assist with the compilation of data necessary to create the annual work plan and written report. The number of hours necessary to compile data for the required annual work plan and written report will vary from five to 15 hours of computer programmer labor per year to assist the clinical director with the necessary data.

It may be reasonably necessary for an HCC to provide compensation to members of the appointed quality improvement committee for time necessary to meet regularly and to provide an ongoing evaluation of the overall effectiveness of the quality improvement program. However, it is not feasible for the department to estimate the total cost attributable to compliance with §13.481(b)(1) because several cost factors are HCC specific and variable, based on features such as the size of the HCC's service area, the variation in the negotiated fees of physicians and providers agreeing to participate in the committee, the number of physicians and providers appointed to the committee by the HCC's governing body, and whether the governing body chooses to include one or more patients from throughout the HCC's service area. Each HCC has the information necessary to determine its individual labor costs necessary to meet the requirements of §13.481(b)(1).

It also may be reasonably necessary for an HCC to provide additional compensation to members of the governing body for time necessary to plan and conduct the required semiannual meetings of the governing body. However, it is not feasible for the department to estimate the total amount of cost attributable to compliance with §13.481(b)(4) because of varying cost factors that are HCC specific, like the size of the HCC's service area(s) and the current salaries of the HCC's governing body members. Each HCC has the information necessary to determine its individual labor costs necessary to meet the requirements of §13.481(b)(4).

Additionally, HCCs may incur additional costs to print or copy the required written description, annual work plan, annual written report, required committee reports, procedures, and additional paperwork necessary to comply with §13.481 and §13.482. The average print, copy, and postage costs necessary for compliance could vary for each HCC depending on the number of pages necessary to print and copy per year.

Finally, it may be reasonably necessary for an HCC to delegate credentialing functions to a qualified credentialing organization for a per-provider fee or employ an in-house credentialing body, including a peer review committee to review and approve credentialed providers. An HCC may incur compliance costs for staff time spent researching credentials, including fees for accessing credentialing databases. An HCC may spend up to one hour per physician or provider researching their credentials with an additional estimated cost of $10 per physician or provider to access the various credentialing databases. An HCC might assign an administrative assistant to perform these tasks. This monthly cost component will vary for each HCC depending on how many providers are researched for credentialing. Each HCC has the information necessary to determine its approximate cost.

Section 13.491 and §13.492. Complaint Systems and Complaints; Deadline for Response and Resolution.

Section 13.491(a) requires each HCC to implement and maintain a complaint system compliant with Insurance Code §848.107. The system must provide reasonable procedures for resolving an oral or written complaint initiated by a complainant concerning the HCC or health care services arranged by, or offered through, the HCC. Section 13.492(a) provides that not later than seven calendar days after receipt of an oral or written complaint, the HCC must acknowledge receipt of the complaint in writing; acknowledge the date of receipt; and provide a description of the HCC's complaint procedures, its appeal process for complaints filed by patients, and deadlines associated with each.

Section 13.492(b) provides that an HCC must investigate each complaint received in accordance with the HCC's policies and in compliance with Insurance Code §848.107.

Section 13.492(c) provides that after an HCC has investigated a complaint, the HCC must issue a resolution letter to the complainant not later than the 30th calendar day after the HCC receives the written complaint or the close of any hearing held under §13.493(2). The resolution letter must include: (1) an explanation of the HCC's resolution of the complaint; (2) the specific reasons for the resolution; (3) the specialization of any health care provider consulted; and (4) if the complainant is a patient who is dissatisfied with the resolution of the complaint, notice that the complainant may file an appeal of the complaint resolution or may file a complaint with the department.

Section 13.492(d) provides that in situations in which a patient complaint has been appealed, the HCC must issue a post-appeal decision letter that includes specific reasons for the decision and states that if the complainant is dissatisfied with the resolution of the complaint, the appeal, or the complaint process, the complainant may file a complaint with the department.

It will be reasonably necessary for the HCC's general operations manager or functional director to spend an average of five to 10 hours creating the policies and procedures necessary to implement the complaint system required by proposed §13.491. The HCC's administrative staff will investigate complaints under the supervision of the general operations manager or functional director. The administrative staff time needed to comply with §13.492 will vary depending on the number and complexity of complaints received. Additionally, the department estimates that HCCs may incur additional costs to print and mail the required complaint acknowledgment and resolution letters necessary to comply with §13.492. The average print and postage costs nec-

essary for compliance could vary for each HCC depending on the number of complaints received per year.

It may be reasonably necessary for an HCC to employ a computer programmer to assist with the creation of a complaint resolution database or to procure complaint resolution software. The number of computer programmer hours necessary to create a complaint resolution database will vary from 10 to 40 hours. The department is unable to accurately estimate the cost of procuring complaint resolution software, since an HCC may choose from several product options.

Though the department has identified factors attributable to the cost of compliance with §13.491 and §13.492, it cannot estimate the total compliance cost that an HCC applicant could incur because several cost factors are HCC specific, including the size, composition, and complexity of the HCC, and the volume of complaints received. The estimated costs to comply with the new sections represent an estimate for an average size HCC. Each HCC will have the information necessary to determine its individual costs necessary to meet the requirements of the sections.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by the Government Code §2006.002(c), the department has determined that Subchapter E might have an adverse economic effect on businesses that would qualify either as small businesses under §2006.001(2) or micro businesses under §2006.001(1) if those businesses were to pursue a certificate of authority to establish and operate an HCC.

However, the new nature of the HCC as a regulated entity makes it impracticable to quantify the number of businesses that might experience an adverse economic effect from the rules as proposed. The costs identified in the public benefit/cost note portion of this proposal are incorporated into this economic impact statement and, unless otherwise noted, apply equally to all HCCs, including all HCCs that are small or micro businesses. Additionally, the cost for small or micro businesses will vary based on multiple factors as described in the public benefit/cost note portion of this proposal.

In accordance with the Government Code §2006.002(c-1), the department has considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses to the extent possible within the provisions of Insurance Code Chapter 848, and based on this consideration, the department has taken steps to mitigate adverse economic impact on any HCC, including any that might qualify as a small or micro business. Three primary areas reflect this effort.

The first area concerns the requirement that an HCC submit to the department all information necessary to facilitate the independent department and attorney general antitrust review that must be performed for every initial or renewal application. On this item, §13.414 provides a limited exemption from certain filing requirements based on the market share of the HCC applicant. If the HCC applicant meets the criteria specified in proposed subsection (b) of that section, it will not incur costs associated with having to provide the information.

The second area is associated with the provisions addressing examinations of HCCs, including financial, quality of care, market conduct, and antitrust examinations. These provisions permit the department to perform any or all of these exams on a consolidated basis where possible. Consolidated administration of the examination function to the extent possible will mitigate costs associated with the ongoing review of any HCC.

The third area regards the SB 7 requirement that HCCs pay the expenses of the department and the attorney general in administering Insurance Code Chapter 848. The subchapter scales the assessment associated with payment of expenses to the size of the HCC by:

1. assessing each HCC for its own examination expenses;

2. assessing all HCCs for all other expenses on a pro rata basis of revenues, excluding revenues attributable to drugs or medical devices; and

3. applying the annual fee amount to the assessment amount.

The department rejects further alternative regulatory methods to accomplish the objectives of the proposal in a way that would minimize adverse impact on small and micro businesses for the following reasons.

First, the portions of SB 7 applicable to the proposed subchapter do not support different rule requirements or exclusion from rule requirements for small or micro businesses. SB 7 adds Insurance Code Chapter 848 relating to health care collaboratives. In conjunction with the creation of HCCs to provide or arrange to provide health care services under contract with a governmental or private entity, the legislature included in SB 7 a specific finding relating to state action immunity:

The legislature intends to exempt from antitrust laws and provide immunity from federal antitrust laws through the state action doctrine a health care collaborative (HCC) that holds a certificate of authority--and that collaborative's negotiations of contracts with payors. The legislature does not intend or authorize any person or entity to engage in activities or to conspire to engage in activities that would constitute per se violations of federal antitrust laws.

SB 7, §2.01(c).

Independent department and attorney general antitrust review must be performed for every initial or renewal application for an HCC certificate of authority. The complexity of an antitrust review is a function of not only the size of the HCC, but its composition. Therefore, allowing different standards based on the size of an HCC would foil the legislative intent behind SB 7.

Second, the ongoing dual oversight and antitrust review functions by both the department and the attorney general established in Insurance Code Chapter 848 must be achieved without cost to the state, through the imposition of fees and assessments sufficient to pay expenses. Reducing or waiving fees for some HCCs would limit the department and attorney general's ability to conduct their dual oversight and antitrust review functions or would result in cost to the state.

Third, based on provisions of Insurance Code Chapter 848, the proposed rules focus on agency regulatory standards for review in three primary areas: solvency and organization, quality and efficiency, and competition. Integration and continuous administration of each of these standards by each HCC is crucial to successful attainment of stated legislative goals of: (1) improved quality and efficiency of health care in this state through implementation of innovative, collaborative health care delivery and payment models; (2) improved health care transparency; and (3) established incentives to improve the quality and efficiency of health care.

Solvency and organization review standards are necessary to ensure that the HCC maintains financial solvency through sufficient capitalization and reserves and complies with statutory formation and governance requirements.

Quality and efficiency review standards are necessary to ensure that the HCC provides adequate networks; increases collaboration; promotes improved outcomes, safety, and coordination of services; reduces preventable events; and contains costs without compromising the quality of patient care.

Competition-related review must be performed at least annually to ensure that: (1) there is no reduction of competition due to an HCC's size or composition; (2) pro-competitive benefits outweigh anticompetitive effects of increases in market power; and (3) HCCs do not violate the enumerated rights of physicians. An essential part of the department review of the HCC application is the determination of whether the applicant meets the SB 7 antitrust test. The attorney general must then conduct an independent antitrust review of the HCC application to determine if it meets the SB 7 antitrust test.

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

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on October 29, 2012, to Sara Waitt, General Counsel, by email to: chiefclerk@tdi.state.tx.us, or by mail to: Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to Jeff Hunt and Doug Danzeiser by single email to: companylicense@tdi.state.tx.us, or by single mailing to Jeff Hunt, Company Licensing & Registration, Mail Code 305-2C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner will consider proposed new 28 TAC Chapter 13, Subchapter E, §§13.401 - 13.404, 13.411 - 13.417, 13.421 - 13.426, 13.429, 13.431 - 13.432, 13.441, 13.451 - 13.455, 13.461, 13.471 - 13.474, 13.481 - 13.483, and 13.491 - 13.494 in a public hearing under Docket No. 2742 scheduled for October 18, 2012, at 9:30 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. The department will consider written and oral comments presented at the hearing.

DIVISION 1. GENERAL PROVISIONS

28 TAC §§13.401 - 13.404

STATUTORY AUTHORITY. The new sections are proposed under Insurance Code §§848.054(b), 848.056(d), 848.108(c)(2), 848.108(d), 848.151, 848.152(d), and 36.001.

Section 848.054(b) requires the commissioner to adopt rules governing the application for certificate of authority to organize and operate an HCC.

Section 848.056(d) authorizes the commissioner by rule to extend the date by which an application is due and to require the disclosure of any additional information necessary to implement and administer Chapter 848, including information necessary to antitrust review and oversight.

Section 848.108(c)(2) authorizes the commissioner to specify by rule functions in addition to those referenced in §848.108(c)(1) under which an HCC may assign responsibility to a delegated entity by agreement.

Section 848.108(d) authorizes the commissioner by rule to set maintenance requirements for reserves and capital in an amount and form in addition to amounts required under Chapter 1272 as are necessary for the liabilities and risks assumed by the HCC.

Section 848.151 authorizes the commissioner and the attorney general to adopt reasonable rules as necessary and proper to implement the requirements of Chapter 848.

Section 848.152(d) requires the commissioner to set fees and assessments in an amount sufficient to pay the reasonable expenses of the department and attorney general in administering Chapter 848, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing HCCs.

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

CROSS REFERENCE TO STATUTE. The proposal affects the following statutes: Insurance Code Chapters 843, 848, 1272, and 1301.

§13.401. Purpose.

This subchapter implements Insurance Code Chapter 848 and other insurance laws of this state that apply to health care collaboratives to provide the framework to support the use of innovative health care collaborative payment and delivery systems in this state.

(1) Severability. If a court of competent jurisdiction holds that any provision of this subchapter or its application to any person or circumstance is invalid for any reason, the invalidity does not affect other provisions or applications of this subchapter that can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.

(2) Effect of rules. The sections in this subchapter govern the performance of appropriate statutory and regulatory functions and do not limit the exercise of statutory authority by the commissioner of insurance.

§13.402. Definitions.

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

(1) Affiliate--As defined in Insurance Code §848.001(1).

(2) Clinical director--Health professional who is:

(A) appropriately licensed;

(B) an employee of, or party to a contract with, an HCC; and

(C) responsible for clinical oversight of the utilization review program, the credentialing of professional staff, and quality improvement functions.

(3) Common service--A service provided by two or more independent HCC participants.

(4) Confidential information--Information that relates to bidding, pricing, trade secrets, business planning documents, financial position and related operational results, profit and loss statements,

contracts, salaries, employee benefits, or other competitively sensitive information.

(5) Credentialing--The periodic process of collecting, assessing, and validating qualifications and other relevant information pertaining to a physician or health care provider to determine eligibility to deliver health care services.

(6) Entity--An artificial person, including a partnership, association, organization, trust, or corporation; the term does not include a securities broker performing no more than the usual and customary broker's function.

(7) Facility--

(A) an ambulatory surgical center licensed under Health and Safety Code Chapter 243;

(B) a birthing center licensed under Health and Safety Code Chapter 244; or

(C) a hospital licensed under Health and Safety Code Chapter 241 or 577.

(8) Financial statement--An HCC's annual statement of financial position and operating results, including a balance sheet, receipts, and disbursements, certified by an independent certified public accountant and prepared in accordance with Generally Accepted Accounting Principles.

(9) Health care collaborative or HCC--As defined in Insurance Code §848.001(2).

(10) Health care provider--As defined in Insurance Code §848.001(4).

(11) Health care services--As defined in Insurance Code §848.001(3).

(12) Health maintenance organization or HMO--As defined in Insurance Code §848.001(5).

(13) Hospital--As defined in Insurance Code §848.001(6).

(14) Individual--A natural person.

(15) Individual health care provider--A health care provider who is a natural person.

(16) Network--A health care delivery system in which an HCC provides or arranges to provide health care services directly or through contracts and subcontracts with governmental entities or private individuals or entities.

(17) Participant--Each physician or health care provider that has agreed to participate in the HCC.

(18) Physician--As defined in Insurance Code §848.001(8).

(19) Primary service area or PSA--For each common service and each participant, the area defined by the smallest number of postal ZIP codes from which the participant draws at least 75 percent of its patients for that service.

(20) Private payor--Any of the following:

(A) an insurer that writes health insurance policies;

(B) an HMO, to the extent that it pays physicians or health care providers for health care services under an HMO evidence of coverage or under a negotiated-rate contract with the physician or health care provider; or

(C) any other entity, including an insurer or third-party administrator for self-insured private or governmental employers, that provides, or offers to provide, health care services to a patient pursuant to a negotiated-rate contract that the entity negotiated with physicians or health care providers.

(21) Pro-competitive benefit--A benefit obtained from clinical or financial integration by the establishment and operation of the HCC. A pro-competitive benefit may include use of electronic medical records, implementation of quality control procedures, utilization review, clinical protocols, coordination of care, and financial incentives to reduce costs or increase quality.

(22) Quality improvement or QI--A system to continuously examine, monitor, and revise processes and systems that support and improve administrative and clinical functions.

(23) Rural hospital--A hospital:

(A) that is paid under the Medicare hospital inpatient prospective payment system and is either located more than 35 miles from other like hospitals or is located in a rural area, and meets the criteria for sole community hospital status as specified by 42 CFR §412.92; or

(B) located in a rural area and that has been certified as a Medicare critical access hospital based on the criteria set forth in 42 CFR Part 485, Subpart F.

(24) Service area--A geographic area within which health care services are available and accessible to an HCC's patients who live, reside, or work within that geographic area and that complies with §13.473 of this title (relating to Organization of an HCC).

(25) Utilization review--As defined in Insurance Code §4201.002.

§13.403. Filing and Required Forms; How to Obtain Forms.

(a) All HCC filings for original or renewal application as required by this subchapter must be made to Company Licensing & Registration, Mail Code 305-2C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, and copies of all HCC forms are available through that address. All forms also are available on the department website at www.tdi.texas.gov.

(b) All HCC forms for an original or renewal application filing may be submitted electronically in a format permitted by the department.

(c) Paragraphs (1) - (7) of this subsection identify the forms specified for use with the rules adopted under this subchapter. Each HCC or other individual or entity must use the form(s) as required by this title in accordance with the form's instructions and content requirements and as appropriate to particular activities. The commissioner adopts by reference the following forms:

(1) Original/Renewal Application for Certificate of Authority to do the Business of a Health Care Collaborative (HCC) in the State of Texas;

(2) Health Care Collaborative Officers and Directors Page;

(3) Biographical Affidavit;

(4) Request to Convert to Renewal of Certificate of Authority to do the Business of a Health Care Collaborative (HCC) in the State of Texas;

(5) Financial Authorization and Release Form;

(6) Health Care Collaborative Payor Information Form; and

(7) Health Care Collaborative (HCC) Acquisition Form.

§13.404. Use of the Term "HCC," Service Mark, Trademarks, d/b/a.

(a) While planning or developing an HCC, an organization may use the terms "health care collaborative" or "HCC" as a part of the proposed HCC's name provided the developmental status of the proposed HCC is clearly communicated in all dealings with employers, individuals, prospective contract holders, news media, and other individuals or entities.

(b) After the certificate of authority is issued, the HCC must include the name as it appears on the certificate of authority on all advertising and forms distributed to the public.

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 September 11, 2012.

TRD-201204796
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 463-6327

♦ ♦ ♦

DIVISION 2. APPLICATION FOR CERTIFICATE OF AUTHORITY

28 TAC §§13.411 - 13.417

STATUTORY AUTHORITY. The new sections are proposed under Insurance Code §§848.054(b), 848.056(d), 848.108(c)(2), 848.108(d), 848.151, 848.152(d), and 36.001.

Section 848.054(b) requires the commissioner to adopt rules governing the application for certificate of authority to organize and operate an HCC.

Section 848.056(d) authorizes the commissioner by rule to extend the date by which an application is due and to require the disclosure of any additional information necessary to implement and administer Chapter 848, including information necessary to antitrust review and oversight.

Section 848.108(c)(2) authorizes the commissioner to specify by rule functions in addition to those referenced in §848.108(c)(1) under which an HCC may assign responsibility to a delegated entity by agreement.

Section 848.108(d) authorizes the commissioner by rule to set maintenance requirements for reserves and capital in an amount and form in addition to amounts required under Chapter 1272 as are necessary for the liabilities and risks assumed by the HCC.

Section 848.151 authorizes the commissioner and the attorney general to adopt reasonable rules as necessary and proper to implement the requirements of Chapter 848.

Section 848.152(d) requires the commissioner to set fees and assessments in an amount sufficient to pay the reasonable expenses of the department and attorney general in administering Chapter 848, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing HCCs.

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

CROSS REFERENCE TO STATUTE. The proposal affects the following statutes: Insurance Code Chapters 843, 848, 1272, and 1301.

§13.411. Filing Fee; Annual Assessments; Open Records.

(a) The application filing fee required by Insurance Code §848.152 must accompany the application required to be filed by Insurance Code §848.056 or §848.060.

(b) The fee for filing the original application for certificate of authority is $10,000 and is nonrefundable.

(c) The fee for filing the annual renewal application for certificate of authority is $5,000 and is nonrefundable.

(d) In addition to the filing fee addressed in this section, each HCC must pay to the department annually an assessment as set forth in §13.421(c)(1) - (6) of this title (relating to Examination; Fee for Expenses).

(e) Except as provided by Insurance Code §848.005(b), the application is public information subject to disclosure under the Government Code Chapter 552.

§13.412. Revisions During Review Process.

(a) Revisions during the review of the application must be addressed to: Company Licensing & Registration, Mail Code 305-2C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

(b) Each revision to the basic organizational document, bylaws, or officers' and employees' bond must be accompanied by a certification of the corporate secretary or corporate president of the applicant that the revision submitted is true, accurate, and complete.

(c) The department will conduct examinations in connection with each application and notify the applicant of the need for revisions necessary to meet the requirements of Insurance Code Chapter 848, this subchapter, and applicable insurance laws and regulations of this state. If the applicant does not make the necessary revisions, the department may withdraw the application on behalf of the applicant. If the time required for the revisions will exceed the time limit provided in Insurance Code §848.056(c), the applicant must request additional time within which to make the revisions. The applicant must specifically state the length of time requested, which may not exceed 90 days. The request for any extension must describe the need for the additional time in writing in sufficient detail for the commissioner to determine if good cause for the extension exists. The applicant may request additional extensions. The commissioner has discretion to grant or deny the request for an extension of time under Insurance Code §848.056.

§13.413. Contents of the Application.

(a) Order of contents. The application must include the items in the order listed in this section.

(b) Original and copies. An applicant filing a nonelectronic application must submit two additional copies of the application along with the original application.

(c) General contents. An application must include:

(1) a declaration executed under oath or affirmation by an officer or other authorized representative of the HCC certifying that the collection of any confidential information for purposes of satisfying filing requirements of this subchapter was made in accordance with the

confidentiality requirements of §13.426 of this title (relating to Confidentiality);

(2) a completed application for certificate of authority;

(3) the basic organizational documents and any amendments to them, complete with the original incorporation certificate with charter number and seal indicating certification by the secretary of state, if applicable;

(4) the bylaws, rules, or any similar documents regulating the conduct of the internal affairs of the applicant, certified by an officer or other authorized representative of the applicant HCC;

(5) a plan of operation for the HCC, including an overview, history, types of health care service offered, and operations provisions that include pro-competitive strategies of the HCC;

(6) information about officers, directors, and staff:

(A) a completed officers and directors page; and

(B) biographical data forms for all individuals who are to be responsible for the day-to-day conduct of the affairs of the applicant;

(7) separate organizational charts or lists, as described in subparagraphs (A) - (C) of this paragraph:

(A) charts clearly identifying the contractual relationships involved in the applicant's health care delivery system and between the applicant and any affiliates, and a list of contracts to provide services between the applicant and the affiliates;

(B) a chart showing the internal organizational structure of the applicant's management and administrative staff; and

(C) for the purposes of this paragraph, the information provided must clearly identify any relationship between the HCC and any affiliate or other organization if a common individual or entity directly or indirectly controls 10 percent or more of both the HCC and the affiliate or other organization;

(8) notice of the physical address in Texas of all books and records described in §13.415 of this title (relating to Documents to be Available for Quality of Care and Financial Examinations); and

(9) a description of the information systems, management structure, and personnel that demonstrates the applicant's capacity to meet the needs of patients and participants and to meet the requirements of regulatory and contracting entities.

(d) Financial information. An application must include financial and financially-related information consisting of the following:

(1) projected financial statements, including a balance sheet, income statement, and cash flow statement. Additionally:

(A) the projected data must be provided for two consecutive annual reporting periods;

(B) the financial statements must include the identity and credentials of the individual making the projections; and

(C) the projected data must reflect compliance with §13.431 of this title (relating to Reserves and Working Capital Requirements);

(2) a balance sheet reflecting actual assets and liabilities, and net assets sufficient to comply with §13.431 of this title;

(3) the form of any contract between the applicant and any payor that addresses the applicant arranging for medical and health care services for the payor in exchange for payments in cash or in kind as provided in Insurance Code Chapter 848;

(4) if applicable, insurance or other protection, or both, against insolvency and:

(A) any reinsurance agreement and any other agreement described in Insurance Code §848.102 covering the cost of a potential significant event or catastrophe; and

(B) any other arrangements offering protection against insolvency;

(5) proof of the applicant's maintenance of a fidelity bond or similar officer and employee antifraud protection as provided in §13.473(d) of this title (relating to Organization of an HCC); and

(6) authorization for disclosure to the commissioner of the financial records of the applicant and affiliates to confirm assets.

(e) Provider and service area information. An application must include:

(1) a description and a map of the service area, with key and scale, that identifies the county or counties, or portions of the county or counties, to be served. If the original map is in color, all copies also must be in color;

(2) network configuration information, including maps demonstrating the location and distribution of the participants by physician type and provider type within the proposed service area by county, counties, or ZIP code(s); lists of participants in Excel-compatible format, including business address, county, license type and specialization, hospital admission privileges, and an indication of whether they are accepting new patients;

(3) the identity of any integrated practice group or independent practice association to which any participant belongs, including the group's name, business address, type of legal organization, and approximate number of members;

(4) for each participating facility:

(A) the facility's name and business address;

(B) a description of the services provided by the facility; and

(C) a statement as to whether the facility's agreement with the HCC allows the facility to contract or affiliate with other HCCs;

(5) the form of any contract or monitoring plan between the applicant and:

(A) any individual listed on the officers and directors page;

(B) any delegated entity, delegated network, or delegated third party as described in Insurance Code Chapter 1272; or any other physician or health care provider, plus the form of any subcontract between those individuals or entities and any physician or health care provider to provide health care services. All contracts must include a hold-harmless provision that complies with Insurance Code §843.361 and §1301.060, as applicable, for the protection of patients covered by health benefit plans;

(C) any exclusive agent or agency; or

(D) any individual or entity who will perform management, marketing, administrative, data processing, or claims processing services; and

(6) a written description of the types of compensation arrangements, such as compensation based on fee-for-service arrangements, risk-sharing arrangements, prepaid funding arrangements, or capitated risk arrangements, made or to be made with physicians and health care providers in exchange for the provision of, or the arrangement to provide, health care services to patients, including any financial incentives for physicians and health care providers.

(f) Quality assurance and quality improvement information. An application must include a detailed description of the policies and processes contained in the quality assurance and quality improvement program required by §13.482 of this title (relating to Quality Assurance and Quality Improvement).

(g) Accreditation disclosure. If an HCC has attained accreditation from a nationally recognized accrediting body such as the National Committee for Quality Assurance or URAC, the HCC must disclose:

(1) the name of the accrediting body;

(2) the date accreditation was granted;

(3) the accreditation level;

(4) current accreditation status; and

(5) a copy of the accreditation report.

(h) Antitrust analysis information required of all applicants. An application must include:

(1) for each participant in the HCC, disclosure of any known past or pending investigation, or administrative or judicial proceeding, in which it is alleged that the participant has engaged in any form of price-fixing or other antitrust violation, or health care fraud or abuse, including any governmental or private investigations, lawsuits, and any judgments, fines, or penalties relating to those allegations;

(2) identification of each common service provided by participants, grouped by:

(A) specific Medicare specialty code for each specialty of any participating physician or health care provider;

(B) specific major diagnostic category for inpatient services at a hospital; and

(C) specific outpatient category as established by the Centers for Medicare and Medicaid Services for outpatient services at a facility;

(3) identification of the PSA for each common service for each participant;

(4) the HCC's calculated market share for each common service in each PSA in which two or more participants serve patients for that service, utilizing the identification procedures and calculation steps set forth in §13.414 of this title (relating to Limited Exemption from Certain Information Filing Requirements); and

(A) identifying the market participants and providing the data used in determining the market share; and

(B) highlighting each common service area in each PSA in which the market share exceeds 35 percent;

(5) identification of all physicians, physician group practices, or other entities the HCC applicant considers to be or have been competitors of the HCC or its participants in its proposed service area;

(6) for each pro-competitive benefit that the applicant anticipates will result from the establishment of the HCC:

(A) a description of the pro-competitive benefit;

(B) an explanation as to why the establishment of the HCC will help achieve the pro-competitive benefit or will help extend the pro-competitive benefit to new patient populations or service areas; and

(C) a description of how the HCC will assess whether the pro-competitive benefit has been achieved, including:

(i) the reference point to be used in determining the status prior to implementation of the pro-competitive benefit;

(ii) the standard to be used by the HCC in tracking progress toward achieving the pro-competitive benefit; and

(iii) the time period to be used in assessing whether the pro-competitive benefit has been achieved. If the time period is longer than one year, the applicant must set forth interim benchmarks that will allow the commissioner to assess whether the HCC is making progress toward achieving the pro-competitive benefit; and

(D) for any pro-competitive benefit that the HCC expects to achieve as the result of financial integration, a description of the alternative payment methods the HCC anticipates using to create the financial, pro-competitive benefit;

(7) a description of the policies and procedures the HCC will establish and administer to ensure that none of its financial incentives will result in any limitation on medically necessary services; and

(8) a description of the confidentiality policies and procedures established and enforced by the HCC applicant as required by §13.426 of this title to protect the confidential information of a participant in the HCC from disclosure to other participants in the HCC. The description must include the types and specifications of safeguards and address confidential information collected in the process of preparing or submitting the HCC application.

(i) Market and market power information. HCC applicants ineligible for the limited information filing exemption. An HCC application for an applicant that does not qualify for the limited information filing exemption set forth in §13.414 of this title must also include additional information. For each PSA that does not fall within the limited filing exemption, for each participant in the PSA, the application must include:

(1) for each participant, the name of each private payor that individually accounts for five percent or more of the participant's business in the past year, measured by:

(A) revenue;

(B) billed charges, if revenue data is unavailable; or

(C) patient visits, if billed charges data is unavailable;

(2) for each participant referenced in paragraph (1) of this subsection, a completed Health Care Collaborative Payor Information Form;

(3) all business planning documents created within the previous 24 months relating to the HCC applicant's or its participants' plans relating to any health care service in each service area, including:

(A) market studies and forecasts;

(B) studies of patient origin and flow;

(C) market share studies;

(D) budgets;

(E) investment banker and other consultant reports;

(F) expansion or retrenchment plans;

(G) research and development documents; and

(H) presentations to management committees, executive committees, and boards of directors;

(4) the name of each individual responsible for negotiating contracts on behalf of participants with payors over the last five years, the name of the participant on whose behalf the individual negotiated, the time periods for which the individual was responsible for those negotiations, and, if known, the individual's current address and phone number;

(5) documents reflecting the applicant's price lists, pricing plans, pricing policies, pricing forecasts, pricing strategies, pricing analyses, and pricing decisions relating to any medical or health care service in the service area;

(6) for each individual or entity that has provided or stopped providing any competing health care service in the service area within the previous 36 months, the following items:

(A) name and address of the individual or entity;

(B) beginning date, or beginning and ending date, of the individual's or entity's provision of the health care service in the service area; and

(C) whether the individual or entity built a new facility, converted assets previously used for another purpose, or began using facilities that already were being used for the same purpose;

(7) documents reflecting participants' contribution margins or identifying or quantifying fixed or variable costs for the provision of any health care service in the service area;

(8) if the applicant believes that approval of the application is necessary for the future financial viability of one or more of the participants, for that participant, documents referencing its future viability, gross or net margins, ability to obtain financing for capital improvements, or other documents the applicant deems necessary for the evaluation of that participant's financial condition;

(9) all memoranda created within the previous 24 months relating to cost savings, economies, or other efficiencies that have been or could be achieved by any participant through a joint venture, internal cost-cutting, or any associated transaction, regardless of whether the applicant establishes and operates the proposed HCC;

(10) identification of every physician or health care provider in its proposed PSA that the applicant has communicated with concerning the possibility of contracting with the HCC within the previous 12 months; and

(11) for each participant, for the previous 12 months, all agendas, minutes, summaries, handouts, and presentations made to the participant's: board of directors; executive committee; strategic or business planning committees; physician or health care provider recruitment committee; and any committee responsible for approving contracts with facilities, clinics, or private payors.

§13.414. Limited Exemption from Certain Information Filing Requirements.

(a) This section specifies circumstances under which an applicant is not required to provide the information specified in §13.413(i) of this title (relating to Contents of the Application) in filing an original renewal application for certificate of authority.

(b) An applicant is not required to provide the information specified in §13.413(i) of this title if:

(1) for each PSA in which two or more individual or group participants provide common services, the applicant's market share is 35 percent or less; and

(2) no contract between the HCC and any participating hospital restricts the HCC or hospital from contracting with other HCCs, networks, hospitals, physicians, physician groups, health care providers, or private payors.

(c) Notwithstanding the provisions of subsection (b) of this section, an HCC that has a contract with a physician or health care provider in a rural county as defined by the U.S. Census Bureau and that does not restrict that physician's or health care provider's ability to contract or deal with other HCCs, networks, physicians, or health care providers is not required to provide the information specified in §13.413(i) of this title, if the inclusion of the physician or health care provider alone causes the HCC's share of any common service to exceed 35 percent.

(d) Notwithstanding the provisions of subsection (b) of this section, an HCC that includes a rural hospital but does not restrict the hospital from contracting with other HCCs, networks, physicians, or health care providers is not required to provide the information specified in §13.413(i) of this title, if the inclusion of the rural hospital alone causes the HCC's share of any common service to exceed 35 percent.

(e) For purposes of this section, an HCC's market share is determined by aggregating the market shares of its participants, calculated as follows:

(1) for physicians or individual health care providers within a particular health care specialty, by dividing the number of physicians or individual health care providers in the specialty within the HCC by the total number of physicians or health care providers providing each of the common services within that health care specialty within a participating physician's or health care provider's PSA;

(2) for outpatient services at a facility, by dividing the number of physicians or health care providers participating in the HCC within each PSA by the total number of physicians or health care providers within each PSA that provide each common service;

(3) for hospital inpatient services, by dividing the number of staffed hospital beds by particular medical specialty within the hospital or group of hospitals as reported to the department of state health services in Texas, for each common service area, by the total number of staffed hospital beds by medical specialty within each participating hospital's PSA; and

(4) if an HCC's participants can be classified as falling within more than one of the categories set forth in paragraphs (1) - (3) of this subsection, calculations must be made for all of the categories within which the participants in the HCC provide services.

(f) Notwithstanding the definition of PSA in §13.402 of this title (relating to Definitions), a participant may calculate market share through reference to the HCC's PSA for a health care specialty rather than the participant's PSA if the participant demonstrates to the commissioner's satisfaction that analysis of competition within the HCC's PSA provides a more accurate measure of competition relating to the participant in the context of the HCC than the analysis of competition within the participant's PSA.

(g) Notwithstanding this section, on receipt of the original or renewal application, the commissioner has discretion to require an applicant to provide any or all of the information specified in §13.413(i) of this title or §13.461 of this title (relating to Commissioner's Authority to Require Additional Information), or both, when the commissioner

deems the information reasonably necessary to conduct the review required under Insurance Code Chapter 848.

§13.415. Documents to be Available for Quality of Care and Financial Examinations.

(a) The following documents must be provided to the department on request and available for review at the HCC's office located within Texas:

(1) administrative: policy and procedure manuals, including procedures relating to confidentiality; patient materials; organizational charts; and key personnel information, such as resumes and job descriptions;

(2) quality improvement: program description and work plan as required by §13.481 of this title (relating to Quality Improvement Structure for HCCs); and, for renewal applications, program evaluations and meeting minutes for committees and subcommittees;

(3) utilization management: program description; policies and procedures; criteria used to determine medical necessity; templates of adverse determination letters and adverse determination logs for all levels of appeal, or, for renewal applications, examples of those letters and logs; and, for renewal applications, utilization management files;

(4) complaints and appeals: policies and procedures; and templates of letters, complaint logs, and appeal logs, or for renewal applications, examples of those letters and logs, including documentation and details of actions taken;

(5) health information systems: policies and procedures for accessing patient health records and a plan to provide for confidentiality of those records in accordance with applicable law;

(6) network configuration information: as outlined in and required by §13.413(e)(2) of this title (relating to Contents of the Application), demonstrating adequacy of the physician and health care provider network;

(7) executed agreements, including:

(A) contracts with payors;

(B) management services agreements;

(C) administrative services agreements; and

(D) delegation agreements;

(8) executed participant contracts: copy of the first page, including the form number, and signature page of individual and group contracts;

(9) executed subcontracts: copy of the first page, including the form number, and signature page of all contracts with subcontracting physicians and providers;

(10) physician and health care provider manuals: current physician manual and current health care provider manual, which must be provided to each contracting physician and health care provider, respectively, and which must contain details of the requirements by which the physicians and health care providers will be governed;

(11) credentialing documentation: credentialing policies, procedures, and files that demonstrate compliance with §13.483 of this title (relating to Credentialing);

(12) reporting system: the statistical reporting system developed and maintained by the HCC that allows for compiling, developing, evaluating, and reporting statistics relating to the cost of operation, the pattern of utilization of services, and the accessibility and availability of services; and, for renewal applications, reports generated by the system concerning those components;

(13) claims systems: policies and procedures that demonstrate the capacity to pay claims timely, if applicable, and to comply with all applicable statutes and rules; and, for renewal applications as applicable, evidence of timely claims payments and reports that substantiate compliance with all applicable statutes and rules regarding claims payment to physicians, health care providers, and patients;

(14) financial records: including statements; ledgers; checkbooks; inventory records; evidence of expenditures, investments, and debts; and related bank confirmations necessary to ascertain funding;

(15) compliance or accreditation: records regarding compliance with applicable statutes and rules or accreditation standards, including audits or examination reports by other entities, such as governmental authorities or accrediting agencies;

(16) satisfaction surveys: for renewal applications only, patient, physician, and provider satisfaction surveys; and patient disenrollment and termination logs;

(17) reports: for renewal applications only, any reports submitted by the HCC to a governmental entity; and

(18) other documents and information: any records requested pursuant to Insurance Code §848.153.

(b) The documents listed in this section must be maintained for at least five years.

§13.416. Review of Original or Renewal Application; Commissioner Discretion.

(a) An original application or renewal application will be processed pursuant to Insurance Code §§848.056 - 848.060 and 848.153.

(b) The department will conduct an examination as specified in §13.421(a) of this title (relating to Examination; Fee for Expenses) in conjunction with each application. If a hearing is held in connection with an application, then the examination(s) will occur prior to the date of the hearing.

(c) Application review will include a determination of compliance with Insurance Code §848.057. The review of pro-competitive benefits of the proposed or existing HCC in relation to anticompetitive effects of market power increase will be in accordance with established antitrust principles of market power analysis.

(d) The commissioner has sole discretion to impose restrictions on an HCC applicant's certificate of authority that are deemed necessary to preserve competition. Examples of these restrictions include the following:

(1) prohibiting the HCC applicant from including "anti-steering," "guaranteed inclusion," "product participation," "price parity," or similar contractual clauses or provisions in its contracts with a private payor;

(2) prohibiting the HCC applicant from tying sales, explicitly or implicitly through pricing policies, of the HCC's services to a private payor's purchase of other services from physicians or health care providers outside of the HCC (and vice versa), including providers affiliated with HCC participants;

(3) prohibiting contracting with HCC participants on a basis that prevents or discourages them from contracting outside the HCC, either individually or through other HCCs or provider networks;

(4) prohibiting restrictions on a private payor's ability to provide its health plan enrollees with cost, quality, efficiency, and performance information used by the HCC to aid enrollees in evaluating and selecting physicians and health care providers in the health plan;

(5) prohibiting sharing with or among the HCC's participants any competitively sensitive pricing or other data that could be used to set prices or other terms for services that the participants provide outside the HCC; and

(6) restricting the HCC's certificate of authority to certain geographic areas or health care services.

§13.417. Withdrawal of an Application.

(a) On written notice to the department, an applicant may request withdrawal of an application from consideration by the department.

(b) The department may in its discretion withdraw an application on behalf of the applicant if the department determines that the applicant has failed to respond in a timely manner to requests made by the department for additional information or if the application is incomplete.

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 September 11, 2012.

TRD-201204795
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 463-6327

♦ ♦ ♦

DIVISION 3. EXAMINATIONS; REGULATORY REQUIREMENTS FOR AN HCC AFTER ISSUANCE OF CERTIFICATE OF AUTHORITY; AND ADVERTISING AND SALES MATERIAL

28 TAC §§13.421 - 13.426, 13.429

STATUTORY AUTHORITY. The new sections are proposed under Insurance Code §§848.054(b), 848.056(d), 848.108(c)(2), 848.108(d), 848.151, 848.152(d), and 36.001.

Section 848.054(b) requires the commissioner to adopt rules governing the application for certificate of authority to organize and operate an HCC.

Section 848.056(d) authorizes the commissioner by rule to extend the date by which an application is due and to require the disclosure of any additional information necessary to implement and administer Chapter 848, including information necessary to antitrust review and oversight.

Section 848.108(c)(2) authorizes the commissioner to specify by rule functions in addition to those referenced in §848.108(c)(1) under which an HCC may assign responsibility to a delegated entity by agreement.

Section 848.108(d) authorizes the commissioner by rule to set maintenance requirements for reserves and capital in an amount and form in addition to amounts required under Chapter 1272 as are necessary for the liabilities and risks assumed by the HCC.

Section 848.151 authorizes the commissioner and the attorney general to adopt reasonable rules as necessary and proper to implement the requirements of Chapter 848.

Section 848.152(d) requires the commissioner to set fees and assessments in an amount sufficient to pay the reasonable expenses of the department and attorney general in administering Chapter 848, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing HCCs.

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

CROSS REFERENCE TO STATUTE. The proposal affects the following statutes: Insurance Code Chapters 843, 848, 1272, and 1301.

§13.421. Examination; Fee for Expenses.

(a) The department has authority to conduct examinations of HCCs under Insurance Code §848.153. The department will conduct examinations in conjunction with an application and as needed to oversee the HCC's activity. The scope of the examination may vary based on the scope of an applicant's or HCC's activities and may include desk review. Any examination may include the review of one or more of the following components:

(1) financial condition;

(2) quality of health care services;

(3) compliance with laws affecting the conduct of business; or

(4) effect on market competition.

(b) The commissioner has authority under Insurance Code §848.152(d) to set and collect fees in an amount sufficient to pay the reasonable expenses of the department and attorney general in administering Insurance Code Chapter 848, including direct and indirect expenses incurred by the department, the attorney general, and their contractors in examining and reviewing HCCs. The department will maintain active oversight of individuals performing examination functions to assure that the examination fee reflects expenses that are reasonable and necessary. The examination fee will include the actual salary, fees, and expenses of the examiners directly attributable to the examination as follows:

(1) any actual salary amount included in an examination fee for an examiner who is a department employee will be the part of the annual salary attributable to each hour an examiner examines the HCC;

(2) any expenses included in an examination fee for an examiner who is a department employee will be actual expenses incurred by an examiner and attributable to the examination, including the actual cost of:

(A) transportation;

(B) lodging;

(C) meals;

(D) subsistence expenses;

(E) parking fees; and

(F) department overhead expense; and

(3) any amount included as an examination fee or expense by an examiner who is not a department employee will be determined according to the terms of the contract between the examiner and the department.

(c) An HCC must pay to the department annually an assessment as set forth in paragraphs (1) - (6) of this subsection.

(1) On or before January 31 of each year, each certified HCC must submit to the department a statement of its gross revenues for the previous calendar year.

(2) On or before January 31, 2014, and annually thereafter, the department will calculate the cost by fiscal year to administer Insurance Code Chapter 848 and this subchapter, including direct and indirect expenses incurred by the department and the attorney general attributable to carrying out their responsibilities under Chapter 848, but excluding examination expenses billed directly to an HCC.

(3) On or before April 1, 2014, and annually thereafter, the department will assess all certified HCCs on a pro rata basis for the expenses determined pursuant to paragraph (2) of this subsection, based on the total annual gross revenues reported by the HCCs. The assessment amount for each HCC will be adjusted by the amount of any application fees received from the HCC.

(4) For purposes of reporting gross revenues relevant to this subsection, an HCC may choose to reduce its gross revenues in a clearly disclosed manner by amounts paid to individuals or entities unaffiliated with the HCC for the following items:

(A) drugs or biological supplies that, by law, require a prescription to be dispensed; and

(B) devices or medical supplies that, by law, require premarket approval by or premarket notification to the Food and Drug Administration.

(5) On receipt of an assessment pursuant to paragraph (3) of this subsection, the HCC must pay the assessment amount before the later of 30 days following receipt of the assessment or May 1.

(6) The department may issue additional assessments as necessary to fully fund the expense of regulation under Insurance Code Chapter 848 and this subchapter.

(d) When an HCC has been notified by the department of a pending examination under this section, it may request that it instead submit a renewal application and that the examination be converted into a renewal review.

(1) To initiate the request, the HCC must file the Request to Convert to Renewal of Certificate of Authority to Do the Business of a Health Care Collaborative (HCC) in the State of Texas form.

(2) The HCC must submit the request prior to the issuance of any draft examination report.

(3) If the department approves the request, the HCC must file an application for renewal within 30 days of the approval to convert to renewal review. The application filing must comply with §13.424 of this title (relating to Certificate of Authority Renewal Requirements).

(4) The subsequent renewal date for the HCC will be 12 months following the approval date of the application to renew.

§13.422. Filing Requirements That Apply After Issuance of Certificate of Authority.

(a) After the issuance of a certificate of authority, each HCC must file certain information with the commissioner, either for approval prior to effectuation or for information only, as provided in this section.

(b) In accordance with Insurance Code §848.060(e), an HCC must report to the department a material change in the size, composition, or control of the HCC.

(c) An HCC must make the filings outlined in paragraphs (2) and (3) of this subsection and in §13.423 of this title (relating to Service Area Change Applications). These requirements include filing changes necessitated by federal or state law or regulations.

(1) Complete filings required. The department will not accept a filing for review until the filing is complete.

(2) Filings requiring approval. After the issuance of a certificate of authority, an HCC must file for approval with the commissioner a written request to implement or modify the following operations or documents and receive the commissioner's approval prior to effectuating those modifications:

(A) a description and a map of the service area, with key and scale, that identifies the county, counties, or portions of counties to be served;

(B) any material change in size, composition, or control of the HCC;

(C) proposed dividends for any calendar year that if declared and paid will, individually and in the aggregate, have a distribution value equal to or exceeding the greater of:

(i) 10 percent of the HCC's net asset value for the prior year; or

(ii) 10 percent of the HCC's net income for the prior year;

(D) any new or revised loan agreements evidencing loans made by the HCC to any affiliated individual or entity or to any physician or health care provider, whether providing services currently, previously, or potentially in the future; and any guarantees of any affiliated individual's or entity's or of any physician's or health care provider's obligations to any third party;

(E) a copy of any proposed material amendment to basic organizational documents; however, if the approved amendment must be filed with the secretary of state, an original or a certified copy of the document with the original file mark of the secretary of state must be filed with the commissioner;

(F) a copy of any material amendments to bylaws of the HCC, with a notarized certification bearing the original or electronic signature of the corporate secretary of the HCC that it is a true, accurate, and complete copy of the original;

(G) any name, or assumed name, on a form, as specified in §13.404 of this title (relating to Use of the Term "HCC," Service Mark, Trademarks, d/b/a); and

(H) original or renewal service contracts and management agreements, the terms of which must comply with Insurance Code §823.101 as if the HCC were an insurer.

(3) Filings for information. Material filed under this paragraph is not to be considered approved, but may be subject to review for compliance with Texas law and consistency with other HCC documents. On or before 30 days after the effective date of a change, an HCC must file with the commissioner, for information only, deletions and modifications to the following previously approved or filed operations and documents:

(A) the list of officers and directors and a biographical data sheet for each individual listed on the officers and directors page

and biographical affidavit forms in §13.413(c)(6)(A) and (B) of this title (relating to Contents of the Application);

(B) any change in the physical address of the books and records described in §13.415 of this title (relating to Documents to be Available for Quality of Care and Financial Examinations);

(C) any new trademark or service mark or any changes to an existing trademark or service mark;

(D) a copy of the form of any new contract or subcontracts or any substantive changes to previously filed copies of forms of all contracts described in §13.413(d)(3) and (e)(5) of this title, not including management agreements filed for approval, with amended contract forms accompanied by an additional copy of the contract form that reflects the revisions made;

(E) notice of the cancellation of any management contracts described in §13.413(e)(5)(D) of this title;

(F) any insurance contracts or amendments to those contracts, guarantees, or other protection against insolvency, including the stop-loss or reinsurance agreements, if changing the insurer or description of coverage, as described in §13.413(d)(4)(A) of this title;

(G) any change in the affiliate chart as described in §13.413(c)(7) of this title;

(H) modifications to any types of compensation arrangements, such as compensation based on fee-for-service arrangements, risk-sharing arrangements, prepaid funding arrangements, or capitated risk arrangements, made or to be made with physicians and health care providers in exchange for the provision of, or the arrangement to provide, health care services to patients, including any financial incentives for physicians and providers. The HCC must maintain the confidentiality of these compensation arrangements;

(I) any material change in network configuration; and

(J) a description of the quality assurance and quality improvement program, as set forth in §13.481 and §13.482 of this title (relating to Quality Improvement Structure for HCCs and Quality Assurance and Quality Improvement, respectively).

(4) Approval time period. Any modification for which commissioner's approval is required is considered approved unless disapproved within 60 days from the date the filing is determined by the department to be complete. The commissioner may postpone the action for a period not to exceed 60 days, as necessary for proper consideration. The commissioner will notify the HCC by letter of any postponement. The commissioner, after notice and opportunity for hearing, may withdraw approval of a filing made under paragraph (2) of this subsection or reject any informational filing made under paragraph (3) of this subsection.

(5) Filing review procedure. Within 20 days from the department's receipt of an initial filing for commissioner's approval under this section, the department will determine whether the filing is complete or incomplete for purposes of acceptance for review and, if found to be incomplete, the department will issue a written notice in paper or electronic form to the HCC of its incomplete filing.

(A) Incomplete filing. The written notice of an incomplete filing will state that the filing is not complete and has not been accepted for review. In addition, the notice will specify the information, documentation, and corrections necessary to make the filing complete for purposes of this section. If a filing is resubmitted in whole or in part and is still incomplete, an additional written notice will be issued. The notice will specify the corrections or information necessary for completeness and state that the 60-day time period for official action will not begin until the date the department determines the filing to be complete. If a filing is not resubmitted within 30 days of the date of the written notice of incompleteness, the department will consider the filing withdrawn and will close it.

(B) Processing of complete filing. The department will in writing approve or disapprove a complete filing within the period of time set forth in paragraph (4) of this subsection, beginning on the date the filing is determined to be complete. The HCC may waive in writing the deemed approval time line set forth in paragraph (4) of this section.

(C) Conversion to renewal review. If the filing by the HCC under this subsection is sufficiently material, the department may require the HCC to file an application for renewal before the date required by Insurance Code §848.060(a).

§13.423. Service Area Change Applications.

(a) An HCC must file an application for approval with the department before the HCC may expand or reduce an existing service area or add a new service area.

(b) If any of the following items are changed by a proposed service area expansion or reduction, the new item or any amendments to an existing item must be submitted for approval or filed for information, as specified in §13.422 of this title (relating to Filing Requirements That Apply After Issuance of Certificate of Authority):

(1) a description and a map with key and scale, showing both the currently approved service area and the proposed new service area as required by §13.413(e)(1) of this title (relating to Contents of the Application);

(2) a form of any new contracts or amendment of any existing contracts in the new area, as described in §13.413(e)(5) of this title;

(3) network configuration information, as required by §13.413(e)(2) of this title;

(4) a brief narrative description of the administrative arrangements and organizational charts as described in §13.413(c)(7) of this title and any other information the HCC considers to be pertinent;

(5) biographical data sheets for any new management staff assigned to the new area;

(6) copies of leases, loans, agreements, and contracts to be used in the proposed new area, including information described in §13.422(c)(2)(D) of this title;

(7) separate and combined sources of financing and financial projections as described in §13.413(d)(1) - (3) of this title; and

(8) any new or amended reinsurance agreements, insurance, or other protection against insolvency, as specified in §13.413(d)(4) of this title.

(c) The department will not accept an application for review until the application is complete. An application to modify the certificate of authority is considered complete when all information required by §13.422 of this title, this section, and §13.481 and §13.482 of this title (relating to Quality Improvement Structure for HCCs and Quality Assurance and Quality Improvement, respectively), that is reasonably necessary for a final determination by the department has been filed with the department.

(d) A service area expansion or reduction application will be considered only if the HCC is in compliance with the requirements of §13.481 and §13.482 of this title, and §13.483 of this title (relating to Credentialing) in both the existing and proposed service areas.

(e) If the filing for proposed service area change might materially affect the HCC's ability to arrange for or provide health care services, or might materially change the antitrust analysis of the HCC, the department may require the HCC to file an application for renewal before the date required by Insurance Code §848.060(a).

§13.424. Certificate of Authority Renewal Requirements.

(a) Not later than 180 days before its certificate anniversary date, the HCC must file with the commissioner an application to renew its certificate.

(b) The filing must include:

(1) the Original/Renewal Application for Certificate of Authority to do the Business of a Health Care Collaborative (HCC) in the State of Texas form; and

(2) the financial statements for the HCC, as of the close of the preceding calendar year.

(c) For purposes of this section, an HCC is not required at renewal to make a duplicate filing of any document or information item specified to be and filed as part of the original application for certificate of authority under §13.413 of this title (relating to Contents of the Application) that has not been amended, modified, revised, canceled, terminated, replaced, or otherwise changed since the original or most recent renewal certificate of authority was issued. A transmittal form specifically identifying the documents and items that have not changed since the original or most recent renewal certificate of authority was issued must be filed as a part of the renewal application and accompanied by an attestation executed by an officer or other authorized representative of the HCC certifying that the documents and items identified in the transmittal form have not changed.

(d) The provisions of subsection (c) of this section also apply to the duplicate filing of any document or information item specified to be and filed pursuant to provisions of §13.422 of this title (relating to Filing Requirements That Apply After Issuance of Certificate of Authority) that has not changed since its filing was approved or accepted by the department, as applicable.

(e) The department will accept for review an application for renewal when the filing is complete.

(1) The department will send written notice of an incomplete initial filing within 20 days of the filing, stating that the filing is not complete and has not been accepted for review.

(2) The notice must specify the information, documentation, and corrections necessary to make the filing complete.

(f) If a completed application for renewal is filed under Insurance Code §848.060 and this section, the commissioner will conduct a review and take official action on the completed application in accordance with the provisions of Insurance Code §848.060. The review will be conducted under Insurance Code §848.057 as if the application for renewal were a new application.

§13.425. Compensation Arrangements.

(a) An HCC must comply with Insurance Code §848.053, including requirements relating to committee membership, charges, fees, distributions, or other compensation assessed for services provided by HCC participants, and to the sharing of the data among nonparticipating physicians and health care providers.

(b) An HCC must establish and enforce procedures to maintain the confidentiality of charge, fee, and payment data and information between HCC participants and any individual or entity outside of the HCC, including information to be transmitted to the department.

(c) A participant in an HCC is prohibited from using charge, fee, and payment data collected by the HCC in any negotiation of charges, fees, or payments if the HCC is not a party to the negotiation.

§13.426. Confidentiality.

(a) An HCC must establish and administer procedures and internal controls to safeguard and ensure against the sharing of any confidential information with or among participants.

(b) The requirements of this section include establishing and enforcing collection, custodial, retrieval, and transmittal procedures to ensure that information that the HCC or its participants must maintain as confidential is protected as confidential both as to entities and individuals outside the HCC, and between or among participants. The requirements of this section apply to confidential information that:

(1) the HCC maintains as custodian; or

(2) the HCC or any of its participants submit to the department under Insurance Code §848.057 or to the attorney general under Insurance Code §848.059.

§13.429. HCCs Subject to Insurance Code Chapters 541 and 542 and Related Rules.

HCCs must comply with Insurance Code Chapters 541 and 542 and rules promulgated by the department pursuant to Insurance Code Chapters 541 and 542, as applicable, in the same manner as insurance companies or HMOs.

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 September 11, 2012.

TRD-201204794
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 463-6327

♦ ♦ ♦

DIVISION 4. FINANCIAL REQUIREMENTS

28 TAC §13.431, §13.432

STATUTORY AUTHORITY. The new sections are proposed under Insurance Code §§848.054(b), 848.056(d), 848.108(c)(2), 848.108(d), 848.151, 848.152(d), and 36.001.

Section 848.054(b) requires the commissioner to adopt rules governing the application for certificate of authority to organize and operate an HCC.

Section 848.056(d) authorizes the commissioner by rule to extend the date by which an application is due and to require the disclosure of any additional information necessary to implement and administer Chapter 848, including information necessary to antitrust review and oversight.

Section 848.108(c)(2) authorizes the commissioner to specify by rule functions in addition to those referenced in §848.108(c)(1) under which an HCC may assign responsibility to a delegated entity by agreement.

Section 848.108(d) authorizes the commissioner by rule to set maintenance requirements for reserves and capital in an amount and form in addition to amounts required under Chapter 1272 as are necessary for the liabilities and risks assumed by the HCC.

Section 848.151 authorizes the commissioner and the attorney general to adopt reasonable rules as necessary and proper to implement the requirements of Chapter 848.

Section 848.152(d) requires the commissioner to set fees and assessments in an amount sufficient to pay the reasonable expenses of the department and attorney general in administering Chapter 848, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing HCCs.

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

CROSS REFERENCE TO STATUTE. The proposal affects the following statutes: Insurance Code Chapters 843, 848, 1272, and 1301.

§13.431. Reserves and Working Capital Requirements.

(a) An HCC must maintain working capital composed of current assets with a ratio of current assets to current liabilities of 1.25:1, based on the greater of the prior year's actual liabilities or the projected liabilities for the subsequent year, subject to the following requirements, as applicable:

(1) an HCC consisting of physicians and one or more facilities must maintain unencumbered net equity of not less than $200,000; and

(2) an HCC must base its ratio of assets to liabilities on the projected liabilities for the subsequent year if the HCC has not been certified for more than one year.

(b) An HCC must have reserves sufficient to operate and maintain the HCC and to arrange for services and expenses it incurs. An HCC must maintain financial reserves computed in accordance with Generally Accepted Accounting Principles in an amount not less than 100 percent of incurred but not paid claims of nonparticipating physicians and providers.

(c) Any HMO or insurer certified by the department that enters into a contract with an HCC pursuant to Insurance Code §848.103 must maintain a reserve that is:

(1) equivalent in value to three months of prepaid funding or capitation payments;

(2) phased in over a no-more-than 36-month period;

(3) maintained separately from and in addition to all other reserves and liabilities of the HMO or insurer;

(4) unencumbered and dedicated to assure its availability for its intended purpose; and

(5) reported in the aggregate separately from all other reserves and liabilities of the HMO or insurer.

(d) For the purpose of meeting the minimum working capital requirements of this section, current assets of an HCC are limited to U.S. currency, certificates of deposit with fixed terms of one year or less, money market accounts, accounts receivable from government payors, and other accounts receivable that have remained due 90 days or less. Accounts receivable must be reported net of all allowances. Assets with a maturity period or fixed term that is greater than one year are not current assets for purposes of this section.

(e) For the purpose of meeting the minimum reserve and minimum net equity requirements of this section, investments in capital assets, mortgages, notes, and loan-backed securities must be excluded from the calculation of reserves and net equity in determining satisfaction of minimum requirements.

§13.432. Fiduciary Responsibility.

A director, member of a committee, officer, or representative of an HCC who is charged with the duty of handling or investing its funds is prohibited from intentionally:

(1) depositing or investing the funds, except in the corporate name of the HCC or in the name of a nominee of the HCC as may be allowed elsewhere in this subchapter; or

(2) taking or receiving to his or her own use any fee, brokerage, or commission for, or on account of, a loan made by or on behalf of the HCC, except that the individuals referenced in this section may receive reasonable interest on amounts loaned to the HCC.

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 September 11, 2012.

TRD-201204793
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 463-6327

DIVISION 5. HCC CONTRACT ARRANGEMENTS

28 TAC §13.441

STATUTORY AUTHORITY. The new section is proposed under Insurance Code §§848.054(b), 848.056(d), 848.108(c)(2), 848.108(d), 848.151, 848.152(d), and 36.001.

Section 848.054(b) requires the commissioner to adopt rules governing the application for certificate of authority to organize and operate an HCC.

Section 848.056(d) authorizes the commissioner by rule to extend the date by which an application is due and to require the disclosure of any additional information necessary to implement and administer Chapter 848, including information necessary to antitrust review and oversight.

Section 848.108(c)(2) authorizes the commissioner to specify by rule functions in addition to those referenced in §848.108(c)(1) under which an HCC may assign responsibility to a delegated entity by agreement.

Section 848.108(d) authorizes the commissioner by rule to set maintenance requirements for reserves and capital in an amount and form in addition to amounts required under Chapter 1272 as are necessary for the liabilities and risks assumed by the HCC.

Section 848.151 authorizes the commissioner and the attorney general to adopt reasonable rules as necessary and proper to implement the requirements of Chapter 848.

Section 848.152(d) requires the commissioner to set fees and assessments in an amount sufficient to pay the reasonable expenses of the department and attorney general in administering Chapter 848, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing HCCs.

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

CROSS REFERENCE TO STATUTE. The proposal affects the following statutes: Insurance Code Chapters 843, 848, 1272, and 1301.

§13.441. General Provisions.

(a) An HCC's contracts with physicians and health care providers must not impede application of provisions in Insurance Code Chapters 843 (Health Maintenance Organizations) and 1301 (Preferred Provider Benefit Plans), and in Chapter 11 of this title (relating to Health Maintenance Organizations) and Chapter 3, Subchapter X of this title (relating to Preferred Provider Plans), that impose requirements concerning relations with physicians or health care providers.

(b) An HCC is prohibited from using a financial incentive or making a payment to a physician or health care provider if the incentive or payment acts directly or indirectly as an inducement to limit medically necessary services.

(c) If an HCC participant's market share as calculated under §13.414 of this title (relating to Limited Exemption from Certain Information Filing Requirements) exceeds 50 percent in a PSA for any service that no other HCC participant provides to patients in that PSA, the participant furnishing the service is a dominant provider for purposes of this subchapter. An HCC with a dominant provider is prohibited from:

(1) requiring a private payor to contract exclusively with the HCC; or

(2) otherwise restricting a private payor's ability to contract or deal with other HCCs, networks, physicians, or health care providers.

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 September 11, 2012.

TRD-201204792
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 463-6327

♦ ♦ ♦

DIVISION 6. CHANGE OF CONTROL BY ACQUISITION OF OR MERGER WITH HCC

28 TAC §§13.451 - 13.455

STATUTORY AUTHORITY. The new sections are proposed under Insurance Code §§848.054(b), 848.056(d), 848.108(c)(2), 848.108(d), 848.151, 848.152(d), and 36.001.

Section 848.054(b) requires the commissioner to adopt rules governing the application for certificate of authority to organize and operate an HCC.

Section 848.056(d) authorizes the commissioner by rule to extend the date by which an application is due and to require the disclosure of any additional information necessary to implement and administer Chapter 848, including information necessary to antitrust review and oversight.

Section 848.108(c)(2) authorizes the commissioner to specify by rule functions in addition to those referenced in §848.108(c)(1) under which an HCC may assign responsibility to a delegated entity by agreement.

Section 848.108(d) authorizes the commissioner by rule to set maintenance requirements for reserves and capital in an amount and form in addition to amounts required under Chapter 1272 as are necessary for the liabilities and risks assumed by the HCC.

Section 848.151 authorizes the commissioner and the attorney general to adopt reasonable rules as necessary and proper to implement the requirements of Chapter 848.

Section 848.152(d) requires the commissioner to set fees and assessments in an amount sufficient to pay the reasonable expenses of the department and attorney general in administering Chapter 848, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing HCCs.

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

CROSS REFERENCE TO STATUTE. The proposal affects the following statutes: Insurance Code Chapters 843, 848, 1272, and 1301.

§13.451. Definitions.

The following words and terms, for purposes of this division, have the following meanings unless the context clearly indicates otherwise.

(1) Control--The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporation office held by an individual.

(2) Voting security--Any security presently entitling its owner or holder to vote in the direction or management of the affairs of an individual or entity, or any instrument presently convertible by its owner or holder into a voting security, or the right to acquire a voting security.

§13.452. Determination of Control.

For purposes of this division:

(1) control is presumed to exist if any individual or entity, directly or indirectly, owns, controls, holds with the power to vote or holds irrevocable proxies representing, 10 percent or more of the voting securities or authority of any other individual or entity;

(2) this presumption may be rebutted by a showing made in the manner provided by Insurance Code §823.010 that control does not exist in fact; and

(3) the commissioner may determine, after furnishing all interested parties notice and opportunity for hearing and making specific findings of fact to support the determination, that control exists in fact where an individual or entity exercises directly or indirectly, either alone or pursuant to an agreement with one or more other individuals or entities, such a controlling influence over the management or policies of an authorized HCC as to be deemed to control the HCC.

§13.453. Filing Requirements.

(a) Unless an individual or entity has filed with the department the items as set forth in subsection (b) of this section, the individual or entity is prohibited from:

(1) acquiring an ownership interest in an entity that holds a certificate of authority as an HCC if the individual or entity is, or after the acquisition would be, directly or indirectly in control of the certificate holder; or

(2) otherwise acquiring control of or exercising any control over the certificate holder.

(b) An individual or entity described in subsection (a) of this section must, under oath or affirmation, file:

(1) a Biographical Affidavit form for each individual by whom or on whose behalf the acquisition of control is to be effected; and

(2) a Health Care Collaborative (HCC) Acquisition Form.

(c) The department may require a partnership, syndicate, or other group that is subject to the filing requirements specified in subsections (a) and (b) of this section to provide the information required by subsection (b) for each partner of the partnership, each member of the syndicate or group, and each individual or entity who controls the partner or member.

(d) If the partner, member, or entity is a corporation, or if the entity required to file the documents set forth in subsection (b) of this section is a corporation, the department may require that the information required under that subsection be provided regarding:

(1) the corporation;

(2) each individual who is an executive officer or director of the corporation; and

(3) each individual or entity who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of the corporation.

§13.454. Commissioner Action.

(a) A proposed acquisition of control will be disapproved if, after notice and opportunity for hearing, the commissioner determines that:

(1) immediately following the change of control, the certificate holder would not be able to satisfy the requirements for the issuance of a certificate of authority;

(2) the competence, trustworthiness, experience, and integrity of the individuals who would control the operation of the certificate holder are such that it would not be in the interest of health care services consumers in this state to permit the acquisition of control; or

(3) the acquisition of control would violate this code or another law of this state, any law of another state, or of the United States.

(b) Notwithstanding subsection (a) of this section, a change in control is considered approved if the commissioner has not, before the 61st day after the date on which the department receives all information required by this division:

(1) acted on the proposed change of control; or

(2) required that the HCC file an application for renewal as a result of the proposed change of control.

§13.455. Change of Control with Increased Market Share.

For any change in control of an authorized HCC that results in an increase to its market share in any PSA as provided in §13.414 of this title (relating to Limited Exemption from Certain Information Filing Requirements), the department may require that the HCC file an application for renewal before the date required by Insurance Code §848.060(a). An HCC may, in connection with a filing under this division, submit an application for renewal of certificate of authority.

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 September 11, 2012.

TRD-201204791
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 463-6327

♦ ♦ ♦

DIVISION 7. ADMINISTRATIVE PROCEDURES

28 TAC §13.461

STATUTORY AUTHORITY. The new section is proposed under Insurance Code §§848.054(b), 848.056(d), 848.108(c)(2), 848.108(d), 848.151, 848.152(d), and 36.001.

Section 848.054(b) requires the commissioner to adopt rules governing the application for certificate of authority to organize and operate an HCC.

Section 848.056(d) authorizes the commissioner by rule to extend the date by which an application is due and to require the disclosure of any additional information necessary to implement and administer Chapter 848, including information necessary to antitrust review and oversight.

Section 848.108(c)(2) authorizes the commissioner to specify by rule functions in addition to those referenced in §848.108(c)(1) under which an HCC may assign responsibility to a delegated entity by agreement.

Section 848.108(d) authorizes the commissioner by rule to set maintenance requirements for reserves and capital in an amount and form in addition to amounts required under Chapter 1272 as are necessary for the liabilities and risks assumed by the HCC.

Section 848.151 authorizes the commissioner and the attorney general to adopt reasonable rules as necessary and proper to implement the requirements of Chapter 848.

Section 848.152(d) requires the commissioner to set fees and assessments in an amount sufficient to pay the reasonable ex-

penses of the department and attorney general in administering Chapter 848, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing HCCs.

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

CROSS REFERENCE TO STATUTE. The proposal affects the following statutes: Insurance Code Chapters 843, 848, 1272, and 1301.

§13.461. Commissioner's Authority to Require Additional Information.

(a) The commissioner may require additional information from the HCC or any participant in the HCC as reasonably necessary to make any determination required by Insurance Code Chapter 848, this subchapter, and applicable insurance laws and regulations of this state.

(b) The commissioner may require any or all of the additional information set forth in subsection (c) of this section. An HCC or HCC participant is not required to create the items listed in subsection (c) of this section unless and except as the commissioner requires the items to be provided under this section. Once created, however, the documents must be maintained by the HCC or participant for at least five years.

(c) Additional information the commissioner may require includes the following:

(1) underlying documentation or data supporting any information, reports, or memoranda submitted to the department under the Insurance Code or this title;

(2) contact information for current participants or employees of the HCC, and last known contact information for former participants or employees;

(3) interviews by the department with individuals affiliated with the HCC or HCC participants;

(4) any participant's agendas, minutes, recordings, summaries, handouts, or presentations to the HCC;

(5) documents relating to past, current, or planned fees, risk-sharing, fee schedules, fee conversion factors, withholds, capitation, pricing plans, pricing strategies, or other forms of payment;

(6) documents relating to planned additions to the participation in the HCC or expansions of participants in the HCC;

(7) de-identified information regarding utilization of services by the HCC's patients or participants, including both medical and financial information;

(8) current bylaws, rules, or regulations of an HCC participant's professional staff or any of its departments or subunits;

(9) questionnaires submitted by participants to applicable professional associations in connection with annual surveys of association members, and to any other association, accreditation agency, or government agency, in connection with any annual or other periodic survey of the participant;

(10) reports prepared by accreditation agencies in connection with accreditation of the HCC or any HCC participant;

(11) revenue-and-cost reports, profitability reports, and other financial reports;

(12) internal or external reports relating to quality of care at any health care service location in each service area by the HCC or its participants, including:

(A) data or reports submitted to or received from or by quality rating organizations;

(B) quality of care initiatives;

(C) quality assurance or quality improvement systems; and

(D) the effect of changes in health care service location quality on patient volume and revenue;

(13) financial reports regularly prepared by or for the HCC applicant on any periodic basis relating to any arranged health care service;

(14) memoranda, excluding engineering and architectural plans and blueprints, relating to plans of the HCC applicant, or any participant, for the construction of new facilities, the closing of any existing facilities, or an expansion, a conversion, or a modification of current facilities;

(15) memoranda relating to plans of, or steps undertaken by the HCC applicant or any participant for any acquisition, divestiture, joint venture, alliance, or merger involving any participant in the service area other than the application for certificate of authority of the applicant;

(16) memoranda analyzing or discussing the effect of any merger, joint venture, acquisition, or consolidation of HCCs in the applicant's service area, including the HCC's application if approved, on the HCC's prices, costs, margins, service quality, or any other aspect of competitive performance, including:

(A) memoranda comparing the actual cost savings or other benefits of the transactions to those previously projected; and

(B) memoranda discussing how the benefits were or might be achieved;

(17) a description relating to the consolidation or realignment of any medical and health care services arranged by or through the applicant whether completed, in progress, or planned among the participants;

(18) the names and addresses of all contracting physicians, in Excel-compatible format;

(19) documents created or used by, for, or on behalf of the applicant for the purpose of soliciting physicians or health care providers to join the applicant as an employee or participant, promoting continued participation in the applicant, or otherwise offering, promoting, or advertising the applicant's services or activities on behalf of physicians or health care providers, and all documents supplied by the HCC to newly recruited physicians or health care providers;

(20) contracts between the HCC applicant or any of its participants and any private payor, all attachments to the contracts, and all documents relating to the contracts, including:

(A) documents sufficient to show the name, contact person, and telephone number of each health plan contracting with the applicant for physician services;

(B) documents relating to fees, fee schedules, fee conversion factors, withholds, capitation, pricing plans, pricing strategies, or other forms of payment;

(C) documents discussing actual or potential negotiations, offers, or responses to any contract, fee schedule, or risk-sharing arrangement with a third-party payor;

(D) copies of internal memoranda relating to:

(i) the development or negotiation of contracts with payors or participants, and internal HCC decisions regarding negotiating positions;

(ii) competition to obtain contracts;

(iii) decisions to terminate contracts;

(iv) draft, contingent, or expired contracts, including contracts not entered into, not yet finalized or in force, or no longer in force; and

(v) contract amendments or modifications; and

(E) the beginning date and termination date, as applicable, for each contract;

(21) documents relating to plans, interests, or steps undertaken by the HCC applicant for any acquisition, divestiture, joint venture, alliance, collaboration, license, or merger with any HCC or other health care provider, including:

(A) any notes or minutes taken; or

(B) reports, memoranda, or correspondence regarding meetings between the HCC applicant and any other HCC or other health care provider;

(22) documents reflecting:

(A) actual or planned lease, management contract, or other agreement for the HCC applicant to operate a facility in the service area that is, or will be, owned in whole or in part by another individual or entity; and

(B) formal or informal commercial or operational relationships or affiliations that have existed, exist, or are planned between or among any facilities, or facilities and any physician organizations in the service area, including purchases by the HCC applicant of services from other facilities or from physician organizations, and vice versa;

(23) for each participant, summaries and interpretations of contract terms and methodologies used to determine the payment due to the participant under a contract with a payor in effect at any time during the previous three years for each treatment, office visit, or other medical or health care service provided or delivered in the service area; and

(24) a list and description by Current Procedural Technology code, if available, of each medical or health care service arranged by or through the applicant in the HCC's service area, and for each code listed, a statement of:

(A) the number of procedures performed;

(B) the amount of revenue received by the applicant;

(C) the ZIP code for each patient receiving the procedure or service; and

(D) the location of the office where the procedure or service was performed.

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 September 11, 2012.

TRD-201204790
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 463-6327

♦ ♦ ♦

DIVISION 8. OTHER REQUIREMENTS

28 TAC §§13.471 - 13.474

STATUTORY AUTHORITY. The new sections are proposed under Insurance Code §§848.054(b), 848.056(d), 848.108(c)(2), 848.108(d), 848.151, 848.152(d), and 36.001.

Section 848.054(b) requires the commissioner to adopt rules governing the application for certificate of authority to organize and operate an HCC.

Section 848.056(d) authorizes the commissioner by rule to extend the date by which an application is due and to require the disclosure of any additional information necessary to implement and administer Chapter 848, including information necessary to antitrust review and oversight.

Section 848.108(c)(2) authorizes the commissioner to specify by rule functions in addition to those referenced in §848.108(c)(1) under which an HCC may assign responsibility to a delegated entity by agreement.

Section 848.108(d) authorizes the commissioner by rule to set maintenance requirements for reserves and capital in an amount and form in addition to amounts required under Chapter 1272 as are necessary for the liabilities and risks assumed by the HCC.

Section 848.151 authorizes the commissioner and the attorney general to adopt reasonable rules as necessary and proper to implement the requirements of Chapter 848.

Section 848.152(d) requires the commissioner to set fees and assessments in an amount sufficient to pay the reasonable expenses of the department and attorney general in administering Chapter 848, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing HCCs.

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

CROSS REFERENCE TO STATUTE. The proposal affects the following statutes: Insurance Code Chapters 843, 848, 1272, and 1301.

§13.471. Notification of Change in Payment Arrangements.

An HCC must notify all affected payors in writing of a material change in the payment arrangement for physicians, health care providers, or both within 30 days of any change in the type of payment arrangement for any type of service (for example, from capitation to fee-for-service, from fee-for-service to capitation). The notification of the change must include a description of the payment arrangement that has been changed and a description of the new payment arrangement.

§13.472. Requirements for Certain Delegation Contracts.

An HCC that delegates responsibility by contract with a delegated entity, delegated network, or delegated third party, as those terms are defined in Insurance Code §1272.001 through reference to contracts with HMOs, must:

(1) submit to the department a monitoring plan setting out how the HCC will ensure that all delegated HCC functions are implemented in a manner consistent with full compliance by the HCC with all regulatory requirements of the department;

(2) conduct an on-site or desk audit of the delegated entity, delegated network, or delegated third party no less frequently than annually, or more frequently on indication of material noncompliance, to obtain information necessary to verify compliance with all regulatory requirements of the department. Written documentation of each audit required by this paragraph must be made available to the department on request; and

(3) take prompt action to correct any failure by the delegated entity, delegated network, or delegated third party to comply with regulatory requirements of the department relating to any matters delegated by the HCC and necessary to ensure the HCC's compliance with the regulatory requirements.

§13.473. Organization of an HCC.

(a) The governing body described in Insurance Code §848.052 must have ultimate responsibility for the development, approval, implementation, and enforcement of administrative, operational, personnel, and patient care policies and procedures related to the operation of the HCC.

(b) The HCC must have a clinical director who:

(1) is currently licensed in Texas or otherwise authorized to practice in this state in the field of services offered by the HCC;

(2) resides in Texas;

(3) is available at all times to address complaints, clinical issues, utilization review, and any quality of care issues on behalf of the HCC;

(4) demonstrates active involvement in all quality management activities; and

(5) is subject to the HCC's credentialing requirements, as appropriate.

(c) The HCC may establish one or more service areas within Texas. For each defined service area the HCC must:

(1) provide a delivery network that is adequate and complies with Insurance Code Chapter 848, and demonstrate to the department the ability to provide continuity, accessibility, availability, and quality of services within the HCC's service area as applicable to the services that the HCC has contracted or will contract to provide, including the following:

(A) participants that are sufficient in number, size, and geographic distribution to be capable of furnishing the contracted health care services, taking into account the number of potential patients, their characteristics, and their medical and health care needs, including the following:

(i) current utilization of covered health care services within the prescribed geographic distances outlined in this section; and

(ii) projected utilization of covered health care services;

(B) an adequate number of participants available and accessible to patients 24 hours a day, seven days a week;

(C) sufficient numbers and classes of participants to ensure choice, access, and quality of care;

(D) an adequate number of participating physicians who have admitting privileges at one or more participating hospitals to make any necessary hospital admissions;

(E) emergency care that is available and accessible 24 hours a day, seven days a week;

(F) services sufficiently available and accessible as necessary to ensure that the distance from any point in the HCC's designated service area to a point of service is not greater than:

(i) 30 miles in nonrural areas and 60 miles in rural areas for primary care and general hospital care; and

(ii) 75 miles for specialty care and specialty hospitals;

(G) urgent care available and accessible within 24 hours for health and behavioral health conditions;

(H) routine care available and accessible:

(i) within three weeks for health conditions; and

(ii) within two weeks for behavioral health conditions;

(I) preventive health services available and accessible:

(i) within two months for a child, or earlier if necessary for compliance with nationally recognized recommendations for specific preventive care services; and

(ii) within three months for an adult;

(2) specify the counties and ZIP codes, or any portions of any counties, included in the service area; and

(3) maintain separate cost center accounting for each service area to facilitate the reporting of divisional operations as required for HCC financial reporting.

(d) The HCC must maintain in force in its own name a fidelity bond on its officers and employees.

(1) The fidelity bond must be in an amount of at least $100,000, or another amount prescribed by the commissioner, and issued by an insurer that holds a certificate of authority in this state.

(2) The fidelity bond must obligate the surety to pay any loss of money or other property the HCC sustains because of an act of fraud or dishonesty by an employee or officer of the HCC, acting alone or in concert with others, while employed or serving as an officer of the HCC.

(3) Subject to the same coverage amount and conditions required for a fidelity bond under this subsection, an HCC may, instead of obtaining a fidelity bond:

(A) obtain and maintain in force in its own name insurance coverage in a form and amount acceptable to the commissioner; or

(B) deposit with the office of the comptroller in Texas readily marketable liquid securities acceptable to the commissioner.

§13.474. Requirements for HMO or Insurer Delegation of Functions to HCCs.

(a) An HMO's delegation of functions to an HCC is subject to the requirements of Insurance Code Chapter 1272 and Chapter 11, Subchapter AA, of this title (relating to Delegated Entities).

(b) An insurer's delegation of functions to an HCC is subject to the requirements of Insurance Code Chapter 1272 and Chapter 11, Subchapter AA, of this title as if the insurer were an HMO.

(c) If a provision of this subchapter imposes a compliance requirement that is greater than or in conflict with those contained in Insurance Code Chapter 1272 or Chapter 11, Subchapter AA, of this title, the requirement of this subchapter governs.

(d) A delegation agreement between an HMO or insurer and an HCC must mandate that the HMO or insurer disclose in all provider listings distributed to insureds or enrollees those providers participating in the HCC.

(e) If an insurer contracts for services with an HCC on a basis other than fee-for-service, the insurer must disclose the nature of its payment arrangement with the HCC in either the insurance policy and certificates or in any provider listing distributed to insureds.

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 September 11, 2012.

TRD-201204789
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 463-6327

♦ ♦ ♦

DIVISION 9. QUALITY AND COST OF HEALTH CARE SERVICES

28 TAC §§13.481 - 13.483

STATUTORY AUTHORITY. The new sections are proposed under Insurance Code §§848.054(b), 848.056(d), 848.108(c)(2), 848.108(d), 848.151, 848.152(d), and 36.001.

Section 848.054(b) requires the commissioner to adopt rules governing the application for certificate of authority to organize and operate an HCC.

Section 848.056(d) authorizes the commissioner by rule to extend the date by which an application is due and to require the disclosure of any additional information necessary to implement and administer Chapter 848, including information necessary to antitrust review and oversight.

Section 848.108(c)(2) authorizes the commissioner to specify by rule functions in addition to those referenced in §848.108(c)(1) under which an HCC may assign responsibility to a delegated entity by agreement.

Section 848.108(d) authorizes the commissioner by rule to set maintenance requirements for reserves and capital in an amount and form in addition to amounts required under Chapter 1272 as are necessary for the liabilities and risks assumed by the HCC.

Section 848.151 authorizes the commissioner and the attorney general to adopt reasonable rules as necessary and proper to implement the requirements of Chapter 848.

Section 848.152(d) requires the commissioner to set fees and assessments in an amount sufficient to pay the reasonable expenses of the department and attorney general in administering Chapter 848, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing HCCs.

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

CROSS REFERENCE TO STATUTE. The proposal affects the following statutes: Insurance Code Chapters 843, 848, 1272, and 1301.

§13.481. Quality Improvement Structure for HCCs.

(a) An HCC must develop and maintain an ongoing quality improvement (QI) program designed to objectively and systematically monitor and evaluate the quality and appropriateness of health care services that it arranges for or offers, and to pursue opportunities for improvement. Unless the HCC has no patients, the QI program must include the active involvement of one or more patient(s) who are not employees of the HCC.

(b) The governing body is ultimately responsible for the QI program. The governing body must:

(1) appoint a quality improvement committee (QIC) that includes the clinical director, practicing physicians, and, if applicable, other individual health care providers;

(2) approve the QI program;

(3) approve an annual QI plan;

(4) meet no less than semiannually to receive and review reports of the QIC or group of committees and take action when appropriate; and

(5) review the annual written report on the QI program.

(c) The QIC must evaluate the overall effectiveness of the QI program.

(1) The QIC may delegate QI activities to other committees that may, if applicable, include practicing physicians and individual health care providers and patients from the service area.

(A) All committees must collaborate and coordinate efforts to improve the quality, availability, and accessibility of health care services.

(B) All committees must meet regularly and report the findings of each meeting, including any recommendations, in writing to the QIC.

(C) If the QIC delegates any QI activity to any subcommittee, then the QIC must establish a method to oversee each subcommittee.

(2) The QIC must use multidisciplinary teams when indicated to accomplish QI program goals. For example, an HCC could include only a narrow range of specialty health care services, making the use of multidisciplinary teams impractical.

§13.482. Quality Assurance and Quality Improvement.

(a) An HCC must establish, implement, and administer a continuous quality assurance and quality improvement program that includes defined policies and processes to:

(1) promote evidence-based medicine and best practices;

(2) secure patient engagement;

(3) promote coordination of care across a continuum of care; and

(4) measure and report the quality of health care services and impact on cost.

(b) Unless otherwise approved by the commissioner, the program must include:

(1) appropriate practice evaluation tools applicable to the services provided by the HCC, including:

(A) Consumer Assessment of Healthcare Providers and Systems surveys developed by the Agency for Healthcare Research and Quality;

(B) Agency for Healthcare Research and Quality standards, as available; and

(C) National Quality Forum standards;

(2) periodic review; and

(3) policies for coordinating with the HCC's quality improvement committee to make necessary updates and adjustments.

(c) The patient engagement process must include, as appropriate:

(1) evaluating the health needs of its enrolled population;

(2) communicating clinical knowledge to patients and patient representatives clearly and understandably;

(3) promoting patient engagement, including engagement in treatment decisions; and

(4) establishing written standards for patient communications.

(d) The processes to promote coordination of care across a continuum of care must include, as appropriate:

(1) a method or system to identify high-risk individuals; and

(2) processes to manage care throughout an episode of care and during transitions.

(e) The processes for measuring and reporting quality of health care services and impact on cost must include:

(1) measurement and evaluation of health care services and processes described in subsection (a)(1) - (3) of this section; and

(2) as appropriate, a process for medical peer review and arrangements for sharing pertinent medical records between participants and ensuring the record's confidentiality.

§13.483. Credentialing.

An HCC must implement a documented process for selection and retention of contracted participants. The credentialing process must comply with the standards promulgated by the National Committee for Quality Assurance, URAC, or the Joint Commission on Accreditation of Hospital Organizations as appropriate, to the extent that those standards are applicable and do not conflict with other laws of this state.

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

Filed with the Office of the Secretary of State on September 11, 2012.

TRD-201204788

Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 463-6327

♦ ♦ ♦

DIVISION 10. COMPLAINT SYSTEMS; RIGHTS OF PHYSICIANS; LIMITATIONS ON PARTICIPATION

28 TAC §§13.491 - 13.494

STATUTORY AUTHORITY. The new sections are proposed under Insurance Code §§848.054(b), 848.056(d), 848.108(c)(2), 848.108(d), 848.151, 848.152(d), and 36.001.

Section 848.054(b) requires the commissioner to adopt rules governing the application for certificate of authority to organize and operate an HCC.

Section 848.056(d) authorizes the commissioner by rule to extend the date by which an application is due and to require the disclosure of any additional information necessary to implement and administer Chapter 848, including information necessary to antitrust review and oversight.

Section 848.108(c)(2) authorizes the commissioner to specify by rule functions in addition to those referenced in §848.108(c)(1) under which an HCC may assign responsibility to a delegated entity by agreement.

Section 848.108(d) authorizes the commissioner by rule to set maintenance requirements for reserves and capital in an amount and form in addition to amounts required under Chapter 1272 as are necessary for the liabilities and risks assumed by the HCC.

Section 848.151 authorizes the commissioner and the attorney general to adopt reasonable rules as necessary and proper to implement the requirements of Chapter 848.

Section 848.152(d) requires the commissioner to set fees and assessments in an amount sufficient to pay the reasonable expenses of the department and attorney general in administering Chapter 848, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing HCCs.

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

CROSS REFERENCE TO STATUTE. The proposal affects the following statutes: Insurance Code Chapters 843, 848, 1272, and 1301.

§13.491. Complaint Systems.

(a) Each HCC must implement and maintain a complaint system compliant with Insurance Code §848.107 and this division that provides reasonable procedures for resolving an oral or written complaint initiated by a complainant concerning the HCC or health care services arranged by, or offered through, the HCC.

(b) For purposes of this subchapter, a complaint is any oral or written expression of dissatisfaction by a complainant to an HCC regarding any aspect of the HCC's operation.

(c) The HCC's complaint system must address a complaint initiated:

(1) by or on behalf of a patient who sought or received health care services by a participant; or

(2) by a participant.

(d) The complaint system for complaints initiated by or on behalf of patients must include a process for the notice and appeal of a complaint.

(e) The commissioner has discretion to examine a complaint system for compliance with Insurance Code §848.107 and this subchapter and will require the HCC to make corrections that the commissioner considers necessary.

§13.492. Complaints; Deadlines for Response and Resolution.

(a) Not later than seven calendar days after receipt of an oral or written complaint, the HCC must:

(1) acknowledge receipt of the complaint in writing;

(2) acknowledge the date of receipt; and

(3) provide a description of the HCC's complaint procedures, its appeal process for complaints filed by patients, and deadlines associated with each.

(b) An HCC must investigate each complaint received in accordance with the HCC's policies and in compliance with Insurance Code §848.107 and this subchapter.

(c) After an HCC has investigated a complaint, the HCC must issue a resolution letter to the complainant not later than the 30th calendar day after the HCC receives the written complaint or the close of any hearing held under §13.493(2) of this title (relating to Rights of Physicians) that:

(1) explains the HCC's resolution of the complaint;

(2) states the specific reasons for the resolution;

(3) states the specialization of any health care provider consulted; and

(4) states, if the complainant is a patient who is dissatisfied with the resolution of the complaint, that the complainant may file an appeal of the complaint resolution, or may file a complaint with the department.

(d) In situations in which a patient complaint has been appealed, the HCC must issue a decision letter after considering the appeal that includes specific reasons for the decision and states that if the complainant is dissatisfied with the resolution of the complaint, the appeal, or the complaint process, the complainant may file a complaint with the department.

(e) An HCC must maintain a complaint log that captures each complaint by category, including at least the following:

(1) quality of care or services;

(2) accessibility and availability of services, providers, or both;

(3) complaint procedures;

(4) physician and provider contracts;

(5) claims processing and bill payment disputes; and

(6) miscellaneous.

(f) Each HCC must maintain the complaint log required under subsection (e) of this section and documentation on each complaint, complaint proceeding, and action taken on the complaint until the third anniversary after the date the complaint was received.

§13.493. Rights of Physicians.

Before a complaint against a physician under Insurance Code §848.107 is resolved, or before a physician's association with an HCC is involuntarily terminated, the HCC must provide the physician an opportunity to dispute the complaint or termination through a process that includes:

(1) written notice of the complaint or basis of the termination;

(2) opportunity for hearing not earlier than the 30th day after the physician receives notice under paragraph (1) of this section;

(3) the right to provide information at the hearing; and

(4) a written decision that includes specific facts and reasons for the decision.

§13.494. Limitations and Prohibition.

(a) An HCC may limit a physician or physician group from participating in the HCC only if the limitation is based on an established development plan approved by the HCC board of directors. The HCC must provide each applicant physician or group with a copy of the development plan.

(b) An HCC is prohibited from taking a retaliatory or adverse action against a physician or health care provider that files a complaint with a regulatory authority regarding the action of an HCC.

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 September 11, 2012.

TRD-201204787
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 463-6327

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 211. ADMINISTRATION

37 TAC §211.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §211.1, concerning Definitions. Subsection (a)(19) is amended to conform to the scope of state regulatory power regarding recognition of accreditation standards for secondary education. Subsection (b) is amended to reflect the effective date of the change.

This amendment is necessary to provide clear and concise definitions for use throughout the rules.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying definitions used throughout the rules.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

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

§211.1. Definitions.

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

(1) Academic alternative program--A program for college credit offered by a training provider recognized by the Southern Association of Colleges and Schools and the Higher Texas Education Board, authorized by the commission to conduct preparatory law enforcement training as part of a degree plan program, and consisting of commission-approved curricula.

(2) Academic provider--A school, accredited by the Southern Association of Colleges and Schools and the Texas Higher Education Coordinating Board, which has been approved by the commission to provide basic licensing courses.

(3) Accredited college or university--An institution of higher education that is accredited or authorized by the Southern Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Commission on Colleges and Universities, the Western Association of Schools and Colleges, or an international college or university evaluated and accepted by a United States accredited college or university.

(4) Active--A license issued by the commission that meets the current requirements of licensure and training as determined by the commission.

(5) Administrative Law Judge (ALJ)--An administrative law judge appointed by the chief administrative law judge of the State Office of Administrative Hearings.

(6) Agency--A law enforcement unit or other entity, whether public or private, authorized by Texas law to appoint a person licensed or certified by the commission.

(7) Appointed--Elected or commissioned by an agency as a peace officer, reserve or otherwise selected or assigned to a position governed by the Texas Occupations Code, Chapter 1701, without regard to pay or employment status.

(8) Background investigation--A pre-employment background investigation that meets or exceeds the commission developed questionnaire/history statement.

(9) Basic licensing course--Any current commission developed course that is required before an individual may be licensed by the commission.

(10) Certified copy--A true and correct copy of a document or record certified by the custodian of records of the submitting entity.

(11) Chief administrator--The head or designee of a law enforcement agency.

(12) Commission--The Texas Commission on Law Enforcement Officer Standards and Education.

(13) Commissioned--Has been given the legal power to act as a peace officer or reserve, whether elected, employed, or appointed.

(14) Commissioners--The nine commission members appointed by the governor.

(15) Contract jail--A correctional facility, operated by a county, municipality or private vendor, operating under a contract with a county or municipality, to house inmates convicted of offenses committed against the laws of another state of the United States, as provided by Texas Government Code, §511.0092.

(16) Contractual training provider--A law enforcement agency, a law enforcement association, alternative delivery trainer, or proprietary training contractor that conducts specific education and training under a contract with the commission.

(17) Convicted--Has been adjudged guilty of or has had a judgment of guilt entered in a criminal case that has not been set aside on appeal, regardless of whether:

(A) the sentence is subsequently probated and the person is discharged from probation;

(B) the charging instrument is dismissed and the person is released from all penalties and disabilities resulting from the offense; or

(C) the person is pardoned, unless the pardon is expressly granted for subsequent proof of innocence.

(18) Court-ordered community supervision--Any court-ordered community supervision or probation resulting from a deferred adjudication or conviction by a court of competent jurisdiction. However, this does not include supervision resulting from a pretrial diversion.

(19) Diploma mill--An entity that offers for a fee with little or no coursework, degrees, diplomas, or certificates that may be used to represent to the general public that the individual has successfully completed a program of secondary education or training. [~~This entity also lacks accreditation by an accrediting agency or association that is recognized by state government.~~]

(20) Distance education--Study, at a distance, with an educational provider that conducts organized, formal learning opportunities for students. The instruction is offered wholly or primarily by distance study, through virtually any media. It may include the use of: videotapes, DVD, audio recordings, telephone and email communications, and Web-based delivery systems.

(21) Duty ammunition--Ammunition required or permitted by the agency to be carried on duty.

(22) Executive director--The executive director of the commission or any individual authorized to act on behalf of the executive director.

(23) Experience--Includes each month, or part thereof, served as a peace officer, reserve, jailer, telecommunicator, or federal officer. Credit may, at the discretion of the executive director, be awarded for relevant experience from an out-of-state agency.

(24) Family Violence--In this chapter, has the meaning assigned by Chapter 71, Texas Family Code.

(25) Field training program--A program intended to facilitate a transition from the academic setting to the performance of the general duties of the appointing agency.

(26) Firearms--Any handgun, shotgun, precision rifle, patrol rifle, or fully automatic weapon that is carried by the individual officer in an official capacity.

(27) Firearms proficiency--Successful completion of the annual firearms proficiency requirements.

(28) Fit for duty review--A formal specialized examination of an individual, appointed to a position governed by the Texas Occupations Code, Chapter 1701, without regard to pay or employment status, to determine if the appointee is able to safely and/or effectively perform essential job functions. The basis for these examinations should be based on objective evidence and a reasonable basis that the cause may be attributable to a medical and/or psychological condition or impairment. Objective evidence may include direct observation, credible third party reports; or other reliable evidence. The review should come after other options have been deemed inappropriate in light of the facts of the case. The selected Texas licensed medical doctor or psychologist, who is familiar with the duties of the appointee, conducting an examination should be consulted to ensure that a review is indicated. This review may include psychological and/or medical fitness examinations.

(29) High School Diploma--An earned high school diploma from a United States high school, an accredited secondary school equivalent to that of United States high school, or a passing score on the general education development test indicating a high school graduation level. Documentation from diploma mills is not acceptable.

(30) Home School Diploma--An earned diploma from a student who predominately receives instruction in a general elementary or secondary education program that is provided by the parent, or a person in parental authority, in or through the child's home. (Texas Education Code §29.916)

(31) Individual--A human being who has been born and is or was alive.

(32) Jailer--A person employed or appointed as a jailer under the provisions of the Local Government Code, §85.005, or Texas Government Code §511.0092.

(33) Killed in the line of duty--A death that is the directly attributed result of a personal injury sustained in the line of duty.

(34) Law--Including, but not limited to, the constitution or a statute of this state, or the United States; a written opinion of a court of record; a municipal ordinance; an order of a county commissioners' court; or a rule authorized by and lawfully adopted under a statute.

(35) Law enforcement academy--A school operated by a governmental entity that has been licensed by the commission, which may provide basic licensing courses and continuing education.

(36) Law enforcement automobile for training--A vehicle equipped to meet the requirements of an authorized emergency vehicle as identified by Texas Transportation Code §546.003 and §547.702.

(37) Lesson plan--A plan of action consisting of a sequence of logically linked topics that together make positive learning experiences. Elements of a lesson plan include: measurable goals and objectives, content, a description of instructional methods, tests and activities, assessments and evaluations, and technologies utilized.

(38) License--A license required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(39) Licensee--An individual holding a license issued by the commission.

(40) Line of duty--Any lawful and reasonable action, which an officer identified in Texas Government Code, Chapter 3105 is required or authorized by rule, condition of employment, or law to perform. The term includes an action by the individual at a social, ceremonial, athletic, or other function to which the individual is assigned by the individual's employer.

(41) Moral character--The propensity on the part of a person to serve the public of the state in a fair, honest, and open manner.

(42) Officer--A peace officer or reserve identified under the provisions of the Texas Occupations Code, §1701.001.

(43) Patrol rifle--Any magazine-fed repeating rifle with iron/open sights or with a frame mounted optical enhancing sighting device, 3 power or less, that is carried by the individual officer in an official capacity.

(44) Peace officer--A person elected, employed, or appointed as a peace officer under the provisions of the Texas Occupations Code, §1701.001.

(45) Personal Identification Number (PID)--A unique computer-generated number assigned to individuals for identification in the commission's electronic database.

(46) Placed on probation--Has received an adjudicated or deferred adjudication probation for a criminal offense.

(47) POST--State or federal agency with jurisdiction similar to that of the commission, such as a peace officer standards and training agency.

(48) Precision rifle--Any rifle with a frame mounted optical sighting device greater than 3 power that is carried by the individual officer in an official capacity.

(49) Proprietary training contractor--An approved training contractor who has a proprietary interest in the intellectual property delivered.

(50) Public security officer--A person employed or appointed as an armed security officer identified under the provisions of the Texas Occupations Code, §1701.001.

(51) Reactivate--To make a license issued by the commission active after a license becomes inactive. A license becomes inactive at the end of the most recent unit or cycle in which the licensee is not appointed and has failed to complete legislatively required training.

(52) Reinstate--To make a license issued by the commission active after disciplinary action or failure to obtain required continuing education.

(53) Reserve--A person appointed as a reserve law enforcement officer under the provisions of the Texas Occupations Code, §1701.001.

(54) Self-assessment--Completion of the commission created process, which gathers information about a training or education program.

(55) Separation--An explanation of the circumstances under which the person resigned, retired, or was terminated, reported on the form currently prescribed by the commission, in accordance with Texas Occupations Code, §1701.452.

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

(57) Successful completion--A minimum of:

(A) 70 percent or better; or

(B) C or better; or

(C) pass, if offered as pass/fail.

(58) TCLEDDS--Texas Commission on Law Enforcement Data Distribution System.

(59) Telecommunicator--A person employed as a telecommunicator under the provisions of the Texas Occupations Code, §1701.001.

(60) Training coordinator--An individual, appointed by a commission-recognized training provider, who meets the requirements of §215.9 of this title.

(61) Training cycle--A 48-month period as established by the commission. Each training cycle is composed of two contiguous 24-month units.

(62) Training hours--Classroom or distance education hours reported in one-hour increments.

(63) Training program--An organized collection of various resources recognized by the commission for providing preparatory or continuing training. This program includes, but is not limited to, learning goals and objectives, academic activities and exercises, lesson plans, exams, skills training, skill assessments, instructional and learning tools, and training requirements.

(64) Training provider--A governmental body, law enforcement association, alternative delivery trainer, or proprietary entity credentialed by the commission to provide preparatory or continuing training for licensees or potential licensees.

(65) Verification (verified)--The confirmation of the correctness, truth, or authenticity of a document, report, or information by sworn affidavit, oath, or deposition.

(b) The effective date of this section is January 17, 2013 [~~July 12, 2012~~].

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 September 14, 2012.

TRD-201204842

Kim Vickers

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: October 28, 2012

For further information, please call: (512) 936-7713

♦ ♦ ♦

37 TAC §211.29

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §211.29, concerning Responsibilities of Agency Chief Administrators. Subsection (p) is added to prohibit appointment when administrative action is pending. Relettered subsection (q) is amended to reflect the effective date of the changes.

This amendment is necessary to prohibit a chief administrator from appointing an applicant subject to pending administrative action based on ineligibility or statutory suspension or revocation.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that only individuals who are eligible will be appointed.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.3075, Qualified Applicant Awaiting Appointment.

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

§211.29. Responsibilities of Agency Chief Administrators.

(a) An agency chief administrator is responsible for making any and all reports and submitting any and all documents required of that agency by the commission.

(b) An individual who is appointed or elected to the position of the chief administrator of a law enforcement agency shall notify the Commission of the date of appointment and title, through a form prescribed by the Commission within 30 days of such appointment.

(c) An agency chief administrator must comply with the appointment and/or retention requirements under Subchapter L of the Texas Occupations Code, Chapter 1701.

(d) An agency chief administrator must report to the commission within 30 days, any change in the agency's name, physical location, mailing address, electronic mail address, or telephone number.

(e) An agency chief administrator must report, in a standard format, incident-based data compiled in accordance with Texas Occupations Code §1701.164.

(f) Line of duty deaths shall be reported to the commission in current peace officers' memorial reporting formats.

(g) An agency chief administrator has an obligation to determine that all appointees are able to safely and effectively perform the essential job functions. An agency chief administrator may require a fit for duty review upon identifying factors that indicate an appointee may no longer be able to perform job-related functions safely and effectively. These factors should be based on objective evidence and a reasonable basis that the cause may be attributable to a medical or psychological condition or impairment.

(h) An agency must provide training on employment issues identified in Texas Occupations Code §1701.402 and field training.

(i) An agency must provide continuing education training required in Texas Occupations Code §1701.351 and §1701.352.

(j) Before an agency appoints any licensee to a position requiring a commission license it shall complete the reporting requirements of Texas Occupations Code §1701.451.

(k) An agency appointing a person who does not hold a commission license must file an application for the appropriate license with the commission.

(l) An agency must notify the commission electronically following the requirements of Texas Occupations Code §1701.452, when a person under appointment with that agency resigns or is terminated.

(m) An agency chief administrator must comply with orders from the commission regarding the correction of a report of resignation/termination or request a hearing from SOAH.

(n) An agency shall notify the commission electronically within 30 days, when it receives information that a person under appointment with that agency has been arrested, charged, indicted, or convicted for any offense above a Class C misdemeanor, or for any Class C misdemeanor involving the duties and responsibilities of office or family violence.

(o) Except in the case of a commission error, an agency that wishes to report a change to any information within commission files about a licensee shall do so in a request to the commission, containing:

(1) the licensees name, date of birth, last four digits of the social security number, or PID;

(2) the requested change; and

(3) the reason for the change.

(p) An agency chief administrator may not appoint an applicant subject to pending administrative action based on:

(1) enrollment or licensure ineligibility; or

(2) statutory suspension or revocation.

(q) [~~(p)~~] The effective date of this section is January 17, 2013 [~~January 1, 2012~~].

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 September 14, 2012.

TRD-201204843
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 936-7713

♦ ♦ ♦

CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

37 TAC §215.13

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §215.13, concerning Risk Assessment. Subsection (a) is amended to change "law enforcement academy" to "training provider." Subsection (a)(1) is amended to identify which training providers will be at risk. Subsection (a)(2) is amended to identify which courses will not be recognized. Subsection (a)(2) - (11) have been renumbered. Subsection (a) relettered paragraphs (6) - (11) are amended to change "law enforcement academy" to "training provider." Subsection (h) is amended to reflect the effective date of the changes.

This amendment is necessary to be consistent with the definition of training provider in §211.1 of this title.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by being consistent in using terms as defined in §211.1 of this title.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.254, Risk Assessment and Inspections.

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

§215.13. Risk Assessment.

(a) A training provider [~~law enforcement academy~~] may be found at risk and placed on at-risk probationary status if:

(1) for those providing licensing courses, the passing rate on a licensing exam for first attempts for any three consecutive state fiscal years, beginning with state fiscal year 2007 (September 1, 2006 through August 31, 2007) is less than 80 percent of the students attempting the licensing exam;

(2) courses taught by academic alternative providers are not conducted in compliance with Higher Education Program Guidelines accepted by the commission;

(3) [~~(2)~~] commission required learning objectives are not taught;

(4) [~~(3)~~] lesson plans for classes conducted are not on file;

(5) [~~(4)~~] examination and other evaluative scoring documentation is not on file;

(6) [~~(5)~~] the training provider [~~academy~~] submits false reports to the commission;

(7) [~~(6)~~] the training provider [~~academy~~] makes repeated errors in reporting;

(8) [~~(7)~~] the training provider [~~academy~~] does not respond to commission requests for information;

(9) [~~(8)~~] the training provider [~~academy~~] does not comply with commission rules or other applicable law;

(10) [~~(9)~~] the training provider [~~academy~~] does not achieve the goals identified in its application for a license;

(11) [~~(10)~~] the training provider [~~academy~~] does not meet the needs of the officers and law enforcement agencies served; or

(12) [~~(11)~~] the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of training or failure to meet training needs for the service area.

(b) A contractual provider may be found at risk and placed on at-risk probationary status if:

(1) the contractor provides licensing courses and fails to comply with the passing rates in subsection (a)(1) of this section;

(2) lesson plans for classes conducted are not on file;

(3) examination and other evaluative scoring documentation is not on file;

(4) the provider submits false reports to the commission;

(5) the provider makes repeated errors in reporting;

(6) the provider does not respond to commission requests for information;

(7) the provider does not comply with commission rules or other applicable law;

(8) the provider does not achieve the goals identified in its application for a license or contract;

(9) the provider does not meet the needs of the officers and law enforcement agencies served; or

(10) the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of training or failure to meet training needs for the service area.

(c) An academic alternative provider may be found at risk and placed on at-risk probationary status if:

(1) the academic alternative provider fails to comply with the passing rates in subsection (a)(1) of this section;

(2) courses are not conducted in compliance with Higher Education Program Guidelines accepted by the commission;

(3) the commission required learning objectives are not taught;

(4) the program submits false reports to the commission;

(5) the program makes repeated errors in reporting;

(6) the program does not respond to commission requests for information;

(7) the program does not comply with commission rules or other applicable law;

(8) the program does not achieve the goals identified in its application for a license or contract;

(9) the program does not meet the needs of the students and law enforcement agencies served; or

(10) the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of education or failure to meet education needs for the service area.

(d) If at risk, the chief administrator of the sponsoring organization, or the training coordinator, must report to the commission in writing within 30 days what steps are being taken to correct deficiencies and on what date they expect to be in compliance.

(e) The chief administrator of the sponsoring organization, or the training coordinator, shall report to the commission the progress toward compliance within the timelines provided in the management response as provided in subsection (d) of this section.

(f) The commission shall place providers found at-risk on probationary status for one year. If the provider remains at-risk after a 12-month probationary period, the commission shall begin the revocation process. If a provider requests a settlement agreement, the commission may enter into an agreement in lieu of revocation.

(g) A training or educational program placed on at-risk probationary status must notify all students and potential students of their at-risk status.

(h) The effective date of this section is January 17, 2013 [~~July 14, 2011~~].

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

Filed with the Office of the Secretary of State on September 14, 2012.

TRD-201204844
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 936-7713

♦ ♦ ♦

37 TAC §215.15

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §215.15, concerning Basic Licensing Enrollment Standards. Subsection (c)(1) and (2) are amended to require psychological and physical fitness to be determined within 180 days before enrollment, acceptance, or entry into a licensing course. Subsection (e) is amended to reflect the effective date of the changes.

This amendment is necessary to ensure that the individuals enrolling in a licensing course are physically and psychologically fit to perform the duties for the license sought.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring the physical and psychological fitness of the licensees protecting the public.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there may be minimal cost to small business, individuals, or both as a result of the proposed section. Individuals may incur a cost if a current physical exam and psychological exam are necessary.

Comments on the proposal may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.402, Proficiency Certificates and §1701.306, Psychological and Physical Examination.

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

§215.15. Basic Licensing Enrollment Standards.

(a) In order for an individual to enroll in any basic licensing course the provider must have on file documentation that the individual meets the following standards:

(1) minimum educational requirements:

(A) a high school diploma;

(B) a high school equivalency certificate; or

(C) for the basic peace officer training course, an honorable discharge from the armed forces of the United States after at least 24 months of active duty service.

(2) the individual has been subjected to a search of local, state and national records to disclose any criminal record;

(A) is not currently charged with any criminal offense for which conviction would be a bar to licensure;

(B) community supervision history:

(i) has never been on court-ordered community supervision or probation for any criminal offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order; but

(ii) the commission may approve the application of an individual who received probation or court-ordered community supervision for a Class B misdemeanor at least five (5) years prior to enrollment if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period;

(C) conviction history:

(i) has never been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years; but

(ii) the commission may approve the application of an individual who was convicted of a Class B misdemeanor at least five (5) years prior to enrollment if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period.

(D) For purposes of this section, the commission will construe any court ordered community supervision, probation, or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(i) another penal provision of Texas law; or

(ii) a penal provision of any other state, federal, military or foreign jurisdiction.

(E) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas law.

(3) has never been convicted of any family violence offense;

(4) has not had a dishonorable or bad conduct discharge;

(5) is not prohibited by state or federal law from operating a motor vehicle;

(6) is not prohibited by state or federal law from possessing firearms or ammunition; and

(7) is a U.S. citizen.

(b) In evaluating whether mitigating circumstances exist, the commission will consider the following factors:

(1) the applicant's history of compliance with the terms of community supervision;

(2) the applicant's continuing rehabilitative efforts not required by the terms of community supervision;

(3) the applicant's employment record;

(4) whether the disposition offense contains an element of actual or threatened bodily injury or coercion against another person under the Texas Penal Code or the law of the jurisdiction where the offense occurred;

(5) the required mental state of the disposition offense;

(6) whether the conduct resulting in the arrest resulted in the loss of or damage to property or bodily injury;

(7) the type and amount of restitution made by the applicant;

(8) the applicant's prior community service;

(9) the applicant's present value to the community;

(10) the applicant's post-arrest accomplishments;

(11) the applicant's age at the time of arrest; and

(12) the applicant's prior military history.

(c) psychological and physical examination requirements:

(1) the individual has been examined by a physician, selected by the appointing, employing agency, or the academy, who is licensed by the Texas Medical Board. The physician must be familiar with the duties appropriate to the type of license sought. The individual must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of enrollment, acceptance, or entry into the licensing course to be:

(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought; and

(B) show no trace of drug dependency or illegal drug use after a blood test or other medical test; and

(2) the individual has been examined by a psychologist, selected by the appointing, employing agency, or the academy, who is licensed by the Texas State Board of Examiners of Psychologists. This examination may also be conducted by a psychiatrist licensed by the Texas Medical Board. The psychologist or psychiatrist must be familiar with the duties appropriate to the type of license sought. The individual must be declared by that professional, on a form prescribed by the commission, to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought. The examination must be conducted pursuant to professionally recognized standards and methods. The examination process must consist of a review of a job description for the position sought; review of any personal history statements; review of any background documents; at least two instruments, one which measures personality traits and one which measures psychopathology; and a face to face interview conducted after the instruments have been scored. The individual must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of enrollment, acceptance, or entry into the licensing course.

(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; or

(B) the examination may be conducted by qualified persons identified by §501.004, Occupations Code. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed.

(d) The enrollment standards established in this section do not preclude the provider from establishing additional requirements or standards for enrollment.

(e) The effective date of this section is January 17, 2013 [~~January 1, 2012~~].

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 September 14, 2012.

TRD-201204845
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 936-7713

♦ ♦ ♦

CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment §217.1, concerning Minimum Standards for Initial Licensure. Subsection (a)(12) is amended to require psychological fitness to be determined within 180 days before appointment. Subsection (l) is amended to reflect the effective date of the changes.

This amendment is necessary to ensure that the individuals applying for a license are psychologically fit to perform the duties for the license for which they are applying.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring the psychological fitness of the licensees protecting the public.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.306, Psychological and Physical Examination.

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

§217.1. Minimum Standards for Initial Licensure.

(a) The commission shall issue a license to an applicant who meets the following standards:

(1) age requirement:

(A) for peace officers and public security officers, is 21 years of age; or 18 years of age if the applicant has received:

(i) an associate's degree; or 60 semester hours of credit from an accredited college or university; or

(ii) has received an honorable discharge from the armed forces of the United States after at least two years of active service;

(B) for jailers is 18 years of age;

(2) minimum educational requirements:

(A) has passed a general educational development (GED) test indicating high school graduation level; or

(B) holds a high school diploma;

(3) is fingerprinted and is subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;

(4) community supervision history:

(A) has not ever been on court-ordered community supervision or probation for any criminal offense above the grade of Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order; but

(B) the commission may approve the application of a person who received probation or court-ordered community supervision for a Class B misdemeanor at least five (5) years prior to application if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period;

(5) is not currently charged with any criminal offense for which conviction would be a bar to licensure;

(6) conviction history:

(A) has not ever been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years; but

(B) the commission may approve the application of a person who was convicted for a Class B misdemeanor at least five (5) years prior to application if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period;

(7) has never been convicted of any family violence offense;

(8) is not prohibited by state or federal law from operating a motor vehicle;

(9) is not prohibited by state or federal law from possessing firearms or ammunition;

(10) has been subjected to a background investigation and has been interviewed prior to appointment by representatives of the appointing authority;

(11) examined by a physician, selected by the appointing or employing agency, who is licensed by the Texas Medical Board. The physician must be familiar with the duties appropriate to the type of license sought and appointment to be made. The appointee must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of appointment by the agency to be:

(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought;

(B) show no trace of drug dependency or illegal drug use after a blood test or other medical test; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory medical exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(12) examined by a psychologist, selected by the appointing, employing agency, or the academy, who is licensed by the Texas State Board of Examiners of Psychologists. This examination may also be conducted by a psychiatrist licensed by the Texas Medical Board. The psychologist or psychiatrist must be familiar with the duties appropriate to the type of license sought. The individual must be declared by that professional, on a form prescribed by the commission, to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought. The examination must be conducted pursuant to professionally recognized standards and methods. The examination process must consist of a review of a job description for the position sought; review of any personal history statements; review of any background documents; at least two instruments, one which measures personality traits and one which measures psychopathology; and a face to face interview conducted after the instruments have been scored. The appointee must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of the appointment by the agency;

(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; or

(B) the examination may be conducted by qualified persons identified by Texas Occupations Code §501.004. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory psychological exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(13) has not had a dishonorable or bad conduct discharge;

(14) has not had a commission license denied by final order or revoked;

(15) is not currently on suspension, or does not have a surrender of license currently in effect;

(16) meets the minimum training standards and passes the commission licensing examination for each license sought;

(17) has not violated any commission rule or provision of the Texas Occupations Code Chapter 1701; and

(18) is a U.S. citizen.

(b) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military or foreign jurisdiction.

(c) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas laws.

(d) In evaluating whether mitigating circumstances exist, the commission will consider the following factors:

(1) the applicant's history of compliance with the terms of community supervision;

(2) the applicant's continuing rehabilitative efforts not required by the terms of community supervision;

(3) the applicant's employment record;

(4) whether the disposition offense contains an element of actual or threatened bodily injury or coercion against another person under the Texas Penal Code or the law of the jurisdiction where the offense occurred;

(5) the required mental state of the disposition offense;

(6) whether the conduct resulting in the arrest resulted in the loss of or damage to property or bodily injury;

(7) the type and amount of restitution made by the applicant;

(8) the applicant's prior community service;

(9) the applicant's present value to the community;

(10) the applicant's post-arrest accomplishments;

(11) the applicant's age at the time of arrest; and

(12) the applicant's prior military history.

(e) A person must meet the training and examination requirements:

(1) training for the peace officer license consists of:

(A) the current basic peace officer course(s);

(B) a commission recognized, POST developed, basic law enforcement training course, to include:

(i) out of state licensure or certification; and

(ii) submission of the current eligibility application and fee; or

(C) a commission approved academic alternative program, taken through a licensed academic alternative provider and at least an associate's degree.

(2) training for the jailer license consists of the current basic county corrections course(s) or training recognized under Texas Occupations Code §1701.310;

(3) training for the public security officer license consists of the current basic peace officer course(s); and

(4) passing any examination required for the license sought while the exam approval remains valid.

(f) The commission shall issue a license to any person who is otherwise qualified for that license, even if that person is not subject to the licensing law or rules by virtue of election or appointment to office under the Texas Constitution.

(g) A sheriff who first took office on or after January 1, 1994, must meet the licensing requirements of Texas Occupations Code §1701.302.

(h) A constable taking office after August 30, 1999, must meet the licensing requirements of Texas Local Government Code §86.0021.

(i) The commission may issue a provisional license, consistent with Texas Occupations Code §1701.311, to an agency for a person to be appointed by that agency. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a provisional license. A provisional license is issued in the name of the applicant; however, it is issued to and shall remain in the possession of the agency. Such a license may neither be transferred by the applicant to another agency, nor transferred by the agency to another applicant. A provisional license may not be reissued and expires:

(1) 12 months from the original appointment date;

(2) on leaving the appointing agency; or

(3) on failure to comply with the terms stipulated in the provisional license approval.

(j) The commission may issue a temporary jailer license, consistent with Texas Occupations Code §1701.310. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary jailer license. A temporary jailer license expires:

(1) 12 months from the original appointment date; or

(2) on completion of training and passing of the jailer licensing examination.

(k) A person who fails to comply with the standards set forth in this section shall not accept the issuance of a license and shall not accept any appointment. If an application for licensure is found to be false or untrue, it is subject to cancellation or recall.

(l) The effective date of this section is January 17, 2013 [~~July 12, 2012~~].

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 September 14, 2012.

TRD-201204846
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 936-7713

♦ ♦ ♦

37 TAC §217.2

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §217.2, concerning Minimum Standards for Telecommunicators. Subsection (a)(12) is amended to include the completion of a basic telecommunicator course and to require successful completion of a commission-approved crisis intervention course for telecommunicators as a part of the minimum standards. Subsection (e) is removed as it becomes a part of subsection (a)(12). Subsections (f), (g), and (h) are relettered. Relettered subsection (g) is amended to reflect the effective date of the changes.

This amendment is necessary to ensure individuals applying for certification have basic training and crisis skills for the certification sought.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be

no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring telecommunicators are trained in basic telecommunications and crisis intervention.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.405, Telecommunicators.

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

§217.2. Minimum Standards for Telecommunicators.

(a) The commission shall issue a certificate to a telecommunicator who meets the following standards:

(1) minimum educational requirements:

(A) has passed a general educational development (GED) test indicating high school graduation level; or

(B) holds a high school diploma;

(2) is at least 18 years of age;

(3) is fingerprinted and is subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;

(4) community supervision history:

(A) has not ever been on court-ordered community supervision or probation for any criminal offense above the grade of Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order; but

(B) the commission may approve the application of a person who received probation or court-ordered community supervision for a Class B misdemeanor at least five (5) years prior to application if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for certification, and that the public interest would be served by reducing the waiting period;

(5) is not currently charged with any criminal offense for which conviction would be a bar to licensure;

(6) conviction history:

(A) has not ever been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years; but

(B) the commission may approve the application of a person who was convicted for a Class B misdemeanor at least five (5) years prior to application if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for certification, and that the public interest would be served by reducing the waiting period;

(7) has never been convicted of any family violence offense;

(8) has been subjected to a background investigation and has been interviewed prior to appointment by representatives of the appointing authority;

(9) has not had a dishonorable or bad conduct discharge;

(10) has not had a commission license denied by final order or revoked;

(11) is not currently on suspension, or does not have a surrender of license currently in effect;

(12) meets the minimum training standards by successfully completing the basic telecommunicator course and a commission-approved crisis intervention course;

(13) has not violated any commission rule or provision of the Texas Occupations Code, Chapter 1701; and

(14) is a U.S. citizen.

(b) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military or foreign jurisdiction.

(c) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas laws.

(d) In evaluating whether mitigating circumstances exist, the commission will consider the following factors:

(1) the applicant's history of compliance with the terms of community supervision;

(2) the applicant's continuing rehabilitative efforts not required by the terms of community supervision;

(3) the applicant's employment record;

(4) whether the disposition offense contains an element of actual or threatened bodily injury or coercion against another person under the Texas Penal Code or the law of the jurisdiction where the offense occurred;

(5) the required mental state of the disposition offense;

(6) whether the conduct resulting in the arrest resulted in the loss of or damage to property or bodily injury;

(7) the type and amount of restitution made by the applicant;

(8) the applicant's prior community service;

(9) the applicant's present value to the community;

(10) the applicant's post-arrest accomplishments;

(11) the applicant's age at the time of arrest; and

(12) the applicant's prior military history.

[(e) A person must successfully complete the current basic telecommunicator course.]

(e) [(f)] The commission may issue a temporary telecommunicator certificate, consistent with Texas Occupations Code §1701.405. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary telecommunicator certificate. A temporary telecommunicator certificate expires 12 months from the original appointment date.

(f) [(g)] A person who fails to comply with the standards set forth in this section shall not accept the issuance of a certificate and shall not accept any appointment. If an application for certification is found to be false or untrue, it is subject to cancellation or recall.

(g) [(h)] The effective date of this section is January 17, 2013 [January 1, 2012].

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 September 14, 2012.

TRD-201204847
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 936-7713

♦ ♦ ♦

37 TAC §217.3

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §217.3, concerning Application for License and Initial Report of Appointment. Subsection (e) is amended to simplify and clarify the language of the rule. Subsection (f) is amended to reflect the effective date of the changes.

This amendment is necessary to simplify and clarify rule language.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying rule language.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.303, License Application; Duties of Appointing Entity and §1701.452, Employment Termination Report.

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

§217.3. Application for License and Initial Report of Appointment.

(a) An agency appointing an individual who does not hold a commission license must file an application for the appropriate license with the commission. The application must be approved with a license issuance date before the individual is appointed or commissioned. The application must be completed, signed, and filed with the commission by the agency's chief administrator or designee.

(b) An application for a license or initial report of appointment must be submitted in an application format currently accepted by the commission.

(c) An agency that files an application for licensing must keep on file and in a format readily accessible to the commission a copy of the documentation necessary to show each licensee appointed by that agency met the minimum standards for licensing, including weapons proficiency for peace officers.

(d) An agency must retain records required under subsection (c) of this section for a minimum of five years after the licensee's termination date with that agency. The records must be maintained in a format readily accessible to the commission.

(e) An agency failing to appoint an individual within 30 days after submitting an application must report a termination of employment in the current commission format. [An agency which submits an application for an individual must report to the commission any failure to appoint that individual in the reported capacity within 30 days of the reported date of appointment. Such report must be made in a currently accepted commission format that reports termination.]

(f) The effective date of this section is January 17, 2013 [January 1, 2012].

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 September 14, 2012.

TRD-201204853
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 936-7713

♦ ♦ ♦

37 TAC §217.5

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §217.5, concerning Denial and Cancellation. Subsection (a)(9) is added allowing the commission to deny an application for licensure or refuse an appointment for a person subject to a

pending administrative action. New subsection (b) prohibits a chief administrator from appointing an applicant subject to pending administrative action based on ineligibility or statutory suspension or revocation. Subsections (b) - (d) are relettered. Relettered subsection (e) is amended to reflect the effective date of the changes.

This amendment is necessary to ensure that only individuals who are eligible for licensing are appointed.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that only individuals who are eligible for licensing are appointed.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

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

§217.5. Denial and Cancellation.

(a) The commission may deny an application for any license and may refuse to accept a report of appointment if the:

(1) applicant has not been reported to the commission as meeting all minimum standards, including any training or testing requirements;

(2) applicant has not affixed any required signature;

(3) required forms or documentation are incomplete, illegible, or are not attached;

(4) application is not submitted or signed by a chief administrator, or designee with authority to appoint the applicant to the position reported;

(5) application is not submitted by the appointing agency or entity;

(6) agency reports the applicant in a capacity that does not require the license sought;

(7) agency fails to provide documentation, if requested, of the agency's creation or authority to appoint persons in the capacity of the license sought or the agency is without such authority; [~~or~~]

(8) application contains a false assertion by any person; or

(9) applicant is subject to pending administrative action against a commission-issued license.

(b) An agency chief administrator may not appoint an applicant subject to pending administrative action based on:

(1) enrollment or licensure ineligibility; or

(2) statutory suspension or revocation.

(c) [~~(b)~~] If an application is found to be incorrect or subject to denial under subsection (a) of this section, any license issued to the applicant by the commission is subject to cancellation.

(d) [~~(c)~~] Any such document may expire or be cancelled, surrendered, suspended, revoked, deactivated, or otherwise invalidated. Mere possession of the physical document does not necessarily mean that the person:

(1) currently holds, has ever held, or has any of the powers of the office indicated on the document; or

(2) still holds an active, valid license, or certificate.

(e) [~~(d)~~] The effective date of this section is January 17, 2013 [~~June 1, 2004~~].

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 September 14, 2012.

TRD-201204854
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 936-7713

♦ ♦ ♦

37 TAC §217.21

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §217.21, concerning Firearms Proficiency Requirements. Subsection (c)(1) - (5) are amended to allow firearms proficiency requirements to be met with other than duty ammunition. Subsection (f) is amended to reflect the effective date of the changes.

This amendment is necessary to ensure that officers may complete their annual qualification requirements with ammunition that is more cost efficient for agencies.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by reducing costs to individuals to qualify and maintain weapons proficiency.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be reduced costs to small business, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.308, Weapons Proficiency, §1701.355, Continuing Demonstration of Weapons Proficiency, and §1701.402, Proficiency Certificates.

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

§217.21. Firearms Proficiency Requirements.

(a) Each agency or entity that employs at least one peace officer shall:

(1) require each peace officer that it employs to successfully complete the current firearms proficiency requirements at least once each year;

(2) designate a firearms proficiency officer to be responsible for the documentation of annual firearms proficiency. The documentation for each officer shall include:

(A) date of qualification;

(B) identification of officer;

(C) firearm manufacturer, model;

(D) results of qualifying; and

(E) course(s) of fire.

(3) keep on file and in a format readily accessible to the commission a copy of all records of this proficiency.

(b) The annual firearms proficiency requirements shall include:

(1) an external inspection by the proficiency officer, range officer, firearms instructor, or gunsmith to determine the safety and functioning of the weapon(s);

(2) a proficiency demonstration in the care and cleaning of the weapon(s) used; and

(3) a course of fire that meets or exceeds the minimum standards.

(c) The minimum standards for the annual firearms proficiency course of fire shall be:

(1) handguns - a minimum of 50 rounds, including at least five rounds of [~~duty~~] ammunition, fired at ranges from point-blank to at least 15 yards with at least 20 rounds at or beyond seven yards, including at least one timed reload;

(2) shotguns - a minimum of five rounds of [~~duty~~] ammunition fired at a range of at least 15 yards;

(3) precision rifles - a minimum of 20 rounds of [~~duty~~] ammunition fired at a range of at least 100 yards; however, an agency may, in its discretion, allow a range of less than 100 yards but not less than 50 yards if the minimum passing percentage is raised to 90;

(4) patrol rifles - a minimum of 30 rounds of [~~duty~~] ammunition fired at a range of at least 50 yards, including at least one timed reload; however, an agency may, in its discretion, allow a range of less than 50 yards but not less than 10 yards if the minimum passing percentage is raised to 90;

(5) fully automatic weapons - a minimum of 30 rounds of [~~duty~~] ammunition fired at ranges from seven to at least 10 yards, including at least one timed reload, with at least 25 rounds fired in full automatic (short bursts of two or three rounds), and at least five rounds fired semi-automatic, if possible with the weapon.

(d) The minimum passing percentage shall be 70 for each firearm.

(e) The executive director may, upon written agency request, waive a peace officer's demonstration of weapons proficiency based on a determination that the requirement causes a hardship.

(f) The effective date of this section is January 17, 2013 [~~January 14, 2010~~].

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 September 14, 2012.

TRD-201204856
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 936-7713

♦ ♦ ♦

CHAPTER 221. PROFICIENCY CERTIFICATES

37 TAC §221.19

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §221.19, concerning Firearms Instructor Proficiency. Subsection (b) is added to limit the certificate validity to two years. Subsection (c) is added to establish requirements to keep the certificate valid. Subsection (d) is added to give direction for obtaining a new certificate. Relettered subsection (e) is amended to reflect the effective date of the changes.

This amendment is necessary to ensure that officers holding the proficiency certificate are up to date with the most current information on training and technology.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by having highly trained and qualified individuals holding proficiency certificates.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission;

Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.251, Training Programs; Instructors and §1701.402, Proficiency Certificates.

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

§221.19. Firearms Instructor Proficiency.

(a) To qualify for a firearms instructor proficiency certificate, an applicant must meet all proficiency requirements including:

(1) at least three years' experience as a licensee or a firearms instructor;

(2) holds a current instructor license or certificate issued by the commission; and

(3) successful completion of the commission's firearms instructor course, or a firearms instructor course that meets or exceeds the minimum standards established and approved by the commission.

(b) A certificate is valid for two years.

(c) To keep the certificate valid, the holder must successfully complete an update course or be the lead instructor in a practical application firearms proficiency course once every two years.

(d) If the certificate becomes invalid, a holder may obtain a new certificate under the application standards in this section.

(e) [~~(b)~~] The effective date of this section is January 17, 2013 [~~June 1, 2006~~].

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 September 14, 2012.

TRD-201204857
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 936-7713

♦ ♦ ♦

37 TAC §221.25

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §221.25, concerning Civil Process Proficiency. Subsection (a) is amended to remove the certificate's full-time salaried requirement. Subsection (b) is added to limit the certificate validity to four years unless additional training is completed. Subsection (c) is added to give direction for obtaining a new certificate. Relettered subsection (d) is amended to reflect the effective date of the changes.

This amendment is necessary to ensure that officers holding the proficiency certificate are up to date with the most current information on training and technology.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by having highly trained and qualified individuals holding proficiency certificates.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there may be minimal cost to small business, individuals, or both as a result of the proposed section. Individuals may incur a cost to obtain a proficiency certificate.

Comments on the proposal may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.354, Continuing Education for Deputy Constables and §1701.402, Proficiency Certificates.

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

§221.25. Civil Process Proficiency.

(a) To qualify, an applicant for a civil process proficiency certificate must meet all proficiency requirements including:

(1) at least three years [~~full-time salaried~~] experience serving civil process;

(2) successful completion of 40 hours of civil process training, with at least 20 hours completed in the current training cycle; and

(3) pass the approved examination for civil process proficiency.

(b) A certificate will become invalid at the end of a training cycle unless the holder successfully completes a 20 hour course of training in civil process during the training cycle.

(c) If the certificate becomes invalid, a holder may obtain a new certificate under the application standards in this section.

(d) [~~(b)~~] The effective date of this section is January 17, 2013 [~~March 1, 2001~~].

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 September 14, 2012.

TRD-201204858
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 936-7713

♦ ♦ ♦

37 TAC §221.27

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §221.27, concerning Instructor Proficiency. Subsection (c) is added to limit the certificate validity to two years. Subsection (d) is added to give direction on keeping a certificate valid. Subsection (e) is added to give direction for obtaining a new certificate. Relettered subsection (f) is amended to reflect the effective date of the changes.

This amendment is necessary to ensure that officers holding the proficiency certificate are up to date with the most current information on training and technology.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by having highly trained and qualified individuals holding proficiency certificates.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there may be minimal cost to small business, individuals, or both as a result of the proposed section. Individuals may incur a cost to obtain a proficiency certificate.

Comments on the proposal may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.251, Training Programs; Instructors and §1701.402, Proficiency Certificates.

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

§221.27. Instructor Proficiency.

(a) To qualify, an applicant for an instructor proficiency certificate must meet all proficiency requirements, and must have:

(1) substantial experience in teaching or in the special field or subject area to be taught, to include:

(A) two years' experience as a peace officer, telecommunicator, or jailer;

(B) a bachelor's degree and two years of teaching experience; or

(C) a graduate degree;

(2) successfully completed an instructor training course or its equivalent, as determined by the executive director; and

(3) submitted a completed application, in the format currently prescribed by the commission, and any required fee.

(b) The commission may require documentation of any instructor training or experience by certificates, diplomas, transcripts, letters of verification, or other supporting documents to be submitted upon commission request.

(c) A certificate is valid for two years.

(d) To keep the certificate valid, the holder must successfully complete an update course or act as lead instructor for a course taught at an agency or training academy once every two years.

(e) If the certificate becomes invalid, a holder may obtain a new certificate under the application standards in this section.

(f) [~~(e)~~] The effective date of this section is January 17, 2013 [~~March 1, 2001~~].

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 September 14, 2012.

TRD-201204859
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 936-7713

♦ ♦ ♦

37 TAC §221.28

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §221.28, concerning Advanced Instructor Proficiency. Subsection (b) is added to limit the certificate validity to two years. Subsection (c) is added to give direction on keeping a certificate valid. Subsection (d) is added to give direction for obtaining a new certificate. Relettered subsection (e) is amended to reflect the effective date of the changes.

This amendment is necessary to ensure that officers holding the proficiency certificate are up to date with the most current information on training and technology.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by having highly trained and qualified individuals holding proficiency certificates.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there may be minimal cost to small business, individuals, or both as a result of the proposed section. Individuals may incur a cost to obtain a proficiency certificate.

Comments on the proposal may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.251, Training Programs; Instructors and §1701.402, Proficiency Certificates.

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

§221.28. Advanced Instructor Proficiency.

(a) To qualify for an advanced instructor proficiency certificate, an applicant must meet all proficiency requirements including:

(1) holding a TCLEOSE Instructor license/certificate for at least three years; and

(2) successful completion of the commission's advanced instructor course.

(b) A certificate is valid for two years.

(c) To keep the certificate valid, the holder must successfully complete an update course or act as lead instructor for a course taught at an agency or training academy once every two years.

(d) If the certificate becomes invalid, a holder may obtain a new certificate under the application standards in this section.

(e) [~~(b)~~] The effective date of this section is January 17, 2013 [~~July 14, 2011~~].

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

Filed with the Office of the Secretary of State on September 14, 2012.

TRD-201204860
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 936-7713

♦ ♦ ♦

37 TAC §221.37

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §221.37, concerning Cybercrime Investigator Proficiency. Subsection (a) is amended to remove the certificate's full-time salaried requirement. Subsection (b) is added to limit the certificate validity to two years. Subsection (c) is added to give direction on keeping a certificate valid. Subsection (d) is added to give direction on obtaining a new certificate. Relettered subsection (e) is amended to reflect the effective date of the changes.

This amendment is necessary to ensure that officers holding the proficiency certificate are up to date with the most current information on training and technology.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by having highly trained and qualified individuals holding proficiency certificates.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there may be minimal cost to small business, individuals, or both as a result of the proposed section. Individuals may incur a cost to obtain a proficiency certificate.

Comments on the proposal may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.402, Proficiency Certificates.

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

§221.37. Cybercrime Investigator Proficiency.

(a) To qualify, an applicant for a cybercrime investigator proficiency certificate must meet all proficiency requirements, and must have:

(1) at least two years [~~full-time salaried~~] experience as a peace officer;

(2) successful completion of the current cybercrimes investigator certification course(s); and

(3) submitted a completed application, in the format currently prescribed by the commission, and any required fee.

(b) A certificate is valid for two years.

(c) To keep the certificate valid, the holder must successfully complete an update course or be assigned primarily as a cybercrime investigator by the appointing chief administrator once every two years.

(d) If the certificate becomes invalid, a holder may obtain a new certificate under the application standards in this section.

(e) [~~(b)~~] The effective date of this section is January 17, 2013 [~~February 24, 2011~~].

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

Filed with the Office of the Secretary of State on September 14, 2012.

TRD-201204861
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 936-7713

♦ ♦ ♦

37 TAC §221.39

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes new §221.39, concerning Crime Prevention Specialist Proficiency. The new rule creates a crime prevention specialist proficiency certificate that re-

quires one year experience in a crime prevention assignment, completion of required courses, and passing a proficiency examination. The validity of the certificate is limited to two years and keeping the certificate requires an update course or primary assignment as a crime prevention specialist every two years.

This new rule is necessary to create a certification standard for individuals who identify crime risks in local communities, coordinate resources, and employ strategies to reduce or eliminate these risks.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring highly trained and qualified individuals holding proficiency certificates.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there may be an anticipated cost to small business, individuals, or both as a result of the proposed section. Individuals may incur a cost to obtain a proficiency certificate.

Comments on the proposal may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The new section is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The new section as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.402, Proficiency Certificates.

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

§221.39. Crime Prevention Specialist Proficiency.

(a) To qualify, an applicant for a crime prevention specialist proficiency certificate must meet all proficiency requirements including:

(1) at least one year experience serving in a crime prevention assignment;

(2) successful completion of required courses; and

(3) pass an approved examination for crime prevention specialist proficiency.

(b) A certificate is valid for two years.

(c) To keep the certificate valid, the holder must successfully complete an update course or be assigned primarily as a crime prevention specialist by the appointing chief administrator once every two years.

(d) If the certificate becomes invalid, a holder may obtain a new certificate under the application standards in this section.

(e) The effective date of this section is January 17, 2013.

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 September 14, 2012.

TRD-201204862
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 936-7713

♦ ♦ ♦

CHAPTER 223. ENFORCEMENT

37 TAC §223.15

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §223.15, concerning Suspension of License. Subsection (i) is amended to remove the limitation of mitigating factors that the commission will consider. Subsection (r) is amended to reflect the effective date of the changes.

This amendment is necessary to allow the commission discretion to consider circumstances beyond the current list of mitigating factors.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that all mitigating factors are considered.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments on the proposal may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Kim Vickers, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.501, Disciplinary Action.

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

§223.15. Suspension of License.

(a) Unless revocation is explicitly authorized by law, the commission may suspend any license issued by the commission if the licensee:

(1) violates any provision of these sections;

(2) violates any provision of the Texas Occupations Code, Chapter 1701;

(3) is convicted of or placed on court ordered community supervision resulting from deferred adjudication for any offense above the grade of Class C misdemeanor;

(4) is placed on deferred adjudication for an offense involving family violence; or

(5) has previously received two written reprimands from the commission.

(b) If a licensee is charged with the commission of a felony, adjudication is deferred, and the licensee is placed on community supervision, the commission shall immediately suspend any license held for a period of 30 years. The suspension of any license under this subsection is effective immediately when the commission receives a certified copy of a court's judgment and issues notice to the licensee via certified mail that any license held is suspended.

(c) If convicted or if adjudication is deferred and the licensee is placed on court ordered community supervision for any misdemeanor offense above the grade of Class C misdemeanor, the term of suspension may be for a period not to exceed 10 years.

(d) If a licensee is charged with the commission of a misdemeanor offense involving family violence and an adjudication of guilt is deferred, the term of suspension may be for a period not to exceed 10 years.

(e) If a license can be suspended under subsection (c) or (d) of this section for a Class A misdemeanor, the minimum term of suspension shall be 120 days. If a license can be suspended under subsection (c) or (d) of this section for a Class B or C misdemeanor, the minimum term of suspension shall be 30 days.

(f) If a license can be suspended for a misdemeanor conviction or deferred adjudication, the commissioners may, in their discretion and upon proof of mitigating factors as defined in subsection (i) of this section, probate all or part of a suspension term after the mandatory minimum suspension.

(g) If a license can be suspended for violation of legislatively required continuing education for licensees as defined in §217.11 of this title and if mitigating circumstances as defined in §217.15 of this title do not apply, the commission may:

(1) for first time offenders suspend a license(s) for up to 90 days;

(2) for second time offenders suspend a license(s) for up to 180 days; and

(3) for third time offenders suspend a license(s) for up to one (1) year.

(h) If a license can be suspended for any other reason, the commission, through its executive director may, in its discretion and upon proof of the mitigating factors as defined in subsection (i) of this section, either:

(1) probate all or part of the suspension term; or

(2) issue a written reprimand in lieu of suspension.

(i) Mitigating factors include: [~~In evaluating whether mitigating circumstances exist, the commission will consider the following factors:~~]

(1) the licensee's history of compliance with the terms of court-ordered community supervision;

(2) the licensee's post-arrest continuing rehabilitative efforts not required by the terms of community supervision;

(3) the licensee's post-arrest employment record;

(4) whether the disposition offense contains an element of actual or threatened bodily injury or coercion against another person under the Texas Penal Code or the law of the jurisdiction where the offense occurred;

(5) the type and amount of any post-arrest, non-court ordered restitution made by the licensee; and

(6) any non-contested disciplinary action, either completed or ongoing, imposed by the appointing agency.

(j) A suspension or probation may be ordered to run concurrently or consecutively with any other suspension or probation. The beginning date of a probated suspension shall be:

(1) any date agreed to by both parties, which is no earlier than the date of the rule violation;

(2) the date the licensee notifies the commission in writing of the rule violation if the commission later receives a signed waiver of suspension from the licensee that was postmarked within 30 days of its receipt; or

(3) the date the commission final order is entered in a contested case or the date it becomes effective, if that order is appealed.

(k) The executive director shall inform the commissioners of any reprimand no later than at their next regular meeting.

(l) The commission may impose reasonable terms of probation, such as:

(1) continued employment requirements;

(2) special reporting conditions;

(3) special document submission conditions;

(4) voluntary duty requirements;

(5) no further rule or law violations; or

(6) any other reasonable term of probation.

(m) A probated license remains probated until:

(1) the term of suspension has expired;

(2) all other terms of probation have been fulfilled; and

(3) a written request for reinstatement has been received and accepted by the commission from the licensee unless the probation has been revoked by the commission for violation of probation; or

(4) revoked.

(n) Twelve months may be added to the term of a new suspension for each separate previous violation that has resulted in either a license suspension, a probated suspension, or a written reprimand before the beginning date of the new suspension.

(o) Before reinstatement, the probation of a suspended license may be revoked before the expiration date of the probation upon violation of the terms of probation. Upon revocation, the full term of suspension shall be imposed with credit for any time already served on that suspension.

(p) Once a license has been suspended, the suspension probated, the probation revoked, or the licensee reprimanded, the commission shall send, by regular mail, notice of the action to the chief administrator of any agency shown to have the licensee under either current or latest appointment.

(q) A suspended license remains suspended until:

(1) the term of suspension has expired and the term of court-ordered community supervision has been completed; and

(2) a written request for reinstatement has been received from the licensee and accepted by the commission; or

(3) the remainder of the suspension is probated and the license is reinstated.

(r) The effective date of this section is January 17, 2013 [~~January 1, 2012~~].

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 September 14, 2012.

TRD-201204863
Kim Vickers
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 936-7713

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 817. CHILD LABOR

The Texas Workforce Commission (Commission) proposes the following new section to Chapter 817, relating to Child Labor:

Subchapter A. General Provisions, §817.7

The Commission proposes the following amendments to Chapter 817, relating to Child Labor:

Subchapter A. General Provisions, §817.2

Subchapter B. Limitations on the Employment of Children, §§817.21, 817.23, and 817.24

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Texas Government Code §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. The Commission has conducted a rule review of Chapter 817, Child Labor, and adds the following:

--definitions of terms commonly used in this chapter or Texas Labor Code, Chapter 51;

--requirements for employers to maintain employment records to be provided to the Agency;

--language to support possible future renumbering of federal regulations referenced in §817.21 and §817.23; and

--requirements for minors employed in sales and solicitation.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§817.2. Definitions

Section 817.2 adds the following new definitions:

New §817.2(2) defines "business or enterprise owned by a parent or custodian" as "a parent or custodian who owns a business as a sole proprietor, a partner in a partnership, or an officer/member of a corporation." The definition clarifies this term, used in Texas Labor Code, Chapter 51, to establish an exemption from the child labor law.

New §817.2(3) defines "business or enterprise operated by a parent or custodian," as "a parent or custodian who operates a business when exerting active direct control over the operation of the business or enterprise by making day-to-day decisions affecting basic income and work assignments, hiring and firing employees, and exercising direct supervision of the work." The definition clarifies this term, used in Texas Labor Code, Chapter 51, to establish an exemption from the child labor law.

New §817.2(4) defines "casual employment" as "employment that is irregular or intermittent and not on a scheduled basis." The definition clarifies this term, used in Texas Labor Code, Chapter 51, to establish an exemption from the child labor law.

New §817.2(7) defines "child actor extra" as "a child under the age of 14 who is employed as an extra without any speaking, singing, or dancing roles, usually in the background of the performance." The definition clarifies the term to establish special authorization for child actors to be employed as extras without the need for the child actor's authorization.

New §817.2(9) defines "direct supervision of the parent or custodian" as "a child is employed under the direct supervision of a parent or custodian when the parent or custodian controls, directs, and supervises all activities of the child." The definition clarifies this term, used in Texas Labor Code, Chapter 51, to establish an exemption from the child labor law.

New §817.2(10) defines "employee" as "an individual who is employed by an employer for compensation."

New §817.2(11) defines "employer" as "a person who employs one or more employees or acts directly or indirectly in the interests of an employer in relation to an employee."

New §817.2(12) defines "employment" as "any service, including service in interstate commerce, that is performed for compensation or under a contract of hire, whether written, oral, express, or implied."

The terms "employee," "employer," and "employment" are used throughout this chapter and in Texas Labor Code, Chapter 51. The definitions clarify that these terms are to be interpreted in the same manner as in Texas Labor Code, Chapter 61 (the Texas Payday Law), and the Fair Labor Standards Act.

New §817.2(14) defines "private school," as set forth in the Texas Education Code, as "a school that offers a course of instruction for students in one or more grades from prekindergarten through grade 12, and is not operated by a governmental entity." The definition clarifies that homeschooled children are subject to the same restrictions on hours of work contained in Texas Labor Code, Chapter 51, as those children attending public schools or traditional private schools.

§817.7. Employment Records

New §817.7(a) states that under Texas Labor Code §51.021(a)(2), collection of information during an inspection means that each employer must keep true and accurate employment records that include the name and correct address of the employer and the following information for each and every individual performing services for the employer:

(1) the individual's name, address, telephone number, date of birth, and Social Security number;

(2) the dates and times the individual performed services; and

(3) a job description of duties performed by any individual who is performing or has performed services for the employer.

New §817.7(b) requires that all records must be kept and made readily accessible to authorized representatives of the Agency.

New §817.7(c) requires that the records prescribed by this subchapter and the Texas Labor Code be preserved for four years.

SUBCHAPTER B. LIMITATIONS ON THE EMPLOYMENT OF CHILDREN

The Commission proposes the following amendments to Subchapter B:

§817.21. Limitations on the Employment of 14- and 15-Year-Old Children

New §817.21(b) incorporates by reference the proposed changes to the federal regulations, including renumbering of sections, contained in Chapter 570, Title 29 of the Code of Federal Regulations regarding the employment of 14- and 15-year-old children. The addition is necessary in order to continue to adopt these federal regulations as state rules governing the employment of 14- and 15-year-old children in Texas.

§817.23. Limitations on the Employment of 16- and 17-Year-Old Children

New §817.23(b) incorporates by reference the proposed changes to the federal regulations, including renumbering of sections, contained in Chapter 570, Title 29 of the Code of Federal Regulations regarding the employment of 16- and 17-year-old children. The amendment is necessary in order to continue to adopt those federal regulations as state rules governing the employment of 16- and 17-year-old children in Texas.

§817.24. Limitations on the Employment of Children to Solicit

New §817.24(a)(2) requires an employer to ensure that the person giving consent is informed whether the child will be soliciting in neighborhoods in which a registered sexual offender resides.

New §817.24(a)(3) requires employers to obtain a Certificate of Age Card from the Agency prior to employing a child. This card must be carried by the child during his or her solicitation trips for identification purposes to provide local authorities or the public the child's contact information in case of an emergency.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There is not a significant probable economic cost to persons required to comply with the rules. A new requirement made by these rules is that, prior to employing children in sales and solicitation, prospective employers:

--obtain a Certificate of Age for the child;

--provide a signed Parental Consent Form to the Agency's Labor Law Department; and

--use the Parental Consent Form to inform the person giving consent whether the child will be soliciting in neighborhoods in which a registered sex offender resides.

While program staff have not provided assurance that they will provide information to such a prospective employer on how to obtain information on the addresses of registered sex offenders, this information is available free of charge from the Texas Department of Public Safety at https://records.txdps.state.tx.us/DPS and includes name, address, birth date, race, estimated severity of risk, picture, and street maps organized by zip code. If such prospective employers do not have personal computers and Internet service provider services, then the use of such computers and services are customarily available free of charge at most public libraries and Workforce Solutions Offices.

There is no estimated adverse economic effect on small businesses or microbusinesses. Most such prospective employers of children in sales and solicitation are small businesses or microbusinesses. Taking into account the conclusion noted above that there is not a significant probable economic cost to persons required to comply with the rule, the conclusion follows that there is no estimated adverse economic effect on small businesses or microbusinesses.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses.

Rich Froeschle, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

John Moore, Director, Regulatory Integrity Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide clear understanding of terms used in the enforcement of the child labor law.

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

PART IV. COORDINATION ACTIVITIES

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §817.2, §817.7

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Labor Code, Title 2.

§817.2. Definitions.

The following words and terms, when used in this chapter or in Texas Labor Code, Chapter 51, shall have the following meanings[~~, unless the context clearly indicates otherwise~~].

(1) Applicant--A child or the child's parent, legal guardian, legal custodian, or prospective employer.

(2) Business or enterprise owned by a parent or custodian--A parent or custodian who owns a business as a sole proprietor, a partner in a partnership, or an officer/member of a corporation. [~~Child--An individual under 18 years of age.~~]

(3) Business or enterprise operated by a parent or custodian--A parent or custodian who operates a business when exerting active direct control over the operation of the business or enterprise by making day-to-day decisions affecting basic income and work assignments, hiring and firing employees, and exercising direct supervision of the work. [~~Child actor--A child under the age of 14 who is to be employed as an actor or other performer.~~]

(4) Casual employment--Employment that is irregular or intermittent and not on a scheduled basis. [~~Commission--Texas Workforce Commission.~~]

(5) Child--An individual under 18 years of age. [~~Executive director--The executive director of the Texas Workforce Commission or the executive director's designee.~~]

(6) Child actor--A child under the age of 14 who is to be employed as an actor or other performer.

(7) Child actor extra--A child under the age of 14 who is employed as an extra without any speaking, singing, or dancing roles, usually in the background of the performance.

(8) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the Governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers and one representative of the public. The definition of "Commission" shall apply to all uses of the term in rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

(9) Direct supervision of the parent or custodian--A child is employed under the direct supervision of a parent or custodian when the parent controls, directs, and supervises all activities of the child.

(10) Employee--An individual who is employed by an employer for compensation.

(11) Employer--An entity who employs one or more employees or acts directly or indirectly in the interests of an employer in relation to an employee.

(12) Employment--Any service, including service in interstate commerce, that is performed for compensation or under a contract of hire, whether written, oral, express, or implied.

(13) Executive director--The executive director of the Texas Workforce Commission or the executive director's designee.

(14) Private school--As set forth in Texas Education Code, Chapter 5, a school that offers a course of instruction for students in one or more grades from prekindergarten through grade 12, and is not operated by a governmental entity.

§817.7. Employment Records.

(a) For purposes of Texas Labor Code §51.021(a)(2), collection of information during an inspection means that each employer shall keep true and accurate employment records that include the name and correct address of the employer and the following information for each and every individual performing services for the employer:

(1) the individual's name, address, telephone number, date of birth, and Social Security number;

(2) the dates and times the individual performed services; and

(3) a job description of duties performed by any individual who is performing or has performed services for the employer.

(b) All records shall be kept and made readily accessible to authorized representatives of the Agency.

(c) The records prescribed by this subchapter and the Texas Labor Code shall be preserved for four years.

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 September 11, 2012.

TRD-201204767
Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-0829

♦ ♦ ♦

SUBCHAPTER B. LIMITATIONS ON THE EMPLOYMENT OF CHILDREN

40 TAC §§817.21, 817.23, 817.24

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Labor Code, Title 2.

§817.21. Limitations on the Employment of 14- and 15-Year-Old [~~14 and 15 Year Old~~] Children.

(a) The Commission adopts by reference §§570.31 through 570.34 and §§570.70 through 570.72 of Title 29 of the Code of Federal Regulations, to the extent that they are consistent with the Fair Labor Standards Act (FLSA), 29 United States Code §201, et seq.[~~.~~] In the event of any inconsistency between federal regulations and [~~the~~] FLSA, [~~the~~] FLSA shall take precedence. The Commission adopts these regulations as state rules governing the employment of 14- and 15-year-old [~~14 and 15 year old~~] children in Texas. These rules will apply to such employment whether or not that employment is subject to FLSA [~~the federal Fair Labor Standards Act (FLSA)~~], 29 United States Code §201, et seq. The application of this rule is limited to the extent it is consistent with Texas Labor Code, Chapter 51.

(b) This section shall continue in effect even if the regulations adopted by reference are subsequently renumbered or reorganized, as long as such reorganization represents no substantive change to the content.

§817.23. Limitations on the Employment of 16- and 17-Year-Old [~~16 and 17 Year Old~~] Children.

(a) The Commission adopts by reference §§570.50 through 570.68 of Title 29 of the Code of Federal Regulations, to the extent that they are consistent with FLSA [~~the Fair Labor Standards Act (FLSA)~~], 29 United States Code §201, et seq.[~~.~~] In the event of any inconsistency between federal regulations and [~~the~~] FLSA, [~~the~~] FLSA shall take precedence. The Commission adopts these regulations as state rules governing the employment of 16- and 17-year-old [~~16 and 17 year old~~] children in Texas. These rules will apply to such employment whether or not that employment is subject to FLSA [~~the federal Fair Labor Standards Act (FLSA)~~], 29 United States Code §201, et seq. The application of this rule is limited to the extent it is consistent with Texas Labor Code, Chapter 51.

(b) This section shall continue in effect even if the regulations adopted by reference are subsequently renumbered or reorganized, as long as such reorganization represents no substantive change to the content.

§817.24. Limitations on the Employment of Children to Solicit.

(a) A person may not begin the employment of a child to solicit, as defined in Texas Labor Code, §51.0145 and as described in §817.4(b) of this chapter [~~Chapter~~] (relating to Statement of Commission Intent), until [~~the Commission's Labor Law Department has received~~]:

(1) the Agency's Labor Law Department has received:

(A) [~~(1)~~] a copy of the signed Parental Consent Form approved by the Commission; and

(B) [~~(2)~~] the information required by statute to be provided to the individual who gives consent;

(2) the individual giving consent is informed, on the Parental Consent Form, whether the child will be soliciting in neighborhoods in which a registered sex offender resides; and

(3) the individual obtains a Certificate of Age Card issued by the Agency, as described in §817.5 of this chapter, for each child, and the child is instructed to carry the certificate for identification purposes during each solicitation trip.

(b) A copy of the Parental Consent Form may be obtained from the Agency's [~~Commission's~~] Labor Law Department.

(c) A person employing a child under Texas Labor Code §51.0145 shall limit each solicitation trip to within a radius of no greater than thirty miles from the child's home, unless the parent or other person identified in Texas Labor Code §51.0145(c)(1) signs a Parental Consent Form in advance of the solicitation trip specifically approving a greater distance.

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 September 11, 2012.

TRD-201204768
Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-0829

♦ ♦ ♦

CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION SUBCHAPTER F. EQUAL EMPLOYMENT OPPORTUNITY RECORDS AND RECORDKEEPING

40 TAC §819.92

The Texas Workforce Commission proposes amendments to the following section of Chapter 819, relating to the Texas Workforce Commission Civil Rights Division:

Subchapter F. Equal Employment Opportunity Records and Recordkeeping, §819.92

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 819 rule change is to limit the release of certain personally identifiable information related to complaints filed under Texas Labor Code §21.201.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rule and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER F. EQUAL EMPLOYMENT OPPORTUNITY RECORDS AND RECORDKEEPING

The Commission proposes the following amendments to Subchapter F:

§819.92. Access to CRD Records

Section 819.92(b) is removed. Pursuant to Texas Labor Code §21.305 and §819.92 of this chapter, the Commission currently must allow, upon written request, a party to a complaint filed

under Texas Labor Code §21.201 reasonable access to Commission records relating to the complaint. These records often include personally identifiable information and sensitive medical information of persons other than a party to the complaint.

House Bill 2463, 82nd Texas Legislature, Regular Session (2011), amended Texas Labor Code §21.305 to state that the following information is not considered public information and must not be disclosed to a party to a complaint filed under §21.201:

--Identifying information of persons other than the parties and witnesses to the complaint;

--Identifying information about confidential witnesses, including any confidential statement given by witnesses;

--Sensitive medical information about the charging party or a witness to the complaint that is:

--provided by a person other than the person requesting the information; and

--not relevant to issues raised in the complaint, including information that identifies injuries, impairments, pregnancies, disabilities, or other medical conditions that are not obviously apparent or visible;

--Identifying information about a person other than the charging party that is found in sensitive medical information regardless of whether the information is relevant to the complaint;

--Nonsensitive medical information that is relevant to the complaint if the disclosure would result in an invasion of personal privacy, unless the information is generally known or has been previously reported to the public;

--Identifying information about other respondents or employers not a party to the complaint;

--Information relating to settlement offers or conciliation agreements received from one party that was not conveyed to the other and information contained in a separate alternative dispute resolution file prepared for mediation purposes; and

--Identifying information about a person on whose behalf a complaint was filed if the person has requested that his or her identity as a complaining party remain confidential.

New §819.92(b) states that the information described in Texas Labor Code §21.305(c) is not public information and must not be disclosed to a party to a complaint filed under Texas Labor Code §21.201.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rule will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rule.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rule.

There are no anticipated economic costs to persons required to comply with the rule.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rule.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rule will not have an adverse economic impact on small businesses as this proposed rule will place no requirements on small businesses.

Rich Froeschle, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rule.

Jonathan Babiak, Director, Civil Rights Division, has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the proposed rule will be to protect the personally identifiable information and sensitive medical information of parties to a complaint and persons other than a party to a complaint.

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

PART IV. COORDINATION ACTIVITIES

In the development of this rule for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on July 10, 2012.

Comments on the proposed rule may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Government Code, Chapter 552.

§819.92. Access to CRD Records.

(a) Pursuant to Texas Labor Code §21.304 and §21.305, CRD shall, on written request of a party to a perfected complaint filed under Texas Labor Code §21.201, allow the party access to CRD's records, unless the perfected complaint has been resolved through a voluntary settlement or conciliation agreement:

(1) following the final action of CRD; or

(2) if a party to the perfected complaint or the party's attorney certifies in writing that a civil action relating to the perfected complaint is pending in federal court alleging a violation of federal law.

(b) The information described in Texas Labor Code §21.305(c) is not public information and shall not be disclosed to a party to a complaint filed under Texas Labor Code §21.201.

[(b) Pursuant to the authority granted the Commission in Texas Labor Code §21.305, reasonable access shall not include access to the following:]

[(1) information excepted from required disclosure under Texas Government Code, Chapter 552; or]

[(2) investigator notes.]

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 September 11, 2012.

TRD-201204769
Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 475-0829

♦ ♦ ♦

TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 215, Subchapter D, §215.105, Notification of License Application; Protest Requirements; and §215.107, Hearing. The department proposes new sections under Subchapter D, new §215.116, Lease or Sublease Listing; new §215.117, Market Value Property Appraisal; new §215.118, Determination of Affected County for Dealership Relocation; and new §215.119, Standing to Protest. The department also proposes amendments to Chapter 215, Subchapter I, §215.307, Notice of Hearing.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTIONS

Amendments and new sections are proposed for clarification of statutory provisions and to implement Senate Bill 529, 82nd Legislature, Regular Session, 2011 (SB 529). The department's Board established the SB 529 Advisory Committee to provide an opportunity for manufacturers and franchised dealers to have input regarding the implementation of the new law. The proposed amendments and new sections are proposed to implement the law, particularly where consensus was reached between motor vehicle dealers in Texas and the manufacturers that supply Texas' dealers with motor vehicles.

Amendments to §215.105, Notification of License Application; Protest Requirements, are proposed to correct a cross reference and to implement the protest standing requirements added by Occupations Code, §2301.6521 and §2301.6522. Amendments throughout §215.105 delete cross references to Occupations Code, §2302.652 and to §2301.652(a) for correction of a cross reference and because varying statutory standing requirements are now found under multiple provisions of Occupations Code, Chapter 2301 (i.e., Occupations Code, §§2301.476, 2301.652(b), 2301.6521, and 2301.6522). The amendments proposed as §215.105(d) will afford a protestant with opportunity to reference the applicable statutory provision to clearly establish standing to protest. The proposed amendments to §215.105 and the amendments to §215.106 adopted by the Board on July 12, 2012, clarify that a protest will be disallowed for failing to timely file the protest or the protest filing fee. The subsections of §215.105 will be renumbered so the provisions of existing §215.105(b) will become §215.105(e).

Amendments to §215.107, Hearing, are proposed to clarify which areas of the department perform certain functions. Additional amendments to §215.107 are proposed to delete the specific statutory reference and broaden the statutory cross reference to Occupations Code, Chapter 2301, because a contested case hearing may be held under Occupations Code, §2301.652(a), and under additional provisions of Chapter 2301.

New §215.116, Lease or Sublease Listing, is proposed to implement Occupations Code, §2301.4651, as promulgated by SB 529. New §215.116 is proposed to clarify the statutory requirement regarding mitigation and lease of the dealership when the dealership is required to comply with Occupations Code, §2301.4651(e). Use of the term "line-make" throughout SB 529 may create ambiguity because a line-make does not necessarily include the entire dealership, apply to all manufacturers with a franchise at the dealership, or encompass all franchises held by one dealer. For example, termination or discontinuation of a line-make does not always terminate a franchise or affect the totality of a dealership. Therefore, new §215.116 is proposed to clarify that only that portion of the dealership related to the termination or discontinuation is to be listed for lease or sublease as required by Occupations Code, §2301.4651(e).

New §215.117, Market Value Property Appraisal, is proposed to implement Occupations Code, §2301.482. New §215.117(a) is proposed to clarify that the appraiser described in Occupations Code, §2301.482(c), is a General Certified Real Estate Appraiser, rather than a Certified Residential Real Estate Appraiser or a State-Licensed Real Estate Appraiser. A General Certified Real Estate Appraiser may appraise all types of real property, including commercial property.

New §215.117(b) is proposed to implement Occupations Code, §2301.482(b). A determination of what is "necessary real estate" or "necessary construction" will be determined by the applicable property use agreement on a case-by-case basis.

New §215.117(c) is proposed to implement Occupations Code, §2301.482(c). The proposed subsection clarifies that the calculation of market value determination is to be made by averaging the independent results of the three appraisers.

New §215.118, Determination of Affected County for Dealership Relocation, is proposed to implement new Occupations Code, §2301.6521, as promulgated by SB 1035. The Code Construction Act, Texas Government Code, §311.005, defines the term "population" to mean "the population shown by the most recent federal decennial census." Currently, the eight Texas Counties of Bexar, Collin, Dallas, Denton, Fort Bend, Harris, Tarrant, and Travis qualify as affected counties as defined under Occupations Code, §2301.6521(a). This list of eight counties will not be modified until the official results of the next federal decennial census

in 2020 are released by the U.S. Census Bureau for the reporting category of Population in Texas by County.

New §215.119, Standing to Protest, is proposed for clarification of the applicable standing requirements under Occupations Code, §§2301.476, 2301.652, 2301.6521, and 2301.6522, as determined by the application that is filed with the division. Proposed new §215.119 is needed to clarify the complex and varying standing requirements that differ among the various types of applications. Standing requirements also vary, based on the county location involved. Generally, the standing requirements for eligibility to protest an application for establishing a dealership, relocating a dealership, or adding a new line-make at an existing dealership will be based on the standing requirements under Occupations Code, §2301.652. However, SB 529 provided new standing requirements applicable to specific applications and under particular circumstances involving affected counties and economically impaired dealers. When an application triggers the affected county provisions, standing requirements for eligibility to protest will be determined in accordance with Occupations Code, §2301.6521. When an application triggers the economically impaired dealer provisions, standing requirements for eligibility to protest will be determined in accordance with Occupations Code, §2301.6522.

New §215.119(a) is proposed to expressly state that the protestant has the burden of proof to demonstrate it meets standing requirements to protest. The franchised dealer challenging the application filed with the department has always had the burden of proof if standing to protest is challenged. Courts do not have subject matter jurisdiction over a party that does not have standing. Subject matter jurisdiction cannot be waived. Therefore, new §215.119(a) is proposed to remove ambiguity.

New §215.119(b) is proposed to simplify the complex standing provisions found in several sections throughout Occupations Code, Chapter 2301. Because standing eligibility requirements differ, based upon the type of application filed and the physical location of the franchised dealership to which the application applies, new §215.119(b) is proposed to cross reference the applicable statutory standing authority, based upon the application filed with the division.

Proposed new §215.119(b)(1) is consistent with existing §215.108 and clarifies that an amendment to add a line-make to an existing license will be treated as an application to establish a dealership. In accordance with the provisions of Occupations Code, §2301.652, standing to protest an application to add a line-make to an existing license will follow the standing provisions proposed in new §215.119(c), determined by both the purpose of the application and by the physical location involved.

New §215.119(b)(2) is proposed to cross reference the standing requirements found under Occupations Code, §2301.652, applicable to dealership relocations, generally.

New §215.119(b)(3) is proposed to cross reference the standing requirements found under Occupations Code, §2301.6521, applicable to relocations when the affected county analysis is triggered by the facts of a specific application.

New §215.119(b)(4) is proposed to cross reference the standing requirements found under Occupations Code, §2301.6522, applicable to relocations when the economically impaired dealer analysis is triggered by the facts of a specific application.

New §215.119(b)(5) is proposed to cross reference the standing requirements found under Occupations Code, §2301.476, applicable to an application filed by a manufacturer, distributor, or representative for an extension of time for its ownership or control of a dealership.

New §215.119(c) - (g) are proposed to clarify, simplify, and set forth the statutory standing requirements applicable to each particular type of application that will be received by the division.

New §215.119(c) is proposed to provide the eligibility standing requirements to protest an application for establishment of a new dealership or to add a franchised line-make at an existing dealership in accordance with Occupations Code, §2301.652. These standing requirements are the same as those established in statute prior to promulgation of SB 529.

New §215.119(d) is proposed to provide the eligibility standing requirements to protest an application for relocation of a dealership. The requirements proposed in new §215.119(d) for general dealership relocation applications are the same standing requirements as those established in statute prior to promulgation of SB 529.

New §215.119(e) is proposed to address standing requirements when an application triggers the affected county provisions of Occupations Code, §2301.6521. The provisions of Occupations Code, §2301.6521 apply in instances when an application is filed to relocate a dealership within an affected county or from an affected county to an adjacent affected county. Standing to protest the application for relocation assumes that the protesting dealer is franchised for one or more of the line-makes at the proposed relocation site. If the relocation site is less than two miles from the current dealership location, no dealer has standing to protest the relocation application in accordance with Occupations Code, §2301.6521(d), regardless of whether the relocation site is nearer or farther. If the relocation site is more than two miles from the current dealership location, then each dealer located within 15 miles of the proposed relocation site with a franchise for one or more of the line-makes that is the subject of the relocation application will have standing to protest the application in accordance with Occupations Code, §2301.6521(b)(2). However, if no dealer with a franchise to sell the line-make that is the subject of the relocation application is located within 15 miles of the proposed relocation site, then a protesting dealer must be located in the affected county of the proposed relocation site and be the nearest dealer to the proposed relocation site with a franchise for the line-make. Determination of standing to protest a relocation application engaging the affected county provisions of Occupations Code, §2301.6521, will require the evaluation described above to be made for each of the line-makes proposed for relocation.

It is possible for multiple dealers to have standing to protest the application when the two-mile threshold has been met and more than one dealer with a franchise for one or more of the line-makes proposed for the relocation site exists within the 15 mile radius.

However, if no dealer located within 15 miles of the proposed relocation site holds a franchise for one or more of the line-makes proposed for relocation, then with regard to each particular line-make, only one dealer has or may have standing to protest. But, that one dealer (for each line-make) has standing to protest only if it is located in the same affected county as the proposed relocation site and no other dealer franchised for the line-make is located nearer to the proposed relocation site. The conjunction "and" appears twice in Occupations Code, §2301.6521(b)(1). In this example where no dealership with a franchise for the

same line-make as the relocating dealership is located within 15 miles of the proposed relocation site, the protesting dealer must meet all elements under Occupations Code, §2301.6521(b)(1), to have standing to protest the relocation.

New §215.119(f) is proposed to address standing requirements when an application triggers the economically impaired dealer provisions of Occupations Code, §2301.6522. The provisions of Occupations Code, §2301.6522, govern an application for relocation filed by an economically impaired dealer.

New §215.119(g) is proposed to provide the eligibility standing requirements to protest an application filed by a manufacturer, distributor, or representative under Occupations Code §2301.476 for extension of time during which the manufacturer, distributor, or representative may continue to own or control a dealership. The requirements proposed in new §215.119(g) are to clarify the standing requirements that existed under Occupations Code, §2301.476, prior to the promulgation of SB 529.

Amendments to §215.307, Notice of Hearing, are proposed to implement the non-amendatory provisions of SB 529, Section 16 and §17. SB 529, §16, states, "The change in law made by this Act applies only to an agreement entered into or renewed under Chapter 2301, Occupations Code, on or after the effective date of this Act. An agreement entered into or renewed before the effective date of this Act is governed by the law in effect on the date the agreement was entered into or renewed, and the former law is continued in effect for that purpose." SB 529, §17, states, "This Act takes effect September 1, 2011." Proposed amendments to §215.307 clarify that the statutory provisions applicable in a protest case will be those statutes in effect at the time the application is filed.

On the other hand, in a complaint case, the changes in the law promulgated by SB 529 will not apply to agreements entered into or renewed under Occupations Code, Chapter 2301, before September 1, 2011. An agreement entered into or renewed before September 1, 2011, continues to be governed by the law in effect on the date the agreement was entered into or renewed. Therefore, the former version of the law continues to be in effect for that purpose.

The Administrative Procedure Act, Government Code, §2001.052, requires notice of a hearing in a contested case to include the legal authority under which the hearing is to be held and the particular sections of the statutes and rules involved. To assure that the correct legal provisions are applied in a complaint case, proposed amendments to §215.307 provide that the legal authority stated in the notice of hearing under which the hearing is to be held may be provided in the alternative if evidence is needed to determine the date of the parties' most recent agreement or when a contested issue arises as to which document comprises or qualifies as the most recent agreement.

SB 529 did not define what constitutes an agreement entered into or renewed under Occupations Code, Chapter 2301. However, Occupations Code, §2301.002(15), defines the term "franchise" to mean "one or more contracts between a franchised dealer (as franchisee) and a manufacturer or a distributor (as franchisor), including a written communication from a franchisor to a franchisee in which a duty is imposed on the franchisee, under which the franchisee is granted the right to sell and service new motor vehicles manufactured or distributed by the franchisor or only to service motor vehicles under the contract and a manufacturer's warranty; the franchisee is a component of the franchisor's distribution system as an independent business; the franchisee is substantially associated with the franchisor's trademark, tradename, and commercial symbol; the franchisee's business substantially relies on the franchisor for a continued supply of motor vehicles, parts, and accessories; or any right, duty, or obligation granted or imposed by this chapter [Occupations Code, Chapter 2301] is affected." Thus, a franchise may be established through a very broad spectrum of agreements, documents, or instruments.

The proposed amendments to §215.307 are necessary for compliance with contested case notice requirements. The required elements of notice in a contested case include the legal authority or particular sections of the statutes and rules involved, in accordance with Government Code, §2001.052.

In some instances, where those elements are not ascertainable, the legal authority or particular sections of the statutes and rules may be provided in the alternative in the notice of hearing so that the correct provisions may be applied and considered during the contested case hearing and through the final decision.

For example, the basis of the complaint or dispute may require examination as to which agreement or renewal applies. If the date of the most recent agreement or renewal is not agreed upon by the parties, then it may be necessary for the parties to present evidence and argument before the administrative law judge during a prehearing conference in order to determine the date of the most recently executed or renewed agreement. Such prehearing conference should logically take place before the hearing on the merits of the complaint that forms the basis of that proceeding. By holding a prehearing conference, the administrative law judge will determine the legal authority, statutes, and rules applicable to the particular complaint case. Therefore, the statutory provisions promulgated by SB 529 will apply in a contested case involving an agreement that was entered into or renewed on or after September 1, 2011.

No section is proposed in this package to clarify or harmonize new Occupations Code, §§2301.4671, 2301.481, and 2301.482 with 2301.476. Occupations Code, §2301.4671(3), prohibits exclusive control by the manufacturer, distributor, or representative over the use of the dealership property. Occupations Code, §2301.481, is a prohibition against a manufacturer, distributor, or representative requiring a dealer to enter into a property use agreement. Occupations Code, §2301.482, is permissive in that a dealer may enter into a property use agreement for cash consideration that grants the manufacturer or distributor the exclusive rights to direct the use of the dealership. Occupations Code, §§2301.4671, 2301.481, and 2301.482 are distinguishable from §2301.476(a) - (c) that prohibits or limits a manufacturer's, representative's, or affiliate's operation, control, or ownership interest in a dealer or dealership.

FISCAL NOTE

Linda Flores, Chief Financial Officer, has determined that for each of the first five years the amendments and new sections as proposed are in effect, there will be no fiscal impact on state or local governments as a result of enforcing or administering the amendments and new sections.

Mr. Bill Harbeson, Interim Director of the Motor Vehicle Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new sections.

PUBLIC BENEFIT AND COST

Mr. Harbeson has also determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new sections as proposed will result from the increased protection franchised dealers may experience in the future, should a manufacturer, distributor, or representative find it necessary to terminate or discontinue a line-make or franchise agreement by any means, including discontinuation of a line-make, ceasing to do business in Texas, changing the distributor, or changing the method of distribution of its products in Texas. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses or individuals.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§215.105, 215.107, 215.307, and new §§215.116 - 215.119 may be submitted to Michelle Lingo, Staff Attorney, Motor Vehicle Division by email to MVD_Exchange@TxDMV.gov. Please write "SB 529 Implementation Rules" in the subject line of the email. Although we strongly encourage all comments to be submitted in electronic format through the referenced email address, comments may also be submitted by writing to Texas Department of Motor Vehicles, Attention: Motor Vehicle Division-SB 529 Implementation Rules, 4000 Jackson Avenue, Austin, Texas 78731. The deadline for receipt of comments is 5:00 p.m. on October 29, 2012.

SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS

43 TAC §§215.105, 215.107, 215.116 - 215.119

STATUTORY AUTHORITY

The amendments and new sections are proposed under Occupations Code, 2301.151, which gives the Board exclusive and original jurisdiction to regulate distribution, sale, and lease of motor vehicles governed by Occupations Code, Chapter 2301. The amendments and new sections are also proposed under Transportation Code, §1002.001; and Occupations Code, §2301.155; which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Occupations Code, §§2301.4651, 2301.476, 2301.652, 2301.6521, 2301.6522, and 2301.482; and Government Code, §2001.052.

§215.105. Notification of License Application; Protest Requirements.

(a) Upon receipt of an application for a new motor vehicle dealer's license, including an application filed with the division by reason of the relocation of an existing dealership, the division shall give notice of the filing of the application to all dealer licensees that may [~~who~~] have standing to protest the application [~~under Occupations Code,~~ §2302.652].

(b) If it appears to the department that there are no dealers with standing to protest [~~are represented in the county or applicable 15-mile area~~], then no notice shall be given.

(c) Any [~~such~~] dealer licensee holding a franchise for the sale of the same line-make of a new motor vehicle as proposed for sale in the subject application and with standing to protest the application may file with the division a notice of protest in opposition to the application and the granting of a license [~~pursuant thereto, which notice shall be given in the following manner~~].

(d) The dealer that wishes to protest the application shall give its notice of protest in the following manner.

(1) The notice of protest shall be in writing and shall be signed by an authorized officer or other official authorized to sign on behalf of the licensee filing the notice.

(2) The notice of protest shall state the basis upon which the protest is made and assert how the protesting dealer meets the standing requirements to protest the application [~~under Occupations Code, §2301.652(a), and shall state the reasons or grounds for the protest~~].

(3) The notice of protest shall state that the protest is not made for purposes of delay or for any other purpose except for justifiable cause [~~under Occupations Code, §2301.652(a)~~].

(4) If a protest is filed against an application for the establishment of a dealership or for addition of a line-make at an existing dealership, the notice of protest shall state the provision of Occupations Code, Chapter 2301, under which the protest is made.

(e) [~~(b)~~]The provisions of this section shall not be applicable to any application filed with the division for a dealer license as a result of the purchase or transfer of an existing entity holding a current franchise license which does not involve any physical relocation of the purchased or transferred line-makes.

§215.107. Hearing.

Upon receipt of a notice of protest, timely filed in accordance with the provisions of §215.106 of this title [~~subchapter~~] (relating to Time for Filing Protest), the division [~~Board~~] shall promptly set a public hearing for the taking of evidence and for the consideration of the matters set forth in Occupations Code, Chapter 2301 [~~§2301.652(a)~~].

§215.116. Lease or Sublease Listing.

A dealer that lists its dealership for lease or sublease to mitigate damages in accordance with Occupations Code, §2301.4651(e), is required to list for lease or sublease:

(1) the entire real property if the termination or discontinuance effectively terminates all line-makes and all franchises for the entire dealership; or

(2) only that portion of the real property associated with the terminated line-make or franchise, if the termination or discontinuance does not affect all line-makes and all franchises of the dealership.

§215.117. Market Value Property Appraisal.

(a) A market value property appraisal assessment made in accordance with Occupations Code, §2301.482(c), requires three general certified real estate appraisers that have been certified by the State of Texas.

(b) Necessary real estate and necessary construction are each determined by the applicable property use agreement.

(c) To determine market value of property in accordance with Occupations Code, §2301.482(c), an average of the market value property appraisals will be calculated from the independent market value property assessment determinations of the three general certified real estate appraisers.

§215.118. Determination of Affected County for Dealership Relocation.

The most recent population data reported by the federal decennial census is used to identify an affected county defined under Occupations Code, §2301.6521.

§215.119. Standing to Protest.

(a) A protestant has the burden to demonstrate standing to protest.

(b) Standing requirements are established by the type of application.

(1) Protest of an application to establish a dealership or to add a new line-make to an existing dealership requires the protestant to meet standing requirements under Occupations Code §2301.652;

(2) Protest of an application to relocate a dealership requires the protestant to meet standing requirements under Occupations Code, §2301.652;

(3) Protest of an application to relocate a dealership within an affected county or from an affected county to an adjacent affected county requires the protestant to meet standing requirements under Occupations Code, §2301.6521;

(4) Protest of an application to relocate an economically impaired dealership requires the protestant to meet standing requirements under Occupations Code, §2301.6522; and

(5) Protest of an application filed by a manufacturer, distributor, or representative for an extension of time for ownership or control of a dealership requires the protestant to meet standing requirements under Occupations Code, §2301.476.

(c) A person has standing to protest an application to establish a dealership or to add a franchised line-make at an existing dealership if:

(1) the person is a franchised dealer of the same line-make; and

(2) the person's dealership is located either in the same county as, or within 15 miles of, the dealership for which the application was filed.

(d) Except as provided in subsections (e) and (f) of this section, a person has standing to protest an application to relocate a dealership or to relocate a franchised line-make of an existing dealership if:

(1) the person is a franchised dealer of the same line-make;

(2) the person's dealership is located either in the same county as, or within 15 miles of, the dealership for which the application for relocation is filed;

(3) the proposed relocation site is more than two miles from the location where the dealership is currently located; and

(4) the proposed relocation site is nearer to the protesting franchised dealer than the location from which the relocating dealership is currently located.

(e) An application may be filed under Occupations Code, §2301.6521 to relocate a dealership from a location in an affected county to a location that is either within the same affected county or in an adjacent affected county.

(1) No dealer has standing to protest an application filed in accordance with this subsection if the proposed relocation site is two miles or less from the relocating dealership's current location; or

(2) If the proposed relocation site for an application filed in accordance with this subsection is more than two miles from the relocating dealership's current location, then:

(A) each franchised dealer located within 15 miles of the proposed relocation site has standing to protest the application if it is franchised for one or more of the line-makes proposed at the relocation site; or

(B) if there is no dealership located within 15 miles of the proposed relocation site with a franchise for a line-make proposed to be relocated, then a dealer has standing to protest the application if:

(i) the dealership of the protesting dealer is located in the affected county to which the relocation site is proposed;

(ii) the protesting dealer is franchised for the same line-make that is proposed to be relocated; and

(iii) there is no other dealer located nearer to the proposed relocation site that is franchised for the line-make that is proposed to be relocated.

(f) If an economically impaired dealer files an application under Occupations Code, §2301.6522, to relocate its dealership, then a dealer has standing to protest the application if:

(1) the dealer is franchised for a line-make that is the same as a line-make proposed to be relocated;

(2) the proposed relocation site is more than two miles closer to the protesting dealer's dealership than the site of the economically impaired dealer's current location; and

(3) there is no other dealer located nearer to the proposed relocation site that is franchised for a line-make that is proposed to be relocated.

(g) A dealer has standing to protest an application for an extension of time that was filed by a manufacturer, distributor, or representative under Occupations Code, §2301.476, if:

(1) the protesting dealer is franchised for a line-make being sold or serviced from the dealership owned or controlled by a manufacturer, distributor, or representative; and

(2) the protesting dealer is located either in the same county as, or within 15 miles of, the dealership owned or controlled by the manufacturer, distributor, or representative.

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 September 17, 2012.

TRD-201204905
Jennifer Soldano
Interim General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 467-3853

SUBCHAPTER I. PRACTICE AND PROCEDURE FOR HEARINGS CONDUCTED BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

43 TAC §215.307

STATUTORY AUTHORITY

The amendments and new sections are proposed under Occupations Code, §2301.151, which gives the Board exclusive and original jurisdiction to regulate distribution, sale, and lease of motor vehicles governed by Occupations Code, Chapter 2301. The amendments and new sections are also proposed under Transportation Code, §1002.001; and Occupations Code, §2301.155; which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Occupations Code, §§2301.4651, 2301.476, 2301.652, 2301.6521, 2301.6522, and 2301.482; and Government Code, §2001.052.

§215.307. Notice of Hearing.

(a) The requirements for a notice of hearing are set out in Occupations Code, §2301.705, Government Code, §2001.052, and 1 TAC §155.401 (relating to Notice of Hearing), as applicable.

(b) In a protest case, the notice of hearing of a contested case must refer to the applicable statutory provisions in effect at the time the application was filed.

(c) To assure that the correct legal provisions are applied in a complaint case, the notice of hearing of a contested case may be presented in the alternative if:

(1) consideration of evidence is necessary to determine the date the parties' most recent agreement was entered into or renewed; or

(2) the document that comprises or qualifies as the most recent agreement entered into or renewed is not clearly identified or is a contested issue.

(d) [~~(b)~~] For service of parties outside of the United States, in addition to service under Occupations Code, §2301.265, the Board may serve notice of hearing by any method allowed by Texas Rules of Civil Procedure Rule 108a(1), or that provides for confirmation of delivery to the party.

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 September 17, 2012.

TRD-201204906
Jennifer Soldano
Interim General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: October 28, 2012
For further information, please call: (512) 467-3853

♦ ♦ ♦

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

♦ ♦ ♦

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 71. APPLICATIONS AND APPLICANTS

22 TAC §71.15

The Texas Board of Chiropractic Examiners withdraws the proposed amendment to §71.15 which appeared in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4326).

Filed with the Office of the Secretary of State on September 14, 2012.

TRD-201204893
Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
Effective date: September 14, 2012
For further information, please call: (512) 305-6716

♦ ♦ ♦

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.17

The Texas Board of Chiropractic Examiners withdraws the proposed amendment to §75.17 which appeared in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4327).

Filed with the Office of the Secretary of State on September 14, 2012.

TRD-201204894
Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
Effective date: September 14, 2012
For further information, please call: (512) 305-6716

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 108. PROFESSIONAL CONDUCT
SUBCHAPTER E. BUSINESS PROMOTION

22 TAC §§108.50 - 108.61

The State Board of Dental Examiners withdraws the proposed repeal of §§108.50 - 108.61 which appeared in the May 18, 2012, issue of the *Texas Register* (37 TexReg 3655).

Filed with the Office of the Secretary of State on September 17, 2012.

TRD-201204895
Glenn Parker
Executive Director
State Board of Dental Examiners
Effective date: September 17, 2012
For further information, please call: (512) 475-0977

♦ ♦ ♦

22 TAC §§108.50 - 108.63

The State Board of Dental Examiners withdraws the proposed new §§108.50 - 108.63 which appeared in the May 18, 2012, issue of the *Texas Register* (37 TexReg 3656).

Filed with the Office of the Secretary of State on September 17, 2012.

TRD-201204896
Glenn Parker
Executive Director
State Board of Dental Examiners
Effective date: September 17, 2012
For further information, please call: (512) 475-0977

♦ ♦ ♦

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

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §355.8581, concerning Reimbursement Methodology for Family Planning Services; and adopts the repeal of §355.8582, concerning Medical Services; §355.8583, concerning Elective Sterilization; and §355.8584, concerning Maximum Rates and Specific Codes. The amendment and repeals are adopted without changes to the proposed text as published in the July 27, 2012, issue of the *Texas Register* (37 TexReg 5529) and will not be republished.

Background and Justification

HHSC adopts amended §355.8581 to eliminate policy language and outdated cross references and to add reimbursement language pertinent to family planning services.

Additionally, HHSC adopts the repeals of §§355.8582 - 355.8584 to eliminate policy language and outdated cross references and to allow all family planning services reimbursement language to be consolidated into one rule, §355.8581.

Comments

The 30-day comment period ended August 26, 2012. During this period, HHSC did not receive any comments regarding the proposed rule changes.

DIVISION 30. FAMILY PLANNING

1 TAC §355.8581

Legal Authority

The amendment is adopted 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 §531.021(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 September 13, 2012.

TRD-201204830
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 1, 2012
Proposal publication date: July 27, 2012
For further information, please call: (512) 424-6900

♦ ♦ ♦

DIVISION 30. FAMILY PLANNING: PURCHASED SERVICES

1 TAC §§355.8582 - 355.8584

Legal Authority

The repeals are adopted 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 §531.021(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 September 13, 2012.

TRD-201204831
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 1, 2012
Proposal publication date: July 27, 2012
For further information, please call: (512) 424-6900

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.7

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §75.7, concerning Required Fees and Charges, which increases certain fees, makes clear which fees include the yearly newsletter fee and changes the term "facility license" to "facility registration." This rule is adopted without changes to the proposed text as published in the April 27, 2012, issue of the *Texas Register* (37 TexReg 2976) and will not be republished.

First, the amendment deleted previous line item 22 (Newsletter Fee - One Year) and added a new column to the schedule of fees to make clear which fees include the $8.00 newsletter fee. Only DC license renewals and reactivations include the $8.00 newsletter fee. However, this was not clear from looking at the previous schedule of fees. This amendment clarifies this fee and also ensures licensees who renew their licenses through Texas.gov can see the detailed breakdown of the total fee in rule.

Second, the amendment increased the DC License Reactivation from Inactive Status Fee from $348.00 to $362.00. The $8.00 newsletter fee, which is collected for this type of license renewal, is now included for this line item in the schedule of fees to make the total fee more clear. Additionally, because a reactivation of a license from inactive to active is treated as a renewal, the $5.00 Texas Online fee and the $1.00 Patient Protection fee were added.

Third, the term "license" was deleted from previous line items 13 through 17, dealing with facilities, and is replaced with "registration." Facilities are registered by the Board, so the correct terminology is substituted.

Fourth, the Texas Online fees for late facility registration renewals were increased by Texas.gov. The Texas Online fee for a facility registration renewal received late under 90 days increased from $2.00 to $4.00. Additionally, the Texas Online fee for a facility registration renewal received late 90 days to one year increased from $2.00 to $5.00. Therefore, these fees were increased in line items 15 and 16.

No comments were received by the Board on the proposed amendment.

The amendment is adopted under Texas Occupations Code §201.152, relating to rules; §201.153, relating to fees; §201.302, relating to the initial application for licensees; §201.311, relating to reactivating an inactive license; §201.312, relating to facility registration and renewal; §201.352, relating to annual registration of licensees; §201.354, relating to annual renewal of licenses; and §201.355, relating to reinstating an expired license for an out-of-state licensee. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.153 authorizes the Board to set fees as necessary to administer Chapter 201 of the Occupations Code. Section 201.302 authorizes the Board to set a fee for a licensee's initial application. Section 201.311 authorizes the Board to set a fee to reactivate an inactive licensee's license. Section 201.312 authorizes the Board to charge a fee up to $75 for facility registration and annual renewal. Section 201.352 authorizes the Board to set a fee for annual registration of licensees. Section 201.354 authorizes the Board to set a fee for the annual renewal of licenses. Section 201.355 authorizes the Board to set a fee for reinstating an expired license of an out-of-state licensee.

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 September 12, 2012.

TRD-201204829
Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
Effective date: October 2, 2012
Proposal publication date: April 27, 2012
For further information, please call: (512) 305-6716

CHAPTER 80. PROFESSIONAL CONDUCT

22 TAC §80.7

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §80.7, concerning Out-of-Facility Practice, without changes to the proposed text as published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4328) and will not be republished.

The adopted amendment makes clear that all out-of-facility services must be provided in conjunction with a registered facility and that the licensee providing the out-of-facility services does not have to actually own that facility. That licensee must only be employed at the "sponsoring" facility. Additionally, the adopted amendment substitutes the term "registered" for "licensed" when speaking about chiropractic facilities, as the board registers facilities.

One comment received by the Board expressed approval of the amendments in subsections (a) and (b). However, the comment stated that the amendments made in subsection (c) were "unnecessary" due to the language contained in Texas Occupations Code §201.312(g). The commenter said the statute "is adequate to stand on its own and needs no rule to clarify it." The Board disagrees. Licensees consistently ask Board staff for clarification of this issue as it relates to out-of-facility practice, despite the language in the statute. Therefore, the Board made no change in response to this comment.

A second comment received by the Board suggested a grammatical change in the proposed language. The Board did not make any changes in response to this comment.

This amendment is adopted under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2012.

TRD-201204902

Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
Effective date: October 7, 2012
Proposal publication date: June 15, 2012
For further information, please call: (512) 305-6716

♦ ♦ ♦

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.2

The Texas Board of Physical Therapy Examiners adopts amendments to §329.2, concerning License by Examination, without changes to the proposed text as published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4334). The amendments adjust requirements for applying for a license by exam to take into account the new fixed dates for the exam, add information about accommodations on the exam, and eliminate redundancies.

The amendments formalize the Board's existing examination accommodation procedures in rule; delete the requirement that an applicant complete all requirements for licensure prior to scheduling an appointment for the national exam; and eliminate redundant paragraphs regarding notification of exam score, re-examination, and grandfathering.

No comments were received regarding the proposed changes.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 14, 2012.

TRD-201204885
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: October 4, 2012
Proposal publication date: June 15, 2012
For further information, please call: (512) 305-6900

♦ ♦ ♦

CHAPTER 337. DISPLAY OF LICENSE

22 TAC §337.2

The Texas Board of Physical Therapy Examiners adopts amendments to §337.2, concerning Consumer Information Sign, without changes to the proposed text as published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4336). The amendment updates contact information for the board.

The amendment adds the board's web address to the consumer information sign.

No comments were received regarding the proposed changes.

The amendment is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 14, 2012.

TRD-201204887
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: October 4, 2012
Proposal publication date: June 15, 2012
For further information, please call: (512) 305-6900

♦ ♦ ♦

CHAPTER 341. LICENSE RENEWAL

22 TAC §341.8

The Texas Board of Physical Therapy Examiners adopts amendments to §341.8, concerning Inactive Status, without changes to the proposed text as published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4336). The amendments remove confusion over what is required of licensees on inactive status and delete language regarding alternatives to the completion of continuing competence activities to return to active status.

The amendments delete references to the renewal certificate, which is being eliminated. They also eliminate alternatives to the requirement that a licensee on inactive status complete continuing competence activities during each renewal cycle.

No comments were received regarding the proposed changes.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 14, 2012.

TRD-201204886
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: October 4, 2012
Proposal publication date: June 15, 2012
For further information, please call: (512) 305-6900

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 102. DISTRIBUTION OF TOBACCO SETTLEMENT PROCEEDS TO POLITICAL SUBDIVISIONS

25 TAC §§102.1 - 102.5

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§102.1 - 102.5, concerning the distribution of tobacco settlement proceeds to political subdivisions. The sections are adopted without changes to the proposed text as published in the April 27, 2012, issue of the *Texas Register* (37 TexReg 2984) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The rule amendments provide updated language and offer clarification to enhance the understanding of the program rules for the distribution of tobacco settlement proceeds to political subdivisions. The rules are still needed due to the continued responsibilities for implementing the Health and Safety Code, §§12.131 - 12.139, and the responsibilities of the department under the "Agreement Regarding Disposition of Tobacco Settlement Proceeds" filed on July 24, 1998, in United States District Court, Eastern District of Texas, in the case styled The State of Texas v. The American Tobacco Co., et al., No. 5-96CV-91.

Government Code, §2001.039, requires 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 102.1 - 102.5 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

The amendment to §102.1 deletes the word "Texas" in front of Health and Safety Code to be consistent with subsection (a) and adds a comma after Chapter 61 in the last sentence of the section. The amendment to §102.2 deletes the phrase "Department of State Health Services (department)" and adds the word "department." The amendment to §102.3(a) and (d)(1) deletes the capitalization and makes the term "political subdivision" lowercase. The amendment to §102.4 removes the word "randomly" for clarification. The amendment to §102.5 updates the name of Chapter 1 of this title to "Miscellaneous Provisions", replacing "the Texas Board of Health."

COMMENTS

The department, on behalf of the commission, received a comment regarding the proposed rules during the comment period. The comment was received from the Texas Conference of Urban Counties in a letter dated May 3, 2012, supporting the proposed rule amendments. The commission acknowledges the rules' support and no changes were made to the proposed text of the rule amendments.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments are authorized under Health and Safety Code, §12.133, which requires the department to adopt rules governing the collection of information that relates to the political subdivisions' unreimbursed health care expenditures; 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.

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 September 17, 2012.

TRD-201204908
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: October 7, 2012
Proposal publication date: April 27, 2012
For further information, please call: (512) 776-6972

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 843. JOB MATCHING SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §843.1

The Texas Workforce Commission (Commission) adopts amendments to the following section of Chapter 843, relating to Job Matching Services, without changes, as published in the July 6, 2012, issue of the *Texas Register* (37 TexReg 5108):

Subchapter A. General Provisions, §843.1

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 843 amendments is to conform the Subchapter A general provisions with the requirements of Senate Bill (SB) 563, enacted by the 82nd Texas Legislature, Regular Session (2011).

Previously, anyone could submit an open records request for WorkInTexas.com data and legally obtain personal and contact information for any job seeker who has registered with the sys-

tem. This information could be used for purposes other than the Agency's job matching system, such as marketing outreach, and for potentially illegal activities.

SB 563 amends Texas Labor Code §301.085 by requiring the Commission to "adopt and enforce reasonable rules governing the confidentiality, custody, use, preservation, and disclosure of job matching services information. The rules must include safeguards to protect the confidentiality of identifying information regarding any individual or any past or present employer or employing unit contained in job matching services information, including any information that foreseeably could be combined with other publicly available information to reveal identifying information regarding the individual, employer, or employing unit, as applicable."

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§843.1. Employer and Job Seeker Services

New §843.1(d):

(1) defines "job matching services information" as information in the records of the Agency that pertains to the job matching services system provided to employers, employing units, and job seekers through the Internet, Workforce Solutions Offices, or other means, and maintained by the Agency, Local Workforce Development Boards (Boards), and their workforce service providers;

(2) states that job matching services information is not public information and shall be maintained as confidential to the same degree as unemployment compensation information as set forth in 40 TAC Chapter 815, Subchapter E;

(3) does not limit or waive any right or obligation of the Agency to invoke limitations or confidentiality requirements based on separate laws or regulations; and

(4) states that disclosure of job matching services information is permissible:

(A) for the purposes of administering job matching services;

(B) when disclosing information about a job seeker or employer to that job seeker or employer;

(C) when there is a written information release signed by the job seeker or employer;

(D) when the information is provided to a public official for use in the performance of his or her official duties; and

(E) in other situations that do not violate the confidentiality of the job seeker or employer and that have been approved by the Agency's Open Records Unit.

No comments were received.

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Texas Labor Code, Chapter 302, and Texas Government Code Chapter 657.

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 September 11, 2012.

TRD-201204766
Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Effective date: October 1, 2012
Proposal publication date: July 6, 2012
For further information, please call: (512) 475-0829

♦ ♦ ♦

TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 215, Subchapter C, §215.82, Administration of Licensing Fees; §215.83, Renewal of Licenses; and §215.86, Processing of License Applications, Amendments, or Renewals; and Subchapter D, §215.112, Motor Home Show Limitations and Restrictions, without changes to the proposed text as published in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4830). The amended rules will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The adopted rule amendments implement Senate Bill 1733 and House Bill 2872, 82nd Legislature, Regular Session, 2011; reflect changes in the Motor Vehicle Division's application process practices; and provide for efficient processing of applications for licenses, renewals, and amendments.

Amendments to §215.82, Administration of Licensing Fees, are adopted to delete a provision that is duplicative of Occupations Code, §2301.264(f) requiring $50 as the fee for a duplicate license. Amendments to §215.82 are also adopted for consistency with Occupations Code, §2301.264(d) requiring that a refund of an amount that is not due or that exceeds the amount due is to be made from funds appropriated to the board for the purpose of refunds. Requirements under existing §215.82(b)(1) and (2) are adopted as §215.82(a). New §215.82(b) is adopted to implement Occupations Code, §55.002 by protecting an active member of the armed forces from increased fee or penalty for failing to timely renew a license because the individual was on active duty in the United States armed forces serving outside of Texas.

Amendments to §215.83, Renewal of Licenses, are extensive. Amendments to §215.83(a) are adopted to emphasize that a li-

censee must submit a timely and sufficient renewal application to the division before the expiration of the license. The licensee's failure to receive notice or the department's failure to provide notice of impending license expiration does not relieve the licensee from the responsibility to timely renew in accordance with the statutory requirements. The provisions of existing §215.83(b) are adopted and moved to §215.83(i) while retaining the 90-day grace period during which a late license renewal application may be filed with accompanying fees. New §215.83(b) is adopted to clarify that a renewal application is sufficient if the renewal form is completed by the licensee or certain authorized representatives, includes the required renewal fee and is accompanied by proof of a surety bond, if required. New §215.83(c) is adopted to indicate that a license renewal application is timely if it is received or postmarked before the license expiration date.

New §215.83(d) states that a timely and sufficient renewal application will be accepted for processing; however, the filing of a timely and sufficient renewal application does not automatically result in the issuance of a license. Rather, the Motor Vehicle Division will review the renewal application and determine whether to approve or deny the application for issuance of a license. New §215.83(e) is adopted for consistency with the Administrative Procedure Act, Government Code, §2001.054. New §215.83(f) is adopted to clarify that if a licensee fails to file a sufficient application before the expiration of the existing license, then a person may not continue to engage in those business activities requiring a license. New §215.83(g) is adopted to clarify that the expiration date of license plates that are issued in accordance with Transportation Code, Chapter 503, Subchapter C, is intrinsically tied to the expiration of the associated license issued by the department's Motor Vehicle Division. Therefore, the plates expire the later of two events, either upon expiration of the license associated with the plates or, if the licensee filed a timely and sufficient license renewal application, then upon the determination whether to issue or deny the license renewal application. New §215.83(h) is adopted to provide a licensee the opportunity to demonstrate to the division that it complied with all license renewal requirements and that the licensee filed a sufficient and timely license renewal application. The entity is afforded 10 calendar days from the date the division issues a notice informing the entity that no renewal application was received by the division.

New §215.83(i) is based upon existing §215.83(b). New §215.83(i) is adopted to clarify that the department affords a grace period of 90 days during which the entity may still file a late renewal application. The 90-day grace period applies only to the filing of the license renewal application and not the activities authorized by the valid license. Once the existing license expires, the applicant no longer holds a valid license; therefore, the applicant may not continue to engage in business activities for which a license is required. In other words, because no timely and sufficient renewal application was filed before the expiration of the existing license, that entity is not authorized to engage in activities requiring a license, even during the 90-day grace period. The entity may file a license renewal application during the 90-day grace period. The applicant must also pay the associated application fee. In addition, a penalty fee is assessed. The adopted subsection clarifies that the applicant may not resume business activities for which a license is required until the applicant receives from the division a written verification that the license has been issued or receives the actual license.

New §215.83(j) is adopted to clarify that if the Motor Vehicle Division has not received a renewal application within 90 days of the expiration of a license, the division will close the license and that license may not be renewed. Instead, the entity must apply for and receive a new license before engaging in or resuming any business activities for which a license is required. However, that entity should realize that because no timely and sufficient renewal application was filed before the expiration of the existing license, that entity will not have been authorized to engage in activities requiring a license since the date the license expired.

Amendments to §215.86, Processing of License Applications, Amendments, or Renewals, are adopted to reflect the logistical and process changes being made by the Motor Vehicle Division to its review of applications. Amendments to §215.86(a) and §215.86(c) are adopted to allow an employee or an unpaid agent of the applicant to file an application or renewal application. Similar to attorneys or accountants, an employee or an agent of the applicant or licensee may be required to demonstrate proof of authority to act on behalf of the applicant or licensee. License purveyors are still prohibited from applying for a license on behalf of another entity or from gaining information by telephone relevant to a pending application. New §215.86(d) is adopted to clarify license processing procedures. The department intends for staff to informally communicate by telephone and e-mail to request materials and information necessary to continue processing an application. However, division staff may also issue a written notice of deficiency to the applicant. The adopted new subsection clarifies that the applicant will be afforded 20 calendar days to respond to a written notice of deficiency and to supply all requested documentation or information. The adopted new subsection allows for an extension of time only if granted in writing so that only for unforeseeable or extenuating circumstances would the 20-day period be extended. If the applicant does not respond to staff or does not provide the information or documents within 20 days of the date of the written notice of deficiency, then the processing of the application will discontinue, the application will be deemed withdrawn and will be administratively closed. New §215.86(e) is adopted to further clarify license processing procedures. The department's evaluation of a complete application will determine approval or denial of the application. In cases where the department determines the application should be denied, a petition and notice of hearing to be held before the State Office of Administrative Hearings will be issued and sent to the applicant in accordance with Texas Occupations Code, §2301.651(d) and the Texas Administrative Procedure Act. The department also allows the applicant to voluntarily withdraw its application prior to the issuance of a final order, so that the applicant is afforded an opportunity to correct the application deficiencies and reapply without having been previously denied a license. New §215.86(f) is adopted to implement Senate Bill 1733, which amended Occupations Code, §55.004 by requiring expedited licensing processing for an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States.

Amendments to §215.112, Motor Home Show Limitations and Restrictions, are adopted for clarification and implementation of House Bill 2872, which amended Transportation Code, Chapter 728, Subchapter A (the Texas Blue Law). An amendment to §215.112(c) is adopted to delete the word "other" to eliminate ambiguity. Additional amendments to §215.112(c) are adopted to clarify that the term "coordinator/promoter" means "promoter or coordinator." Amendments to §215.112(e) are adopted to replace the term "day" with "Saturday or Sunday" to expressly state that the non-selling day designated by the motor home show promoter or coordinator for compliance with the Texas Blue Law will

be on a Saturday or a Sunday, rather than on any other day of the week. Additional amendments to §215.112(e) are adopted to clarify that the reference to "Blue Law" means the prohibition of sales on a consecutive Saturday and Sunday in accordance with the requirements of Transportation Code, Chapter 728, Subchapter A. Amendments to §215.112(e) are also adopted to implement new Transportation Code, §728.002(d), which was promulgated by House Bill 2872. The motor vehicles to which the Transportation Code, §728.002 prohibition applies include a motor home or a tow truck. However, the new statutory provision at Transportation Code, §728.002(d) clarifies that the section does not prohibit the quoting of a price for a motor home, tow truck, or towable recreational vehicle at a show or exhibition. In response to numerous inquiries received by the Motor Vehicle Division, amendments to §215.112(e) are adopted to clarify the activities in which a motor home dealer may engage on a consecutive Saturday and Sunday during a show or exhibition. As the term "motor vehicle" is defined under Transportation Code, §728.001(2), no prohibition exists against sale of towable recreational vehicles on a consecutive Saturday and Sunday. Therefore, no new rule or rule amendment is adopted regarding the quoting of a price for a towable recreational vehicle. However, the prohibition on sale or offer to sell motor vehicles on a consecutive Saturday and Sunday still applies to motor vehicles as defined in Transportation Code, §728.001(2), including tow trucks, ambulances, fire fighting vehicles, and traditional self-propelled motor vehicles of two or more wheels designed to transport a person or property. Although new Transportation Code, §728.002(d) does not prohibit the quoting of a price for a tow truck on a consecutive Saturday and Sunday at a show or exhibition under Occupations Code, §2301.358, no rule amendment or new rule is adopted at this time.

COMMENTS

No comments on the proposed amendments were received.

SUBCHAPTER C. LICENSES, GENERALLY

43 TAC §§215.82, 215.83, 215.86

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §503.002; Transportation Code, §1002.001; and Occupations Code, §2301.155; which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Occupations Code §§55.002, 55.004, 2301.251 - 2301.266, 2301.301 - 2301.304, 2301.355, 2301.358, and 2301.362; Transportation Code, §§503.003, 503.007, 503.008, 503.010, 503.021 - 503.038, and 728.001 - 728.002; and Government Code, §2001.054.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2012.

TRD-201204903
Jennifer Soldano
Interim General Counsel
Texas Department of Motor Vehicles
Effective date: October 7, 2012
Proposal publication date: June 29, 2012
For further information, please call: (512) 467-3853

♦ ♦ ♦

SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS

43 TAC §215.112

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §503.002; Transportation Code, §1002.001; and Occupations Code, §2301.155; which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Occupations Code §§55.002, 55.004, 2301.251 - 2301.266, 2301.301 - 2301.304, 2301.355, 2301.358, and 2301.362; Transportation Code, §§503.003, 503.007, 503.008, 503.010, 503.021 - 503.038, and 728.001 - 728.002; and Government Code, §2001.054.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 17, 2012.

TRD-201204904
Jennifer Soldano
Interim General Counsel
Texas Department of Motor Vehicles
Effective date: October 7, 2012
Proposal publication date: June 29, 2012
For further information, please call: (512) 467-3853

♦ ♦ ♦

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.

Agency Rule Review Plan

Commission on State Emergency Communications

Title 1, Part 12

TRD-201204918
Filed: September 18, 2012

♦ ♦ ♦

Proposed Rule Reviews

Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts proposes to review Texas Administrative Code, Title 34, Part 1, Chapter 3, concerning Tax Administration. This review is being conducted in accordance with Government Code, §2001.039. The review will include, at the minimum, whether the reasons for re-adopting continue to exist.

The comptroller will accept comments regarding the review. The comment period will last for 30 days following the publication of this notice in the *Texas Register.*

Any questions or written comments pertaining to this rule review may be submitted to Bryant Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

TRD-201204841
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: September 14, 2012

♦ ♦ ♦

Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas files this notice of intent to review and readopt 16 TAC Chapter 9, concerning LP-Gas Safety Rules, in accordance with Texas Government Code, §2001.039. The agency's reasons for adopting these rules continue to exist. In a separate, concurrent rulemaking, the Commission proposes some nonsubstantive amendments to various rules in Chapter 9.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until noon on Monday, October 29, 2012, which is 31 days after publication in the *Texas Register,* and encourages all interested persons to submit comments on the forms no later than this deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Kellie Martinec at (512) 475-1295. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

Issued in Austin, Texas, on September 11, 2012.

TRD-201204832
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Filed: September 13, 2012

♦ ♦ ♦

The Railroad Commission of Texas files this notice of intent to review and readopt 16 TAC Chapter 13, concerning Regulations for Compressed Natural Gas (CNG), in accordance with Texas Government Code, §2001.039. The agency's reasons for adopting these rules continue to exist. In a separate, concurrent rulemaking, the Commission proposes some nonsubstantive amendments to various rules in Chapter 13.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until noon on Monday, October 29, 2012, which is 31 days after publication in the *Texas Register,* and encourages all interested persons to submit comments on the forms no later than this deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Kellie Martinec at (512) 475-1295. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

Issued in Austin, Texas, on September 11, 2012.

TRD-201204833
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Filed: September 13, 2012

♦ ♦ ♦

The Railroad Commission of Texas files this notice of intent to review and readopt 16 TAC Chapter 14, concerning Regulations for Liquefied Natural Gas (LNG), in accordance with Texas Government Code,

§2001.039. The agency's reasons for adopting these rules continue to exist. In a separate, concurrent rulemaking, the Commission proposes some nonsubstantive amendments to various rules in Chapter 14.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until noon on Monday, October 29, 2012, which is 31 days after publication in the *Texas Register,* and encourages all interested persons to submit comments on the forms no later than this deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Kellie Martinec at (512) 475-1295. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

Issued in Austin, Texas, on September 11, 2012.

TRD-201204834
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Filed: September 13, 2012

♦ ♦ ♦

The Railroad Commission of Texas files this notice of intent to review and readopt 16 TAC Chapter 15, concerning Alternative Fuels Research and Education Division, in accordance with Texas Government Code, §2001.039. The agency's reasons for adopting these rules continue to exist. In a separate, concurrent rulemaking, the Commission proposes some nonsubstantive amendments to various rules in Chapter 15.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until noon on Monday, October 29, 2012, which is 31 days after publication in the *Texas Register,* and encourages all interested persons to submit comments on the forms no later than this deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Kellie Martinec at (512) 475-1295. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

Issued in Austin, Texas, on September 11, 2012.

TRD-201204835
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Filed: September 13, 2012

♦ ♦ ♦

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 §4.222(d)

Engineering and Environmental Standards for Recyclable Product to be Used as Road Base		
PARAMETER	LIMITATION	METHOD
Arsenic	Less than 0.500 mg/l	EPA Method 1312, Synthetic Leaching Procedure (SPLP)
Barium	Less than 100.00 mg/l	
Cadmium	less than 1.00 mg/l	
Chromium (total)	less than 5.00 mg/l	
Lead	less than 5.00 mg/l	
Mercury	less than 0.20 mg/l	
Selenium	less than 1.00 mg/l	
Silver	less than 5.00 mg/l	
Zinc	less than 5.00 mg/l	
Benzene	less than 0.50 mg/l	
Chlorides	less than 500.00 mg/l	LDNR leachate test method 1:4 Solid Solution
TPH	less than 100 mg/l	
pH	6 to 12 Standard Units	
Minimum compressive strength	35 psi	TxDOT Method Tex-126-E

Figure: 16 TAC §4.243(d)

Engineering and Environmental Standards for Recyclable Product to be Used as Road Base		
PARAMETER	LIMITATION	METHOD
Arsenic	Less than 0.500 mg/l	EPA Method 1312, Synthetic Leaching Procedure (SPLP)
Barium	Less than 100.00 mg/l	
Cadmium	less than 1.00 mg/l	
Chromium (total)	less than 5.00 mg/l	
Lead	less than 5.00 mg/l	
Mercury	less than 0.20 mg/l	
Selenium	less than 1.00 mg/l	
Silver	less than 5.00 mg/l	
Zinc	less than 5.00 mg/l	
Benzene	less than 0.50 mg/l	
Chlorides	less than 500.00 mg/l	LDNR leachate test method 1:4 Solid Solution
TPH	less than 100 mg/l	
pH	6 to 12 Standard Units	
Minimum compressive strength	35 psi	TxDOT Method Tex-126-E

Figure: 16 TAC §4.259(d)

Engineering and Environmental Standards for Recyclable Product to be Used as Road Base		
PARAMETER	LIMITATION	METHOD
Arsenic	Less than 0.500 mg/l	EPA Method 1312, Synthetic Leaching Procedure (SPLP)
Barium	Less than 100.00 mg/l	
Cadmium	less than 1.00 mg/l	
Chromium (total)	less than 5.00 mg/l	
Lead	less than 5.00 mg/l	
Mercury	less than 0.20 mg/l	
Selenium	less than 1.00 mg/l	
Silver	less than 5.00 mg/l	
Zinc	less than 5.00 mg/l	
Benzene	less than 0.50 mg/l	
Chlorides	less than 500.00 mg/l	LDNR leachate test method 1:4 Solid Solution
TPH	less than 100 mg/l	
pH	6 to 12 Standard Units	
Minimum compressive strength	35 psi	TxDOT Method Tex-126-E

Figure: 16 TAC §9.3

Railroad Commission of Texas LP-Gas Forms			
Form Number	**Form Title**	**Creation or Last Revision Date**	**Applicable Rule Number (16 TAC §_____) or Other Authority**
LPG Form 1	Application for LPG License or License Renewal	Rev. 7/2012	9.7(f)(1); 9.17(a)(1); 9.17(a)(5); 9.22(a)(1); 9.22(c)(1)
LPG Form 1A	Outlet List	Rev. 7/2012	9.7(f)(2)(A); 9.17(a)(1); 9.17(a)(5); 9.22(c)(1)
LPG Form 3	Liquefied Petroleum Gas License	n/a	9.6
LPG Form 4	Liquefied Petroleum Gas Vehicle Identification	n/a	9.202(c)
LPG Form 7	Truck Registration/Re-registration/Transfer	Rev. 7/2012	9.7(f)(2)(B); 9.22(c)(4); 9.202(a)
LPG Form 8	Manufacturer's Report of Pressure Vessel Repair, Modification, or Testing	Rev. 7/2012	9.101(f); 9.115(b); 9.129(f)
LPG Form 8A	Report of DOT Cylinder Repair	Rev. 7/2012	n/a
LPG Form 16	Application for Examination	Rev. 7/2012	9.7(f)(2); 9.8(a)(1)
LPG Form 16A	Certified Employee Transfer Form	Rev. 7/2012	9.11
LPG Form 16B	Application for Registration by a Master or Journeyman Plumber or a Class A or B Air Conditioning & Refrigeration Contractor	Rev. 7/2012	9.7(f)(2); 9.13(a)(4)
LPG Form 16R	Application for LP-Gas Examination Exemption by Reciprocity Agreement	Rev. 7/2012	9.18(d)(2)
LPG Form 18	Affidavit of Lost or Destroyed License	Rev. 7/2012	n/a
LPG Form 18B	Statement of Lost or Destroyed LPG Form 4 Decal	Rev. 7/2012	9.202(c)(6)
LPG Form 19	Transfer of LP-Gas Bulk Storage Plant or Cylinder Filling/Service Station	Rev. 7/2012	9.7(f)(2)(C); 9.22(c)(5)
LPG Form 20	Report of LP-Gas Incident/Accident	Rev. 7/2012	9.36(c)

LPG Form 22	Report of LP-Gas Safety Rule Violation	Rev. 7/2012	9.38(a); 9.134
LPG Form 23	Statement in Lieu of Container Testing	Rev. 7/2012	9.115
LPG Form 25	Application and Notice of Exception to the LP-Gas Safety Rules	Rev. 7/2012	9.27(a)
LPG Form 28	Notice of Election to Self-Insure	Rev. 7/2012	9.26(i)(2)
LPG Form 28A	Bank Declarations Regarding Irrevocable Letter of Credit	Rev. 7/2012	9.26(i)(2)
LPG Form 30	Texas School LP-Gas Leakage Test Report	Rev. 7/2012	9.41
LPG Form 500	Application to Install LPG Facility (Aggregate Water Capacity of 10,000 Gallons or More)	Rev. 7/2012	9.101(c)(1); 9.102
LPG Form 500A	Notice of Proposed LP-Gas Installation	Rev. 7/2012	9.101(c)(1); 9.102
LPG Form 501	Completion Report for LP-Gas Installations of Less than 10,000 Gallons Aggregate Water Capacity	Rev. 7/2012	9.101(b)(1)
LPG Form 502	Application for Commission Identification Nameplate Installation	Rev. 7/2012	9.130(a)(1)
LPG Form 503	Notice of Completed Installation of an LP-Gas System on School Bus, Public Transportation, Mass Transit, or Special Transit Vehicle(s)	Rev. 7/2012	9.7(i)(2)
LPG Form 505	Testing Procedures Certification	Rev. 7/2012	9.7(i)(2)
LPG Form 506	Polyethylene Pipe/Tubing Heat-Fusion Certification	Rev. 7/2012	9.312
LPG Form 995	Certification of Political Subdivision of Self-Insurance for Workers' Compensation, General Liability, and/or Motor Vehicle Liability Insurance	Rev. 7/2012	9.26
LPG Form 996B	Statement in Lieu of Insurance Filing Certifying Workers' Compensation Coverage, including Employer's Liability Insurance or Alternative Accident/Health Insurance	Rev. 7/2012	Table 9.26(a); 9.26(b)
LPG Form 997B	Statement in Lieu of Motor Vehicle Bodily Injury Insurance and Property Damage Liability Insurance	Rev. 7/2012	Table 9.26(a); 9.26(d)
LPG Form 998B	Statement in Lieu of General Liability Insurance and/or Completed Operations or Products Liability Insurance	Rev. 7/2012	Table 9.26(a); 9.26(e); 9.26(f)
LPG Form 999	Notice of Insurance Cancellation	Rev. 7/2012	9.26(b)

Figure: 16 TAC §9.26(a)

§9.26. INSURANCE REQUIREMENTS
TABLE 1

Category of License	Type of Coverage	Form Required	Statement in Lieu of Required Insurance Filing
All Except P	Workers' Compensation, including Employer's Liability or Alternative to Workers' Compensation including Employer's Liability, or Accident/Health insurance coverage: Medical expenses in the principal amount of at least $150,000; accidental death benefits in the principal amount of at least $100,000; loss of limb or sight on a scale based on principal amount of at least $100,000; loss of income based on at least 60% of employee's pre-injury income for at least 52 weeks, subject to a maximum weekly wage calculated annually by the Texas Workforce Commission	The Acord™ form or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information	LPG Form 996B
A, B, C, E, O, H, J	General liability coverage including: premises and operations in an amount of at least $300,000 per occurrence and $300,000 aggregate	The Acord™ form or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information	LPG Form 998B
A, B, C, E, O	Completed operations or products liability insurance, or both, in an amount of at least $300,000 aggregate	The Acord™ form or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information	LPG Form 998B
D, F, G, I, K, L, M, N, P	General liability coverage including: premises and operations in an amount of at least $25,000 per occurrence with a $50,000 policy aggregate	The Acord™ form or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information	LPG Form 998B
C, E, H, J, Ultimate Consumer	Motor vehicle coverage: minimum $500,000 ($300,000 for state agencies) combined single limit for bodily injuries to or death of all persons injured or killed in any one accident, and loss or damage to property of others in any one accident	The Acord™ form or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information	LPG Form 997B

Figure: 16 TAC §13.4

Railroad Commission of Texas CNG Forms			
Form Number	**Form Title**	**Creation or Last Revision Date**	**Applicable Rule Number (16 TAC §_____) or Other Authority**
CNG Form 1001	Application for CNG License or License Renewal	Rev. 7/2012	13.61(j)
CNG Form 1001A	Branch Outlet List	Rev. 7/2012	13.72(b)
CNG Form 1003	Compressed Natural Gas License	n/a	13.61
CNG Form 1004	Compressed Natural Gas Vehicle Identification	n/a	13.69(c)
CNG Form 1007	Truck Registration/Re-registration/Transfer	Rev. 7/2012	13.68(b); 13.69(a)
CNG Form 1008	Manufacturer's Report of Retest or Repair	Rev. 7/2012	13.141(d)
CNG Form 1016	Application for Examination	Rev. 7/2012	13.70(a)(3); 13.70(c)(1)(B)
CNG Form 1016A	Certified Employee Transfer Form	Rev. 7/2012	13.73
CNG Form 1016B	Application for Registration by a Master or Journeyman Plumber or a Class A or B Air Conditioning & Refrigeration Contractor	Rev. 7/2012	13.70(b)(1)
CNG Form 1018	Affidavit of Lost or Destroyed License	Rev. 7/2012	n/a
CNG Form 1018B	Statement of Lost or Destroyed CNG Form 1004 Decal	Rev. 7/2012	13.69(c)(5)
CNG Form 1019	Transfer of CNG Storage Cylinders/Containers	Rev. 7/2012	n/a
CNG Form 1020	Report of CNG Incident/Accident	Rev. 7/2012	13.36(d)
CNG Form 1025	Application and Notice of Exception to the Regulations for Compressed Natural Gas	Rev. 7/2012	13.35(a)
CNG Form 1027	Application for Qualification as Self-Insurer General Liability	Rev. 7/2012	13.63(b)
CNG Form 1028	Notice of Election to Self-Insure	Rev. 7/2012	13.64
CNG Form 1500	Application to Install CNG Facility (Aggregate Storage Capacity Greater than 240 Standard Cubic Feet Water Volume)	Rev. 7/2012	13.25(b)(1)
CNG Form 1501	Completion Report for CNG Commercial Installations of 240 Standard Cubic Feet Water Volume or Less	Rev. 7/2012	13.25(f)(1)

CNG Form 1503	Notice of Completed Installation of a CNG System on School Bus, Public Transportation, Mass Transit, or Special Transit Vehicle(s)	Rev. 7/2012	13.24(a)
CNG Form 1505	Testing Procedures Certification	Rev. 7/2012	13.61(k)(2)
CNG Form 1995	Certification of Political Subdivision of Self-Insurance for Workers' Compensation, General Liability, and/or Motor Vehicle Liability Insurance	Rev. 7/2012	13.63(g)
CNG Form 1996B	Statement in Lieu of Insurance Filing Certifying Workers' Compensation Coverage, including Employer's Liability Coverage or Alternative Accident/Health Insurance	Rev. 7/2012	Table 13.62; 13.62(d)(3)
CNG Form 1997B	Statement in Lieu of Motor Vehicle Bodily Injury Insurance and Property Damage Liability Insurance	Rev. 7/2012	Table 13.62; 13.62(d)(1)
CNG Form 1998B	Statement in Lieu of General Liability Insurance and/or Completed Operations or Products Liability Insurance	Rev. 7/2012	Table 13.62; 13.62(d)(2); 13.62(d)(4)
CNG Form 1999	Notice of Insurance Cancellation	Rev. 7/2012	13.62(g)

Figure: 16 TAC §13.62(a)

§13.62. INSURANCE REQUIREMENTS
TABLE 1

Category of License	Type of Coverage	Form Required	Statement in Lieu of Required Insurance Filing
All	Workers' Compensation, including Employer's Liability	The Acord™ form or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information	CNG Form 1996B
All	Alternative to Workers' Compensation including Employer's Liability, or Accident/Health insurance coverage: Medical expenses in the principal amount of at least $150,000; accidental death benefits in the principal amount of at least $100,000; loss of limb or sight on a scale based on principal amount of at least $100,000; loss of income based on at least 60% of employee's pre-injury income for at least 52 weeks, subject to a maximum weekly wage calculated annually by the Texas Workforce Commission	The Acord™ form or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information	N/A
2, 5, 6	General liability coverage including: premises and operations in an amount not less than $25,000 per occurrence and $50,000 aggregate	The Acord™ form or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information	CNG Form 1998B
1, 3, 4	Completed operations and products liability insurance in an amount not less than $300,000 aggregate	The Acord™ form or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information	CNG Form 1998B
3 and Ultimate Consumer	Motor vehicle coverage: minimum $500,000 combined single limit for bodily injuries to or death of all persons injured or killed in any one accident, and loss or damage to property of others in any one accident	The Acord™ form or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information	CNG Form 1997B

Figure: 16 TAC §14.2010

Railroad Commission of Texas LNG Forms			
Form Number	**Form Title**	**Creation or Last Revision Date**	**Applicable Rule Number (16 TAC §_____) or Other Authority**
LNG Form 2001	Application for LNG License or License Renewal	Rev. 7/2012	14.2016(a); 14.2028(b)
LNG Form 2001A	Branch Outlet List	Rev. 7/2012	14.2025(b)
LNG Form 2003	Liquefied Natural Gas License	n/a	14.2013
LNG Form 2004	Liquefied Natural Gas Vehicle Identification	n/a	14.2704(c); 14.2705; 14.2749
LNG Form 2007	Truck Registration/Re-registration/Transfer	Rev. 7/2012	14.2704
LNG Form 2008	Manufacturer's Report of Pressure Vessel Repair, Modification, or Testing	Rev. 7/2012	14.2040(k)(2); 14.2607(c); 14.2640(d); 14.2707(a)(2)
LNG Form 2016	Application for Examination	Rev. 7/2012	14.2019(a)(3); 14.2019(b)(2)
LNG Form 2016A	Certified Employee Transfer Form	Rev. 7/2012	14.2020
LNG Form 2018	Affidavit of Lost or Destroyed License	Rev. 7/2012	n/a
LNG Form 2018B	Statement of Lost or Destroyed LNG Form 2004 Decal	Rev. 7/2012	14.2705
LNG Form 2019	Transfer of LNG Storage Cylinders/Containers	Rev. 7/2012	14.2040(a)
LNG Form 2020	Report of LNG Incident/Accident	Rev. 7/2012	14.2049(e)
LNG Form 2025	Application and Notice of Exception to the Regulations for Liquefied Natural Gas	Rev. 7/2012	14.2052
LNG Form 2027	Application for Qualification as Self-Insurer General Liability	Rev. 7/2012	14.2034(b)
LNG Form 2028	Notice of Election to Self-Insure	Rev. 7/2012	14.2034(h)
LNG Form 2500	Application to Install LNG Facility (Aggregate Water Capacity of 15,540 Gallons or More)	Rev. 7/2012	14.2040(b); 14.2043; 14.2307(c)
LNG Form 2500A	Notice of Proposed LNG Installation	Rev. 7/2012	14.2040

LNG Form 2501	Completion Report for Commercial LNG Installations of Less Than 15,540 Gallons Water Capacity	Rev. 7/2012	14.2040(f); 14.2040(g); 14.2043; 14.2316
LNG Form 2503	Notice of Completed Installation of an LNG System on School Bus, Public Transportation, Mass Transit, or Special Transit Vehicles	Rev. 7/2012	14.2046
LNG Form 2505	Testing Procedures Certification	Rev. 7/2012	14.2016(e)(3)
LNG Form 2995	Certification of Political Subdivision of Self-Insurance for Workers' Compensation, General Liability, and/or Motor Vehicle Liability Insurance	Rev. 7/2012	14.2034(g)
LNG Form 2996B	Statement in Lieu of Insurance Filing Certifying Workers' Compensation Coverage, including Employer's Liability Insurance or Alternative Accident/Health Insurance	Rev. 7/2012	Table 14.2031; 14.2031(d)
LNG Form 2997B	Statement in Lieu of Motor Vehicle Bodily Injury and Property Damage Liability Insurance	Rev. 7/2012	Table 14.2031; 14.2031(e)
LNG Form 2998B	Statement in Lieu of General Liability Insurance and/or Completed Operations or Products Liability Insurance	Rev. 7/2012	Table 14.2031; 14.2031(f); 14.2031(g)
LNG Form 2999	Notice of Insurance Cancellation	Rev. 7/2012	14.2031(c)

Figure: 16 TAC §14.2019(a)(3)

EXAMINATION AND COURSE OF INSTRUCTION
TABLE 1

Categories of Licenses

	15	20	25	30	35	40	45	50
Company Representative Management Exam	*	*	*	*	*	*	*	*
Operations Supervisor (Branch Manager) Management Exam	*	*	*	*	*	*	*	*
Employee Level - Service & Installation (including Transport Driver and Motor Fuel Dispenser) Exam			*	*	*	*		
Employee Level - Transport Driver Exam			*		*			
Employee Level - Engine Fuel Exam					*		*	*
Employee Level - Service & Installation Exam				*	*			
Employee Level - Motor/Mobile Fuel Dispenser Exam					*	*	*	
File LNG Form 2016	*	*	*	*	*	*	*	*
~~File LNG Form 2016B~~					*			

Figure: 16 TAC §14.2031(a)

§14.2031. INSURANCE REQUIREMENTS

TABLE 1

Category of License	Type of Coverage	Form Required	Statement in Lieu of Required Insurance Filing
All	Workers' Compensation, including Employer's Liability	The Acord™ form or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information	LNG Form 2996B
All	Alternative to Workers' Compensation including Employer's Liability, or Accident/Health insurance coverage: Medical expenses in the principal amount of at least $150,000; accidental death benefits in the principal amount of at least $100,000; loss of limb or sight on a scale based on principal amount of at least $100,000; loss of income based on at least 60% of employee's pre-injury income for not less than 52 weeks, subject to a maximum weekly wage calculated annually by the Texas Workforce Commission	The Acord™ form or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information	N/A
30, 40, 45	General liability coverage including: premises and operations in an amount of at least $25,000 per occurrence and $50,000 aggregate	The Acord™ form or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information	LNG Form 2998B
20, 25, 35, 50	Completed operations in an amount of at least $300,000 aggregate	The Acord™ form or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information	LNG Form 2998B
15, 25, 35	Product liability in an amount of at least $300,000 aggregate	The Acord™ form or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information	LNG Form 2998B
15, 20, 25, 35, 50	General liability coverage: premises and operations including completed operations in an amount of at least $300,000 per occurrence with a $300,000 policy aggregate	The Acord™ form or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information	LNG Form 2998B

25, 35, Ultimate Consumer	Motor vehicle coverage: minimum $5,000,000 ($300,000 for state agencies) combined single limit for bodily injuries to or death of all individuals injured or killed in any one accident, and loss or damage to property of others in any one accident.	The Acord™ form or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information	LNG Form 2997B

Figure: 16 TAC §15.5

Railroad Commission of Texas AFRED Forms			
Form Number	**Form Title**	**Creation or Last Revision Date**	**Applicable Rule Number (16 TAC §_____) or Other Authority**
AFRED Form 1	Odorizer's or Importer's Report of Fees Collected	Rev. 7/2012	15.55, 15.65, 15.100
AFRED Form 1A	Schedule A: Schedule of Refund Amounts	Rev. 7/2012	15.65, 15.100
AFRED Form 2	Load Exemption: Certificate of LPG Destined for Export	Rev. 7/2012	15.60
AFRED Form 3	Fee on Delivery of Odorized LPG: Refund Request to Commission	Rev. 7/2012	15.70, 15.100
AFRED Form 4	Blanket Exemption	Rev. 7/2012	15.60
AFRED Form 5	Refund Request to Odorizer or Importer	Rev. 7/2012	15.65, 15.100
AFRED Form 6	Odorizer or Importer Registration	Rev. 7/2012	15.45, 15.100
AFRED Form 6A	Odorizer or Importer Designation of Agent	Rev. 7/2012	15.45, 15.100
CR-1	Propane Water Heater Rebate Application	Rev. 7/2012	15.125(a)
CR-2	Propane Star/Superstar Home Rebate Application	Rev. 7/2012	15.125(a)
CR-3	Propane Dealer Rebate Assignment Form	Rev. 7/2012	15.150
CR-4	Propane Safety Check for Residential Customers	Rev. 7/2012	15.125(a)

Figure: 28 TAC Chapter 13--Preamble

Rule Section	Document Type	Employee Type	Estimated Time
§13.413(c)(1)	declaration or affirmation	officer/director	1 hour
§13.413(c)(2)	application form	administrative staff	1 - 2 hours
§13.413(c)(3)	organizational documents	administrative staff	1 hour
§13.413(c)(4)	bylaws	administrative staff	1 hour
§13.413(c)(5)	plan of operation	administrative staff	2 - 6 hours
§13.413(c)(6)(A)	officers and directors page	administrative staff	1 - 2 hours
§13.413(c)(6)(B)	biographical data	administrative staff officers/directors	1 - 2 hours 1 - 3 hours each
§13.413(c)(7)	organizational charts	administrative staff	2 - 3 hours
§13.413(c)(8)	physical address notice	administrative staff	1 hour
§13.413(c)(9)	description of the information systems	administrative staff	2 - 3 hours
§13.413(d)(1)	financial projections	administrative staff financial analyst	4 - 6 hours 4 - 8 hours
§13.413(d)(2)	balance sheet	financial analyst	1 hour
§13.413(d)(3)	contract forms	administrative staff	1 - 3 hours
§13.413(d)(4)	If applicable, insurance, agreements, or arrangements protecting against insolvency	administrative staff	1 hour
§13.413(d)(6)	financial authorization	administrative staff	1 hour
§13.413(e)(1) - (2)	service area, network information	administrative staff programmer	5 - 20 hours 5 - 10 hours
§13.413(e)(3)	practice groups, associations	administrative staff	1 - 2 hours
§13.413(e)(4)	participating facilities	administrative staff	1 - 2 hours

§13.413(e)(5)	contract copies	administrative staff	1 - 2 hours
§13.413(e)(6)	compensation arrangements	administrative staff	2 - 4 hours
§13.413(g)	accreditation disclosures	administrative staff	1 hour
§13.413(h)(1)	antitrust, fraud proceedings	administrative staff	1 - 5 hours
§13.413(h)(2)	identification of common services	administrative staff	20 - 80 hours
§13.413(h)(3)	identification of primary service area	administrative staff	1 hour/service
§13.413(h)(4)	market share calculation	administrative staff	1 hour/service
§13.413(h)(5)	competitor identification	administrative staff	1 - 8 hours
§13.413(h)(6)	benefit analysis	administrative staff	3 - 20 hours
§13.413(h)(7)	financial incentive analysis	administrative staff	1 - 5 hours
§13.413(h)(8)	confidentiality policies description	administrative staff	1 - 5 hours
§13.413(i)(1)	identification of payors	administrative staff	1 - 5 hours
§13.413(i)(2)	payor information form	administrative staff	2 - 4 hours
§13.413(i)(3)	business planning documents	administrative staff	2 - 6 hours
§13.413(i)(4)	identification of negotiators	administrative staff	1 - 3 hours
§13.413(i)(5)	pricing documentation	administrative staff	2 - 6 hours
§13.413(i)(6)	competitor information	administrative staff	1 - 5 hours
§13.413(i)(7)	margins/costs documents	administrative staff	1 - 5 hours
§13.413(i)(8)	documents for evaluation of participant's financial condition	administrative staff	1 - 3 hours
§13.413(i)(9)	alternative efficiencies memos	administrative staff	1 - 3 hours
§13.413(i)(10)	potential participants' identification	administrative staff	1 - 3 hours
§13.413(i)(11)	internal meeting documents	administrative staff	1 - 3 hours

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Request for Proposals

The Texas State Affordable Housing Corporation (the Corporation) is requesting proposals for a qualified education provider (Provider) to conduct training to nonprofits, units of local government and other community-based organizations to fulfill the purposes of the Texas Statewide Homebuyer Education Program (TSHEP). More information can be found at www.tsahc.org.

The deadline for submitting a response to this Request for Proposals is Friday, October 12, 2012. No proposal will be accepted after 5:00 p.m. on that date. Faxed responses will not be accepted. For questions or comments, please contact Paige Omohundro at (512) 477-3561 or by email at pomohundro@tsahc.org.

TRD-201204938
David Long
President
Texas State Affordable Housing Corporation
Filed: September 19, 2012

♦ ♦ ♦

Department of Assistive and Rehabilitative Services

Notice of Public Hearing and Opportunity for Public Comment

The Texas Department of Assistive and Rehabilitative Services (DARS) is holding a public hearing and soliciting public comments on proposed amendments to Texas Administrative Code (TAC), Title 40, Part 2, Department of Assistive and Rehabilitative Services:

Chapter 101, Administrative Rules and Procedures; and

Chapter 108, Division for Early Childhood Intervention Services.

Proposed Rule Amendment

The 40 TAC Chapter 101 Administrative Rules and Procedures rulemaking proposes amendments and a new rule to comply with guidance received by DARS from the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS), Office of Special Education Programs (OSEP), concerning the Individuals with Disabilities Education Act (IDEA), Part C, State Application and Assurances.

The 40 TAC Chapter 108 Division for Early Childhood Intervention Services rulemaking proposes to amend and move programmatic requirements from the definitions rule to programmatic rules; correct terminology; clarify requirements related to eligible for auditory or visual impairments; and correct citations.

Copies of the proposed rules may be obtained from the DARS website at http://www.dars.state.tx.us/ or by contacting the DARS Division for Early Childhood Intervention Services at (512) 424-6754. The proposed rule revisions were published in the September 7, 2012, issue of the *Texas Register* (37 TexReg 7051). *(www.sos.state.tx.us/texreg/)*

Public Hearing

DARS will hold a public hearing on the proposed rulemaking on October 29, 2012, from 2:00 p.m. until 4:00 p.m., at the Criss Cole Rehabilitation Center, 4800 North Lamar Boulevard, Austin, Texas 78756.

The hearing is structured to receive oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing. However, DARS staff will be available to discuss the proposal 30 minutes prior to the hearing.

For persons with disabilities requesting accommodations, please contact DARS Inquiries at 1-800-628-5115 TDD/TTY 1-866-581-9328. Requests should be made as far in advance as possible.

Public Comment

Written comments may also be submitted to Rules Coordinator, Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 200, Austin, Texas 78756 or electronically to DARSRules@dars.state.tx.us. The comment period closes at 5:00 p.m. on November 6, 2012.

TRD-201204910
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Filed: September 17, 2012

♦ ♦ ♦

Coastal Bend Regional Water Planning Group (Region N)

Notice to Public - Regional Water Planning

Notice is hereby given that the Nueces River Authority (NRA) will submit by 5:00 p.m. October 4, 2012, a grant application for financial assistance to the Texas Water Development Board (TWDB) on behalf of the Coastal Bend Regional Water Planning Group (Region N) to carry out planning activities to develop the 2016 Region N Regional Water Plan in completion of the state's Fourth Cycle (2012 - 2016) of Regional Water Planning.

The Coastal Bend Regional Water Planning Group (Region N) includes the following counties: Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Nueces, and San Patricio.

Copies of the grant application may be obtained from NRA or online at www.nueces-ra.org. Written comments from the public regarding the grant application must be submitted to NRA and TWDB by no later than October 16, 2012. Comments can be submitted to NRA and the TWDB as follows:

Rocky Freund, Administrative Agent for Region N

Nueces River Authority

400 Mann Street, Suite 1002

Corpus Christi, Texas 78401

Melanie Callahan, Executive Administrator

Texas Water Development Board

P.O. Box 13231

Austin, Texas 78711-3231

For additional information, please contact Rocky Freund, Nueces River Authority, c/o Region N, 400 Mann Street, Suite 1002, Corpus Christi, Texas 78401, (361) 653-2110, rfreund@nueces-ra.org.

TRD-201204897
Rocky Freund
Administrative Agent for Region N
Coastal Bend Regional Water Planning Group (Region N)
Filed: September 17, 2012

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to §1201.027, Texas Government Code; Chapter 2254, Subchapter B, Texas Government Code; and Chapter 404, Subchapter H, Texas Government Code, the Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 205a ("RFP") from qualified, independent firms to serve as Financial Advisor to Comptroller. Comptroller desires to obtain the services of a Financial Advisor on a project by project as-needed basis on statewide public finance issues potentially affecting the financial condition of the State of Texas. The successful respondent will be expected to begin performance of the contract on or about October 31, 2012.

Contact: Parties interested in submitting a proposal should contact Jennifer W. Sloan, Assistant General Counsel, Contracts Section, Comptroller of Public Accounts, 111 E. 17th Street, 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 will be available for pick-up at the above-referenced address on Friday, September 28, 2012, after 10:00 a.m., Central Time ("CT"), and during normal business hours thereafter. Comptroller will also make the RFP available electronically on the Electronic State Business Daily at: http://esbd.cpa.state.tx.us on Friday, September 28, 2012, after 10:00 a.m., CT.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-Mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. CT on Wednesday, October 10, 2012. Prospective respondents are encouraged to fax or e-mail Non-Mandatory Letters of Intent and Questions to (512) 463-3669 or contracts@cpa.state.tx.us to ensure timely receipt. The Letter of Intent must be addressed to Jennifer W. Sloan, Assistant General Counsel, Contracts Section, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. On or about Friday, October 12, 2012, Comptroller expects to post responses to questions as a revision to the Electronic State Business Daily notice on the issuance of this RFP. Respondents are solely responsible for verifying timely receipt of Questions in the Issuing Office by the deadline. Questions received after this time and date will not be considered.

Closing Date: Proposals must be delivered to the Issuing Office, to the attention of the Assistant General Counsel, Contracts Section, no later than 2:00 p.m. CT, on Friday, October 19, 2012. Proposals received after this time and date will not be considered under any circumstances.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller shall make the final decision on any contract award or awards resulting from this RFP. Comptroller reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. Comptroller is not obligated to award or execute any contracts on the basis of this notice or the distribution of any RFP. 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 - September 28, 2012, 10:00 a.m. CT; Non-Mandatory Letter of Intent to propose and Questions Due - October 10, 2012, 2:00 p.m. CT; Official Responses to Questions posted - October 12, 2012, or as soon thereafter as practical; Proposals Due - October 19, 2012, 2:00 p.m. CT; Contract Execution - October 31, 2012, or as soon thereafter as practical; and Commencement of Project Activities - October 31, 2012.

TRD-201204939
Jennifer W. Sloan
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: September 19, 2012

♦ ♦ ♦

Notice of Request for Proposals

Pursuant to §1201.027, Texas Government Code; Chapter 2254, Subchapter A, Texas Government Code; and Chapter 404, Subchapter H, Texas Government Code, Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 205b ("RFP") from qualified, independent law firms to serve as Bond Counsel to Comptroller. Comptroller desires to obtain the services of financial market experts to provide legal services on a project by project as-needed basis on statewide public finance issues potentially affecting the financial condition of the State of Texas. The successful respondent will be expected to begin performance of the contract on or about October 31, 2012.

Contact: Parties interested in submitting a proposal should contact Jennifer W. Sloan, Assistant General Counsel, Contracts Section, Comptroller of Public Accounts, 111 E. 17th Street, 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 will be available for pick-up at the above-referenced address on Friday, September 28, 2012, after 10:00 a.m., Central Time ("CT"), and during normal business hours thereafter. Comptroller will also make the RFP available electronically on the Electronic State Business Daily at: http://esbd.cpa.state.tx.us on Friday, September 28, 2012, after 10:00 a.m. CT.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-Mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. CT on Wednesday, October 10, 2012. Prospective respondents are encouraged to fax or e-mail Non-Mandatory Letters of Intent and Questions to (512) 463-3669 or contracts@cpa.state.tx.us to ensure timely receipt. The Letter of Intent must be addressed to Jennifer W. Sloan, Assistant General Counsel, Contracts Section, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. On or about Friday, October 12 2012, Comptroller expects to post responses to questions as a revision to the Electronic State Business Daily notice on the issuance of this RFP. Respondents are solely responsible for verifying timely receipt of Questions in the Issuing Office by the deadline. Questions received after this time and date will not be considered.

Closing Date: Proposals must be delivered to the Issuing Office, to the attention of the Assistant General Counsel, Contracts Section, no later than 2:00 p.m. CT, on Friday, October 19, 2012. Proposals received after this time and date will not be considered under any circumstances.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller shall make the final decision

on any contract award or awards resulting from this RFP. Comptroller reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. Comptroller is not obligated to award or execute any contracts on the basis of this notice or the distribution of any RFP. 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 - September 28, 2012, 10:00 a.m. CT; Non-Mandatory Letter of Intent to propose and Questions Due - October 10, 2012, 2:00 p.m. CT; Official Responses to Questions posted - October 12, 2012, or as soon thereafter as practical; Proposals Due - October 19, 2012, 2:00 p.m. CT; Contract Execution - October 31, 2012, or as soon thereafter as practical; and Commencement of Project Activities - October 31, 2012.

TRD-201204940
Jennifer W. Sloan
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: September 19, 2012

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/24/12 - 09/30/12 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 09/24/12 - 09/30/12 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 10/01/12 - 10/31/12 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 10/01/12 - 10/31/12 is 5.00% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201204915
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 18, 2012

♦ ♦ ♦

Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from America's Credit Union (Garland) seeking approval to merge with Dallas TxDOT Credit Union (Mesquite), with America's Credit Union being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201204928
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 19, 2012

♦ ♦ ♦

Application to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from Neighborhood Credit Union (#1), Dallas, Texas to expand its field of membership. The proposal would permit persons who work, reside, worship or attend school within a 10-mile radius of Neighborhood Credit Union's Grand Prairie branch at 2525 Bardin Road, Grand Prairie, TX, to be eligible for membership in the credit union.

An application was received from Neighborhood Credit Union (#2), Dallas, Texas to expand its field of membership. The proposal would permit persons who work, reside, worship or attend school within a 10-mile radius of Neighborhood Credit Union's Coppell branch at 300 S. Denton Tap Road, Coppell, TX, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201204930
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 19, 2012

♦ ♦ ♦

Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following application:

Application to Amend Articles of Incorporation - Approved

First Community Credit Union of Houston, Houston, Texas - See *Texas Register* issue dated July 27, 2012.

Application for a Merger or Consolidation - Approved

Abilene Telco Federal Credit Union (Abilene) and First Priority Credit Union (Abilene) - See *Texas Register* issue dated May 25, 2012.

Independence Parkway Federal Credit Union (Houston) and Space City Credit Union (Houston) - See *Texas Register* issue dated April 27, 2012.

TRD-201204929
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 19, 2012

♦ ♦ ♦

Texas Council for Developmental Disabilities

Requests for Proposals

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funding for two separate opportunities to help support self-advocacy and self-determination at conferences and other similar events in Texas.

The Support for Disability-Related Presentations Request for Proposals (RFP) allows organizations hosting meetings, conferences or legislative seminars to request funds to sponsor presentations on disability-related issues. This RFP represents a new TCDD activity. Sponsoring organizations may request up to $6,000 per year for the event(s) and must apply for funds at least 90 days in advance of the event.

The Event Stipends Grants RFP provides an opportunity for organizations hosting conferences or other training events to receive funds to enable individuals with developmental disabilities and their families to attend the event. This RFP revises the existing Event Stipends RFP. The revised RFP clarifies that a grant received by an organization through this RFP may be used to support participation at multiple connected events, such as a series of trainings, as well as a single conference-type event. Sponsoring organizations may request up to $6,000 per year for the event(s) and must apply for funds at least 90 days in advance of the beginning of the event(s).

Individuals are not eligible to apply for these funds.

Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Intellectual and Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Non-federal matching funds of at least 10% of the total project costs are required.

Additional information concerning this Request for Proposals (RFP) or more information about TCDD may be obtained through TCDD's website at **http://www.txddc.state.tx.us.** All questions pertaining to this RFP should be directed to Sonya Hosey, Grants Management Director, at (512) 437-5437 or via email **Sonya.Hosey@tcdd.state.tx.us,** or to Barbara Booker, Budget Support Specialist, at (512) 437-5438 or via email **Barbara.Booker@tcdd.state.tx.us.** Application packets must be requested in writing or downloaded from the Internet.

Deadline: One hard copy, with original signatures, and one electronic copy must be submitted. All applications must be received by TCDD at least 90 days prior to the beginning of the event. Applications may be delivered by hand or mailed to TCDD at 6201 East Oltorf, Suite 600, Austin, Texas 78741-7509 to the attention of Barbara Booker. Faxed proposals cannot be accepted. Electronic copies should be addressed to **Barbara.Booker@tcdd.state.tx.us.**

TRD-201204942
Roger Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: September 19, 2012

♦ ♦ ♦

Texas Education Agency

Request for Personal Financial Literacy Materials - High School Level

Description. The Texas Education Agency (TEA) is notifying organizations that personal financial literacy materials for use in high school economics courses may be submitted for review. Approved materials will be added to the *List of Approved Personal Financial Literacy Materials.* Personal financial literacy materials previously selected for the *List of Approved Personal Financial Literacy Materials* do not need to be resubmitted for approval. Texas Education Code (TEC), §28.002, authorizes the State Board of Education to approve materials for use in courses meeting a requirement for an economics credit under TEC, §28.025.

Program Requirements. Materials submitted for review may include any of the following areas of instruction: understanding interest; avoiding and eliminating credit card debt; understanding the rights and responsibilities of renting or buying a home; managing money to make the transition from renting a home to home ownership; starting a small business; being a prudent investor in the stock market and using other investment options; beginning a savings program and planning for retirement; bankruptcy; the types of bank accounts available to consumers and the benefits of maintaining a bank account; balancing a checkbook; the types of loans available to consumers and becoming a low-risk borrower; understanding insurance; and/or charitable giving.

Selection Criteria. Organizations will be responsible for submitting materials that they wish to be reviewed for consideration for inclusion on the *List of Approved Personal Financial Literacy Materials.* All materials submitted for review must satisfy at least one of the areas of instruction in the preceding list and must be submitted with a verification of the extent to which the areas are covered in the materials. The verification form may be downloaded from the TEA website at http://www.tea.state.tx.us/index2.aspx?id=3523.

Materials must be submitted to Julie Brelsford, Statewide Social Studies Coordinator, Texas Education Agency, Room 3-121, 1701 North Congress Avenue, Austin, Texas 78701 by 5:00 p.m. (Central Time), Thursday, November 1, 2012, to be considered for inclusion on the *List of Approved Personal Financial Literacy Materials.*

TRD-201204933
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: September 19, 2012

♦ ♦ ♦

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 (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is October 29, 2012. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a

comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on October 29, 2012. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: ALTO BUSINESS LLC dba STOP N SHOP #4; DOCKET NUMBER: 2012-0753-PST-E; IDENTIFIER: RN102870326; LOCATION: Alto, Cherokee County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the piping associated with the UST system; PENALTY: $5,129; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Angelina Water Supply Corporation; DOCKET NUMBER: 2012-1392-MWD-E; IDENTIFIER: RN102074846; LOCATION: Homer, Angelina County; TYPE OF FACILITY: water treatment plant; RULE VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d), and Texas Pollutant Discharge Elimination System Permit Number WQ0014128001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the permit for the months of December 2011 and January - March 2012; PENALTY: $1,060; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: Arif M. Khan dba Kwick Food Mart; DOCKET NUMBER: 2012-1015-PST-E; IDENTIFIER: RN102283934; LOCATION: Longview, Gregg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for review upon request by agency personnel; PENALTY: $3,005; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Baptist/St. Anthony's Health System; DOCKET NUMBER: 2012-1302-PST-E; IDENTIFIER: RN102888443; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: hospital with an underground storage tank (UST); RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,563; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(5) COMPANY: Bee Trucking, LLC; DOCKET NUMBER: 2012-0993-PST-E; IDENTIFIER: RN102258951; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the UST; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $13,557; ENFORCEMENT COORDINATOR: Andrea Park, (713) 422-8970; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Bir Hanuman, Incorporated dba Dazu Food Mart; DOCKET NUMBER: 2012-1308-PST-E; IDENTIFIER: RN101641355; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Bobak Automotive Center, L.L.C. dba Mitras Texaco; DOCKET NUMBER: 2012-1030-PST-E; IDENTIFIER: RN101377760; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; PENALTY: $4,500; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: BP Products North America, Incorporated; DOCKET NUMBER: 2012-0839-AIR-E; IDENTIFIER: RN102535077; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: petroleum refining; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for Incident Number 162823 not later than 24 hours after the discovery of an emissions event on December 8, 2011; 30 TAC §§101.20(3), 116.715(a), and 122.143(4), New Source Review Permit Numbers 47256 and PSDTX402M2, Special Conditions Number 1, Federal Operating Permit Number O-2328, Special Terms and Conditions Number 16, and THSC, §382.085(b), by failing to prevent unauthorized emissions during an emissions

event on December 8, 2011 (Incident Number 162823) and during an emission event on December 10, 2011 (Incident Number 162658); PENALTY: $33,000; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Butler, Cecil; DOCKET NUMBER: 2012-1716-WOC-E; IDENTIFIER: RN106484934; LOCATION: Big Lake, Reagan County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(10) COMPANY: City of George West; DOCKET NUMBER: 2012-0783-MWD-E; IDENTIFIER: RN101651495; LOCATION: George West, Live Oak County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §§305.125(17), 319.1 and 319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010455002, Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results at the intervals specified in the permit; and 30 TAC §305.125(17) and TPDES Permit Number WQ0010455002, Sludge Provisions, by failing to timely submit an annual sludge report for the monitoring period ending July 31, 2011 by September 30, 2011; PENALTY: $2,360; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(11) COMPANY: COBRA STONE, INCORPORATED; DOCKET NUMBER: 2012-0586-MLM-E; IDENTIFIER: RN105485460; LOCATION: Florence, Williamson County; TYPE OF FACILITY: stone quarry; RULE VIOLATED: 30 TAC §213.4(j)(3) and Water Pollution Abatement Plan (WPAP) Number 11-08043006B, Standard Conditions Number 4, by failing to obtain approval of a modification to a WPAP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; and 30 TAC §335.4, by failing to prevent the unauthorized disposal of industrial solid waste; PENALTY: $10,375; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(12) COMPANY: HRH Investments, LP dba Texaco Lake June; DOCKET NUMBER: 2012-0851-PST-E; IDENTIFIER: RN101431930; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: K.L. COMFORT PARK, LTD. dba Bird Creek Mobile Home Park; DOCKET NUMBER: 2012-0886-PWS-E; IDENTIFIER: RN101223600; LOCATION: Temple, Bell County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(f)(3) and §290.122(b)(2)(A) and Texas Health and Safety Code, §341.031(a), by failing to comply with the Maximum Contaminant Level (MCL) for total coliform and by failing to provide public notification of the MCL exceedance for the months of October 2011 and January 2012; 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine sample; 30 TAC §290.109(c)(2)(F), by failing to collect at least five routine distribution coliform samples the month following a coliform-positive sample result; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; PENALTY: $1,393; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: Karishma Properties, Incorporated dba Quick N Easy Stop; DOCKET NUMBER: 2012-1004-PST-E; IDENTIFIER: RN102390127; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,500; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: KK IRISH 66 LLC; DOCKET NUMBER: 2012-0318-PST-E; IDENTIFIER: RN101776532; LOCATION: Adrian, Oldham County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the piping associated with the underground storage tank system; PENALTY: $2,630; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(16) COMPANY: Lam Nguyen dba A & D Discount Store; DOCKET NUMBER: 2012-1154-PST-E; IDENTIFIER: RN101435097; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the piping associated with the underground storage tank system; PENALTY: $3,508; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(17) COMPANY: LAYAL SAROSHA, INCORPORATED dba Fleming Food Store; DOCKET NUMBER: 2012-1032-PST-E; IDENTIFIER: RN101377885; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,550; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Magnablend, Incorporated; DOCKET NUMBER: 2012-0251-MLM-E; IDENTIFIER: RN104603907; LOCATION: Waxahachie, Ellis County; TYPE OF FACILITY: chemical blending plant; RULE VIOLATED: 30 TAC §335.4 and TWC, §26.121, by failing to prevent an unauthorized discharge of fire water runoff into or adjacent to water in the state; 30 TAC §§101.4, 101.5, and 116.110(a)(4) and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent a nuisance condition from impacting off property receptors and a traffic hazard, also by failing to prevent an unauthorized emissions; and 30 TAC §101.201(g) and THSC, §382.085(b), by failing to submit an initial notification of an emissions event into the State of Texas Environmental Electronic Reporting System within 48 hours of discovery of the event; PENALTY: $38,500; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: MAT-J, L.L.C. dba Lone Star Exxon 1; DOCKET NUMBER: 2012-0811-PST-E; IDENTIFIER: RN101769297; LOCATION: Longview, Gregg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the underground storage tanks (USTs); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $7,134; ENFORCEMENT COORDINATOR: Andrea Park, (713) 422-8970; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: MIDWAY PITSTOP, INCORPORATED dba Spunky's Valero; DOCKET NUMBER: 2012-0902-PST-E; IDENTIFIER: RN102363603; LOCATION: Dallas, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $3,851; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Military Highway Water Supply Corporation; DOCKET NUMBER: 2012-1165-MWD-E; IDENTIFIER: RN101524452; LOCATION: Cameron County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Texas Pollutant Discharge Elimination System Permit Number WQ0013462008, Effluent Limitations and Monitoring Requirements Number 1, 30 TAC §305.125(1) and TWC, §26.121(a), by failing to comply with permitted effluent limits; PENALTY: $2,375; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(22) COMPANY: Noel S Corporation dba Daves Food & Deli; DOCKET NUMBER: 2012-0227-PST-E; IDENTIFIER: RN100761154; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; and 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: $7,509; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Northwest Texas Healthcare System, Incorporated; DOCKET NUMBER: 2012-1210-PST-E; IDENTIFIER: RN102023835; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: healthcare facility with fleet refueling; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days prior to the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $1,541; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(24) COMPANY: Robert Leroy Hunt, Jr. dba Reliable Rain Sprinkler Company; DOCKET NUMBER: 2012-0479-LII-E; IDENTIFIER: RN103694063; LOCATION: Hutto, Williamson County; TYPE OF FACILITY: landscape irrigation business; RULE VIOLATED: 30 TAC §344.24(a) and §344.35(d)(2), by failing to comply with local regulations by failing to obtain a permit required to install an irrigation system and by failing to have the final inspection conducted on the irrigation system; 30 TAC §344.50(c), by failing to test the irrigation system's backflow prevention device upon installation of the irrigation system; and 30 TAC §344.63(4), by failing to provide the homeowner with a design plan for the irrigation system; PENALTY: $929; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(25) COMPANY: Skinner Lands Carrollton, LLC; DOCKET NUMBER: 2012-0693-MSW-E; IDENTIFIER: RN101838456; LOCATION: Carrollton, Denton County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; PENALTY: $3,925; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: SWEETWATER CORPORATION; DOCKET NUMBER: 2011-1636-MLM-E; IDENTIFIER: RN102413705; LOCATION: Humble, Harris County; TYPE OF FACILITY: hazardous waste transfer facility; RULE VIOLATED: 30 TAC §335.43(a) and §335.94(a) and 40 Code of Federal Regulations (CFR) §263.12, by failing to prevent the unauthorized storage of hazardous waste at a transfer facility; 30 TAC §335.4, by failing to prevent the unauthorized discharge of industrial solid waste; 30 TAC §335.112(a)(2) and (8) and 40 CFR §265.35 and §265.176, by failing to maintain aisle space to allow the unobstructed movement of personnel, fire protective equipment, spill control equipment, and decontamination equipment to any area of the facility and by failing to store containers holding ignitable or reactive waste at least 50 feet from the facility's property line; 30 TAC §335.112(a)(1) and 40 CFR §265.14(b), by failing to control entry to unknowing and unauthorized persons and livestock, at all times, to the active portion of the facility; 30 TAC §335.112(a)(8) and 40 CFR §265.171 and §265.174, by failing to conduct weekly inspections of container storage areas for leaking containers and deterioration of containers caused by corrosion or other factors and by failing to transfer hazardous waste from a container in poor condition to a container that is in good condition; 30 TAC §335.112(a)(1) and 40 CFR §265.16(c), by failing to have facility personnel successfully complete an annual refresher training program regarding emergency response and proper management of hazardous waste; 30 TAC §335.262(c)(1) and 40 CFR §273.35(a), by failing to ship universal waste for disposal within one year of the date of accumulation; 30 TAC §335.262(c)(2), by failing to properly contain paint or paint-related waste; and 30 TAC §328.24(a), by failing to have a valid registration with the TCEQ prior to storing, processing, recycling or disposing of used oil filters; PENALTY: $91,962; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Total Petrochemicals & Refining USA, Incorporated; DOCKET NUMBER: 2012-1093-AIR-E; IDENTIFIER: RN100212109; LOCATION: La Porte, Harris County; TYPE OF FACILITY: petrochemicals and refining plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code

(THSC), §382.085(b), Federal Operating Permit (FOP) Number O1293, Special Terms and Conditions (STC) Number 14, and Permit Number 3908B, Special Conditions (SC) Number 13, by failing to maintain the minimum thermal oxidizer firebox exit temperature and oxygen concentration; and 30 TAC §§115.725(l), 116.115(c), and 122.143(4), THSC, §382.085(b), FOP Number O1293, STC Numbers 1A and 14, and Permit Number 21538, SC Number 16, by failing to monitor the inlet and exhaust volatile organic compound concentration of the Bleeder/Feeder Vent Gas Catalytic Oxidizer (Unit ID Number M3A-ES-975) on August 12, 2010, October 15, 2010, and from February 13, 2011 - August 8, 2011; PENALTY: $10,370; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 899-8799; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: TRINITY SO GP, L.L.C.; DOCKET NUMBER: 2012-1166-MWD-E; IDENTIFIER: RN102075827; LOCATION: Spring, Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012650001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the permit; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0012650001, Sludge Provisions, by failing to submit a complete annual sludge report for the monitoring period ending July 31, 2011, by September 1, 2011; PENALTY: $1,776; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: Vipul, Incorporated dba Dearls Grocery; DOCKET NUMBER: 2012-1043-PST-E; IDENTIFIER: RN101547065; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain underground storage tank records and making them immediately available for inspection upon request by agency personnel; PENALTY: $900; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(30) COMPANY: WM Resource Recovery & Recycling Center, Incorporated; DOCKET NUMBER: 2012-0462-AIR-E; IDENTIFIER: RN100922392; LOCATION: Anahuac, Chambers County; TYPE OF FACILITY: recycling center; RULE VIOLATED: 30 TAC §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O3058, Special Terms and Conditions (STC) Number 3A(iv)3, by failing to maintain records of visible emissions observations of the ash building in the first quarter of 2010; the lime silo from April 2009 - December 2010; the carbon silo in the second and third quarter of 2009 and all quarters for 2010; and the facility operations building in the second and third quarter of 2009 and the fourth quarter of 2010; 30 TAC §§111.121(5), 116.115(c), and 122.143(4), THSC, §382.085(b), Permit Number 24247, Special Conditions (SC) Number 6, and FOP Number O3058, STC Numbers 1A and 6, by failing to maintain an opacity limit of 5% averaged over a six-minute period; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), 40 Code of Federal Regulations §60.58c(b)(4) and (5), Permit Number 24247, SC Numbers 21B, 22, and 24A, and FOP Number O3058, STC Numbers 1A, 6, and 8, by failing to accurately document all required information in annual and semiannual performance reports for 2009; 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and FOP Number O3058, General Terms and Conditions, by failing to report all instances of deviations; 30 TAC §§122.143(4), 122.145(2)(B), and 122.146(2), THSC, §382.085(b), and FOP Number O3058, STC Number 9, by failing to submit semiannual deviation reports and a permit compliance certification within 30 days after the end of the reporting period; and 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), Permit Number 24247, SC Number 15F, and FOP Number O3058, STC Numbers 6 and 8, by failing to submit a copy of the final sampling report to the TCEQ Air Permits Division and Houston Regional Office within 60 days after testing; PENALTY: $22,485; ENFORCEMENT COORDINATOR: Roshondra Lowe, (512) 767-3553; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201204919
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 18, 2012

♦ ♦ ♦

Enforcement Orders

A field citation was entered regarding Terbo Construction LP, Docket No. 2009-0927-WQ-E on August 30, 2012 assessing $700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PURI INVESTMENTS, L.L.C. dba AS Bellaire Foodmart, Docket No. 2011-1934-PST-E on August 30, 2012 assessing $2,004 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding I R Enterprises, Inc. dba Stop N In, Docket No. 2011-2075-PST-E on August 30, 2012 assessing $4,451 in administrative penalties with $890 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Golden Pass LNG Terminal LLC, Docket No. 2011-2151-PWS-E on August 30, 2012 assessing $3,022 in administrative penalties with $604 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BERKELEY FIRST CITY, L.P. dba 1700 Pacific, Docket No. 2011-2215-PST-E on August 30, 2012 assessing $7,437 in administrative penalties with $1,487 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Liberty Tire Recycling, LLC, Docket No. 2011-2262-MSW-E on August 30, 2012 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Allan Clark dba Hitch N Post, Docket No. 2011-2343-PST-E on August 30, 2012 assessing $6,958 in administrative penalties with $1,391 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MCCRAW OIL COMPANY, INC., Docket No. 2012-0013-PST-E on August 30, 2012 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Real International, Inc. dba Real Food, Docket No. 2012-0032-PST-E on August 30, 2012 assessing $3,388 in administrative penalties with $677 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mark A. Clampitt, Docket No. 2012-0035-LII-E on August 30, 2012 assessing $127 in administrative penalties with $25 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SPAR SALES INC dba Prime Travel Stop, Docket No. 2012-0045-PST-E on August 30, 2012 assessing $2,629 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Overton Stop & Save, Inc., Docket No. 2012-0080-PST-E on August 30, 2012 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JOLLY DREAMS CORPORATION dba Jollys Barn Stop, Docket No. 2012-0088-PST-E on August 30, 2012 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fashion A. Jarvis dba Fashion's Country Store, Docket No. 2012-0102-PST-E on August 30, 2012 assessing $5,100 in administrative penalties with $1,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2012-0109-PST-E on August 30, 2012 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mukhi Petroleum LLC dba C Store Sub Express, Docket No. 2012-0117-PST-E on August 30, 2012 assessing $2,750 in administrative penalties with $550 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Paris, Docket No. 2012-0139-PST-E on August 30, 2012 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kemp Independent School District, Docket No. 2012-0140-PST-E on August 30, 2012 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VALERO EXPRESS MART, INC. dba Stop N Go 2300, Docket No. 2012-0184-PST-E on August 30, 2012 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridgett Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North Coastal Group, Inc. dba Rock Island Express, Docket No. 2012-0186-PST-E on August 30, 2012 assessing $3,879 in administrative penalties with $775 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cliffside Guest House, L.L.C., Docket No. 2012-0189-PWS-E on August 30, 2012 assessing $1,556 in administrative penalties with $310 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shady Hollow Municipal Utility District, Docket No. 2012-0203-EAQ-E on August 30, 2012 assessing $5,650 in administrative penalties with $1,130 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Addison Enterprises Inc. dba Diamond D and dba Minit Mart, Docket No. 2012-0275-PST-E on August 30, 2012 assessing $5,274 in administrative penalties with $1,054 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 16303 Food Store Associates, Inc. dba Sunrise Super Stop 15, Docket No. 2012-0286-PST-E on August 30, 2012 assessing $3,050 in administrative penalties with $610 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lim Hang dba Jon's Mini-Mart, Docket No. 2012-0313-PST-E on August 30, 2012 assessing $2,005 in administrative penalties with $401 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mary Lellee Hayre and Thomas Hayre, Docket No. 2012-0322-WR-E on August 30, 2012 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AMERICAN HONDA MOTOR CO., INC., Docket No. 2012-0324-PST-E on August 30, 2012 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bexar County, Docket No. 2012-0328-PST-E on August 30, 2012 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OVERSEAS ENTERPRISES USA, INC. dba Gateway Travel Plaza, Docket No. 2012-0351-PST-E on August 30, 2012 assessing $3,809 in administrative penalties with $761 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHOALWATER FLATS ASSOCIATION, Docket No. 2012-0363-PWS-E on August 30, 2012 assessing $2,095 in administrative penalties with $419 deferred.

Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Signal Hill Water System 24, Docket No. 2012-0373-PWS-E on August 30, 2012 assessing $330 in administrative penalties with $66 deferred.

Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dalhart Independent School District, Docket No. 2012-0405-PST-E on August 30, 2012 assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CEMEX Construction Materials South, LLC, Docket No. 2012-0443-AIR-E on August 30, 2012 assessing $5,500 in administrative penalties with $1,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Istar Investment, Inc. dba EZ To Stop, Docket No. 2012-0456-PST-E on August 30, 2012 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ASH-JEN PROPERTIES, INC. dba Oil Patch Xpress, Docket No. 2012-0463-PST-E on August 30, 2012 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Simon Stephen dba KK Food Store, Docket No. 2012-0464-PST-E on August 30, 2012 assessing $4,270 in administrative penalties with $854 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding All Seasons Center LLC dba All Season 8, Docket No. 2012-0488-PST-E on August 30, 2012 assessing $3,632 in administrative penalties with $726 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County, Docket No. 2012-0491-PST-E on August 30, 2012 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding D.N.D. CORPORATION dba Andy's Food Mart, Docket No. 2012-0522-PST-E on August 30, 2012 assessing $2,600 in administrative penalties with $520 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ZS Quick Stop, Inc. dba Nassau Food Mart, Docket No. 2012-0562-PST-E on August 30, 2012 assessing $4,258 in administrative penalties with $851 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leedo Manufacturing Co., L.P., Docket No. 2012-0568-AIR-E on August 30, 2012 assessing $2,850 in administrative penalties with $570 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LeTourneau Technologies Drilling Systems, Inc., Docket No. 2012-0588-AIR-E on August 30, 2012 assessing $1,625 in administrative penalties with $325 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cliff Roberts dba Cliff's Auto Sales, Docket No. 2012-0600-AIR-E on August 30, 2012 assessing $563 in administrative penalties with $112 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Air Liquide Large Industries U.S. LP, Docket No. 2012-0602-AIR-E on August 30, 2012 assessing $4,875 in administrative penalties with $975 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FOURTH QUARTER PROPERTIES 140, LLC, Docket No. 2012-0638-EAQ-E on August 30, 2012 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Copano Field Services/North Texas, L.L.C., Docket No. 2012-0639-AIR-E on August 30, 2012 assessing $7,266 in administrative penalties with $1,453 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Houston and BSL GOLF CORP., Docket No. 2012-0652-PST-E on August 30, 2012 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ravenna-Nunnelee Water Supply Corporation, Docket No. 2012-0659-PWS-E on August 30, 2012 assessing $100 in administrative penalties with $20 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SFN Texas Inc dba Corner Market 1, Docket No. 2012-0662-PST-E on August 30, 2012 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. R. Carpenter, L.P., Docket No. 2012-0784-AIR-E on August 30, 2012 assessing $7,465 in administrative penalties with $1,493 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Benjamin G. Guynn, Docket No. 2012-0949-WOC-E on August 30, 2012 assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Rhone Building Corp., Docket No. 2012-0958-WQ-E on August 30, 2012 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Rio Concho Inc, Docket No. 2012-1071-WQ-E on August 30, 2012 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Thomas W. Davis, Docket No. 2012-1142-WOC-E on August 30, 2012 assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Monte T. Young, Docket No. 2012-1158-WOC-E on August 30, 2012 assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TERRY'S SUPERMARKET #8, INC, Docket No. 2011-0487-PST-E on September 12, 2012 assessing $6,134 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TC JESTER MOBIL, INC., Docket No. 2011-0944-PST-E on September 12, 2012 assessing $2,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BUCCANEER FOOD STORES INC., Docket No. 2011-1557-PST-E on September 12, 2012 assessing $3,629 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sam Rayburn Water, Inc., Docket No. 2011-1572-PWS-E on September 12, 2012 assessing $1,637 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Prestonwood Golf Club LLC, Docket No. 2011-1881-WR-E on September 12, 2012 assessing $1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UNIVERSAL ENTERPRISES, INC. dba Handi Stop 4, Docket No. 2011-1899-PST-E on September 12, 2012 assessing $2,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Homayon Rashid dba J & P One Stop FFP 601, Docket No. 2011-2085-PST-E on September 12, 2012 assessing $2,703 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NORTH TEXAS FIXTURE COMPANY, INC. dba Alvord Express, Docket No. 2012-0076-PST-E on September 12, 2012 assessing $2,004 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SABIR, INC. dba Stop N Drive 7, Docket No. 2012-0179-PST-E on September 12, 2012 assessing $6,548 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LEAGUE CITY INTERESTS, INC. dba Super Food 1, Docket No. 2012-0190-PST-E on September 12, 2012 assessing $3,299 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SCCW Industrial Services, LLC, Docket No. 2012-0249-AIR-E on September 12, 2012 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunset Enterprises Inc. dba Fast Fuels 1, Docket No. 2012-0591-PST-E on September 12, 2012 assessing $1,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201204935
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 19, 2012

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 **October 29, 2012.** 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 October 29, 2012.** 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: AB Grocery, Inc.; DOCKET NUMBER: 2012-0657-PST-E; TCEQ ID NUMBER: RN102268620; LOCATION: 8902 Airport Boulevard, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain the required UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $5,040; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: ACRES ENTERPRISES, INC. d/b/a Rebels Food Market; DOCKET NUMBER: 2012-0706-PST-E; TCEQ ID NUMBER: RN101780500; LOCATION: Farm-to-Market Road 105 and Murphy Road, Evadale, Jasper County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide proper release detection for the pressurized piping associated with the UST system; PENALTY: $2,630; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: ALAMO RECYCLE CENTERS LLC; DOCKET NUMBER: 2012-0016-MSW-E; TCEQ ID NUMBER: RN106171887; LOCATION: 4210 Grape Street, Abilene, Taylor County; TYPE OF FACILITY: shingle recycling facility; RULES VIOLATED: 30 TAC §328.5(c) and (f)(3), by failing to provide a financial assurance mechanism sufficient to cover all closure costs for storing combustible materials outdoors; PENALTY: $1,310; 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.

(4) COMPANY: ALAMO RECYCLE CENTERS LLC; DOCKET NUMBER: 2011-2278-MSW-E; TCEQ ID NUMBER: RN101628410; LOCATION: 7240 East Interstate Highway 10, San Antonio, Bexar County; TYPE OF FACILITY: shingle recycling facility; RULES VIOLATED: 30 TAC §328.5(c) and (f)(3), by failing to provide a financial assurance mechanism sufficient to cover all closure costs for storing combustible materials outdoors; PENALTY: $1,983; STAFF ATTORNEY: Jeff Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Bulldog Tire Recycling, Inc.; DOCKET NUMBER: 2011-1549-MSW-E; TCEQ ID NUMBER: RN103042495; LOCATION: 706 Genoa Red Bluff Road, Houston, Harris County; TYPE OF FACILITY: real property that involves the management and/or the disposal of municipal solid waste (MSW); RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §330.15(a)(1) and (a)(3), by failing to prevent the unauthorized storage or disposal of MSW, and by failing to prevent the unauthorized discharge of waste into or adjacent to water in the state; PENALTY: $45,000; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: City of Burleson; DOCKET NUMBER: 2011-1002-WQ-E; TCEQ ID NUMBER: RN101387264; LOCATION: approximately 500 feet behind 624 Northwest Douglas Street, Burleson, Johnson County; TYPE OF FACILITY: wastewater collection system with an associated manhole; RULES VIOLATED: TWC, §26.121(c), by failing to prevent the unauthorized discharge of raw wastewater from the collection system; and 30 TAC §319.302(b)(3) and (c), by failing to notify appropriate local government officials and the local media within 24 hours of the spill; PENALTY: $12,250; STAFF ATTORNEY: Jeff Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Dana Swearengin d/b/a Holiday Harbor Subdivision and Diane Pieper d/b/a Holiday Harbor Subdivision; DOCKET NUMBER: 2012-0697-PWS-E; TCEQ ID NUMBER: RN101180909; LOCATION: intersection of South Gulf Road and Holiday Harbor Road (legal description HOLIDAY HARBOR SUBDIVISION LOT 29), Matagorda, Matagorda County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.0315(c) and 30 TAC §290.113(f)(4), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the running annual average; PENALTY: $165; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Jesus Acuna d/b/a Country Boy Store 1; DOCKET NUMBER: 2012-0116-PST-E; TCEQ ID NUMBER: RN100810555; LOCATION: 12496 Montana Avenue, El Paso, El Paso County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b), by failing to maintain all UST records and make them immediately available for inspection upon request by agency personnel; TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III), (d)(1)(B)(ii) and (iii)(I), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); by failing to provide proper release detection for the pressurized piping associated with the UST system (specifically, the annual piping tightness testing was not conducted); by failing to test the line leak detectors at least once per year for per-

formance and operational reliability; by failing to conduct reconciliation of detailed inventory control at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.42(i), by failing to inspect at least once every 60 days, any sumps, manways, overspill containers or catchment basins, to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free of debris and liquid; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $8,139; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(9) COMPANY: Juan C. Gracia d/b/a Lonestar Landscaping Management Company; DOCKET NUMBER: 2011-1431-LII-E; TCEQ ID NUMBER: RN104804851; LOCATION: 1411 Cowtown Drive, Mansfield, Johnson County; TYPE OF FACILITY: irrigation and landscaping service business; RULES VIOLATED: 30 TAC §344.24(a) and §344.35(d)(2) and (3), by failing to comply with local ordinances of a municipality by failing to obtain a permit prior to working on an existing irrigation system; PENALTY: $188; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Lake Hills DTP II, LLC; DOCKET NUMBER: 2012-0517-PWS-E; TCEQ ID NUMBER: RN106081326; LOCATION: 9258 Farm-to-Market Road 1283, Lakehills, Bandera County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.033(d) and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), by failing to collect routine distribution water samples for coliform analysis for the months of April 2011 - August 2011 and by failing to provide public notification of the failure to collect routine samples for the months of June 2011 - August 2011; and THSC, §341.033(d) and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), by failing to collect routine distribution water samples for coliform analysis for the months of September 2011 - December 2011 and by failing to provide public notification of the failure to collect routine samples for the month of September 2011; PENALTY: $2,572; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: Lindberg Collision Incorporated; DOCKET NUMBER: 2011-1561-AIR-E; TCEQ ID NUMBER: RN105927156; LOCATION: 8920 John W. Carpenter Freeway, Dallas, Dallas County; TYPE OF FACILITY: auto body refinishing and paint shop; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(a) and 30 TAC §116.110(a), by failing to obtain authorization prior to operating the plant; PENALTY: $11,550; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Magnolia Shell Truck Stop, Inc.; DOCKET NUMBER: 2012-0330-IWD-E; TCEQ ID NUMBER: RN101520344; LOCATION: the northwest corner of the intersection of Interstate Highway 10 and Magnolia Avenue, approximately 1.8 miles west of the intersection of Interstate Highway 10 and San Jacinto River, Houston, Harris County; TYPE OF FACILITY: a convenience store/truck stop with an associated wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §305.64(b), by failing to obtain authorization prior to operating a wastewater treatment plant; PENALTY: $54,600; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: MORIZ INVESTMENTS LLC d/b/a Buddy's; DOCKET NUMBER: 2012-0220-PST-E; TCEQ ID NUMBER: RN102991320; LOCATION: 6428 Denton Highway, Watauga, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail gasoline sales; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; TWC, §26.3475(c)(2) and 30 TAC §334.51(b)(2), by failing to equip the USTs with spill containment equipment; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $4,473; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Nadeem Noorali d/b/a Shell Classic; DOCKET NUMBER: 2012-1673-PST-E; TCEQ ID NUMBER: RN101563476; LOCATION: 9512 C. F. Hawn Freeway, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,550; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: R&K FABRICATING INC.; DOCKET NUMBER: 2011-2363-IHW-E; TCEQ ID NUMBER: RN104085956; LOCATION: 3183 Highway 146, Dayton, Liberty County; TYPE OF FACILITY: manufacturing facility with sandblasting operations; RULES VIOLATED: 30 TAC §335.4, by failing to prevent the unauthorized disposal of industrial solid waste; and 30 TAC §335.9(a)(1), by failing to maintain records of hazardous and industrial solid waste activities; PENALTY: $4,875; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Richard Allen Keenan dba K & B Waterworks; DOCKET NUMBER: 2011-1163-PWS-E; TCEQ ID NUMBER: RN102690187; LOCATION: the dead end of Treepoint Lane adjacent to 24th Street off Avenue T, Santa Fe, Galveston County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a Disinfectant Level Quarterly Report to the executive director by the tenth day of the month following the end of each quarter; 30 TAC §290.274(c), by failing to submit to the executive director by July 1 of each year

a copy of the annual Consumer Confidence Report (CCR) and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(A), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample collected, and by failing to provide public notification of the failure to collect the repeat distribution sample; 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(A), by failing to collect raw groundwater source Escherichia coli samples from all sources within 24 hours of being notified of a distribution total coliform-positive result, and by failing to provide public notification of the failure to collect the raw groundwater source Escherichia coli samples; 30 TAC §290.106(e), by failing to provide the results of annual nitrate sampling to the executive director; and 30 TAC §290.106(e) and §290.108(e), by failing to provide the results of triennial sampling for metals, minerals and radionuclide levels to the executive director; PENALTY: $2,042; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Tho Qui Hang d/b/a Pappys Gas & Grocery; DOCKET NUMBER: 2012-0132-PST-E; TCEQ ID NUMBER: RN101801363; LOCATION: 1656 South Church Street, Paris, Lamar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail gasoline sales; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide proper release detection for the piping associated with the UST system; PENALTY: $2,004; STAFF ATTORNEY: Rebecca M. Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(18) COMPANY: Thobani International, Inc. d/b/a Port Arthur Shell; DOCKET NUMBER: 2012-0547-PST-E; TCEQ ID NUMBER: RN103036505; LOCATION: 3949 Twin City Highway, Port Arthur, Jefferson County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retails sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(a)(1)(A), by failing to provide a method of release detection capable of detecting a release from any portion of the UST system which contained regulated substances; 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; 30 TAC §334.54(d)(2), by failing to ensure that any residue from stored regulated substances which remained in the system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; and Texas Health and Safety Code, §382.085(b) and 30 TAC §115.222(5) and §334.54(b)(1), by failing to ensure that each UST vent line is kept open and functioning and equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch; PENALTY: $5,250; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(19) COMPANY: Woodside Tuscan Oaks, LLC and Tuscan Oaks, Inc.; DOCKET NUMBER: 2012-0157-EAQ-E; TCEQ ID NUMBER: RN104415294; LOCATION: along the north right-of-way at Bulverde Road, about 500 linear feet east of United States 281 North, San Antonio, Bexar County; TYPE OF FACILITY: construction site; RULES VIOLATED: 3o TAC §213.4(j) and Water Pollution Prevention Plan (WPAP) Plan 13-04100602 Standard Condition Number 4, by failing to obtain approval of a modification to an approved WPAP prior to constructing the modification; PENALTY: $3,750; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201204920
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 18, 2012

♦ ♦ ♦

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 29, 2012.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 29, 2012.** 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: Billy Don Hughes; DOCKET NUMBER: 2012-0484-PST-E; TCEQ ID NUMBER: RN101910115; LOCATION: 665 State Highway 7 West, Center, Shelby County; TYPE OF FACILITY: property with four inactive underground storage tanks (UST); RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $5,250; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: C. J. RESOURCES, INC.; DOCKET NUMBER: 2012-0146-MSW-E; TCEQ ID NUMBER: RN104557335; LOCATION: 16434 Old Beaumont Highway, Houston, Harris County; TYPE OF FACILITY: a source-separated vegetative material recycling facility; RULES VIOLATED: 30 TAC §37.921(a) and §328.5(d), by failing to establish and maintain financial assurance for the closure of a recycling facility that stores combustible materials outdoors; PENALTY: $13,004; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Erasmo Garcia; DOCKET NUMBER: 2012-0450-OSS-E; TCEQ ID NUMBER: RN105691786; LOCATION: 123 County Road 409, Brady, McCulloch County; TYPE OF FACILITY: constructed, installed, altered, and/or repaired an On-Site Sewage Facility (OSSF); RULES VIOLATED: Texas Health and Safety Code, §366.051(a), 30 TAC §285.3(b)(1), and TCEQ Default Order Docket Number 2010-0496-OSS-E Ordering Provision Numbers 3.a. - 3.e., by failing to obtain authorization prior to constructing an OSSF; and TCEQ Default Order Docket Number 2010-0496-OSS-E, by failing to pay the administrative penalty assessed; PENALTY: $3,900; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(4) COMPANY: Indian Petro Corp.; DOCKET NUMBER: 2011-1344-MWD-E; TCEQ ID NUMBER: RN102080744; LOCATION: approximately 1,500 feet southwest of the intersection of United States Highway 59 and Farm-to-Market Road 2914, on the west side of United States Highway 59, approximately 4.2 miles south of Shepherd, San Jacinto County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014035001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $16,830; 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.

(5) COMPANY: Jason Castoria d/b/a American Auto Care; DOCKET NUMBER: 2011-0490-MLM-E; TCEQ ID NUMBER: RN105967806; LOCATION: 304 South Bryan Avenue, Bryan, Brazos County; TYPE OF FACILITY: paint and body shop; RULES VIOLATED: 30 TAC §335.9(a)(1), by failing to keep records of all hazardous and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of on-site or shipped off-site for storage, processing, or disposal; 30 TAC §335.62 and §335.503(a) and 40 Code of Federal Regulations (CFR) §262.11, by failing to conduct proper hazardous waste determinations and waste classifications on each solid waste generated and/or stored at the facility; 30 TAC §335.69(a)(3) and 40 CFR §262.34(a)(3), by failing to label each hazardous waste container clearly with the words "Hazardous Waste"; 30 TAC §335.262(c)(2)(A) and 40 CFR §265.173(a), by failing to keep containers holding paint or paint-related waste closed, except when adding or removing waste; and 30 TAC §324.6 and 40 CFR §279.22(c)(1), by failing to label used oil containers clearly with the words "Used Oil"; PENALTY: $11,502; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: Jason Castoria d/b/a American Auto Care; DOCKET NUMBER: 2011-0380-AIR-E; TCEQ ID NUMBER: RN105967806; LOCATION: 304 South Bryan Avenue, Bryan, Brazos County; TYPE OF FACILITY: paint and body shop; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain a permit or meet the conditions of a permit by rule prior to operating an auto body shop; PENALTY: $3,210; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Terry Lee Middleton d/b/a Five Star Lawn & Landscape; DOCKET NUMBER: 2011-1630-LII-E; TCEQ ID NUMBER: RN105704118; LOCATION: 4101 West Green Oaks Boulevard, Arlington, Tarrant County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: TWC, §37.003 and 30 TAC §30.5(b), by failing to refrain from advertising or representing himself to the public as a holder of a license or registration or unless he employs an individual who holds a current license; PENALTY: $275; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Wendell Reese d/b/a Pecan Shadows Water Supply Company; DOCKET NUMBER: 2012-0424-PWS-E; TCEQ ID NUMBER: RN102691052; LOCATION: 1.2 miles West from Farm-to-Market Road 457 on Pecan Shadows Street, Matagorda County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and by failing to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.106(e), by failing to report the results of annual nitrate/nitrite and iron monitoring to the executive director; 30 TAC §§290.106(e), 290.108(e) and 290.113(e), by failing to report the results for triennial metals, minerals, radionuclides, and Stage 1 Disinfectant Byproducts monitoring to the executive director; 30 TAC §290.107(e), by failing to report the results of six-year volatile organic compound sampling to the executive director; and TWC, §5.702 and 30 TAC §290.51(b), by failing to pay all annual Public Health Service fees, for fiscal years of 2007 - 2012, including any associated late fees and penalties, for TCEQ Financial Administration Account Number 91610014; PENALTY: $2,188; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Whit R. Ogilvie; DOCKET NUMBER: 2012-0243-WOC-E; TCEQ ID NUMBER: RN103830741; LOCATION: the intersection of State Highway 171 and Farm-to-Market Road 73, Coolidge, Limestone County; TYPE OF FACILITY: involves process control duties in the production, treatment, or distribution of public drinking water at a public water system; RULES VIOLATED: TWC, §37.003, Texas Health and Safety Code, §341.034(b) and 30 TAC §30.381(b) and §30.5(a), by failing to obtain a valid public water system operator license prior to performing process control duties in the production, treatment, and distribution of public drinking water; and TWC, §26.0301(c) and §37.003 and 30 TAC §30.331(b) and §30.5(a), by failing to obtain a valid wastewater operator license prior to performing process control duties in the treatment of wastewater; PENALTY: $1,500; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-201204921
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 18, 2012

♦ ♦ ♦

Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 29, 2012.** The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 29, 2012.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Cindy Mettlen d/b/a Midway; DOCKET NUMBER: 2012-0333-PST-E; TCEQ ID NUMBER: RN102254190; LOCATION: 200 East Broad Street, Oakwood, Leon County; TYPE OF FACILITY: UST system and a convenience store with retail gasoline sales; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $2,884; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: HSBM Retail Management, LLC d/b/a I-45 Quick Stop; DOCKET NUMBER: 2012-0389-PST-E; TCEQ ID NUMBER: RN102018652; LOCATION: 16322 South Interstate Highway 45, Streetman, Freestone County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,500; STAFF ATTORNEY: Rebecca M. Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: SUPER VILLAGE ENTERPRISE INC d/b/a Super Food Mart; DOCKET NUMBER: 2012-0419-PST-E; TCEQ ID NUMBER: RN101884799; LOCATION: 850 Uvalde Road, Houston, Harris County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide proper release detection for the piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain all UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $3,634; STAFF ATTORNEY: Rebecca M. Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201204922
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 18, 2012

♦ ♦ ♦

Notice of Water Quality Applications

The following notices were issued on September 7, 2012 through September 14, 2012.

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 USA INC WHICH operates the Galena Park Terminal, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001745000, which authorizes the discharge of stormwater, truck rinse water, drainage from truck loading areas and diked spill containment areas, tank water draws (including hystrostatic tank test water and drawdown from under ground storage tanks), and associated groundwater from remediation activities at a daily average flow not to exceed 10,000 gallons per day, and a daily maximum flow not to exceed 20,000 gallons per day via Outfall 002, and the discharge of stormwater runoff from diked tank areas on an intermittent and flow variable basis via Outfalls 003 and 004. The facility is located at 12523 American Petroleum Road approximately 0.5 mile north of the inter-

section of Federal Road and Clinton Drive in the City of Galena Park, Harris County, Texas 77547. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

GALVESTON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 8 has applied for a renewal of TPDES Permit No. WQ0010174001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located at 11628 11th Street, approximately 0.90 mile east of the intersection of 11th Street and Farm-to-Market Road 646 in the City of Santa Fe in Galveston County, Texas 77510.

CITY OF BORGER has applied for a major amendment to TPDES Permit No. WQ0010535001 to authorize the removal of total mercury monitoring requirement or reduction in monitoring frequency for total mercury. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located at 1302 West Third Street, approximately 1200 feet west of intersection of State Highway 207 and State Highway 152 in Hutchinson County, Texas 79007.

UPPER TRINITY REGIONAL WATER DISTRICT has applied for a renewal of TPDES Permit No. WQ0010698002, which authorizes the discharge of treated domestic wastewater at a combined annual average flow not to exceed 5,700,000 gallons per day from Outfall 001 and Outfall 002. The facility is located at 1780 Navo Road, Aubrey, approximately 3,000 feet northwest of the intersection of U.S. Highway 380 and Navo Road in Denton County, Texas 76227.

UPPER TRINITY REGIONAL WATER DISTRICT has applied for a renewal of TPDES Permit No. WQ0010698003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,225,000 gallons per day. The facility will be located at 27080 Highway 380, Aubrey, approximately 0.25 mile west and 0.15 mile south of the intersection of U.S. Highway 380 and Farm-to-Market Road 1385 in Denton County, Texas 75068.

NORTH TEXAS MUNICIPAL WATER DISTRICT has applied for a renewal of TPDES Permit No. WQ0012047001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,250,000 gallons per day. The facility is located at 4920 Horizon Road, on the west side of Buffalo Creek and on the south side of Farm-to-Market Road 3097 approximately 1.5 miles northwest of the intersection of Farm-to-Market Roads 3097 and 549 in the City of Rockwall in Rockwall County, Texas 75032.

CITY OF PEARLAND has applied for a renewal of TPDES Permit No. WQ0012295001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located at 3711 Soho Drive, approximately 2,200 feet south of Clear Creek and approximately 8,000 feet northeast of the intersection of State Highway 288 and Hughes Ranch Road in Brazoria County, Texas 77584.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO 37 has applied for a renewal of TPDES Permit No. WQ0012370001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 175,000 gallons per day. The facility is located at 25039 1/2 Emporia Chase Court, approximately 1,600 feet southwest of Green-Busch Road and approximately 2,700 feet southeast of Katy-Flewellen Road (formerly Crossover Road) in Fort Bend County, Texas 77494.

PALMER PLANTATION MUNICIPAL UTILITY DISTRICT NO 1 has applied for a renewal of TPDES Permit No. WQ0012937001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located at located at 2415 Lake Olympia Parkway, Missouri City, approximately 1 mile east-southeast of the intersection of State Highway 6 and Lake Olympia Parkway, on the south side of Lake Olympia Parkway in Fort Bend County, Texas 77459.

CITY OF PENELOPE has applied for a renewal of TPDES Permit No. WQ0013621001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 2,000 feet southeast of the intersection of Farm-to-Market Roads 308 and 2114; adjacent to the northerly side of Farm-to-Market Road 2114; at the southeast edge of the City of Penelope in Hill County, Texas 76676.

CITY OF MISSOURI CITY has applied for a renewal of TPDES Permit No. WQ0013873001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,000,000 gallons per day. The facility is located at 6310 Oilfield Road, approximately 2,300 feet southeast of the intersection of Oilfield Road and Steep Bank Creek and approximately one mile southwest of the intersection of Oilfield Road and State Highway 6 in Fort Bend County, Texas 77459.

WESTPHALIA WATER AND SEWER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014382001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located at 133 County Road 366, adjacent to the east side of State Highway 320, approximately 1,500 feet south of the intersection of Farm-to-Market Road 431 and State Highway 320 near the community of Westphalia in Falls County, Texas 76656.

IF TEJAS MINISTRIES INC HAS applied for a renewal of TCEQ Permit No. WQ0014773001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 16,800 gallons per day via surface irrigation on 12.24 acres of non-public access meadow. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located within the compound located at 1038 Private Road 2191 in Lee County, Texas 78942.

CITY OF LA VILLA has applied for a new permit, proposed TPDES Permit No. WQ0014781002, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 399,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0014781001 which expired July 1, 2010. The facility is located on Mile 17 North, approximately 4,150 feet east of its intersection with Farm-to-Market Road 491 in Hidalgo County, Texas 78562.

ABRAXAS CORPORATION has applied for a new permit, proposed TPDES Permit No. WQ0015010001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility was previously permitted under TCEQ Permit No. 11086-001 which expired December 1, 2009. The facility is located at 3301 Cattlebaron Road, approximately 0.9 mile north of the intersection of Cattlebaron and White Settlement Roads in Parker County, Texas 76108.

COMMUNITY OF FAITH has applied for a new permit, proposed TPDES Permit No. WQ0015044001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 14,000 gallons per day. The facility will be located at 16124 Becker Road, Hockley in Harris County, Texas 77447.

AQUA WATER SUPPLY CORPORATION has applied for a new permit, proposed TPDES Permit No. WQ0015045001, to authorize the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 49,000 gallons per day. The facility is located approximately 0.6 mile south of the intersection of Farm-to-Market Road 86 and Farm-to-Market Road 713 in Caldwell County, Texas 78616.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201204934
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 19, 2012

♦ ♦ ♦

Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on September 13, 2012, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Benjamin Sanjuan d/b/a Deer Trail Mobile Home Park; SOAH Docket No. 582-11-9593; TCEQ Docket No. 2010-0801-MLM-E. The Commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Benjamin Sanjuan d/b/a Deer Trail Mobile Home Park 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-201204936
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 19, 2012

♦ ♦ ♦

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: Semiannual Report due July 16, 2012, for Candidates and Officeholders

Miguel "Mike" Herrera, 500 E. San Antonio, Room 1101, El Paso, Texas 79901

Deadline: Semiannual Report due July 23, 2012, for Candidates and Officeholders

John Pena, 102 W. 10th St., La Joya, Texas 78560

Rod Ponton, 2301 N. Hwy. 118, Alpine, Texas 79830

TRD-201204838
David Reisman
Executive Director
Texas Ethics Commission
Filed: September 13, 2012

♦ ♦ ♦

Texas Facilities Commission

Request for Proposal #303-4-20354

The Texas Facilities Commission (TFC), on behalf of the Texas Parks and Wildlife Department (TPWD), announces the issuance of Request for Proposals (RFP) #303-4-20354. TFC seeks a five (5) or ten (10) year lease of approximately 5,592 square feet of office space in Houston, Harris County, Texas.

The deadline for questions is October 8, 2012, and the deadline for proposals is October 22, 2012, at 3:00 p.m. The award date is November 21, 2012. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=102489*.

TRD-201204888
Kay Molina
General Counsel
Texas Facilities Commission
Filed: September 14, 2012

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Notice of Public Hearing Concerning Multifamily Housing Revenue Bonds (The Waters at Willow Run Apartments)

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") in the Cafeteria of Wells Branch Elementary School, 14650 Merrilltown Drive, Austin, Texas 78728, at 6:30 p.m. on October 17, 2012, with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $20,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds") by the Issuer. The proceeds of the Bonds will be loaned to The Waters at Willow Run, LP, a Texas limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development described as follows: an approximately 242-unit multifamily housing development to be located northeast of the intersection of FM 1325 and Shoreline Drive, Austin, Texas at 15515 FM 1325, Austin, Texas 78728 (the "Development"). Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and

Community Affairs, P.O. Box 13941, Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three (3) days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two (2) days before the meeting so that appropriate arrangements can be made.

TRD-201204931
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 19, 2012

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application to change the name of PARIS RE AMERICA INSURANCE COMPANY to PARTNERRE AMERICA INSURANCE COMPANY a Fire and/or Casualty company. The home office is in Wilmington, Delaware.

Application for incorporation in the State of Texas by UNITED LLOYDS INSURANCE COMPANY, a domestic fire and/or casualty. The home office is in Houston, 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, MC 305-2C, Austin, Texas 78701.

TRD-201204882
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: September 14, 2012

♦ ♦ ♦

Company Licensing

Application for admission in the State of Texas by INFINITY PREMIER INSURANCE COMPANY, a domestic fire and/or casualty. The home office is in Indianapolis, Indiana.

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, MC 305-2C, Austin, Texas 78701.

TRD-201204884
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: September 14, 2012

♦ ♦ ♦

Company Licensing

Application to do business in the State of Texas by DENTAL AFFILIATES MANAGED CARE, LLC., a domestic Health Maintenance Organization. The home office is in Carrollton, Texas.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201204937
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: September 19, 2012

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 1475 "Wild Doubler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1475 is "WILD DOUBLER". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1475 shall be $1.00 per Ticket.

1.2 Definitions in Instant Game No. 1475.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, WILD SYMBOL, $1.00, $2.00, $5.00, $10.00, $20.00, $40.00, $100, and $1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1475 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
WILD SYMBOL	DOUBLE
$1.00	ONE$
$2.00	TWO$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$100	ONE HUND
$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $1.00, $2.00, $5.00, $10.00, or $20.00.

G. Mid-Tier Prize - A prize of $40.00 or $100.

H. High-Tier Prize - A prize of $1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code, which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1475), 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: 1475-0000001-001.

K. Pack - A Pack of "WILD DOUBLER" 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 "WILD DOUBLER" Instant Game No. 1475 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 "WILD DOUBLER" Instant Game is determined once the latex on the Ticket is scratched off to expose 12 (twelve) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "WILD" Play Symbol, the player wins DOUBLE the prize for that Play 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 12 (twelve) 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 12 (twelve) 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 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 12 (twelve) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to five (5) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical play and prize symbol patterns. Two (2) Tickets have identical play and prize symbol patterns if they have the same play and prize symbols in the same positions.

C. Each Ticket will have two (2) different "WINNING NUMBERS" Play Symbols.

D. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

E. No Ticket will ever contain more than two (2) identical non-winning prize symbols.

F. The "WILD" Play Symbol will never appear in the "WINNING NUMBERS" Play Symbol spots.

G. The "WILD" Play Symbol will only appear as dictated by the prize structure.

H. Non-winning prize symbols will never be the same as the winning prize symbol(s).

I. The top prize symbol will appear on every Ticket unless otherwise restricted.

J. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "WILD DOUBLER" Instant Game prize of $1.00, $2.00, $5.00, $10.00, $20.00, $40.00, or $100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $40.00 or $100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and in-

struct 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 "WILD DOUBLER" Instant Game prize of $1,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WILD DOUBLER" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "WILD DOUBLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "WILD DOUBLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 11,040,000 Tickets in the Instant Game No. 1475. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1475 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,324,800	8.33
$2	809,600	13.64
$5	147,200	75.00
$10	73,600	150.00
$20	36,800	300.00
$40	28,750	384.00
$100	2,300	4,800.00
$1,000	92	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.56. 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. 1475 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Ticket game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1475, 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-201204911
Bob Biard
General Counsel
Texas Lottery Commission
Filed: September 17, 2012

♦ ♦ ♦

Instant Game Number 1481 "Wild Cherry"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1481 is "WILD CHERRY". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1481 shall be $1.00 per Ticket.

1.2 Definitions in Instant Game No. 1481.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, $$ SYMBOL, $1.00, $2.00, $5.00, $10.00, $20.00, $40.00, $100, and $1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1481 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
$$	DOUBLE
$1.00	ONE$
$2.00	TWO$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$100	ONE HUND
$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier-Prize - A prize of $1.00, $2.00, $5.00, $10.00, or $20.00.

G. Mid-Tier-Prize - A prize of $40.00 or $100.

H. High-Tier-Prize - A prize of $1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code, which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1481), 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: 1481-0000001-001.

K. Pack - A Pack of "WILD CHERRY" 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 "WILD CHERRY" Instant Game No. 1481 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 "WILD CHERRY" Instant Game is determined once the latex on the Ticket is scratched off to expose 12 (twelve) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins PRIZE for that number. If a player reveals a "$$ Play Symbol, the player wins DOUBLE 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 12 (twelve) 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 12 (twelve) 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 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 12 (twelve) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to five (5) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical play and prize symbol patterns. Two (2) Tickets have identical play and prize symbol patterns if they have the same play and prize symbols in the same positions.

C. Each Ticket will have two (2) different "WINNING NUMBERS" Play Symbols.

D. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

E. No Ticket will ever contain more than two (2) identical non-winning prize symbols.

F. The "$$" Play Symbol will never appear in the "WINNING NUMBERS" Play Symbol spots.

G. The "$$" Play Symbol will only appear as dictated by the prize structure.

H. Non-winning prize symbols will never be the same as the winning prize symbol(s).

I. The top prize symbol will appear on every Ticket unless otherwise restricted.

J. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "WILD CHERRY" Instant Game prize of $1.00, $2.00, $5.00, $10.00, $20.00, $40.00, or $100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $40.00 or $100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and in-

struct 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 "WILD CHERRY" Instant Game prize of $1,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WILD CHERRY" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "WILD CHERRY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "WILD CHERRY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 Tickets in the Instant Game No. 1481. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1481 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,209,600	8.33
$2	739,200	13.64
$5	134,400	75.00
$10	67,200	150.00
$20	33,600	300.00
$40	26,250	384.00
$100	2,100	4,800.00
$1,000	84	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.56. 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. 1481 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1481, 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-201204912
Bob Biard
General Counsel
Texas Lottery Commission
Filed: September 17, 2012

♦ ♦ ♦

Instant Game Number 1503 "$50,000 Fast Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1503 is "$50,000 FAST CASH". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1503 shall be $5.00 per Ticket.

1.2 Definitions in Instant Game No. 1503.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, MONEY BAG SYMBOL, WHEEL SYMBOL, $5.00, $10.00, $15.00, $20.00, $40.00, $50.00, $100, $500, $1,000 and $50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1503 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
MONEY BAG SYMBOL	DOUBLE
WHEEL SYMBOL	WHEEL
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY

$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000 or $50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1503), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1503-0000001-001.

K. Pack - A Pack of "$50,000 FAST CASH" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$50,000 FAST CASH" Instant Game No. 1503 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 "$50,000 FAST CASH" Instant Game is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "WHEEL" Play Symbol, the player wins the prize for that symbol. If a player reveals a "MONEY BAG" Play Symbol, the player wins DOUBLE 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 45 (forty-five) 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 45 (forty-five) 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 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed

in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to twenty (20) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical play and prize symbol patterns. Two (2) Tickets have identical play and prize symbol patterns if they have the same symbols in the same positions.

C. Each Ticket will have five (5) unique "WINNING NUMBERS" Play Symbols.

D. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

E. Non-winning prize symbols will never appear more than four (4) times.

F. The "WHEEL" and "MONEY BAG" Play Symbols will never appear in the "WINNING NUMBERS" Play Symbol spots.

G. The "MONEY BAG" Play Symbol will only appear as dictated by the prize structure.

H. Non-winning prize symbols will never be the same as the winning prize symbol(s).

I. The top prize symbol ($50,000) will appear on every Ticket unless otherwise restricted.

J. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "$50,000 FAST CASH" Instant Game prize of $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$50,000 FAST CASH" Instant Game prize of $1,000, or $50,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$50,000 FAST 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 Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "$50,000 FAST 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 $600 or more from the "$50,000 FAST 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 rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 Tickets in the Instant Game No. 1503. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1503 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	800,000	7.50
$10	920,000	6.52
$20	160,000	37.50
$50	36,400	164.84
$100	12,500	480.00
$500	600	10,000.00
$1,000	130	46,153.85
$50,000	10	600,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.11. 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. 1503 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1503, 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-201204925

Bob Biard
General Counsel
Texas Lottery Commission
Filed: September 18, 2012

♦ ♦ ♦

North Central Texas Council of Governments

Request for Proposals for the North Central Texas Activity-Based Model Framework

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Texas Government Code, Chapter 2254.

NCTCOG is requesting written proposals from consulting firms to define the framework for developing an Activity-Based Model (ABM)

and its associated data needs for the North Central Texas area. The main task in this work is to describe all the necessary components of an ABM in detail, and develop the associated data needs, sampling plan, and sample sizes for a household survey in the NCTCOG modeling area. The ABM is intended to provide tangible improvement with regards to modeling the High-Occupancy Toll (HOT) lanes, managed-lanes, High-Occupancy Vehicle (HOV) lanes, congestion pricing, and other travel management policies. The consultant will be required to present the research throughout the project through conference calls or webinars, and provide complete documentation of all work.

Due Date

Proposals must be received no later than 5:00 p.m., on Friday, October 26, 2012, to Kathy Yu, Senior Transportation System Modeler, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals (RFP) will be available at www.nctcog.org/rfp by the close of business on Friday, September 28, 2012.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the RFP. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-201204941
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: September 19, 2012

♦ ♦ ♦

Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) seeks to develop a list of qualified training providers to offer training on an "as needed" basis for program participants being served through the Workforce Solutions office located in Amarillo, and throughout the 26-county area. The purpose of this solicitation is to gather information from area training providers sufficient to determine their qualifications, offerings, costs, and willingness to meet the requirements of inclusion on the PRPC Training Provider List.

Providers of such training must be either secondary and post-secondary educational institutions; licensed career schools and colleges; or other public, private non-profit, and private for-profit entities that are specifically exempt from the Texas proprietary school laws. Providers subject to Texas proprietary school laws must show evidence of license or exemption.

A copy of the Request for Information (RFI) is available from Leslie Hardin, Training Coordinator, Workforce Development Division, at (806) 372-3381/(800) 477-4562 or lhardin@theprpc.org. Copies of the RFI may also be obtained at PRPC's offices located at 415 West Eighth Street, Amarillo, Texas. For early consideration, information may be submitted any time prior to 3:00 p.m., Monday, October 15, 2012. Submissions received after that time will be accepted but providers will not be included on the Training Provider List until after the receipt and evaluation of a completed submission.

TRD-201204864
Leslie Hardin
WFD Coordinator
Panhandle Regional Planning Commission
Filed: September 14, 2012

♦ ♦ ♦

Legal Notice

The Panhandle Regional Planning Commission (PRPC) seeks to develop a list of pre-qualified providers who may be solicited on an "as needed" basis to conduct group or individual activities and services for program participants being served through the Workforce Solutions office located in Amarillo, and throughout the 26-county area. The purpose of this solicitation is to gather information from area providers sufficient to identify their qualifications, activities and services of interest, and willingness to provide those services to meet the requirements of inclusion on the PRPC Group and Individual Activities and Services Provider List.

To qualify for inclusion on the list, providers should be a secondary or post-secondary educational institution; licensed career school or college; proprietary school; or other public, private non-profit, and private for-profit entity capable of providing group or individual counseling or one or more of the types of services defined by category by PRPC. In addition, providers must document any special accreditation, licensing, or other credentials that might be legally required to provide the services listed in their information.

A copy of the Request for Information (RFI) is available from Leslie Hardin, Training Coordinator, Workforce Development Division, at (806) 372-3381/(800) 477-4562 or lhardin@theprpc.org. Copies of the RFI may also be obtained at PRPC's offices located at 415 West Eighth Street, Amarillo, Texas. For early consideration, information may be submitted any time prior to 3:00 p.m., Monday, October 15, 2012. Submissions received after that time will be accepted but providers will not be included on the Group and Individual Activities and Services Provider List until the receipt and evaluation of a completed submission.

TRD-201204865
Leslie Hardin
WFD Coordinator
Panhandle Regional Planning Commission
Filed: September 14, 2012

♦ ♦ ♦

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 a joint application on September 17, 2012, to amend their state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Joint Application of Time Warner Entertainment, Advance/Newhouse Partnership and Time Warner Cable San Antonio, L.P. to Amend Their State-Issued Certificate of Franchise Authority (SICFA); Name Change, Expansion of SAF & Other, Project Number 40756.

The Applicants seek to: (1) amend SICFA Numbers 90007 and 90008 to reflect the reorganization of the Time Warner Cable Inc. subsidiaries, Time Warner Entertainment - Advance/Newhouse Partnership and Time Warner Cable San Antonio, L.P., into a single entity, Time Warner Cable Texas LLC, under SICFA Number 90008; and (2) expand the service area footprint to include the unincorporated areas of Lampasas, Coryell, and Gillespie Counties, excluding any federal properties, and for a name change.

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 40756.

TRD-201204927
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 18, 2012

♦ ♦ ♦

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 13, 2012, for 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 Zito Graham, LLC, for State-Issued Certificate of Franchise Authority, Project Number 40744.

The requested CFA service area consists of the municipality of Graham, 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 40744.

TRD-201204890
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 14, 2012

♦ ♦ ♦

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 13, 2012, for 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 Zito Texas-Washington, LLC for State-Issued Certificate of Franchise Authority, Project Number 40745.

The requested CFA service area consists of the municipalities of Palestine and Elkhart, 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 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 inquiries should reference Project Number 40745.

TRD-201204891
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 14, 2012

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On September 11, 2012, FiberLight, LLC (Applicant) filed an application to amend a service provider certificate of operating authority (SPCOA) Number 60736. Applicant seeks approval to expand its service area to include the entire State of Texas.

The Application: Application of FiberLight, LLC for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 40735.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than October 5, 2012. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. All comments should reference Docket Number 40735.

TRD-201204849
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 14, 2012

♦ ♦ ♦

Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of a petition filed with the Public Utility Commission of Texas on September 12, 2012, for designation as an eligible telecommunications carrier (ETC), pursuant to 47 U.S.C. 214(e) and P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Global Connection, Inc., of America d/b/a Stand Up Wireless for Designation as an Eligible Telecommunications Carrier in the State of Texas. Docket Number 40739.

The Application: Stand Up Wireless seeks ETC designation solely to participate in the Universal Service Fund's (USF) Lifeline program as a prepaid wireless carrier; Stand Up Wireless will not seek access to funds from the USF for the purpose of providing service to high cost areas. Pursuant to 47 U.S.C. 214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs for service areas set forth by the commission. In its application, Stand Up Wireless provides a list of non-rural wire centers in its underlying carrier's (Sprint) coverage area for which the Company requests ETC designation. Stand Up Wireless indicates where Sprint serves the entire wire center and where it serves only part of the wire center.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by October 18, 2012. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission's Customer Protection Division 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 to reach the commission's toll-free number (888) 782-8477. All comments should reference Docket Number 40739.

TRD-201204851
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 14, 2012

♦ ♦ ♦

Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on September 14, 2012 for designation as an eligible telecommunications provider (ETP) and eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.417 and §26.418, respectively.

Docket Title and Number: Application of Guadalupe Valley Communications Systems, L.P. for Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.418 and Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.417. Docket Number 40752.

The Application: Guadalupe Valley Communications Systems, L.P. (GVCS or the company) requests ETC/ETP designation to be eligible for federal and state universal service funds to assist it in providing universal service in Texas. Pursuant to P.U.C. Substantive Rule §26.418 and P.U.C. Substantive Rule §26.417, the commission, designates qualifying common carriers as ETCs and ETPs for service areas designated by the commission. GVCS seeks ETC/ETP designation in the Blanco, Boerne and Gonzales wire centers of GTE Southwest, Inc. d/b/a Verizon Southwest. The company holds Service Provider Certificate of Operating Authority Number 60222. GVCS has requested approval of the application to be effective no earlier than 30 days after completion of notice in the *Texas Register* in this instance; the requested effective date is November 2, 2012.

Persons who wish to comment upon the action sought should notify the Public Utility Commission of Texas no later than October 19, 2012. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. All comments should reference Docket Number 40752.

TRD-201204924
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 18, 2012

♦ ♦ ♦

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 September 11, 2012, for an amendment to certificated service area for a service area exception within Lamb County, Texas.

Docket Style and Number: Application of Lamb County Electric Cooperative, Inc., to Amend its Certificate of Convenience and Necessity for a Service Area Exception in Lamb County, Texas. Docket Number 40737.

The Application: Lamb County Electric Cooperative, Inc. (LCEC) filed an application for a service area boundary exception to allow LCEC to provide service to a specific customer located within the certificated service area of Southwestern Public Service (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 October 5, 2012, 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 comments should reference Docket Number 40737.

TRD-201204850
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 14, 2012

♦ ♦ ♦

Notice of Application for Waiver from Requirements in Automatic Dial Announcing Devices (ADAD) Application Form

Notice is given to the public of an application filed on September 12, 2012, with the Public Utility Commission of Texas (commission) for waiver of a requirement in the commission prescribed application for a permit to operate automatic dial announcing devices.

Docket Style and Number: Application of Genesys Telecommunications Laboratories, Inc., for a Waiver to the Federal Registration Number Requirement of the ADAD Application Form, Docket Number 40741.

The Application: Genesys Telecommunications Laboratories, Inc. (Genesys) filed a request for a waiver of the registration number requirement in the Public Utility Commission of Texas prescribed application for a permit to operate automatic dial announcing devices (ADAD). Specifically, Question 11(e) of the application requires the Federal Registration Number (FRN) issued to the ADAD manufacturer or programmer either by the Federal Communications Commission (FCC) or Administrative Council Terminal Attachments (ACTA).

Genesys stated that it uses a web-based platform for calls made over a Voice over Internet Protocol (VoIP) platform.

Persons wishing to comment on the action sought or intervene 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. 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 40741.

TRD-201204852
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 14, 2012

♦ ♦ ♦

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on September 7, 2012, to amend a certificate of convenience and necessity for a proposed transmission line in Comal and Guadalupe Counties, Texas.

Docket Style and Number: Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Proposed EC Mornhinweg to Parkway 138-kV Transmission Line in Comal and Guadalupe Counties. Docket Number 40684.

The Application: The application of LCRA Transmission Services Corporation, Inc. (LCRA TSC) is to amend a certificate of convenience and necessity (CCN) for a proposed construction of a new 138-kilovolt (kV) transmission line in Comal and Guadalupe Counties. The proposed project is designated as the EC Mornhinweg to Parkway Transmission Line Project. The design voltage rating for this project is 138-kV, and the operating voltage is also 138-kV. The new circuit will connect the existing Guadalupe Valley Electric Cooperative (GVEC)-owned Parkway Substation (Parkway) located just west of Schertz Parkway (south of Wiederstein Road) in Guadalupe County to the new New Braunfels Utilities (NBU) ECM Substation under construction in the vicinity of FM 482 (east of Schwab Road and north of IH35) in Comal County. The entire project will be approximately 8 to 11 miles in length, depending on the final route selected. LCRA TSC will install new equipment at both the new NBU ECM Substation and the existing Parkway Substation. In addition, if Route 10 or a similar route using Alternate Route Segments L1, N1, 01, and C1 (a direct path across IH-35 from the ECM Substation to the existing LCRA TSC Transmission Right-of-way (ROW)) is selected by the PUC, LCRA TSC requests that the portion between the ECM Substation and the existing ROW be approved and certificated by the PUC for a second 138-kV circuit to be added as needed in the future.

The total estimated cost for the project ranges from approximately $5,770,000 to $3,990,000 depending on the route chosen. The proposed project is presented with 14 alternate routes. The commission may approve any of the routes or route segments presented in the application.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is October 22, 2012. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 40684.

TRD-201204848
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 14, 2012

♦ ♦ ♦

Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208(h)

Notice is given to the public of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) application filed with the Public Utility Commission of Texas (commission) to withdraw services pursuant to P.U.C. Substantive Rule §26.208(h).

Docket Title and Number: Application of Southwestern Bell Telephone Company d/b/a AT&T Texas to Withdraw Speed Calling 30 for Residence Customers, Docket Number 40727.

The Application: On September 5, 2012, AT&T Texas filed an application to withdraw Speed Calling 30 for Residence Customers. AT&T Texas proposes an effective date of December 1, 2012. AT&T Texas will continue to offer a Speed Calling Service with the storage capacity of eight numbers. Additionally, telephone equipment, both landline and mobile, can be purchased to provide speed dialing capabilities. The proceedings were docketed and suspended on September 6, 2012, to allow adequate time for review and intervention.

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 Docket Number 40727.

TRD-201204923
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 18, 2012

♦ ♦ ♦

Notice of Petition for Rulemaking

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition for rulemaking filed on September 12, 2012.

Project Style and Number: Petition of The Sierra Club, et al., to Amend §25.173 to Increase the Renewable Portfolio Standard for Non-Wind Resources to 3,000 MW by 2025 and to Ensure Effective Implementation of the Standard. Project Number 40740.

Summary of Petition: The Petitioners requested that P.U.C. Substantive Rule §25.173 be amended to further implement the Legislature's intent to advance non-wind renewable energy technologies in the state by strengthening the renewable portfolio standard (RPS) for non-wind resources such as solar, geothermal, and hydroelectric generation. The Petitioners stated that the amendments will: (1) implement the target for non-wind renewable resources to achieve at least 500 MWs by 2015, and then expand this target to 3,000 MWs by 2025 and (2) ensure that the 3,000 MW target is achieved by allocating responsibility for meeting the 3,000 MW target in the same way that the Public Utility Commission (PUC) has done, with notable effectiveness, for the higher

target for total renewable resources. The Petitioners stated that, at the same time, the proposed amendments will establish alternative compliance payments, as authorized in 2007 in House Bill 1090, to provide program participants with flexibility and to bring these non-wind renewable resources online cost-effectively.

The Petitioners requested that P.U.C. Substantive Rule §25.173 be amended in the following basic ways:

- Increase the goal for non-wind renewable energy resources to 3,000 MW by 2025 and establish interim benchmarks.

- Establish two tiers of renewable energy credits: one for renewable energy technologies powered by wind, and another for non-wind renewable energy technologies.

- Allow program participants to remit alternative compliance payments in lieu of either tier of RECs to satisfy their RPS requirements.

- Allow energy storage devices to earn and trade RECs when charged by renewable energy resources.

- Establish preliminary capacity conversion factors for several non-wind renewable energy technologies.

- Eliminate the provision of offsets for wind energy resources that existed prior to September 1, 1999, and for non-wind renewable energy resources that existed prior to September 1, 2012.

The deadline to file comments in this project is October 19, 2012. Comments shall be filed at the Public Utility Commission of Texas, 1701 N. Congress, Austin, Texas 78701. Interested persons may contact the commission at (512) 936-7120 or (toll-free) 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 Project Number 40740.

TRD-201204889
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 14, 2012

♦ ♦ ♦

Request for Comments on Form Change

The Public Utility Commission of Texas (commission) requests comments on its proposed changes to the Generation Registration and Reporting form. The proposed form can be found on the commission's website home page under "Filings," using Control Number 40601. The form is used by power generation companies and self-generators to register with the commission and update information pursuant to P.U.C. Substantive Rule §25.109.

Comments on the proposed form may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of comments on the form are required to be filed. Comments on the form are due Monday, October 29, 2012. Comments should be organized in a manner consistent with the organization of the form. All comments should refer to Project Number 40601.

Questions concerning Project Number 40601 should be directed to Jennifer Hubbs, Infrastructure and Reliability Division, at (512) 936-7233. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201204855
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 14, 2012

♦ ♦ ♦

Railroad Commission of Texas

Request for Comments on Proposed Railroad Commission Alternative Energy Division Forms (LP-Gas, CNG, LNG, and AFRED)

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the forms in this submission will not be included in the print version of the Texas Register. The **forms** are available in the on-line version of the September 28, 2012, issue of the Texas Register.)*

The Railroad Commission of Texas (Commission) requests comments on Alternative Energy Division forms as part of four rule proposals published in this issue of the *Texas Register.* The proposals include various amendments, repeals, and new rules in 16 TAC Chapter 9, concerning LP-Gas Safety Rules; 16 TAC Chapter 13, concerning Regulations for Compressed Natural Gas (CNG); 16 TAC Chapter 14, concerning Regulations for Liquefied Natural Gas (LNG); and 16 TAC Chapter 15, concerning Alternative Fuels Research and Education Division. The proposals update references to the Alternative Energy Division and consolidate the division's administrative forms into one rule per chapter. In particular, §§9.3, 13.4, 14.2010, and 15.5 include new tables listing the form numbers, titles, creation or revision dates, and the applicable rules in each chapter where the forms are discussed.

The Commission is requesting comments on both the proposed amendments, repeals, and new rules in Chapters 9, 13, 14, and 15, as well as the forms.

Comments on the proposals to the four chapters or these proposed forms included in this notice may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until noon on Monday, October 29, 2012, which is 31 days after publication in the *Texas Register,* and encourages all interested persons to submit comments on the forms no later than this deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Kellie Martinec at (512) 475-1295. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

Issued in Austin, Texas, on September 11, 2012.

TRD-201204836
Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
Filed: September 13, 2012

♦ ♦ ♦

Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

Cameron County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254,

Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: Cameron County. TxDOT CSJ No. 1321PTISB. Scope: Provide engineering/design services for a new Jet A and AvGas Fuel Farm System.

Interested firms shall have recent and relevant experience in the design and construction oversight of aviation fuel systems and shall provide evidence of said experience within the last five years.

There is no DBE goal. TxDOT Project Manager is Eusebio Torres, P.E.

To assist in your proposal preparation the criteria, 5010 drawing, project diagram, and most recent airport layout plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Port Isabel-Cameron County."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/business/projects/aviation.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven eight and one half by eleven inch pages of data plus two optional pages consisting of an illustration page and a proposal summary page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Seven completed copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than October 23, 2012, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The Evaluation Criteria for Engineering Proposals can be found at http://www.txdot.gov/business/projects/aviation.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager at 1-800-68-PILOT at extension 4517. For technical questions, please contact Eusebio Torres, P.E. at 1-800-68-PILOT at extension 4557.

TRD-201204916
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 18, 2012

♦ ♦ ♦

Aviation Division - Request for Proposal for Professional Engineering Services

Victoria County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

Airport Sponsor: Victoria County. TxDOT CSJ No.: 1313VICTR. Scope: Provide engineering/design services for an aircraft rescue and firefighting (ARFF), repair and replace the waterline system to include the needs of ARFF and other facilities and replace sanitary sewer system.

The DBE goal is 7 percent. TxDOT Project Manager is Harry Lorton, PE.

To assist in your proposal preparation the criteria, 5010 drawing, project diagram and most recent Airport Layout Plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Victoria Regional Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/business/projects/aviation.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven eight and one half by eleven inch pages of data plus two optional pages consisting of an illustration page and a proposal summary page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound or folded in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than October 23, 2012, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The Evalua-

tion Criteria for Engineering Proposals can be found at http://www.txdot.gov/business/projects/aviation.htm under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Harry Lorton, Project Manager.

TRD-201204917
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 18, 2012

♦ ♦ ♦

Texas State University System

Notice of Award - Outside Consultant or Executive Search Firm

The Texas State University System (TSUS) announces this Notice of Contract Award in connection with the Request for Qualifications/Proposals (RFQ #758-12-00017) inviting professional consultants experienced in providing Executive Search services (particularly institutions of higher education) to the TSUS institution, Lamar University in Beaumont, Texas.

TSUS announces that a contract was awarded to R. William Funk and Associates, 100 Highland Park Village, Suite 200, Dallas, Texas 75205. The amount and term of the contract is dependent upon the expenses involved in conduct of the time required to complete the search.

The Notice of Request for Proposals (RFP #758-12-00017) was published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6389).

TRD-201204839
Perry D. Moore
Vice Chancellor for Academic Affairs
Texas State University System
Filed: September 13, 2012

♦ ♦ ♦

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)*