TEXAS REGISTER

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Sergio Ledesma

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

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

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IN THIS ISSUE

Texas Water Development Board

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-1099-GA

Requestor:

Ms. Phyllis L. Martin

Montgomery County Auditor

Post Office Box 539

Conroe, Texas 77305

Re: Appointment and compensation of temporary justices of the peace (RQ-1099-GA)

Briefs requested by December 17, 2012

RQ-1100-GA

Requestor:

The Honorable Todd Staples

Commissioner

Texas Department of Agriculture

Post Office Box 12847

Austin, Texas 78711

Re: Whether a self-insurance program of a political subdivision or state agency may be used to satisfy the insurance requirements set by the Prescribed Burning Board pursuant to Chapter 153 of the Natural Resources Code (RQ-1100-GA)

Briefs requested by December 20, 2012

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

TRD-201206105
Katherine Cary
General Counsel
Office of the Attorney General
Filed: November 27, 2012

♦ ♦ ♦

Opinions

Opinion No. GA-0975

Raymund A. Paredes, Ph.D.

Commissioner of Higher Education

Texas Higher Education Coordinating Board

Post Office Box 12788

Austin, Texas 78711

Re: Whether the Texas Higher Education Coordinating Board may grant a certificate of authority to a foreign school, including a foreign medical school, pursuant to section 61.306 of the Education Code (RQ-1062-GA)

S U M M A R Y

Chapter 61 of the Education Code gives the Board discretion to grant or deny a certificate of authority to a foreign medical school that otherwise satisfies the statutory and regulatory criteria for issuance of a certificate.

Opinion No. GA-0976

The Honorable Kathryn H. Gurley

287th Judicial District Attorney

Bailey and Parmer Counties

Post Office Box 729

Friona, Texas 79035

Re: Whether a home-rule municipality may require sex offenders who reside within the city to register with the sheriff rather than with the chief of police (RQ-1064-GA)

S U M M A R Y

A sex offender who resides within a municipality should register with the office of chief of police of the municipality, and a sex offender who resides outside the limits of a municipality should register with the county sheriff. A home-rule municipality may not require otherwise, unless the municipality is in a county with a centralized registration authority. A county with a population of less than 100,000 persons is not authorized to establish a centralized registration authority. Whether an offender may be prosecuted for failure to comply with sex registration requirements is a matter within a prosecutor's discretion.

Opinion No. GA-0977

The Honorable Jo Anne Bernal

El Paso County Attorney

500 East San Antonio, Room 503

El Paso, Texas 79901

Re: Whether a county bail bond board may permit a licensed bail bond holder to change part of the collateral he or she posted as security (RQ-1067-GA)

S U M M A R Y

A licensed bondsman may not withdraw a portion of the security deposited or executed under section 1704.160 of the Occupations Code and replace it with a different type of collateral.

To the extent that replacement security posted under section 1704.206 of the Occupations Code replaces a portion of the initial security that has been depleted, the replacement security must be in the same form as the existing collateral. Additional security posted under section 1704.203 of the Occupations Code beyond the amount initially posted may be in a form different from that originally deposited or executed.

Opinion No. GA-0978

The Honorable Craig D. Caldwell

Cherokee County Attorney

Post Office Box 320

Rusk, Texas 75785

Re: Whether the Cherokee County Community Supervision and Corrections Department may prescribe a procedure that permits the issuance of checks without the signature of the county auditor (RQ-1069-GA)

S U M M A R Y

Whatever the scope of the "accounting procedures" that the fiscal officer of the Cherokee County Supervision and Corrections Department may prescribe, they may not include a directive that removes the county auditor from the process of countersigning checks or warrants.

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

TRD-201206089

Katherine Cary

General Counsel

Office of the Attorney General

Filed: November 26, 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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS
SUBCHAPTER X. CITRUS GREENING QUARANTINE

4 TAC §§19.615 - 19.622

The Texas Department of Agriculture (the department) proposes new §§19.615 - 19.622 to establish a quarantine to contain and combat a recently discovered infestation of citrus greening *("Candidatus* Liberibacter asiaticus"), also known as Huanglongbing (HLB), an exotic incurable, lethal disease that is dangerous to citrus trees and many related plants and that is vectored by the Asian citrus psyllid (ACP), *Diaphorina citri* Kuwayama (Homoptera: Psyllidae). This quarantine is proposed because the department and the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) have confirmed the detection of citrus greening in a commercial orange grove and an adjacent commercial grapefruit grove in San Juan, Texas, in Hidalgo County. The newly detected infestation, which is the first known instance of citrus greening in Texas, represents a serious risk to the state's citrus fruit and citrus nursery industries and residential citrus trees. The department believes that establishment of this proposed quarantine on a permanent basis is both necessary and appropriate in order to effectively combat and prevent the spread of citrus greening to non-infected areas, including to other commercial citrus groves, citrus nursery plant production areas and residential citrus in Texas and other states.

New §19.615 states the basis for the quarantine and defines the quarantined pest. New §19.616 designates the areas subject to quarantine. New §19.617 provides that an article subject to the quarantine, or regulated article, is any article described as a regulated article by Title 7, Code of Federal Regulations (CFR) §301.76-2. New §19.618 provides restrictions on the movement of articles subject to the quarantine. New §19.619 provides consequences for failure to comply with quarantine restrictions. New §19.620 provides an appeal process for certain agency actions taken against a person for failure to comply with quarantine restrictions or requirements. New §19.621 provides procedures for handling discrepancies or other inconsistencies in textual descriptions in this subchapter with graphic representations. New §19.622 provides requirements for treatment of citrus nursery stock in the citrus zone, prior to shipment within and outside of the citrus zone.

The department declared a temporary emergency quarantine for citrus greening on January 13, 2012, to quarantine a five-mile area surrounding the initial detection site. Revisions of the temporary emergency quarantine were filed and published in the *Texas Register.* On August 14, 2012, the department filed an updated temporary emergency quarantine, published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6827), that made the department's quarantine consistent with USDA regulations found in 7 CFR, Part 301, Subpart--Citrus Greening and Asian Citrus Psyllid, §§301.76 - 301.76-11, and with Federal Order DA-2012-30 issued by USDA-APHIS on August 9, effective September 1, 2012.

The citrus and nursery industries are in peril because, without the adoption of the proposed quarantine action on a permanent basis, USDA could quarantine the entire state of Texas and, as a result, important export markets for citrus plants could be lost and all citrus plants would be subject to more costly production in enclosed structures under stringent requirements prior to export from the state. This proposed quarantine takes necessary steps to prevent the spread of the infection, thus protecting the state's citrus fruit and nursery crops, agricultural industries of vital importance to the state of Texas.

Dr. Awinash Bhatkar, Coordinator for Environmental and Biosecurity Programs, has determined that for the first five-year period the proposed new sections are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the sections, as proposed.

Dr. Bhatkar has also determined that for each of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing the proposed sections will be reduction in the spread of citrus greening due to manmade activities. There will be treatment costs to nurseries, including small and/or micro-businesses, that propagate or move regulated articles within or from the citrus zone, within the quarantined area, or (under a USDA compliance agreement) from the quarantined area to free areas. In order to comply with the proposed new sections, businesses located in the quarantined area may be required to treat by means specified in the "Interstate Movement of Citrus and other Rutaceous Plants For Planting From Areas Quarantined for Citrus Canker, Citrus Greening, or Asian Citrus Psyllid" as published by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine. Although citrus fruit are not regulated articles, because regulated articles such as leaves, twigs and insects (including ACP, if present), commonly become mixed with the citrus fruit, the quarantine necessarily includes treatment and handling requirements to mitigate risks associated with movement and processing of harvested commercial citrus fruit. The cost of required treatments will depend on factors such as the volume of articles being moved as well as treatment materials

and methods that are employed. Consequently, the specific cost to impacted businesses cannot be determined at this time.

Comments on the proposal may be submitted to Dr. Awinash Bhatkar, Coordinator for Environmental and Biosecurity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code, §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; and §12.020, which authorizes the department to assess administrative penalties for violations of Chapter 71.

The code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 71.

§19.615. Basis for Quarantine; Quarantined Pest - Dangerous Plant Disease (Proscribed Biological Entity).

(a) Quarantined pest is citrus greening. The department finds that citrus greening, *"Candidatus* Liberibacter asiaticus," is a dangerous plant disease that is not widely distributed in this state.

(b) Description of dangerous plant disease. Host plants. Citrus greening is a dangerous plant disease that can infect and be carried by all plant parts (including leaves and propagative seeds) except fruit of *Aegle marmelos, Aeglopsis chevalieri, Afraegle gabonensis, A. paniculata, Amyris madrensis, Atalantia* spp. (including *Atalantia monophylla), Balsamocitrus dawei, Bergera; (= Murraya) koenigii, Calodendrum capense, Choisya ternata, C. arizonica,* X *Citroncirus webberi, Citropsis articulata, Citropsis gilletiana, Citrus madurensis* (= X *Citrofortunella microcarpa), Citrus* spp., *Clausena anisum-olens, C. excavata, C. indica, C. lansium, Eremocitrus glauca, Eremocitrus* hybrid, *Esenbeckia berlandieri, Fortunella* spp., *Limonia acidissima, Merrillia caloxylon, Microcitrus australasica, M. australis, M. papuana,* X *Microcitronella* spp., *Murraya* spp., *Naringi crenulata, Pamburus missionis, Poncirus trifoliata, Severinia buxifolia, Swinglea glutinosa, Tetradium ruticarpum, Toddalia asiatica, Triphasia trifolia, Vepris* (= *Toddalia) lanceolata,* and *Zanthoxylum fagara.* A majority of these plants also are hosts of Asian citrus psyllid *Diaphorina citri,* the vector of citrus greening in the United States. Citrus greening is a bacterial disease that attacks the vascular system of plants. Once infected, there is no cure for a tree with citrus greening disease. In areas of the world where citrus greening is endemic, citrus trees decline and die within a few years. Citrus greening is considered a serious disease by the United States Department of Agriculture (USDA) as well as many states.

(c) Establishment of quarantine. The department is authorized by the Texas Agriculture Code, §71.002, to establish a quarantine against the dangerous plant disease, citrus greening, identified in this section.

§19.616. Infested Geographical Areas Subject to the Quarantine.

(a) Quarantined infested areas.

(1) Quarantined infested areas, or quarantined areas (infested geographical areas subject to the quarantine), are those locations within this state in which the dangerous plant disease is currently found, from which dissemination of the disease is to be prevented, and within which the disease is to be managed or eradicated.

(2) The quarantine boundaries found in subsection (b) of this section are declared to be the boundaries of quarantined infested areas, or quarantined areas. The department may designate additional or expanded quarantined infested areas or quarantined areas, or a reduction of the quarantined area based upon the confirmation of the presence or absence of the citrus greening. The designations will be effective upon the posting of the notification of the quarantined infested areas or quarantined areas on the department's website (http://www.Texas-Agriculture.gov). Notification consists of a map and a description of the quarantined infested areas or quarantined areas. A printed copy of the notification is available at the department's Valley Regional Office, 900-B, East Expressway 83, San Juan, Texas 78217, (956) 787-8866. In addition, notification will be made through press release by the department. Each quarantined area is bounded on all sides by a line drawn using the World Geographic Coordinate System of 1984.

(b) The Quarantine Boundary in Hidalgo County is described as: Starting at a point described as N26.092345 degrees and W98.143389 degrees, then West to a point described as N26.091944 degrees and W98.151891 degrees, then West to a point described as N26.092451 degrees and W98.161387 degrees, then West to a point described as N26.095246 degrees and W98.176367 degrees, then North West to a point described as N26.102571 degrees and W98.194316 degrees, then North West to a point described as N26.112126 degrees and W98.207752 degrees, then North West to a point described as N26.119346 degrees and W98.214906 degrees, then North West to a point described as N26.127551 degrees and W98.221651 degrees, then North West to a point described as N26.130722 degrees and W98.223631 degrees, then North to a point described as N26.147012 degrees and W98.230526 degrees, then North to a point described as N26.163728 degrees and W98.232918 degrees, then North to a point described as N26.16734 degrees and W98.232894 degrees, then North to a point described as N26.177266 degrees and W98.231828 degrees, then North East to a point described as N26.19214 degrees and W98.227227 degrees, then North East to a point described as N26.202493 degrees and W98.221654 degrees, then North East to a point described as N26.215525 degrees and W98.210556 degrees, then North East to a point described as N26.222527 degrees and W98.201611 degrees, then North East to a point described as N26.227622 degrees and W98.193957 degrees, then East to a point described as N26.232083 degrees and W98.184415 degrees, then East to a point described as N26.23386 degrees and W98.179397 degrees, then East to a point described as N26.237379 degrees and W98.163353 degrees, then East to a point described as N26.237807 degrees and W98.159345 degrees, then East to a point described as N26.237712 degrees and W98.143327 degrees, then East to a point described as N26.237237 degrees and W98.139326 degrees, then East to a point described as N26.233989 degrees and W98.124833 degrees, then South East to a point described as N26.228947 degrees and W98.112357 degrees, then South East to a point described as N26.223016 degrees and W98.102392 degrees, then South East to a point described as N26.221195 degrees and W98.099903 degrees, then South East to a point described as N26.214489 degrees and W98.092725 degrees, then South East to a point described as N26.211194 degrees and W98.08897 degrees, then South East to a point described as N26.206528 degrees and W98.085674 degrees, then South East to a point described as N26.205749 degrees and W98.084508 degrees, then South to a point described as N26.192155 degrees and W98.076608 degrees, then South to a point described as N26.18401 degrees and W98.07367 degrees, then South to a point described as N26.171354 degrees and W98.071269 degrees, then South to a point described as N26.15736 degrees and W98.07138 degrees, then South to a point described as N26.148793 degrees and W98.072948 degrees, then South West to a point described as N26.139332 degrees and W98.076024 degrees, then South West to a point described as N26.126285 degrees and W98.083128 degrees, then South West to a point described as N26.115956 degrees and W98.09171 degrees, then South West to a

point described as N26.103864 degrees and W98.107304 degrees, then West to a point described as N26.097624 degrees and W98.120351 degrees, then West to a point described as N26.093646 degrees and W98.13438 degrees and then returning West to the Starting Point.

(c) A map of the quarantined area may be obtained by contacting the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866, or by visiting the department's website at: http://www.TexasAgriculture.gov.

§19.617. Articles Subject to the Quarantine

An article subject to the quarantine, or regulated article, is any article described as a regulated article by Title 7, Code of Federal Regulations (CFR) §301.76-2.

§19.618. Restrictions on Production, Movement or Distribution of Articles Subject to the Quarantine.

(a) In addition to other restrictions that may apply:

(1) In a quarantined area, any regulated article intended for interstate movement, distribution or sale shall conform to:

(A) the requirements of 7 CFR §301.76; and

(B) those requirements of §19.622 of this subchapter (relating to Mandatory Treatment of Citrus Nursery Plants in the Citrus Zone) that apply to all regulated articles intended for interstate movement; or

(2) In a quarantined area, any regulated article intended for intrastate movement, distribution or sale:

(A) shall not be moved, except as specified in this subchapter; and

(B) shall conform to the requirements of §19.622 of this subchapter that apply to any regulated article produced or under production in the citrus zone, that is intended either for intrastate sale or for commercial or noncommercial distribution or movement.

(3) Regulated articles currently under seizure under the Deputy Commissioner of Agriculture's emergency seizure order of January 18, 2012, shall either be:

(A) held without further movement within or outside the quarantined area and treated with a department approved systemic pesticide (soil drench) labeled for the control of Asian citrus psyllid and for use on those plants, in accordance with that label, for the duration of the quarantine maintaining the plants free of Asian citrus psyllid; or

(B) moved within the quarantined area under the conditions of a special permit or compliance agreement issued by the department; or

(C) destroyed.

(b) Transitory movement of regulated articles through a quarantined area shall be done only in a sealed, insect-proof container that shall not remain in the quarantined area beyond the time required for simple transit.

(c) Movement of regulated articles into a quarantined area shall be conducted as follows.

(1) Except as covered by subsection (b) of this section, movement of regulated articles into a quarantined area must be performed under a compliance agreement with the department.

(2) Retail purchasers who take regulated articles purchased outside of a quarantined area directly to their home or business inside the quarantined area and permanently plant the regulated article promptly at that address are exempt from paragraph (1) of this subsection.

(d) Propagation, sale or distribution of regulated articles.

(1) Any person who propagates regulated articles in a quarantined area, other than for personal noncommercial use on the same property, or who sells, distributes or moves regulated articles, shall do so only under a special permit or a compliance agreement with the department.

(2) Under a special permit or compliance agreement from the department, regulated articles may be moved intrastate out of a quarantined area, if the regulated articles are compliant with all production, treatment, recordkeeping and shipment requirements that apply to regulated articles intended for interstate movement, as provided in 7 CFR §301.76 and in the "Interstate Movement of Citrus and other Rutaceous Plants For Planting From Areas Quarantined for Citrus Canker, Citrus Greening, or Asian Citrus Psyllid" as published by the United States Department of Agriculture, Animal and Plant Health Inspection Service (USDA-APHIS), Plant Protection and Quarantine. A copy of the requirements may be obtained by contacting the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866.

(e) Detached citrus fruit originating within a quarantined area may be moved outside the quarantined area provided the fruit is treated, harvested, transported and packed under the conditions outlined in the August 9, 2012, Federal Order (DA-2012-30) issued by the USDA-APHIS, Plant Protection and Quarantine, entitled "Quarantine for *'Candidatus* Liberibacter asiaticus' Causal Agent of Citrus Greening (CG)".

(f) To request a special permit, a compliance agreement, or a copy of applicable departmental or federal requirements, contact the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866.

§19.619. Consequences for Failure to Comply with Quarantine Restrictions.

A person who fails to comply with quarantine restrictions or requirements or a department order relating to the quarantine is subject to administrative or civil penalties up to $10,000 per day for any violation of the order and to the assessment of costs for any treatment or destruction that must be performed by the department in the absence of such compliance. Additionally, the department is authorized to seize and treat or destroy, or order to be treated or destroyed, any quarantined article that is found to be infested with the quarantined pest or, regardless of whether infected or not, transported within, out of, or through the quarantined area in violation of this subchapter.

§19.620. Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions.

An order under the quarantine may be appealed according to procedures set forth in the Texas Agriculture Code, §71.010.

§19.621. Conflicts Between Graphical Representations and Textual Descriptions; Other Inconsistencies.

(a) In the event that discrepancies exist between graphical representations and textual descriptions in this subchapter, the representation or description creating the larger geographical area or more stringent requirements regarding the handling or movement of quarantined articles shall control.

(b) The textual description of the plant disease shall control over any graphical representation of the same.

(c) Where otherwise clear as to intent, the mistyping of a scientific or common name in this subchapter shall not be grounds for avoiding the requirements of this subchapter.

§19.622. Mandatory Treatment of Citrus Nursery Plants in the Citrus Zone.

(a) Treatment Requirements:

(1) Interstate sale, distribution or movement. Any regulated article produced or under production in the citrus zone, as specified in §21.4 of this title (relating to Citrus Zone), that is intended for interstate sale, distribution or movement shall be treated as provided in 7 CFR §301.76, and as specified in the "Interstate Movement of Citrus and other Rutaceous Plants For Planting From Areas Quarantined for Citrus Canker, Citrus Greening, or Asian Citrus Psyllid" as published by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine. A copy of the requirements may be obtained by contacting the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866; and

(2) Intrastate sale, distribution or movement. Any regulated article produced or under production in the citrus zone, as specified in §21.4 of this title, that is intended for intrastate sale, distribution or movement, either within or outside of the Citrus Zone:

(A) Prior to any sale, distribution or movement shall be treated as specified in the "Interstate Movement of Citrus and other Rutaceous Plants For Planting From Areas Quarantined for Citrus Canker, Citrus Greening, or Asian Citrus Psyllid" as published by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine; and

(B) If any maximum treatment period specified under subparagraph (A) of this paragraph expires before all regulated articles have been sold, distributed or moved, the required treatment shall be re-applied, as necessary. No regulated article that is not compliant with all treatment requirements may be sold, distributed, or moved.

(C) A copy of the requirements in this subsection may be obtained by contacting the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866.

(b) Treatment records. Records of the lot numbers treated and of the treatment materials and treatment dates for each treatment required under subsection (a) of this section shall be maintained by the nursery for a period of not less than two years following the last treatment date for a given lot of regulated articles, and records shall be made available to an authorized department or USDA employee, upon request during normal business hours.

(c) Exemptions. For regulated articles intended for intrastate sale or for intrastate commercial or noncommercial distribution or movement, the following are exempt from the requirements of this section:

(1) Any retail location that possesses a valid Class 1 nursery/floral registration, as required by §22.3 of this title (relating to Nursery/Floral Registration Classifications and Fees); or

(2) Any person who purchases or otherwise receives a regulated article for that person's own use and not for further sale, distribution or movement, is exempt from the requirements of this section.

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

Filed with the Office of the Secretary of State on November 19, 2012.

TRD-201205985

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: January 6, 2013
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER O. UNBUNDLING AND MARKET POWER

DIVISION 2. INDEPENDENT ORGANIZATIONS

16 TAC §25.362

The Public Utility Commission of Texas (commission) proposes an amendment to §25.362, relating to Electric Reliability Council of Texas (ERCOT) Governance. The proposed amendment establishes that the commission may remove an unaffiliated member of the ERCOT governing board only for "cause." This rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act §39.001(e). Project Number 40862 is assigned to this proceeding.

Rebecca Reed, Wholesale Markets Analyst, Competitive Markets 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. Reed 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 the amendment will be to provide regulatory certainty to unaffiliated members of the governing board by removing the broad authority of the commission to remove such a board member with or without cause. The amendment also provides four categorical definitions of cause for removal. There are no economic costs to persons who are required to comply with the amendment. 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.

Ms. Reed 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.

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 at 10:00 a.m. on Wednesday, January 23, 2013. The request for a public hearing must be received by Monday, January 7, 2013.

Initial 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, on or before Monday, January 7, 2013. Sixteen copies of comments on the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted on or before Monday, January 21, 2013. Comments should be organized in a manner consistent with the organization of the amended 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 40862.

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. In addition, PURA §39.151 provides that an independent organization certified by the commission is directly responsible and accountable to the commission, and provides that the commission may take appropriate action against an independent organization that does not adequately perform the organization's functions or duties or does not comply with PURA §39.151.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.151.

§25.362. Electric Reliability Council of Texas (ERCOT) Governance.

(a) - (f) (No change.)

(g) Qualifications, selection, and removal of members of the governing board. ERCOT shall establish and implement criteria for an individual to serve as a member of its governing board, procedures to determine whether an individual meets these criteria, and procedures for removal of an individual from service if the individual ceases to meet the criteria.

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

(5) ERCOT shall notify the commissioners when a vacancy occurs for an unaffiliated member of the governing board. ERCOT shall provide information to the commissioners concerning the process for selecting a new member, the candidates who have been identified and their qualifications, any recommendation that will be made to the governing board, and any other information requested by a commissioner. The selection of an unaffiliated member of the governing board is subject to approval by the commission. A person who is selected may not serve as a member of the governing board until the commission approves the selection. An unaffiliated board member whose three-year term has expired shall, if reappointed by the ERCOT governing board, cease serving as a member of the governing board until the reappointment is approved by the commission. The commission may remove an unaffiliated member of the governing board for [~~without~~] cause. Compensation, per diem and travel reimbursements to be paid to unaffiliated members of the governing board shall be subject to commission review and approval. As used in this paragraph, "cause" shall mean:

(A) a violation of a commission rule or applicable statute, an ERCOT rule, or written ERCOT policy or procedure adopted under this section;

(B) a director is indicted or charged with a felony or is convicted of a misdemeanor involving moral turpitude;

(C) conduct inconsistent with a director's fiduciary duty to ERCOT or that may reflect poorly upon the board or ERCOT; or

(D) a fundamental disagreement with the commission as to the policies or procedures that ERCOT shall adopt, in each case as determined by the commission at its sole discretion.

(6) (No change.)

(h) - (k) (No change.)

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

Filed with the Office of the Secretary of State on November 19, 2012.

TRD-201205992
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: January 6, 2013
For further information, please call: (512) 936-7223

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 76. WATER WELL DRILLERS AND WATER WELL PUMP INSTALLERS

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 76, §76.10, proposes new rules at §§76.20 - 76.26, 76.30, 76.62, 76.65, 76.70 - 76.76, 76.78, 76.80, 76.90, and 76.100 - 76.111, and proposes the repeal of existing rules at §§76.200 - 76.206, 76.250, 76.300, 76.600 - 76.602, 76.650, 76.700 - 76.706, 76.708, 76.800, 76.900, and 76.1000 - 76.1011, regarding the Water Well Driller and Water Well Pump Installer program. These changes are collectively referred to as "proposed rules" or "the proposal" in this document. These proposed rules are necessary to implement the changes recommended by Department staff and the Water Well Advisory Council (Council) as a result of the rule review of 16 TAC Chapter 76, which included the appointment of a four-member Council workgroup for this purpose.

The Department conducted its four-year rule review of 16 TAC Chapter 76, Water Well Drillers and Water Well Pump Installers, in accordance with the requirements of Texas Government Code, §2001.039. The Department found the rules to be still essential in implementing Texas Occupations Code, Chapters 1901 and 1902 (the Code), and the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, re-adopted the rules which appeared in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8606). As part of the *Texas Register* notice announcing the re-adoption of the rules, the Department stated that any proposed amendments to the rules as a result of the rule review would be published in the *Texas Register* at a future date for a 30-day public comment period.

As a result of that rule review, the Department is proposing streamlining and simplifying the rules by removing text which is more appropriate in other formats, such as on application forms, or on the program website in the form of frequently asked questions. Also, for consistency and ease of use, the Depart-

ment is proposing the reorganization of the rules so they are more aligned with the rule formats used in other programs. The Department is proposing repeal of the regulation of the Driller and Installer Apprentices, which currently includes a registration and renewal fee, continuing education and other requirements. The Department believes that the Code does not authorize this regulation. Unlicensed persons who perform drilling and installing work for licensees still must be directly supervised according to the statutes and proposed rules, and those requirements remain largely unchanged. The combined proposed rule changes should make the rules easier to understand and bring the rules into compliance with the Code mandates.

The proposed amendments to §76.10 delete terms which are also defined in the Code and add definitions which clarify terms used in the Code and rules. Additionally, the proposed amendment to the definition of "monitoring well" was expanded to include a "geotechnical borehole" at the recommendation of the Council workgroup, because of the potential for harm to groundwater.

Section 76.201 is proposed for repeal and replaced with proposed new §76.21 which deletes unnecessary language regarding the examination and adds requirements for obtaining Driller or Installer specialty endorsements, relocated from another subsection.

Section 76.203 is proposed for repeal and replaced with proposed new §76.23 to streamline the rule section to align with other program rules and to repeal the limitation on taking the examination only twice within a twelve-month period.

Section 76.250 is proposed for repeal and replaced with proposed new §76.25. Also, any reference to registration of Apprentices is deleted. Proposed new subsection (g) states that Drillers and Installers may place their licenses on "inactive status" and while "inactive" are not required to take continuing education until they seek to return to "active" status.

Section 76.300 is proposed for repeal and replaced with proposed new §76.30. All of the exemptions except "Underground Storage Tank Contractors" and "hand auger soil borings" are proposed to be deleted because they are either set forth in the Code or are outside the mandates of the Code.

Section 76.602 is proposed for repeal and replaced with proposed new §76.62 to clarify the Department's responsibility to provide notification when a driller or installer encounters injurious water. The text relating to a hearing for a landowner who refuses to plug or complete a well is proposed for repeal because the Department does not believe the Code authorizes formal enforcement against a landowner in this circumstance.

Section 76.800 is proposed for repeal and replaced with proposed new §76.80 which deletes language relating to examination fees, since those fees are currently collected by the examination providers. Additionally, the proposal adds fees related to inactive status, and the section is reorganized to align more closely with rules in other regulated programs.

Section 76.1000 is proposed for repeal and replaced with proposed new §76.100. The term "static water level" is replaced with "production zone". This proposed revision is to further protect groundwater because the static water level can be very shallow, for example, two feet below ground surface and that would not provide enough room for adequate cementing of the annulus to prevent surface contamination from entering the well. Additionally, the proposal deletes text relating to an exemption for Class V injection wells.

Section 76.1004 is proposed for repeal and replaced with proposed new §76.104. The text relating to applying for a variance is proposed to be deleted in this section because it is found within another rule section. Proposed new subsection (e) is added to clarify that any licensee or landowner has authority to remove the pump.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments, new rules, and repeals are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposal. The Department estimates that there will be a loss in revenue to the state as a result of enforcing or administering the proposal due to the loss of the Apprentice program. Currently there are 900 registered driller or installer apprentices who pay $65 for the initial license and $65 annually to renew, for a total of $58,500. The Department believes that the resources utilized to administer the program can be redirected to strengthen other functions within the Department.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments, new rules, and repeals are in effect, the public benefit will be the lessening of regulatory burdens and increased efficiencies.

There is no anticipated adverse economic effect on small or micro-business or to persons who are required to comply with the rules as proposed. Since the agency has determined that the proposal will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

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

16 TAC §§76.10, 76.20 - 76.26, 76.30, 76.62, 76.65, 76.70 - 76.76, 76.78, 76.80, 76.90, 76.100 - 76.111

The amendments and new rules are proposed under Texas Occupations Code, Chapters 51, 1901 and 1902, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed amendments and new rules are those set forth in Texas Occupations Code, Chapters 51, 1901 and 1902. No other statutes, articles, or codes are affected by the proposal.

§76.10. Definitions.

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

(1) Altering--The process of changing the original design or intent of a completed well.

[~~(1) Abandoned well--A well that has not been used for six consecutive months. A well is considered to be in use in the following cases:~~]

[~~(A) a non-deteriorated well which contains the casing, pump, and pump column in good condition; or~~]

[~~(B) non-deteriorated well which has been capped.~~]

(2) Annular space--The space between the casing and borehole wall.

(3) Atmospheric barrier--A section of cement placed from two feet below land surface to the land surface when using granular sodium bentonite as a casing sealant or plugging sealant in lieu of cement.

(4) Bentonite--A sodium hydrous aluminum silicate clay mineral (montmorillonite) commercially available in powdered, granular, or pellet form which is mixed with potable water and used for a variety of purposes including the stabilization of borehole walls during drilling, the control of potential or existing high fluid pressures encountered during drilling below a water table, and to provide a seal in the annular space between the well casing and borehole wall.

(5) Bentonite grout--A fluid mixture of sodium bentonite and potable water mixed at manufacturers' specifications to a slurry consistency that can be pumped through a pipe directly into the annular space between the casing and the borehole wall. Its primary function is to seal the borehole in order to prevent the subsurface migration or communication of fluids.

(6) Borehole or well bore--The drilled hole.

(7) [~~(6)~~] Capped well--A well that is closed or capped with a covering capable of preventing surface pollutants from entering the well and sustaining weight of at least 400 pounds and constructed in such a way that the covering cannot be easily removed by hand.

(8) [~~(7)~~] Casing--A watertight pipe which is installed in an excavated or drilled hole, temporarily or permanently, to maintain the hole sidewalls against caving, advance the borehole, and in conjunction with cementing and/or bentonite grouting, to confine the ground waters to their respective zones of origin, and to prevent surface contaminant infiltration.

(A) Plastic casing--National Sanitation Foundation (NSF-WC) or American Society of Testing Material (ASTM) F-480 minimum SDR 26 approved water well casing.

(B) Steel Casing--New ASTM A-53 Grade B or better and have a minimum weight and thickness of American National Standards Institute (ANSI) schedule 10.

(C) Monitoring wells may use other materials, such as fluoropolymer (Teflon), glass-fiber-reinforced epoxy, or various stainless steel alloys.

(9) [~~(8)~~] Cement--A neat portland or construction cement mixture of not more than seven gallons of water per 94-pound sack of dry cement, or a cement slurry which contains cement along with bentonite, gypsum or other additives.

(10) Cessation of drilling--When the borehole has been drilled to total depth and casing has been placed in the borehole.

(11) [~~(9)~~] Chemigation--A process whereby pesticides, fertilizers or other chemicals, or effluents from animal wastes is added to irrigation water applied to land or crop, or both, through an irrigation distribution system.

(12) [~~(10)~~] Closed Loop Geothermal Well--A vertical closed system well used to circulate water, and other fluids or gases through the earth as a heat source or heat sink.

(13) Code--Refers to Texas Occupations Code, Chapters 1901 and 1902.

(14) Commingling--The mixing, mingling, blending or combining through the borehole casing annulus or the filter pack of waters that differ in chemical quality, which causes quality degradation of any aquifer or zone.

[~~(11) Commission--The Texas Commission of Licensing and Regulation.~~]

[~~(12) Complainant--A person who has filed a complaint with the Texas Department of Licensing and Regulation (Department) against any party subject to the jurisdiction of the Department. The Department may be the complainant.~~]

(15) [~~(13)~~] Completed monitoring well--A monitoring well which allows water from a single water-producing zone to enter the well bore, but isolates the single water-producing zone from the surface and from all other water-bearing zones by proper casing and/or cementing procedures. Annular space positive displacement or pressure tremie tube grouting or cementing (sealing) method shall be used when encountering undesirable water or constituents above or below the zone to be monitored or if the monitoring well is greater than twenty (20) feet in total depth. The single water-producing zone shall not include more than one continuous water-producing unit unless a qualified geologist or a groundwater hydrologist has determined that all the units screened or sampled by the well are interconnected naturally.

(16) [~~(14)~~] Completed to produce undesirable water--A completed well which is designed to extract water from a zone which contains undesirable water.

(17) [~~(15)~~] Completed water well--A water well, which has sealed off access of undesirable water or constituents to the well bore by utilizing proper casing and annular space positive displacement or pressure tremie tube grouting or cementing (sealing) methods.

(18) [~~(16)~~] Constituents--Elements, ions, compounds, or substances which may cause the degradation of the soil or ground water.

(19) [~~(17)~~] Dry litter poultry facility--Fully enclosed poultry operation where wood shavings or similar material is used as litter.

(20) [~~(18)~~] Easy access--Access is not obstructed by other equipment and the fitting can be removed and replaced with a minimum of tools without risk of breakage of the attachment parts.

(21) [~~(19)~~] Edwards aquifer--That portion of an arcuate belt of porous, water bearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, Williamson, and Bell Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Formation and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

(22) [~~(20)~~] Environmental soil boring--An artificial excavation constructed to measure or monitor the quality and quantity or movement of substances, elements, chemicals, or fluids beneath the surface of the ground. The term shall not include any well that is used in conjunction with the production of oil, gas, or any other minerals.

(23) Filter pack--The media that is used in the annular space around the well screen to create a filter to prevent sand or sediment from entering the well.

[(21) Executive Director--means the executive director of the Department.]

(24) [(22)] Flapper--The clapper, closing, or checking device within the body of the check valve.

(25) [(23)] Foreign substance--Constituents that include recirculated tailwater and open-ditch water when a pump discharge pipe is submerged in the ditch.

(26) [(24)] Freshwater--Water whose bacteriological, physical, and chemical properties are such that it is suitable and feasible for beneficial use.

(27) Geotechnical borehole--A hole drilled or bored to obtain soil samples, information on the physical properties of soil and rock, or to check groundwater quality.

(28) [(25)] Granular sodium bentonite--Sized, coarse ground, untreated, sodium based bentonite (montmorillonite) which has the specific characteristic of swelling in freshwater.

(29) Grout--This term shall include cement or bentonite mixed with water, or a combination of bentonite and cement mixed with water and/or Department-approved additives.

[(26) Groundwater conservation district--Any district or authority to which Chapter 36, Water Code, applies and that has the authority to regulate the spacing or production of water wells.]

[(27) Injection well includes:]

[(A) an air-conditioning return flow well used to return water that has been used for heating or cooling in a heat pump to the aquifer that supplied the water;]

[(B) a cooling water return flow well used to inject water that has been used for cooling;]

[(C) a drainage well used to drain surface fluid into a subsurface formation;]

[(D) a recharge well used to replenish water in an aquifer;]

[(E) a saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into fresh water;]

[(F) a sand backfill well used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines;]

[(G) a subsidence control well used to inject fluids into a non-oil-producing or non-gas-producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water; and]

[(H) a closed system geothermal well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink.]

(30) [(28)] Irrigation distribution system--A device or combination of devices having a hose, pipe, or other conduit which connects directly to any water well or reservoir connected to the well, through which water or a mixture of water and chemicals is drawn and applied to land. The term does not include any hand held hose sprayer or other similar device, which is constructed so that an interruption in water flow automatically prevents any backflow to the water source.

(31) [(29)] Monitoring well--Includes environmental soil borings, piezometer wells, observation wells, recovery wells, and geotechnical boreholes. [An artificial excavation constructed to measure or monitor the quality and/or quantity or movement of substances, elements, chemicals, or fluids beneath the surface of the ground. Included within this definition are environmental soil borings, piezometer wells, observation wells, and recovery wells. The term shall not include any well that is used in conjunction with the production of oil, gas, coal, lignite, or other minerals.]

(32) [(30)] Mud for drilling--A relatively homogenous, viscous fluid produced by the suspension of clay-size particles in water or the additives of bentonite or polymers.

(33) Offering to perform--Making a written or oral proposal, contracting in writing or orally to perform well drilling or pump installing work, or advertising in any form through any medium that a person or business entity is a well driller or pump installer, or that implies in any way that a person or business entity is available to contract for or perform well drilling or pump installing work.

(34) [(31)] Piezometer--A device so constructed and sealed as to measure hydraulic head at a point in the subsurface.

(35) [(32)] Piezometer well--A well of a temporary nature constructed to monitor well standards for the purpose of measuring water levels or used for the installation of piezometer resulting in the determination of locations and depths of permanent monitor wells.

(36) [(33)] Placement and preparation for operation of equipment and materials--Includes but is not limited to removing the pump.

(37) [(34)] Plugging--An absolute sealing of the well bore.

(38) [(35)] Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water that renders the water harmful, detrimental, or injurious to humans, animals, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any or reasonable purpose.

(39) Positive placement method--The process in which the cement, bentonite or a combination of the two sealing materials is forced through the well casing followed by water or drilling fluids, via a mechanical pump and out through relief holes in the casing at the maximum depth of the zone to be grouted. The grout then returns under pressure to the surface through the annular space and upon curing or setting causing an annular seal.

(40) [(36)] Potable water--Water which is safe for human consumption in that it is free from impurities in amounts sufficient to cause disease or harmful physiological effects. [For purposes of this chapter, water may be rendered potable by adding chlorine bleach at the rate of one (1) gallon of bleach for every 500 gallons of water.]

(41) [(37)] Public water system--A system supplying water to a number of connections or individuals, as defined by current rules and regulations of the Texas Commission on Environmental Quality, 30 TAC Chapter 290.

(42) [(38)] Recharge zone--Generally, that area where the stratigraphic units constituting the Edward Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such in official maps in the appropriate regional office of the Texas Commission on Environmental Quality.

(43) Reconditioning--The process where a well is cleaned out to original depth and the water production is restored. This term shall include any procedures that make the well operable.

(44) Re-completion--The process to bring an existing well into compliance with §76.100 or §76.105 by installing any and all

sanitary seals, safeguards, casing, grouting, and the re-setting of well screens as required.

(45) [~~(39)~~] Recovery well--A well constructed for the purpose of recovering undesirable groundwater for treatment or removal of contamination.

(46) [~~(40)~~] Sanitary well seal--A watertight device to maintain a junction between the casing and the pump column.

(47) [~~(41)~~] Test well--A well drilled to explore for groundwater.

(48) Tremie pipe method--The process in which a small diameter pipe or tubing is inserted in the annular space of the well to the maximum depth of the zone to be sealed, before the grouting procedure is commenced to pump sealing material through. The tubing or pipe may be retrieved during the grouting process, causing an annular seal.

(49) [~~(42)~~] Undesirable water--Water that is injurious to human health and the environment or water that can cause pollution to land or other waters.

(50) [~~(43)~~] Water or waters in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

~~[(44) Well--A water well, test well, injection well, dewatering well, monitoring well, closed loop geothermal well, piezometer well, observation well, or recovery well.]~~

(51) [~~(45)~~] State of Texas Well Report (Well Log)--A log recorded on forms prescribed by the department [~~Department~~], at the time of drilling showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, depth, size, and character of casing installed, together with any other data or information required by the executive director [~~Executive Director~~].

§76.20. Licensing Requirements--General.

A person may not act or offer to act as a driller or pump installer unless the person holds a license issued by the executive director pursuant to the Texas Occupations Code, Chapters 1901 and 1902.

§76.21. Requirements for Issuance of a Driller or Pump Installer License.

(a) An applicant must submit a completed application, and the required fee.

(b) An applicant must complete all requirements within one year of the date the application is filed.

(c) A licensee, not licensed to perform all types of well drilling and pump installation, may apply for endorsements. Applications for additional endorsements shall be accompanied by the appropriate application fee, and shall contain all information required by this chapter for an initial license. Upon examination of the applicant's qualifications, the executive director shall deny or grant additional endorsements to an existing license.

(d) An applicant must have sufficient installation/drilling experience as set forth in paragraphs (1) and (2) to be eligible to take each endorsement examination.

(1) Drillers Endorsements--Qualifying number of installation/drillings

(A) Water Wells (W)--15

(B) Monitor Wells (M)--50

(C) Injection Wells (N)--50

(D) Dewatering Wells (D)--50

(E) Closed Loop Geothermal Wells (C)--50

(2) Pump Installer Endorsements--Qualifying number of installation/drillings

(A) Single Phase Pumps (P)--15

(B) 3 Phase Pumps (K)--15

(C) Turbine Pump (T)--15

(D) Windmill, Pump jack, hand pump--15

(e) An applicant who has demonstrated competency in all types of well drilling shall be deemed qualified for a master driller's license.

(f) An applicant who has demonstrated competency in all types of pump installation shall be deemed qualified for a master pump installer's license.

§76.22. Applications for Licenses and Renewals.

(a) Application shall be made on forms approved by the department.

(b) When the department determines that the qualifications submitted in the application meet the requirements for taking the requested license examination, the applicant is eligible to take the examination.

(c) A license issued by the department will expire annually from the date of issuance.

§76.23. Examinations.

(a) To be eligible for an examination, the applicant must submit a completed license application and pay the required fee.

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

(c) A passing grade is 70%.

§76.24. License Renewal.

(a) On or before the expiration date of the license, the licensee shall pay an annual renewal fee to the department and submit an application for renewal.

(b) To renew a license, the licensee is required to show proof of four (4) hours of continuing education in compliance with §76.25(b).

§76.25. Continuing Education.

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

(b) To renew a license as a driller or pump installer, a licensee must complete four (4) hours of continuing education in courses approved by the department. The continuing education hours must include the following:

(1) one (1) hour of instruction dedicated to the Water Well Driller/Pump Installer statutes and rules; and

(2) three (3) hours of instruction in topics directly related to the water well industry, including but not limited to well and water well pump standards, geologic characteristics of the state, state groundwater

laws and related regulations, well construction and pump installation practices and techniques, health and safety, environmental protection, technological advances, or business management.

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

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

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

(f) To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the topics listed in subsection (b), and the provider must be registered under Chapter 59 of this title.

(g) A licensee whose license has been placed on "inactive" status pursuant to Texas Occupations Code, §51.4011 is not required to complete continuing education as required by this section until the licensee seeks to change to "active" status.

§76.26. A Person Assisting Licensed Driller or Licensed Pump Installers.

(a) A person not licensed to perform drilling or pump installing work may assist a licensed driller or pump installer provided that the unlicensed person is not primarily responsible for the drilling or installation operations, and provided that the unlicensed person:

(1) performs drilling work under the direct supervision of a licensed driller; or

(2) performs pump installing work under the direct supervision of a licensed pump installer.

(b) A licensed driller or pump installer may directly supervise no more than three unlicensed persons at any time.

(c) A licensed driller or pump installer shall provide to the department, at the time of license renewal on a form prescribed by the department, a written list of all of the unlicensed assistants who the licensee directly supervises to perform drilling or pump installing work at the time of the renewal and who performed drilling or installing work under their supervision at any time during the previous 12 month period of the licensee's license term.

(d) For purposes of this chapter and the Code, a licensed driller or pump installer provides "direct supervision" to an unlicensed assistant if the licensed driller or pump installer:

(1) is present at the well site at all times during all drilling or pump installing operations; or

(2) is represented at the well site by an unlicensed assistant, capable of immediate communication with the licensed driller or pump installer at all times and the licensed driller or pump installer is no more than a reasonable distance from the well site, but no further than an 8 hour arrival time; and

(3) inspects the well site at least once in every 24-hour period of operation.

(e) The supervising licensee is responsible for ensuring that the unlicensed person performs drilling or pump installing work in compliance with the Code and this chapter.

(f) Any allegation of a violation of this chapter or the Code against an unlicensed person performing work as set forth in this chapter, shall be opened as a complaint against the supervising licensee.

§76.30. Exemptions.

The following are not required to obtain a license under Chapters 1901 and 1902 of the Texas Occupations Code.

(1) Any person who, pursuant to 30 TAC Chapter 334, Subchapter I, possesses a Class A or Class B Underground Storage Tank (UST) Installers' license who drills observation wells within the backfill of the original excavation for USTs, including associated piping and pipe trenches (tank plumbing and piping), to a depth of no more than two feet below the tank bottom. However, if the total depth exceeds 20 feet below ground surface, a licensed driller is required to drill the well.

(2) Any person who drills environmental hand auger soil borings no more than 10 feet in depth.

§76.62. Responsibilities of the Department--Injurious Water or Constituents.

If injurious water or constituents are encountered, the department shall, within 30 days of notification by the driller, notify the person having the well drilled, deepened, or altered that the driller is required by law to ensure that the well is plugged, repaired, or completed under the standards and procedures in this chapter.

§76.65. Advisory Council.

(a) All notices of regular or special meetings of the council shall be directed to the residence of the members of the council as they are recorded on the official records of the council and department.

(b) The presiding officer shall preside at all council meetings and shall not vote except to break a tie vote.

(c) In the absence of the presiding officer, the members present shall choose one member to act as presiding officer.

(d) The permanent or temporary presiding officer may appoint any member of the council present to act for any other officer of the council who is not present.

§76.70. Responsibilities of the Licensee--State Well Reports.

Every well driller who drills, deepens, or alters a well, within this state shall record and maintain a legible and accurate State of Texas Well Report on a form prescribed by the executive director. Each copy of a State of Texas Well Report, other than a department copy, shall include the name, mailing address, web address and telephone number of the department.

(1) Every well driller shall transmit electronically through the Texas Well Report Submission and Retrieval System or deliver or send by certified mail, the original of the State of Texas Well Report to the department. Every well driller shall deliver or send by first-class mail a photocopy to the local groundwater conservation district, if applicable, and a copy to the owner or person for whom the well was drilled, within 60 days from the completion or cessation of drilling, deepening, or otherwise altering a well.

(2) The person that plugs a well shall, within 30 days after plugging is complete, transmit electronically through the Texas Well Report Submission and Retrieval System or deliver or send by certified mail, the original of the State of Texas Plugging Report to the department. The person that plugs the well shall deliver or send by first-class mail a copy of the State of Texas Plugging Report to the local groundwater district, if applicable, and the owner or person for whom the well was plugged.

(3) The department or the local groundwater district, if applicable, shall furnish State of Texas Plugging Reports on request.

(4) The executive director shall prescribe the contents of the State of Texas Plugging Reports.

§76.71. Responsibilities of the Licensee--Reporting Injurious Water or Constituents.

Each well driller or installer shall, within 24 hours of becoming aware of the existence of injurious water or constituents, inform the landowner or person having a well drilled, deepened, or otherwise altered. The well driller or installer shall, within 30 days of becoming aware of the existence of injurious water or constituents transmit electronically through the Texas Well Report Submission and Retrieval System or deliver or send by certified mail, the original of the Injurious Water or Constituents Report to the department. The well driller or installer shall also deliver or send by first-class mail a copy of the Injurious Water or Constituents Report to the local groundwater conservation district, if applicable, and the landowner or person having the well drilled, deepened, or altered.

§76.72. Responsibilities of the Licensee and Landowner--Well Drilling, Completion, Capping and Plugging.

(a) All well drillers, installers and persons having a well drilled, deepened or altered, and persons in possession of abandoned or deteriorated wells, shall adhere to the provisions of the Code and this chapter prescribing the location of wells and proper drilling, completion, capping and plugging.

(b) A licensed driller shall ensure that when injurious water or constituents are knowingly encountered, the well is plugged or is converted into a properly completed monitoring well as defined in §76.10(31), and under the standards set forth in §76.104.

(c) A driller must comply with applicable requirements of the Texas Commission on Environmental Quality rules under 30 TAC Chapter 331, if injurious water or constituents are encountered while drilling a Class V Injection well.

(d) If a landowner, or person having the well drilled, deepened or altered refuses to allow a licensed driller or installer access to the well which requires plugging or completion or otherwise precludes the driller or installer from plugging or completing a well where injurious constituents or water have been encountered, the driller shall, within 48 hours of the refusal, file a signed statement to that effect with the department and provide a copy of the statement to the local groundwater conservation district. The statement shall indicate that:

(1) the driller, installer or person under his supervision, encountered injurious water or constituents while drilling the well;

(2) the driller or installer has informed the person having the well drilled, deepened or otherwise altered that injurious water or constituents were encountered and that the well must be plugged or completed pursuant to Texas Occupations Code, §1901.254 or §1902.253 and this chapter;

(3) the person or landowner having the well drilled, deepened or altered has denied the driller or installer access to the well;

(4) the reason, if known, for which access has been denied; and

(5) if known, whether the person having the well drilled, deepened or otherwise altered intends to have the well plugged or completed.

(e) If a landowner or person who possesses an abandoned or deteriorated well fails to have the well plugged or capped under standards and procedures adopted by the commission within 180 days from learning of its condition, the department shall notify the local groundwater conservation district and the department may initiate a contested case against the landowner or person for a violation of Texas Occupations Code, §1901.255.

(f) It is the responsibility of a landowner or person in possession of a well that is open at the surface, to have the well capped under standards set forth in §76.104.

(g) The driller of a newly-drilled well shall place a cover or cap which is not easily removed over the boring or casing if the well is intended to be left unattended without a pump installed. It shall be the responsibility of the pump installer to place a cap over the casing which is not easily removable if the well is intended to be left unattended with the pump removed.

§76.73. Responsibilities of the Licensee--Standards of Completion for Public Water System Wells.

(a) A licensed well driller shall complete a well intended for use with a public water system in accordance with 30 TAC Chapter 290 (Rules and Regulations for Public Water Systems) and any other local or regional regulations.

(b) The landowner or person having the well drilled, deepened or altered that is intended for use as a part of a public water system shall comply with 30 TAC Chapter 290 and any other local or regional regulations.

§76.74. Responsibilities of the Licensee--Marking Vehicles and Equipment.

Licensees shall mark their well rigs and pump installer vehicles used by them or their employees in the well drilling or pump installer business with legible and plainly visible identification numbers.

(1) The identification number to be used on rigs and vehicles shall be the licensee's license number.

(2) License numbers shall be printed, upon each side of every well rig or pump installer vehicle, not less than two inches high and in a color sufficiently different from the color of the vehicle or equipment so that the license number shall be plainly visible.

(3) A licensee shall have 30 days from the date a license is issued to properly mark all well rigs or pump installer vehicles used by him or his employees as provided in paragraphs (1) and (2).

§76.75. Responsibilities of the Licensee--Representations.

(a) No licensee shall offer to perform services unless such services can be competently performed.

(b) A licensee shall accurately and truthfully represent to a prospective client the licensee's qualifications and the capabilities of the equipment to perform the services to be rendered.

(c) A licensee shall neither perform nor offer to perform services for which the licensee is not qualified by experience or knowledge in any of the technical fields involved.

(d) A licensee shall not enter into a partnership or any agreement with a person, not legally qualified to perform the services to be rendered, and who has control over the licensee's equipment and/or independent judgment as related to construction, alteration, or plugging of a well or installation of pumps or equipment in a well.

(e) A licensee shall not make false, misleading, or deceptive representations.

(f) A licensee shall make known to prospective clients, all adverse, or suspicions of adverse conditions concerning the quantity or quality of groundwater in the area. If there is any uncertainty regard-

ing the quality of water in any well, the licensee shall recommend that the client have the suspected water analyzed.

§76.76. Responsibilities of the Licensee--Unauthorized Practice.

(a) A licensee shall inform the department of any unauthorized well drilling or pump installation practice of which the licensee has knowledge.

(b) A licensee shall not aid or abet an unlicensed person to unlawfully drill or offer to drill wells or install pump equipment.

(c) A licensee shall, upon request of the department, furnish any information the licensee possesses concerning any alleged violation of the Code or this chapter.

(d) A licensee shall have the following information on all proposals and invoices given to consumers: Regulated by the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, (512) 463-7880, www.license.state.tx.us.

§76.78. Responsibilities of the Licensee--Adherence to Manufacturer's Recommended Well Construction Materials and Equipment.

(a) Unless waived by the landowner, a licensee shall use a manufacturer's well screen, and select the correct slot size for the screen in the installation of a domestic (household use) or landscape irrigation water well.

(b) The waiver must be on a department-approved form, signed by the landowner or person having the well drilled and the driller, and presented to the landowner.

(c) A licensee shall adhere to manufacturers' recommended pump sizing and wiring specifications.

(d) A licensee shall select the proper hydraulic collapse pressure for casing to be installed.

§76.80. Fees.

(a) Application Fees

(1) Driller license--$215

(2) Installer license--$215

(3) Combination Driller and Installer license--$325

(b) Renewal Fees

(1) Driller license--$215

(2) Installer license--$215

(3) Combination Driller and Installer license--$325

(4) Late renewal fees for licenses issued under this chapter are provided in §60.83 of this title.

(c) Lost, revised, or duplicate license--$25

(d) Variance request fee--$100

(e) Inactive License Status

(1) The fee for an inactive license--No charge.

(2) The fee to renew a license marked "inactive" is the renewal fee as stated in subsection (b).

(3) The fee to change from an inactive license to an active license is $25.

§76.90. Disciplinary Actions.

If a person violates the Texas Occupations Code, Chapters 51, 1901 and 1902, or a rule or order of the executive director or commission, proceedings may be instituted to impose administrative sanctions and/or recommend administrative penalties in accordance with the Code or Texas Occupations Code, Chapter 51, and Chapter 60 of this title.

§76.100. Technical Requirements--Locations and Standards of Completion for Wells.

(a) Wells shall be completed in accordance with the following specifications and in compliance with the local groundwater conservation district rules or incorporated city ordinances:

(1) The annular space to a minimum of ten (10) feet shall be three (3) inches larger in diameter than the casing and filled from ground level to a depth of not less than ten (10) feet below the land surface or well head with cement slurry, bentonite grout, or eight (8) feet solid column of granular sodium bentonite topped with a two (2) foot cement atmospheric barrier, except in the case of monitoring, dewatering, piezometer, and recovery wells when the water to be monitored, recovered, or dewatered is located at a more shallow depth. In that situation, the cement slurry or bentonite column shall only extend down to the level immediately above the monitoring, recovery, or dewatering level. Unless the well is drilled within the Edwards Aquifer, the distances given for separation of wells from sources of potential contamination in paragraph (2) may be decreased to a minimum of fifty (50) feet provided the well is cemented with positive displacement technique to a minimum of one hundred (100) feet to surface or the well is tremie pressured filled to the depth of one hundred (100) feet to the surface provided the annular space is three inches larger than the casing. For wells less than one hundred (100) feet deep, the cement slurry, bentonite grout, or bentonite column shall be placed to the top of the producing layer. In areas of shallow, unconfined groundwater aquifers, the cement slurry, bentonite grout, or bentonite column need not be placed below the production zone. In areas of shallow, confined groundwater aquifers having artesian head, the cement slurry, bentonite grout, or bentonite column need not be placed below the top of the water-bearing strata.

(2) A well is cemented with positive displacement technique to a minimum of one hundred (100) feet to surface or the well is tremie pressure filled to the depth of one hundred (100) feet to the surface provided the annular space is three (3) inches larger than the casing may encroach up to five (5) feet of the property line. For wells less than one hundred (100) feet deep, the cement slurry, bentonite grout, or bentonite column shall be placed to the top of the producing layer. In areas of shallow, unconfined groundwater aquifers, the cement slurry, bentonite grout, or bentonite column need not be placed below the production zone. In areas of shallow, confined groundwater aquifers having artesian head, the cement slurry, bentonite grout, or bentonite column need not be placed below the top of the water-bearing strata.

(3) A well shall be located a minimum horizontal distance of fifty (50) feet from any water-tight sewage and liquid-waste collection facility, except in the case of monitoring, dewatering, piezometer, and recovery wells which may be located where necessity dictates.

(4) Except as noted in paragraphs (1) and (2) a well shall be located a minimum horizontal distance of one hundred fifty (150) feet from any concentrated sources of potential contamination such as, but not limited to, existing or proposed livestock or poultry yards, cemeteries, pesticide mixing/loading facilities, and privies, except in the case of monitoring, dewatering, piezometer, and recovery wells which may be located where necessity dictates. A well shall be located a minimum horizontal distance of one hundred (100) feet from an existing or proposed septic system absorption field, septic systems spray area, a dry litter poultry facility and fifty (50) feet from any property line provided the well is located at the minimum horizontal distance from the sources of potential contamination.

(5) A well shall be located at a site not generally subject to flooding; provided, however, that if a well must be placed in a flood prone area, it shall be completed with a watertight sanitary well seal, so as to maintain a junction between the casing and pump column, and a steel sleeve extending a minimum of thirty-six (36) inches above ground level and twenty-four (24) inches below the ground surface.

(6) The following are exceptions to the property line distance requirement where:

(A) groundwater conservation district rules are in place regulating the spacing of wells;

(B) platted or deed restricted subdivision regulated spacing of wells and on-site sewage systems are part of planning; or

(C) public wastewater treatment is provided and utilized by the landowner.

(b) In all wells where plastic casing is used, except when a steel or polyvinyl chloride (PVC) sleeve or pitless adapter, as described in paragraph (3) is used, a concrete slab or sealing block shall be placed above the cement slurry around the well at the ground surface.

(1) The slab or block shall extend laterally at least two (2) feet from the well in all directions and have a minimum thickness of four (4) inches and should be separated from the well casing by a plastic or mastic coating or sleeve to prevent bonding of the slab to the casing.

(2) The surface of the slab shall be sloped to drain away from the well.

(3) The top of the casing shall extend a minimum of twelve (12) inches above the land surface except in the case of monitoring wells when it is impractical or unreasonable to extend the casing above the ground. Monitoring wells shall be placed in a waterproof vault the rim of which extends two (2) inches above the ground surface and a sloping cement slurry shall be placed a minimum twelve (12) inches from the edge of the vault and two (2) feet below the base of the vault between the casing and the wall of the borehole so as to prevent surface pollutants from entering the monitoring well. The well casing shall have a locking cap that will prevent pollutants from entering the well. The annular space of the monitoring well shall be sealed with an impervious bentonite or similar material from the top of the interval to be tested to the cement slurry below the vault of the monitoring well.

(4) The well casing of a temporary monitoring well shall have a locking cap and the annular space shall be sealed from zero (0) to one (1) foot below ground level with an impervious bentonite or similar material; after 48 hours, the well must be completed in accordance with this section or plugged in accordance with §76.104.

(5) The annular space of a closed loop geothermal well used to circulate water or other fluids shall be backfilled to the total depth with impervious bentonite or similar material, closed loop injection well where there is no water or only one zone of water is encountered you may use sand, gravel or drill cuttings to back fill up to ten (10) feet from the surface. The top ten (10) feet shall be filled with impervious bentonite or similar materials and meets the standards pursuant to Texas Commission on Environmental Quality 30 TAC Chapter 331.

(c) In wells where a steel or PVC sleeve is used:

(1) The steel sleeve shall be a minimum of 3/16 inches in thickness and/or the plastic sleeve shall be a minimum of Schedule 80 sun resistant or SDR 17 in the 6" and 8" inch sun resistant and be twenty four (24) inches in length, and shall extend twelve (12) inches into the cement, except when steel casing or a pitless adapter as described in paragraph (2) is used. The casing shall extend a minimum of twelve (12) inches above the land surface, and the steel/plastic sleeve shall be two (2) inches larger in diameter than the plastic casing being used and filled entirely with cement; or

(2) A slab or block as described in this subsection is required above the cement slurry except when steel casing or a pitless adapter is used. Pitless adapters may be used in such wells provided that:

(A) the adapter is welded to the casing or fitted with another suitably effective seal;

(B) the annular space between the borehole and the casing is filled with cement to a depth not less than twenty (20) feet below the adapter connection; and

(C) in lieu of cement, the annular space may be filled with a solid column of granular sodium bentonite to a depth of not less than twenty (20) feet below the adapter connection.

(d) All wells shall be completed so that aquifers or zones containing waters that differ in chemical quality are not allowed to commingle through the borehole-casing annulus or the gravel pack and cause quality degradation of any aquifer or zone.

(e) The well casing shall be capped or completed in a manner that will prevent pollutants from entering the well.

(f) Each licensee shall use potable water in drilling fluids.

(g) Each licensed well driller drilling, deepening, or altering a well shall keep any drilling fluids, tailings, cuttings, or spoils contained in such a manner so as to prevent spillage onto any property not under the jurisdiction or control of the well owner without the property owners' written consent.

(h) Each licensed well driller drilling, deepening, or altering a well shall prevent the spillage of any drilling fluids, tailings, cuttings, or spoils into any body of surface water.

(i) Unless waived by written request from the landowner, a new, repaired, or reconditioned well or pump installation or repair on a well used to supply water for human consumption shall be properly disinfected. The well shall be properly disinfected with chlorine or other appropriate disinfecting agent under the circumstances. A disinfecting solution with a minimum concentration of fifty (50) milligrams per liter (mg/l) (same as parts per million), shall be placed in the well as required by the American Water Works Association (AWWA), pursuant to ANST/AWWA C654-87 and the United States Environmental Protection Agency (EPA).

(j) A licensed installer shall disinfect the well by:

(1) treating the water in the well casing to provide an average disinfectant residual to the entire volume of water in the well casing of fifty (50) mg/l. This may be accomplished by the addition of calcium hypochlorite tablets or sodium hypochlorite solution in the prescribed amounts;

(2) circulating, to the extent possible, the disinfected water in the well casing and pump column; and

(3) pumping the well to remove disinfected water for a minimum of fifteen (15) minutes.

(4) If calcium hypochlorite (granules or tablets) is used, it is suggested that the installer dribble the tablets of approximately five-gram (g) size down the casing vent and wait at least thirty (30) minutes for the tablets to fall through the water and dissolve. If sodium hypochlorite (liquid solution) is used, care should be taken that the solution reaches all parts of the well. It is suggested that a tube be used to pipe the solution through the well-casing vent so that it reaches the bottom of the well. The tube may then be withdrawn as the sodium

hypochlorite solution is pumped through the tube. After the disinfectant has been applied, the installer should surge the well at least three times to improve the mixing and to induce contact of disinfected water with the adjacent aquifer. The installer should then allow the disinfected water to rest in the casing for at least twelve hours, but for not more than twenty-four hours. Where possible, the installer should pump the well for a minimum of fifteen (15) minutes after completing the disinfection procedures set forth above until a zero disinfectant residual is obtained. In wells where bacteriological contamination is suspected, the installer shall inform the well or property owner that bacteriological testing may be necessary or desirable.

(k) A test well that is drilled for exploring for groundwater shall not be open at the surface or allowing water zones of different chemical quality to commingle and must be completed or plugged within six (6) months of drilling.

(l) Water wells located within public water supply system sanitary easements must be constructed to public well standards pursuant to 30 TAC Chapter 290.

(m) Pump column material that has been used in the production of oil or gas or has been exposed to contamination may not be placed in a well regulated by this department.

§76.101. Technical Requirements--Standards of Completion for Water Wells Encountering Undesirable Water or Constituents.

If a well driller encounters undesirable water or constituents and the well is not plugged or made into a completed monitoring well as defined in §76.10(31), the licensed well driller shall see that the well drilled, deepened, or altered is forthwith completed in accordance with the following:

(1) When undesirable water or constituents are encountered in a water well, the undesirable water or constituents shall be sealed off and confined to the zone(s) of origin. It is a defense to prosecution for violation of this section that the driller reasonably was not aware of having encountered undesirable water or constituents.

(2) When undesirable water or constituents are encountered in a zone overlying fresh water, the driller shall case the water well from an adequate depth below the undesirable water or constituent zone to the land surface to ensure the protection of water quality.

(3) The annular space between the casing and the wall of the borehole shall be pressure grouted with positive displacement technique or the well is tremie pressured filled provided the annular space is three inches larger than the casing with cement or bentonite grout from an adequate depth below the undesirable water or constituent zone to the land surface to ensure the protection of groundwater. Bentonite grout may not be used if a water zone contains chlorides above one thousand five hundred (1,500) parts per million (milligrams per liter) or if hydrocarbons are present.

(4) When undesirable water or constituents are encountered in a zone underlying a fresh water zone, the part of the wellbore opposite the undesirable water or constituent zone shall be filled with pressured cement or bentonite grout to a height that will prevent the entrance of the undesirable water or constituents into the water well. Bentonite grout may not be used if a water zone contains chlorides above one thousand five hundred (1,500) parts per million (milligrams per liter) or if hydrocarbons are present.

(5) For class V injection wells, which encounter undesirable water or constituents, the driller must comply with applicable requirements of the Texas Commission on Environmental Quality 30 TAC Chapter 331.

§76.102. Technical Requirements--Standards for Wells Producing Undesirable Water or Constituents.

(a) Wells completed to produce undesirable water or constituents shall be cased to prevent the mixing of water or constituent zones.

(b) The annular space between the casing and the wall of the borehole shall be pressured grouted with cement or bentonite grout to the land surface. Bentonite grout may not be used if a water zone contains chloride water above one thousand five hundred (1,500) parts per million (milligrams per liter) or if hydrocarbons are present.

(c) Wells producing undesirable water or constituents shall be completed in such a manner that will not allow undesirable fluids to flow onto the land surface except when the department's authorization is obtained by the landowner or the person(s) having the well drilled.

§76.103. Technical Requirements--Re-completions.

The landowner shall have the continuing responsibility of ensuring that a well does not allow the commingling of undesirable water or constituents with fresh water through the wellbore to other porous strata.

(1) If a well is allowing the commingling of undesirable water or constituents and fresh water or the unwanted loss of water, and the casing in the well cannot be removed and the well re-completed in accordance with the applicable rules, the casing in the well shall be perforated and squeeze cemented in a manner that will prevent the commingling or loss of water. If such a well has no casing then the well shall be cased and cemented, or plugged in a manner that will prevent such commingling or loss of water.

(2) The executive director may direct the landowner to take proper steps to prevent the commingling of undesirable water or constituents with fresh water, or the unwanted loss of water.

§76.104. Technical Requirements--Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones.

(a) All wells which are required to be plugged or capped under Texas Occupations Code, Chapters 1901 and 1902 or this chapter shall be plugged and capped in accordance with the following specifications and in compliance with the local groundwater conservation district rules or incorporated city ordinances:

(1) all removable casing shall be removed from the well;

(2) any existing surface completion shall be removed;

(3) the entire well pressure filled via a tremie pipe with cement from bottom up to the land surface;

(4) In lieu of the procedure in paragraph (3), the well shall be pressure filled via a tremie tube with clean bentonite grout of a minimum 9.1 pounds per gallon weight followed by a cement plug extending from land surface to a depth of not less than two (2) feet, or if the well to be plugged has one hundred 100 feet or less of standing water the entire well may be filled with a solid column of 3/8 inch or larger granular sodium bentonite hydrated at frequent intervals while strictly adhering to the manufacturers' recommended rate and method of application. If a bentonite grout is used, the entire well from not less than two (2) feet below land surface may be filled with the bentonite grout. The top two (2) feet above any bentonite grout or granular sodium bentonite shall be filled with cement as an atmospheric barrier. Bentonite grout may not be used if a water zone contains chlorides above 1500 ppm or if hydrocarbons are present.

(5) Undesirable water or constituents shall be isolated from the fresh water zone(s) with cement plugs and the remainder of the

wellbore filled with neat cement or clean bentonite grout of a minimum 9.1 weight followed by a cement plug extending from land surface to a depth of not less than two (2) feet.

(b) Large hand dug and bored wells 36-inches or greater in diameter to one hundred (100) feet in depth may be plugged by back filling with compacted clay or caliche to surface. All removable debris shall be removed from the well. If the well contains standing water, it shall be chlorinated by adding chlorine bleach at a rate of one (1) gallon of bleach for every five hundred (500) gallons of standing water. The backfill material shall be mounded above the surrounding surface to compensate for settling.

(c) Wells which do not encounter groundwater (dry holes) may be plugged by backfilling with drill cuttings from total depth to the surface. The backfill material shall be mounded above the surrounding surface to compensate for settling.

(d) A non-deteriorated well which contains casing in good condition and is beneficial to the landowner can be capped with a covering capable of preventing surface pollutants from entering the well and sustaining weight of at least four hundred (400) pounds and constructed in such a way that the covering cannot be easily removed by hand.

(e) For the purpose of plugging a well, any licensee or landowner can remove the pump.

§76.105. Technical Requirements--Standards for Water Wells (Drilled before June 1, 1983).

(a) Wells drilled prior to June 1, 1983, unless abandoned, shall be grandfathered from this chapter without further modification unless the well is found to be a threat to public health and safety or to groundwater quality. A threat to public health and safety or to groundwater quality shall include, but is not limited to the following:

(1) annular space around the well casing is open at or near the land surface;

(2) an unprotected opening into the well casing that is above ground level;

(3) top of well casing below known flood level and not appropriately sealed;

(4) deteriorated well casing allowing commingling of aquifers or zones of water of different quality;

(5) water wells with the well head below ground level unless the department grants a variance; and

(6) water wells located within fifty (50) feet of a source of contamination which affects the quality of water produced by the well.

(b) If the annular space around the well casing is not adequately sealed as set forth in this section, it shall be the responsibility of each licensed driller or licensed pump installer to inform the landowner that the well is considered to be a deteriorated well and must be recompleted when repairs are made to the pump or well in accordance with this chapter, and the following specifications.

(1) The well casing shall be excavated to a minimum depth of four (4) feet and the annular space shall be filled from ground level to a depth of not less than four (4) feet below the land surface with cement. In areas of shallow, unconfined groundwater aquifers, the cement need not be placed below the static water level. In areas of shallow, confined groundwater aquifers having artesian head, the cement need not be placed below the top of the water bearing strata.

(2) A cement slab or sealing block shall be placed above the cement around the well at the ground surface except when a pitless adapter as described in §76.100(c)(2) or a steel or plastic sleeve as described in §76.100(c)(1) is used.

(A) The slab or block shall extend laterally at least two (2) feet from the well in all directions and have a minimum thickness of four inches.

(B) The surface of the slab shall be sloped to drain away from the well.

(C) The top of the casing shall extend a minimum of twelve 12 inches above ground level or thirty six 36 inches above known flood prone areas and unprotected openings into the well casing that is above ground shall be sealed water tight.

(3) If deteriorated well casing is allowing commingling of aquifers or zones of water of different quality and causing degradation of any water including groundwater, the well shall be plugged according to §76.104 or repaired. Procedures for repairs shall be submitted to the department for approval prior to implementation.

(c) Well covers shall be capable of supporting a minimum of four hundred 400 pounds and constructed in such a way that they cannot be easily removed by hand.

(d) This section shall not apply to a public water supply system well.

§76.106. Technical Requirements--Water Distribution and Delivery Systems.

(a) The licensee shall inform the landowner and well owner that the landowner and well owner are responsible for complying with the rules and regulations under the standards set forth in this chapter.

(b) A buried discharge line between the pump discharge and the pressure tank or pressure system in any installation, including a deep well turbine or a submersible pump, shall not be under negative pressure at any time. With the exception of jet pumps, a check valve or an air gap shall be installed in a water line between the well casing and the pressure tank. Either a check valve or an air gap, as applicable, shall be required on all irrigation well pumps whenever a pump is installed or repaired. All wells shall have either a check valve, or an air gap as applicable.

(c) Wells shall be vented with watertight joints except as provided by subsection (b).

(1) Watertight joints, where applicable pursuant to the provisions of this rule, shall terminate at least two (2) feet above the regional flood level or one (1) foot above the established ground surface or the floor of a pump room or well room, whichever is higher.

(2) The casing vent shall be screened and point downward.

(3) Vents may be offset provided they meet the provisions of this rule.

(4) Toxic or flammable gases, if present, shall be vented from the well. The vent shall extend to the outside atmosphere above the roof level at a point where the gases will not produce a hazard.

§76.107. Technical Requirements--Chemical Injection, Chemigation, and Foreign Substance Systems.

(a) All irrigation distribution systems or water distribution systems into which any type of chemical (except disinfecting agents) or other foreign substances will be injected into the water pumped from water wells shall be equipped with an in-line, automatic quick-closing check valve capable of preventing pollution of the ground water. The required equipment shall be installed on all systems whenever a pump is installed or repaired, or at the time of a chemical injection, Chemigation or foreign substance unit is added to a water delivery system, if the

well has a chemical injection, Chemigation, or foreign substance unit in the delivery system. The type of check valve installed shall meet the specifications listed in subsections (b) - (h).

(b) The body of the check valve shall be constructed of cast iron, stainless steel, cast aluminum, cast steel, or of a material and design that provides a sturdy integrity to the unit and is resistant to the foreign substance being injected. All materials shall be corrosion resistant or coated to prevent corrosion. The valve working pressure rating shall exceed the highest pressure to which the valve will be subjected.

(c) The check valve shall contain a suitable automatic, quick-closing and tight-sealing mechanism designed to close at the moment water ceases to flow in the downstream or output direction. The device shall, by a mechanical force greater than the weight of the closing device, provide drip-tight closure against reverse flow. Hydraulic back-pressure from the system does not satisfy this requirement.

(d) The check valve construction should allow for easy access for internal and external inspection and maintenance. All internal parts shall be corrosion resistant. All moving parts shall be designed to operate without binding, distortion, or misalignment.

(e) The check valve shall be installed in accordance with the manufacturer's specifications and maintained in a working condition during all times in which any fertilizer, pesticide, chemical, animal waste, or other foreign substance is injected into the water system. The check valve shall be installed between the pump discharge and the point of chemical injection or foreign substance injection.

(f) A vacuum-relief device shall be installed between the pump discharge and the check valve in such a position and in such a manner that insects, animals, floodwater, or other pollutants cannot enter the well through the vacuum-relief device. The vacuum-relief device may be mounted on the inspection port as long as it does not interfere with the inspection of other anti-pollution devices.

(g) An automatic low pressure drain shall also be installed between the pump discharge and the check valve in such a position and in such a manner that any fluid which may seep toward the well around the flapper will automatically flow out of the pump discharge pipe. The drain must discharge away from rather than flow into the water supply. The drain must not collect on the ground surface or seep into the soil around the well casing.

(1) The drain shall be at least three-quarter (3/4) inch in diameter and shall be located on the bottom of the horizontal pipe between the pump discharge and the check valve.

(2) The drain must be flush with the inside surface of the bottom of the pipe unless special provisions, such as a dam made downstream of the drain, forces seepage to flow into the drain.

(3) The outside opening of the drain shall be at least two (2) inches above the grade.

(h) An easily accessible inspection port shall be located between the pump discharge and the check valve, and situated so the automatic low-pressure drain can be observed through the port and the flapper can be physically manipulated.

(1) The port shall allow for visual inspection to determine if leakage occurs past the flapper, seal, seat, and/or any other components of the checking device.

(2) The port shall have a minimum four (4) inch diameter orifice or viewing area. For irrigation distribution systems with pipe lines too small to install a four-inch diameter inspection port, the check valve and other anti-pollution devices shall be mounted with quick disconnects, flange fittings, dresser couplings, or other fittings that allow for easy removal of these devices.

(i) Any check valve not fully meeting the specifications set forth in this section may on request to the executive director be considered for a variance.

§76.108. Technical Requirements--Pump Installation.

(a) During any repair or installation of a water well pump, the licensed installer shall make a reasonable effort to maintain the integrity of ground water and to prevent contamination by elevating the pump column and fittings, or by other means suitable under the circumstances.

(b) This section shall include every type of connection device, including but not limited to, flange connections, hose-clamp connections, and other flexible couplings. Except as provided by this chapter, a pump shall be constructed so that no unprotected openings into the interior of the pump or well casing exist.

(1) A hand pump, hand pump head, stand, or similar device shall have a spout, directed downward.

(2) A power driven pump shall be attached to the casing or approved suction or discharge line by a closed connection. For the purposes of this section a closed connection is defined to be a sealed connection.

(c) The provisions of this section relating to the requirement of closed connections shall not apply to the following types of pumps and pumping equipment:

(1) sucker rod pumps and windmills; and

(2) hand pumps.

(d) A new, repaired, or reconditioned well, or pump installation or repair on a well used to supply water for human consumption shall be properly disinfected. The landowner may waive the disinfection process by submitting a written request to the driller or pump installer.

§76.109. Technical Requirements--Variances--Alternative Procedures.

(a) If the party having the well drilled, deepened or altered, the licensed well driller, or the party, landowner or person drilling or plugging the well, finds any of the procedures prescribed by §§76.100 - 76.105 inapplicable, unworkable, or inadequate, combinations of the prescribed procedures or alternative procedures may be employed, provided that the proposed alternative procedures will prevent injury and pollution. The department will not grant a variance based solely on cost, aesthetics, or for a well head to be placed below ground level.

(b) Written proposals to use combinations of prescribed procedures or alternative procedures shall be considered application for a variance and must be submitted to the department for review prior to their implementation, and also provide a copy of the variance to the local groundwater conservation district.

(c) If a written variance request is not submitted prior to construction and the licensee or landowner or the designated agent believes a request is justified, such written request shall be submitted to the department and a copy of the variance provided to the local groundwater conservation district as soon as possible following completion of the well.

(d) This section shall not apply to a public water system well.

§76.110. Appeals--Variances.

(a) Appeal of staff decision disapproving a variance or waiver application shall be submitted to the executive director and a copy

of the appeal provided to the local groundwater conservation district within 14 days of notification of staff decision.

(b) The executive director shall determine whether or not to uphold the disapproval of the variance.

(c) The party making the appeal shall be advised in writing of the executive director's determination.

§76.111. Memorandum of Understanding between the Texas Department of Licensing and Regulation and the Texas Commission on Environmental Quality.

(a) Recitals.

(1) Pursuant to Senate Bill 279 (78th Legislature, 2003), §19.015, which created §1901.257(b), Texas Occupations Code, the Texas Department of Licensing and Regulation (TDLR) and the Texas Commission on Environmental Quality (TCEQ) shall enter into a Memorandum of Understanding (MOU) to coordinate the efforts of the TDLR, the field offices of the TCEQ, and groundwater conservation districts (GCDs), relating to investigative procedures for referrals of complaints regarding abandoned and/or deteriorated wells.

(2) Pursuant to Senate Bill 279 (78th Legislature, 2003), §19.015, which created §1901.257(c), Texas Occupations Code, GCDs in which an abandoned and/or deteriorated well is located shall join the Memorandum of Understanding adopted under Texas Occupations Code, §1901.257(b). In addition, GCDs may enforce compliance with Texas Occupations Code, §1901.255 related to abandoned and/or deteriorated wells located in the boundaries of the district.

(3) Pursuant to Texas Occupations Code, §1901.255 and §1901.257(b) and (c), and in compliance with authority granted by the Interagency Cooperation Act, Texas Government Code Annotated, §771.003, the TDLR and TCEQ enter into this MOU to coordinate efforts related to investigative procedures for referrals of complaints regarding abandoned and/or deteriorated wells. Each GCD in which an abandoned and/or deteriorated well is located is required by Texas Occupations Code, §1901.257(c) to join this MOU. Such joinder is established by submission to the TDLR at P.O. Box 12157, Austin, Texas 78711, of a copy of appropriate GCD Board action indicating that the GCD has joined this MOU and understands its responsibilities under the MOU and Chapter 1901 of the Texas Occupations Code.

(b) TDLR Responsibilities.

(1) Investigate abandoned and/or deteriorated well complaints, including referrals received from the TCEQ regional field offices, unless the complaint is being investigated by a GCD in coordination with TDLR staff.

(2) Enforce compliance with Texas Occupations Code, §1901.255 related to persons possessing abandoned and/or deteriorated wells.

(3) Coordinate investigation and enforcement efforts with appropriate GCD for any complaints regarding wells located within the boundaries of a GCD.

(4) When abandoned and/or deteriorated wells are observed while conducting field investigations inside the boundaries of a GCD, a reasonable effort to obtain the landowners' name, mailing address, and latitude and longitude of the well shall be made, and such information shall be referred to the General Manager of the appropriate GCD for investigation and possible enforcement action to assure compliance with Texas Occupations Code, §1901.255 related to persons possessing abandoned and/or deteriorated wells.

(5) When an abandoned and/or deteriorated well complaint is received, TDLR will determine if the well is located within a GCD boundary and provide a referral to the General Manager of the appropriate GCD for investigation and possible enforcement action to assure compliance with Texas Occupations Code, §1901.255 related to persons possessing abandoned and/or deteriorated wells.

(6) Provide training and technical assistance to GCD staff and TCEQ Field Operations staff on field recognition of an abandoned and/or deteriorated well.

(7) Annually report to TCEQ the status of all complaints provided to the TDLR under this MOU and the number of wells closed as a result of TCEQ abandoned and/or deteriorated well complaint referrals.

(c) TCEQ Responsibilities.

(1) When suspected abandoned and/or deteriorated wells are observed by Field Operations staff while conducting field investigations, information to allow for identification of the well, which may include: the landowners' name, physical address, and latitude and longitude of the well; shall be referred to the TDLR Compliance Division, Water Well Driller/Pump Installer Section. TCEQ field operation staff shall make a reasonable effort to obtain information needed for the identification of any abandoned and/or deteriorated well.

(2) Provide updated list of GCDs as they are confirmed, including boundaries and the name and address of district contacts such as the General Manager.

(d) GCD Responsibilities.

(1) When a GCD receives a referral from the TDLR of an abandoned and/or deteriorated well, the GCD shall respond within 14 calendar days informing the TDLR as to whether the GCD will investigate the referral.

(2) After the GCD has been notified by the TDLR or becomes aware of an abandoned and/or deteriorated well, the GCD may:

(A) investigate the complaint of an abandoned and/or deteriorated well within the boundaries of the GCD; and

(B) enforce compliance with Texas Occupations Code, §1901.255 related to landowners that have an abandoned and/or deteriorated well located on their property.

(3) A GCD that performs an investigation related to an abandoned and/or deteriorated well referred to the GCD by TDLR shall notify the TDLR regarding the disposition of the investigation.

(4) Any GCD enforcement under Texas Occupations Code, §1901.255 and §1901.256, may be coordinated with the TDLR.

(5) A GCD may communicate with the TDLR regarding any phase of the investigation or enforcement action.

(e) Referral and Investigation Requirements.

(1) For the purposes of this MOU, a "referral" shall constitute information gathered, compiled, and forwarded to the TDLR. Written referrals via email or letter shall utilize the appropriate form, provided by TDLR, and document information on the abandoned and/or deteriorated well, which may include:

(A) the name of landowner possessing the abandoned and/or deteriorated well;

(B) the physical address of said landowner;

(C) the latitude and longitude of the abandoned and/or deteriorated well; and

(D) if possible, a photograph of the well.

(2) Following the receipt of a referral from TCEQ, the TDLR will begin landowner notification procedures or follow up investigation or, if the well is inside the boundaries of a GCD, provide a referral to the General Manager of the corresponding GCD for investigation and possible enforcement action to assure compliance with Texas Occupations Code, §1901.255 related to persons possessing abandoned and/or deteriorated wells.

(3) Referrals to TDLR should be sent to: Water Well Driller/Pump Installer Section, Compliance Division, TDLR; Phone: (512) 463-7880; Fax: (512) 463-8616; Email: waterwell@license.state.tx.us.

(f) Term. The term of this MOU shall be from the date both the TDLR and TCEQ adopt the MOU by rule. The TCEQ or TDLR may for any reason terminate this MOU upon thirty days notice to the other agency.

(g) Severability. Should any provision of this MOU be held to be null, void, or for any reason without force or effect, such provision shall be construed as severable from the remainder of this document and shall not affect the validity of all other provisions, which shall remain in full force and effect.

(h) Amendment. This MOU may be amended through rulemaking proposal and adoption at any time by mutual consent of the TCEQ and the TDLR.

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

Filed with the Office of the Secretary of State on November 26, 2012.

TRD-201206085
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: January 6, 2013
For further information, please call: (512) 475-4879

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16 TAC §§76.200 - 76.206, 76.250, 76.300, 76.600 - 76.602, 76.650, 76.700 - 76.706, 76.708, 76.800, 76.900, 76.1000 - 76.1011

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

The repeals are proposed under Texas Occupations Code, Chapters 51, 1901 and 1902, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapters 51, 1901 and 1902. No other statutes, articles, or codes are affected by the proposed repeals.

§76.200. Licensing Requirements--General.
§76.201. Requirements for Issuance of a License.
§76.202. Applications for Licenses and Renewals.
§76.203. Examinations.
§76.204. License and Apprentice Registration Renewal.
§76.205. Registration for Driller and/or Pump Installer Apprenticeship.
§76.206. Responsibilities of the Apprentice and Supervising Driller and/or Pump Installer.
§76.250. Continuing Education.
§76.300. Exemptions.
§76.600. Responsibilities of the Department--Certification by the Executive Director.
§76.601. Responsibilities of the Department--General.
§76.602. Responsibilities of the Department--Undesirable water.
§76.650. Advisory Council.
§76.700. Responsibilities of the Licensee--State Well Reports.
§76.701. Responsibilities of the Licensee--Reporting Undesirable Water or Constituents.
§76.702. Responsibilities of the Licensee and Landowner--Well Drilling, Completion, Capping and Plugging.
§76.703. Responsibilities of the Licensee--Standards of Completion for Public Water System Wells.
§76.704. Responsibilities of the Licensee--Marking Vehicles and Equipment.
§76.705. Responsibilities of the Licensee--Representations.
§76.706. Responsibilities of the Licensee--Unauthorized Practice.
§76.708. Responsibilities of the Licensee--Adherence to Manufacturers' Recommended Well Construction Materials and Equipment.
§76.800. Fees.
§76.900. Disciplinary Actions.
§76.1000. Technical Requirements--Locations and Standards of Completion for Wells.
§76.1001. Technical Requirements--Standards of Completion for Water Wells Encountering Undesirable Water or Constituents.
§76.1002. Technical Requirements--Standards for Wells Producing Undesirable Water or Constituents.
§76.1003. Technical Requirements--Re-completions.
§76.1004. Technical Requirements--Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones.
§76.1005. Technical Requirements--Standards for Water Wells (Drilled before June 1, 1983).
§76.1006. Technical Requirements--Water Distribution and Delivery Systems.
§76.1007. Technical Requirements--Chemical Injection, Chemigation, and Foreign Substance Systems.
§76.1008. Technical Requirements--Pump Installation.
§76.1009. Technical Requirements--Variances--Alternative Procedures.
§76.1010. Appeals--Variances.
§76.1011. Memorandum of Understanding between the Texas Department of Licensing and Regulation and the Texas Commission on Environmental Quality.

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

Filed with the Office of the Secretary of State on November 26, 2012.

TRD-201206084

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: January 6, 2013
For further information, please call: (512) 475-4879

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER B. ADULT BASIC AND SECONDARY EDUCATION

The State Board of Education (SBOE) proposes amendments to §§89.21, 89.30, 89.31, 89.33, 89.34, and 89.35 and the repeal of §89.29, concerning adult education programs. The sections address provisions relating to adult basic and secondary education. The proposed amendments and repeal would update the rules to reflect statutory changes that provide for competitive procurement of service providers under the Adult Education and Family Literacy Act (AEFLA) program required by the Texas Education Code (TEC), §29.2535, as added by Senate Bill 1, 82nd Texas Legislature, 2011.

Senate Bill (SB) 1, 82nd Texas Legislature, First Called Session, 2011, added the TEC, §29.2535, requiring the Texas Education Agency (TEA) to adopt rules to provide for a competitive procurement process to award contracts to service providers of adult education programs. As required by the TEC, §29.2535, the commissioner of education has exercised rulemaking authority to adopt new 19 TAC §89.1301, Service Provider Contracts for Adult Education Programs, which became effective September 20, 2012.

The proposed revisions to 19 TAC Chapter 89, Subchapter B, would update the rules to reflect statutory changes that provide for a competitive procurement of the service provider contracts under the AEFLA and other technical edits, as follows.

Section 89.21, Definitions, would be amended to make a technical edit in paragraph (2) to remove the hyphen in the phrase "federally approved." A technical edit would also be made in paragraph (4) to correct punctuation.

Section 89.29, Allocation of Funds Prior to School Year 2010-2011, would be repealed as it applies only to the timeframe prior to the 2010-2011 school year.

Section 89.30, Allocation of Funds Beginning with School Year 2010-2011, would be amended to add an ending date to the funding allocation process outlined in the section. A new subsection (f) would be added to provide a reference to the commissioner's authority for future allocations. The section title would also be changed to "Allocation of Funds Beginning with School Year 2010-2011 and Ending After School Year 2012-2013."

Section 89.31, Payment of Funds, would be amended in subsection (a) to add an ending date for use of the current formula for allocations and the payment of funds.

Section 89.33, Tuition and Fees, would be amended consistent with commissioner's rule to clarify that tuition and fees for adult education instructional programs may not be charged without specific statutory authorization. The language also specifies that any such generated funds must be used for the adult education instructional program.

Section 89.34, Other Provisions, would be amended to update subsection (b) to reflect current practice and to make language consistent with that found in the commissioner's rule.

Section 89.35, Revocation and Recovery of Funds, would be amended to make a technical correction in subsection (a)(5) to add the word "Agency" to the reference to the TEA.

The proposed amendments and repeal would have procedural and reporting requirements. Beginning in school year 2013-2014, the allocation of state and federal education funds will be awarded through a competitive procurement process as provided by commissioner's rule. The proposed amendments and repeal would have no new locally maintained paperwork requirements for current service providers. Any new service providers would be required to maintain student and program records.

Anita Givens, associate commissioner for standards and programs, has determined that for the first five-year period the amendments and repeal are in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed amendments and repeal.

Ms. Givens has determined that for each year of the first five years the amendments and repeal are in effect the public benefit anticipated as a result of enforcing the amendments and repeal would be updated rules to reflect statutory changes and to ensure that state and federal funding is awarded to the most qualified adult education service providers. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and repeal.

In addition, 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.

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 proposed amendments and repeal 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.*

19 TAC §§89.21, 89.30, 89.31, 89.33 - 89.35

The amendments are proposed under the Texas Education Code (TEC), §7.102(c)(16) and §29.253, which authorize the SBOE to adopt rules for adult education programs. TEC, §29.2535, as added by Senate Bill 1, 82nd Texas Legislature, First Called Session, 2011, authorizes the Texas Education Agency to adopt rules to provide for a competitive procurement process to award contracts to service providers of adult education programs.

The amendments implement the Texas Education Code, §§7.102(c)(16), 29.253, and 29.2535.

§89.21. Definitions.

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

(1) Adult education--Basic and secondary instruction and services for adults.

(A) Adult basic education--Instruction in reading, writing, English and solving quantitative problems, including functional context, designed for adults who:

(i) have minimal competence in reading, writing, and solving quantitative problems;

(ii) are not sufficiently competent to speak, read, or write the English language; or

(iii) are not sufficiently competent to meet the requirements of adult life in the United States, including employment commensurate with the adult's real ability.

(B) Adult secondary education--Comprehensive secondary instruction below the college credit level in reading, writing and literature, mathematics, science, and social studies, including functional context, and instruction for adults who do not have a high school diploma or its equivalent.

(2) Base allocation--An amount of funds set aside for each grantee to provide adult basic education services to eligible adults within its service area in compliance with provisions of the grant application and the state's federally approved [~~federally-approved~~] adult education plan.

(3) Contact time--The cumulative sum of minutes during which an eligible adult student receives instructional, counseling, and/or assessment services by a staff member supported by federal and state adult education funds as documented by local attendance and reporting records.

(A) Student contact time generated by volunteers may be accrued by the adult education program when volunteer services are verifiable by attendance and reporting records and volunteers meet requirements under §89.25 of this title (relating to Qualifications and Training of Staff).

(B) Student contact hour is 60 minutes.

(4) Cooperative/consortium adult education program--A community or area partnership of educational, work force development and[~~,~~] human service entities[~~,~~] and other agencies that agree to collaborate for the provision of adult education and literacy services.

(5) Eligible grant recipient--Eligible grant recipients for adult education programs are those entities specified in state and federal law.

(6) Fiscal agent--The local entity that applies for, receives, and manages funds on behalf of the cooperative or adult education partnership.

(7) Grantee--Recipient of award of federal and/or state adult education funds from the Texas Education Agency.

(8) Performance definitions--

(A) Allocation--A performance allocation is an amount of funds set aside for each grantee from which it is eligible to withdraw funds once it has demonstrated that it has met or exceeded set performance targets.

(B) Payment--A performance payment is a financial incentive awarded to grantees based on the number of performance points earned by meeting or exceeding identified federal and state performance targets.

(C) Points--Performance points are the basis by which the grantee can earn performance payments. Performance points are earned by grantees by meeting or exceeding state and federal performance targets.

(D) Target--A performance target is a quantifiable measurement that identifies the degree or extent to which grantees are expected to achieve performance measures.

(i) Federal targets--A quantifiable measurement assigned to individual federal performance measures set forth in the Texas plan for adult education approved by the United States Department of Education (USDE).

(ii) State targets--A quantifiable measurement assigned to individual state performance measures set forth in the Texas plan for adult education approved by the USDE.

(9) Reallocation fund--Monies from grantee's performance allocations that grantees fail to earn because they did not achieve all federal performance targets that are placed in a fund to be distributed among grantees based on their performance on state performance measures.

§89.30. Allocation of Funds Beginning with School Year 2010-2011 and Ending After School Year 2012-2013.

(a) Allocation of state and federal funds. The provisions of this section apply to the allocation of state and federal adult education funds beginning with school year 2010-2011 and ending after school year 2012-2013. Annually, after federal adult education and literacy funds have been set aside for state administration, special projects, staff development, and leadership, state and federal adult education funds shall be allocated based upon grantees':

(1) funding received in the second year of the previous biennium; and

(2) proportionate share of need.

(b) Total grantee allocation. Each grantee's total shall be comprised of the following components:

(1) base allocation; and

(2) performance allocation.

(c) Calculation of base allocation. Each grantee will receive a base allocation equal to the amount of funding it received in the second year of the previous biennium, provided that:

(1) the grantee serves, at a minimum, the same or equivalent school district geographic areas as it served in the second year of the previous biennium; and

(2) the total amount of federal and state funds available statewide is equal to or greater than the amount available in the second year of the previous biennium.

(d) Reduction of base allocation. If the calculation of the base allocation results in a total that is greater than the state and federal funds available, each grantee's base allocation shall be reduced proportionately.

(e) Calculation of performance allocation. The sum of all grantees' base allocations, which are calculated based on subsection (c) of this section, will be subtracted from the total amount of federal and state funds available, excluding the amount of federal funds set aside for state administration, special projects, staff development, and leadership. The remainder then will be allocated among all grantees based upon need and will be designated as each grantee's performance allocation.

(f) Future allocations. Beginning with school year 2013-2014, allocation of state and federal adult education funds shall be governed

by §89.1301(d) of this title (relating to Service Provider Contracts for Adult Education Programs).

§89.31. Payment of Funds.

(a) Base payments. Each grantee will receive its base allocation as calculated in accordance with §89.30(c) of this title (relating to Allocation of Funds Beginning with School Year 2010-2011 and Ending After School Year 2012-2013).

(b) Performance payments. Each grantee may earn performance payments from:

(1) its performance allocation as calculated in accordance with §89.30(e) of this title by achieving federal performance targets; and

(2) the reallocation fund by achieving state performance targets.

(c) Earning payments from a grantee's performance allocation. Each grantee is eligible to earn performance payments from its performance allocation by meeting or exceeding federal performance targets.

(1) For each federal performance target that the grantee meets or exceeds, the grantee will earn:

(A) one and one-half performance points for meeting or exceeding a target that advances students from the lowest literacy level for either adult basic education or English as a second language to the next literacy level; and

(B) one performance point for meeting or exceeding all other targets.

(2) The amount of funds that each grantee will receive from its performance allocation is calculated by adding the number of performance points the grantee earned and dividing it by the total number of performance points possible to earn and multiplying that number by 100. The resulting percentage of possible points earned is then multiplied by the amount of funds set aside in the grantee's performance allocation.

(3) The amount of funds in each grantee's performance allocation that are not earned will be placed in a statewide reallocation fund.

(d) Earning payments from the reallocation fund. All grantees, regardless of performance on the federal performance measures, will be eligible to earn funds from the reallocation fund by meeting or exceeding state performance targets for state performance measures.

(1) For each state performance target that a grantee meets or exceeds, the grantee will earn:

(A) one and one-half performance points for meeting or exceeding a target that advances students from the lowest literacy level for either adult basic education or English as a second language to the next literacy level; and

(B) one performance point for meeting or exceeding all other targets.

(2) The total number of performance points earned by all grantees will be summed and divided into the total amount of funds in the reallocation fund to determine a cost per state performance point earned.

(3) The amount of funds that each grantee will receive from the reallocation fund is calculated by adding the number of performance points the grantee earned for meeting or exceeding state performance targets and multiplying that number by the cost per state performance point earned.

§89.33. Tuition and Fees.

Tuition and fees may not be charged unless the entity charging them is statutorily authorized to do so. Funds generated by such tuition and fees shall be used for the adult education instructional programs.

~~[(a) No student tuition or fees shall be charged for adult basic education as a condition for membership and participation in a class.]~~

~~[(b) Tuition and fees for adult secondary education may be charged and be established by local fiscal agent board policy. Funds generated by such tuition and fees shall be used for the adult education instructional program.]~~

§89.34. Other Provisions.

(a) Allowable and nonallowable expenditures. Supervisory and administrative costs shall not exceed 25% of the total budget. These costs may include supervisory payroll costs, rental of administrative space, indirect costs, and clerical costs.

(b) Staff development and special projects. From the federal funds set aside for state administration, special projects, staff development, and leadership, a portion of funds shall be used to provide training and professional development to organizations that are not currently receiving grants but are providing literacy services.

~~[(1) Priorities for expenditures of federal funds as required by the Workforce Investment Act, §223, shall be presented annually to the State Board of Education.]~~

~~[(2) From the federal funds set aside for state administration, special projects, staff development, and leadership, a portion of funds shall be used to provide training and professional development to organizations that are not currently receiving grants but are providing literacy services.]~~

(c) Evaluation of programs. The Texas Education Agency shall evaluate adult education programs based on the indicators of program quality for adult education.

§89.35. Revocation and Recovery of Funds.

(a) The commissioner of education may revoke a grant award for the adult education grant program based on the following factors:

(1) noncompliance with application assurances and/or the provisions of this section;

(2) lack of program success as evidenced by progress reports and program data;

(3) failure to participate in data collection and audits;

(4) failure to meet performance standards specified in the application or in the Texas state plan for adult education approved by the U.S. Department of Education; or

(5) failure to provide accurate, timely, and complete information as required by the Texas Education Agency (TEA) to evaluate the effectiveness of the adult education program.

(b) A decision by the commissioner and the TEA to revoke the grant award of an adult education program is final and may not be appealed.

(c) The commissioner may audit the use of grant funds and may recover funds against any state provided funds.

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

Filed with the Office of the Secretary of State on November 21, 2012.

TRD-201206055
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: January 6, 2013
For further information, please call: (512) 475-1497

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19 TAC §89.29

(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 Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under the Texas Education Code (TEC), §7.102(c)(16) and §29.253, which authorize the SBOE to adopt rules for adult education programs. TEC, §29.2535, as added by Senate Bill 1, 82nd Texas Legislature, First Called Session, 2011, authorizes the Texas Education Agency to adopt rules to provide for a competitive procurement process to award contracts to service providers of adult education programs.

The repeal implements the Texas Education Code, §§7.102(c)(16), 29.253, and 29.2535.

§89.29. Allocation of Funds Prior to School Year 2010-2011.

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

Filed with the Office of the Secretary of State on November 21, 2012.

TRD-201206056
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: January 6, 2013
For further information, please call: (512) 475-1497

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CHAPTER 101. ASSESSMENT

The State Board of Education (SBOE) proposes amendments to §§101.1, 101.5, 101.25, 101.27, 101.33, and 101.101 and the repeal of §§101.7, 101.9, 101.11, 101.13, 101.21, 101.29, 101.61, 101.63, 101.65, 101.81, and 101.83, concerning student assessment. The sections address provisions relating to the state assessment program. The proposed amendments and repeals would reflect changes in statute granting rulemaking authority to the commissioner of education by the Texas Legislature as necessary to implement the Texas Education Code (TEC), §§28.0211, 39.023, and 39.025.

In 2007, the 80th Texas Legislature enacted Senate Bill (SB) 1031, and in 2009, the 81st Texas Legislature enacted House Bill (HB) 3, both of which made significant changes to the Texas student assessment program and required the development and implementation of the State of Texas Assessments of Academic Readiness (STAAR) program. With HB 2135 in 2011, the 82nd Texas Legislature further modified assessment requirements for students who test above grade level. In response to SB 1031, HB 3, and HB 2135, the commissioner of education has adopted and amended rules as necessary to implement the legislative requirements for the assessment program. The commissioner rules include student testing requirements, grade advancement requirements, testing requirements for graduation, and accelerated instruction requirements.

According to the TEC, the SBOE is responsible for adopting rules related to the general establishment of the assessment program for purposes of accountability. This SBOE requirement is met through the following rules in 19 TAC Chapter 101, Assessment.

In Subchapter A, §101.1, Scope of Rules, §101.3, Policy, and §101.5(a), Student Testing Requirements, establish the assessment program and require all students receiving instruction in the Texas Essential Knowledge and Skills to be assessed.

In Subchapter B, §101.25, Schedule, specifies that the commissioner will adopt a schedule for administering the assessments and requires uniform administrative procedures.

The SBOE also has responsibility for the following.

Per the TEC, §39.023(e), Adoption and Administration of Instruments, the SBOE establishes a release test schedule in rule.

Under the TEC, §39.033, Voluntary Assessment of Private School Students, the SBOE approves the per-student costs for private schools that administer state assessments.

As authorized under the TEC, §39.026, Local Option, and the TEC, §39.032, Assessment Instrument Standards; Civil Penalty, the SBOE rules govern the administration and renorming of local option group-administered assessments.

To align the SBOE rules in 19 TAC Chapter 101 with state law and ensure a clear delineation between SBOE and commissioner authority over the assessment program as clarified by the Office of Attorney General (OAG) Opinion No: JC-0478 and to eliminate possible contradictions between SBOE and commissioner rule in Texas Administrative Code, this proposal presents revisions to 19 TAC Chapter 101, Subchapters A-E. The proposed revisions also include necessary updates, clarifications, and conforming changes. Proposed commissioner rules that would replace the repealed SBOE rules where necessary are scheduled to be filed as proposed in December 2012.

Subchapter A, General Provisions

Section 101.1, Scope of Rules, would be amended to update language to indicate the new assessments of academic readiness.

Section 101.5, Student Testing Requirements, would be amended to remove subsections (b)-(d) relating to certain student populations. Specific student testing requirements stemming from the TEC, §§28.0211, 39.023, and 39.027, applicable to general education, special education, and English language learner student populations, have been established by the commissioner in 19 TAC Chapter 101, Subchapter AA, Commissioner's Rules Concerning the Participation of English Language Learners in State Assessments, Subchapter BB, Commissioner's Rules Concerning Grade Advancement and Accelerated Instruction, and Subchapter CC, Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program.

Section 101.7, Testing Requirements for Graduation, would be repealed. Rulemaking authority for the STAAR program's assessment graduation requirements has been granted to the commissioner in the TEC, §39.025(a). The TEC, §39.025(f), also allows commissioner rulemaking concerning the transition to the

STAAR. Commissioner's rules have been established in 19 TAC Chapter 101, Subchapters AA and CC.

Section 101.9, Grade Advancement Requirements, and §101.11, Remediation, would be repealed. Since rulemaking authority for the Student Success Initiative (SSI) has been granted by the Texas Legislature to the commissioner in the TEC, §28.0211(k), commissioner rules for the SSI, including remediation requirements, have been established by the commissioner in 19 TAC Chapter 101, Subchapters BB and CC.

Section 101.13, Notice to Students and Parents, would be repealed. The TEC, §39.025(f), requires the commissioner to adopt rules for the transition to end-of-course (EOC) testing, including the requirement of the TEC, §39.025(g), that students be notified of their graduation requirements by the beginning of Grade 8. Further, Grades 5 and 8 assessment promotion requirements fall under the commissioner's rulemaking authority as specified by the TEC, §28.0211(k), including notification of grade promotion requirements. Any other requirements for parental/student notification of mandated assessments falls under the commissioner's general rulemaking authority over the assessment program.

The agency plans to adopt commissioner rules as necessary for the required notification to students and parents of mandated assessments for grade promotion purposes, graduation, and any other state or federally required testing. The commissioner rulemaking process is scheduled to begin in December 2012 with an effective date of March 2013.

Subchapter B, Development and Administration of Tests

As clarified by the OAG Opinion No: JC-0478, all aspects of test development and specific administration procedures, including allowable accommodations, are a commissioner responsibility. Accordingly, §101.21, Test Development, and §101.29, Accommodations, would be repealed and §101.27, Administrative Procedures, would be amended to remove subsections (a) and (c).

The agency plans to adopt commissioner rules as necessary to require educator, campus, and district participation in the test development process.

Though allowable assessment accommodations are currently covered in appropriate state-developed test administrator manuals, the agency plans to adopt commissioner rules as necessary to require districts to provide appropriate accommodations. The commissioner rulemaking process is scheduled to begin in December 2012 with an effective date of March 2013.

To comply with statutory requirements, the proposal includes the following changes to SBOE rules in 19 TAC Chapter 101, Subchapter B.

Section 101.25, Schedule, would be amended to specify that the schedule for administering assessments be in compliance with the TEC, §39.023(c-3)(1) and (2), which states that Grades 3-8 assessments must be administered at least two weeks later than when the first of those assessments were administered in 2006-2007 and that the EOC assessments cannot be administered before the first full week in May, with the exception of English I-III.

Section 101.33, Release of Tests, would be amended to clarify the release of field-test items.

Subchapter C, Security and Confidentiality

Sections 101.61, Security of Tests; 101.63, Confidentiality; and 101.65, Penalties, would be repealed. As specified in the TEC, §§39.0301, 39.0302, and 39.0304, the security of assessments, investigations, issuance of subpoenas, and requiring necessary training activities to ensure a secure testing program are the responsibility of the commissioner and agency. Beginning in 2012, the commissioner adopted into rule the Test Security Supplement, which covers all aspects of training, security, and the handling of incident reporting. As allowed by the commissioner's general rulemaking authority, the agency intends to adopt into rule a Test Security Supplement for each subsequent school year.

Subchapter D, Scoring and Reporting

Sections 101.81, Scoring and Reporting, and 101.83, National Comparative Data, would be repealed. The TEC, §39.0231, Reporting Results of Certain Assessments, specifies that the agency ensure the prompt reporting of assessments required under the TEC, §28.0211. All further reporting requirements fall under the commissioner's general rulemaking authority to fully implement the assessment program, which includes the timely reporting of results to students and parents.

The agency plans to adopt commissioner rules as necessary to require the reporting of assessment results, with appropriate interpretations, to students and parents. Such reporting will be required to be in compliance with the confidentiality requirements of the TEC, §39.030. The commissioner rulemaking process is scheduled to begin in December 2012 with an effective date of March 2013.

Authority for conducting nationally comparative data studies is given to the state's assessment program by the TEC, §39.028. The proposed repeal of §101.83 would align Texas Administrative Code with statute. The agency plans to adopt commissioner rules as necessary for the National Comparative Data Study.

Subchapter E, Local Option

Section 101.101, Group-Administered Tests, would be amended to specify that the section applies only to assessments covered by this section and to update a reference to rules on test security and confidentiality.

The proposed amendments and repeals would have no procedural and reporting requirements. The proposed amendments and repeals would have no new locally maintained paperwork requirements.

Criss Cloudt, associate commissioner for assessment and accountability, has determined that for the first five-year period the amendments and repeals are in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed amendments and repeals.

Dr. Cloudt has determined that for each year of the first five years the amendments and repeals are in effect the public benefit anticipated as a result of enforcing the amendments and repeals would be updates to the Texas Administrative Code to reflect SBOE and commissioner rulemaking responsibilities relating to the statewide assessment program and to help ensure that the assessment requirements are clearly defined for students, school districts, and the public. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and repeals.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexi-

bility analysis, specified in Texas Government Code, §2006.002, is required.

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 proposed amendments and repeals 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.*

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §101.1, §101.5

The amendments are proposed under the Texas Education Code (TEC), §§28.0211, 39.023, and 39.025, as amended and added by Senate Bill 103, 76th Texas Legislature, 1999; Senate Bill 1031, 80th Texas Legislature, 2007; and House Bill 3, 81st Texas Legislature, 2009, which grant specific rulemaking authority over the assessment program to the commissioner of education.

The amendments implement the Texas Education Code, §§28.0211, 39.023, and 39.025.

§101.1. Scope of Rules.

(a) The State Board of Education (SBOE) shall:

(1) create and implement the statewide assessment program to ensure the program supports the goals of education as specified in the Texas Education Code (TEC); and

(2) establish goals for the statewide assessment program.

(b) When adopting rules, the SBOE shall maintain the stability of the statewide assessment program to the greatest extent possible in accordance with the TEC, Chapter 39, Subchapter B.

(c) The statewide assessment program consists of the following criterion-referenced tests:

(1) the assessments [~~assessment~~] of academic readiness [~~skills~~] in English and Spanish for the grades and subjects as specified in the TEC, Chapter 39, Subchapter B;

(2) the alternative assessments [~~assessment~~] of academic readiness [~~skills~~] for eligible students receiving special education services as specified in the TEC, Chapter 39, Subchapter B;

(3) the assessments required for graduation as specified in the TEC, Chapter 39, Subchapter B; and

(4) the reading proficiency tests in English for eligible limited English proficient students as specified in the TEC, Chapter 39, Subchapter B.

§101.5. Student Testing Requirements.

[~~(a)~~] Every student receiving instruction in the essential knowledge and skills shall take the appropriate criterion-referenced assessments, as required by the Texas Education Code (TEC), Chapter 39, Subchapter B.

[~~(b) A student receiving special education services under the TEC, Chapter 29, Subchapter A, enrolled in Grades 3-11 and who is receiving instruction in the essential knowledge and skills, shall take the assessment of academic skills unless the student's admission, review, and dismissal (ARD) committee determines that it is an inappropriate measure of the student's academic progress as outlined in the student's individualized education program (IEP). If the student's ARD committee determines that the assessment of academic skills is an inappropriate measure of the student's academic progress in one or more subjects, the student shall take the alternate assessment of academic skills in the subject or subjects. Each testing accommodation shall be documented in the student's IEP in accordance with 34 Code of Federal Regulations (CFR) §300.347(a)(5)(i) and (ii), relating to the content of the IEP and participation in statewide or districtwide assessments.~~]

[~~(c) In Grades 3-12, a limited English proficient (LEP) student, as defined by the TEC, Chapter 29, Subchapter B, shall participate in the assessments as required by this section and Subchapter AA of this chapter (relating to Commissioner's Rules Concerning the Participation of Limited English Proficient Students in State Assessments). In Grades 3-5, the language proficiency assessment committee (LPAC) shall determine whether a nonexempt LEP student whose primary language is Spanish will take the assessment of academic skills in English or in Spanish. The decision as to the language of the assessment shall be based on the assessment that will provide the most appropriate measure of the student's academic progress.~~]

[~~(d) A foreign exchange student who has waived in writing his or her intention to receive a Texas high school diploma may be excused from the assessment requirement as specified in the TEC, Chapter 39, Subchapter B.~~]

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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19 TAC §§101.7, 101.9, 101.11, 101.13

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

The repeals are proposed under the Texas Education Code (TEC), §§28.0211, 39.023, and 39.025, as amended and added by Senate Bill 103, 76th Texas Legislature, 1999; Senate Bill 1031, 80th Texas Legislature, 2007; and House Bill 3, 81st Texas Legislature, 2009, which grant specific rulemaking authority over the assessment program to the commissioner of education.

The repeals implement the Texas Education Code, §§28.0211, 39.023, and 39.025.

§101.7. Testing Requirements for Graduation.

§101.9. Grade Advancement Requirements.

§101.11. Remediation.

§101.13. Notice to Students and Parents.

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

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Cristina De La Fuente-Valadez
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Texas Education Agency
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SUBCHAPTER B. DEVELOPMENT AND ADMINISTRATION OF TESTS

19 TAC §101.21, §101.29

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

The repeals are proposed under the Texas Education Code (TEC), §§28.0211, 39.023, and 39.025, as amended and added by Senate Bill 103, 76th Texas Legislature, 1999; Senate Bill 1031, 80th Texas Legislature, 2007; and House Bill 3, 81st Texas Legislature, 2009, which grant specific rulemaking authority over the assessment program to the commissioner of education.

The repeals implement the Texas Education Code, §§28.0211, 39.023, and 39.025.

§101.21. Test Development.

§101.29. Accommodations.

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

Filed with the Office of the Secretary of State on November 21, 2012.

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Cristina De La Fuente-Valadez
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Texas Education Agency
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19 TAC §§101.25, 101.27, 101.33

The amendments are proposed under the Texas Education Code (TEC), §§28.0211, 39.023, and 39.025, as amended and added by Senate Bill 103, 76th Texas Legislature, 1999; Senate Bill 1031, 80th Texas Legislature, 2007; and House Bill 3, 81st Texas Legislature, 2009, which grant specific rulemaking authority over the assessment program to the commissioner of education.

The amendments implement the Texas Education Code, §§28.0211, 39.023, and 39.025.

§101.25. Schedule.

(a) The commissioner of education shall specify the schedule for testing and field testing that is in compliance with the Texas Education Code (TEC), §39.023(c-3)(1) and (2), and supports reliable and valid assessments.

(b) The superintendent of each school district or chief administrative officer of each charter school and any private school administering the tests as allowed under the TEC [~~Texas Education Code (TEC)~~], §39.033, shall be responsible for administering tests.

(c) The commissioner of education may provide alternate dates for the administration of tests required for a high school diploma to students who are migratory children, as defined in the TEC, §39.029, and who are out of the state.

(d) Participation in University Interscholastic League area, regional, or state competitions is prohibited on any days on which testing is scheduled between Monday and Thursday of the school week in which the primary administration of assessment instruments under the TEC, §39.023(a), (c), or (l), occurs.

§101.27. Administrative Procedures.

[~~(a) Test administration procedures shall be established by the Texas Education Agency (TEA) in the applicable test administration materials.~~]

[~~(b)~~] A school district, charter school, or private school administering the tests required by the Texas Education Code (TEC), Chapter 39, Subchapter B, shall follow procedures specified in the applicable test administration materials.

[~~(c) The superintendent of each school district and chief administrative officer of each charter school or private school administering tests required by TEC, Chapter 39, Subchapter B, shall be responsible for:~~]

[~~(1) maintaining the integrity of the test administration process; and~~]

[~~(2) ensuring that every test administrator receives at least annual training in these procedures as provided by the TEA through the education service centers.~~]

§101.33. Release of Tests.

Beginning in 2009 with the 2008-2009 school year and each subsequent third school year, the Texas Education Agency shall release all test items and answer keys only for primary administration assessment instruments administered under the Texas Education Code, §39.023(a), (b), (c), (d), and (l), and [~~. In the nonrelease years, a set of representative~~] field test items that are at least four years old and that are no longer eligible for inclusion on a subsequent test form [~~will be released~~].

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
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For further information, please call: (512) 475-1497

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SUBCHAPTER C. SECURITY AND CONFIDENTIALITY

19 TAC §§101.61, 101.63, 101.65

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

The repeals are proposed under the Texas Education Code (TEC), §§28.0211, 39.023, and 39.025, as amended and added by Senate Bill 103, 76th Texas Legislature, 1999; Senate Bill 1031, 80th Texas Legislature, 2007; and House Bill 3, 81st Texas Legislature, 2009, which grant specific rulemaking authority over the assessment program to the commissioner of education.

The repeals implement the Texas Education Code, §§28.0211, 39.023, and 39.025.

§101.61. Security of Tests.

§101.63. Confidentiality.

§101.65. 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.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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SUBCHAPTER D. SCORING AND REPORTING

19 TAC §101.81, §101.83

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

The repeals are proposed under the Texas Education Code (TEC), §§28.0211, 39.023, and 39.025, as amended and added by Senate Bill 103, 76th Texas Legislature, 1999; Senate Bill 1031, 80th Texas Legislature, 2007; and House Bill 3, 81st Texas Legislature, 2009, which grant specific rulemaking authority over the assessment program to the commissioner of education.

The repeals implement the Texas Education Code, §§28.0211, 39.023, and 39.025.

§101.81. Scoring and Reporting.

§101.83. National Comparative Data.

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

Filed with the Office of the Secretary of State on November 21, 2012.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: January 6, 2013
For further information, please call: (512) 475-1497

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SUBCHAPTER E. LOCAL OPTION

19 TAC §101.101

The amendment is proposed under the Texas Education Code (TEC), §§28.0211, 39.023, and 39.025, as amended and added by Senate Bill 103, 76th Texas Legislature, 1999; Senate Bill 1031, 80th Texas Legislature, 2007; and House Bill 3, 81st Texas Legislature, 2009, which grant specific rulemaking authority over the assessment program to the commissioner of education.

The amendment implements the Texas Education Code, §§28.0211, 39.023, and 39.025.

§101.101. Group-Administered Tests.

(a) An assessment instrument to which this section is applicable [~~required~~] under the Texas Education Code (TEC), §39.032, is defined as any district-commissioned achievement test, either nationally normed or criterion-referenced, that is group administered and reported publicly (e.g., to the local board of trustees) in the aggregate. A test given for a special purpose[~~,~~] such as program placement or individual evaluation (e.g., a spelling test, a diagnostic test such as a reading inventory or interim benchmark assessment, or a released statewide assessment instrument)[~~,~~] is not included in this definition. The commissioner of education shall provide annually to school districts and charter schools a list of state-approved, norm-referenced group-administered achievement tests that test publishers certify meet the requirements of the TEC, §39.032.

(b) A company or organization scoring a test defined in subsection (a) of this section shall send test results to the school district for verification. The school district shall have 90 days to verify the accuracy of the data and report the results to the school district board of trustees.

(c) State and national averages for an assessment instrument under this section must be computed using data that are not more than eight years old at the time the assessment instrument is administered and that are representative of the group of students to whom the assessment instrument is administered. This eight-year limitation does not apply if only data older than eight years are available for an assessment instrument.

(d) To maintain the security and confidentiality of group-administered achievement tests, school districts and charter schools shall follow the applicable procedures for test security and confidentiality delineated in §101.3031 of this title (relating to Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments) [~~Subchapter C of this chapter (relating to Security and Confidentiality)~~].

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

Filed with the Office of the Secretary of State on November 21, 2012.

TRD-201206063
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: January 6, 2013
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.8

(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 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 proposes the repeal and replacement of §101.8, concerning Persons with Criminal Backgrounds. New §101.8 is proposed concurrently and published in this issue of the *Texas Register.* The repeal and replacement of §101.8 will be a more streamlined rule.

Glenn Parker, Executive Director, has determined that for each year of the first five years the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Parker has also determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the new section will be protection of the public safety and welfare by barring or disciplining the professional licenses of individuals who have engaged in criminal conduct.

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. The repeal and concurrent proposal do not substantially change existing rules, and rather serve to clarify the rules.

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 repeal is 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.

§101.8. Persons with Criminal Backgrounds.

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

Filed with the Office of the Secretary of State on November 26, 2012.

TRD-201206069
Glenn Parker
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: January 6, 2013
For further information, please call: (512) 475-0977

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22 TAC §101.8

The State Board of Dental Examiners proposes new §101.8, concerning Persons with Criminal Backgrounds.

The section establishes guidelines and criteria for the disciplinary actions to be taken by the Board against applicants, licensees or registrants with criminal backgrounds. The rule lists mandated disciplinary actions under the Dental Practice Act and Chapter 53 of the Texas Occupations Code. Additionally, the rule describes situations in which the Board may take disciplinary action against an applicant, licensee or registrant in its discretion and the criteria the Board may consider in making a discretionary decision. Lastly, the rule lists the crimes that the Board considers to be directly related to the practice of dentistry.

Glenn Parker, Executive Director, has determined that for each year of the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new section.

Mr. Parker has also determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be protection of the public health and safety by discouraging criminal behavior. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

Comments on the proposal may be submitted electronically to Nycia Deal, Staff Attorney, at *nycia@tsbde.texas.gov* or by mail to Nycia Deal, Staff Attorney, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701. To be considered, all written comments must be received by the State Board of Dental Examiners no later than 30 days from the date that the new section is published in the *Texas Register.*

The new section is proposed under Texas Government Code §§2001.021 et seq. and Texas Occupations Code §254.001, which authorize the Board to adopt and enforce rules necessary for it to perform its duties.

The new section affects Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

§101.8. Persons with Criminal Backgrounds.

(a) The purpose of this section is to establish guidelines and criteria for the disciplinary actions to be taken by the Board against applicants, licensees or registrants with criminal backgrounds.

(b) The Board shall suspend a license or registration upon an initial conviction and revoke upon a final conviction for:

(1) a felony;

(2) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(3) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(4) a misdemeanor under Section 25.07, Penal Code; or

(5) a misdemeanor under Section 25.071, Penal Code.

(c) The Board shall suspend a license or registration upon an initial finding of guilt by a trier of fact and revoke upon a final conviction for a felony under:

(1) Chapter 481 or 483, Health and Safety Code;

(2) Section 485.033, Health and Safety Code; or

(3) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.).

(d) The Board may not reinstate or reissue a license or registration suspended or revoked under subsection (b) or (c) of this section, unless an express determination is made that the reinstatement or reissuance of the license or registration is in the best interests of the public and the person whose license or registration was suspended or revoked.

(e) The Board shall revoke a license or registration upon the imprisonment of the licensee or registrant following a felony conviction or deferred adjudication, or revocation of felony community supervision, parole or mandatory supervision.

(f) The Board may impose any authorized disciplinary action on an applicant, licensee or registrant because of a person's conviction of a crime that:

(1) serves as a ground for discipline under the Act;

(2) directly relates to the duties and responsibilities of a licensee or registrant;

(3) does not directly relate to the duties and responsibilities of a licensee or registrant and that was committed within the previous five years;

(4) is listed in Section 3g, Article 42.12, Code of Criminal Procedure; or

(5) is a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

(g) The crimes listed in paragraphs (1) - (8) of this subsection are directly related to the duties and responsibilities of a licensee or registrant because, as established by the Legislature in the Dental Practice Act, the offenses are of a serious nature; have a relationship to the purposes for requiring a license; may offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; or have a relationship to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensee or registrant:

(1) a felony offense;

(2) a misdemeanor offense involving fraud;

(3) an offense relating to the regulation of dentists, dental hygienists, or dental assistants;

(4) an offense relating to the regulation of a plan to provide, arrange for, or reimburse any part of the cost of dental care services or the regulation of the business of insurance;

(5) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(6) a misdemeanor under Section 25.07, Penal Code;

(7) a misdemeanor under Section 25.071, Penal Code; and

(8) an offense that was committed in the practice of or connected to dentistry, dental hygiene or dental assistance.

(h) In determining the appropriate disciplinary action to take where the Board is not mandated to take a certain disciplinary action, the Board may consider the factors listed in paragraphs (1) - (6) of this subsection:

(1) the extent and nature of the person's criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity, indicating that the person has maintained steady employment, supported the person's dependents, maintained a record of good conduct, and paid all outstanding court costs, supervision fees, fines, and restitution;

(5) evidence of the person's rehabilitation or rehabilitative effort; and

(6) other evidence of the person's fitness including letters of recommendation.

(i) A person is considered to have been convicted of an offense for purposes of subsection (f) of this section if the person entered a plea of guilty or nolo contendere and the judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision, whether or not the court has dismissed the proceedings and discharged the person.

(j) An applicant, licensee or registrant shall disclose in writing to the Board any arrest, conviction or deferred adjudication against him or her at the time of initial application and renewal. Additionally, an applicant, licensee or registrant shall provide information regarding any arrest, conviction or deferred adjudication to the Board within 30 days of a Board request. An application shall be deemed withdrawn if the applicant has failed to respond to a request for information or to a proposal for denial of eligibility or conditional eligibility within 30 days.

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

Filed with the Office of the Secretary of State on November 26, 2012.

TRD-201206070
Glenn Parker
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: January 6, 2013
For further information, please call: (512) 475-0977

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CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER A. PROCEDURES GOVERNING GRIEVANCES, HEARINGS, AND APPEALS

22 TAC §§107.66 - 107.68

The State Board of Dental Examiners (SBDE) proposes amendments to §107.66, concerning Modification to Order; §107.67, concerning Review of Modification; and §107.68, concerning Appearances. The provisions of §107.66 and §107.67 address the process by which a licensee of SBDE may request a modification of a past order of disciplinary action. Section 107.68 addresses the process by which any party may appear before SBDE.

The proposed amendment to §107.66 clarifies the requirements of an application to modify a Board Order, including a specification of its components and a requirement that the longer of one year or two-thirds of the compliance period has passed before applying for a modification.

The proposed amendment to §107.67 specifies that the applications for modification are reviewed at an informal settlement conference; after which a recommendation is made to the Board.

The proposed amendment to §107.68 requires an interested party to submit a written request to appear before the Board thirty days prior to the date of the requested appearance.

Glenn Parker, Executive Director, has determined that for each year of the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections.

Mr. Parker has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amended sections will be consistency and clarity in the modification of Board disciplinary action and appearances before the Board. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Comments on the proposal may be submitted electronically to Nycia Deal, Staff Attorney at nycia+107@tsbde.texas.gov or by mail to Nycia Deal, Staff Attorney, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701. Comments may also be faxed to (512) 463-7452. To be considered, all written comments must be received by the State Board of Dental Examiners no later than 30 days from the date that the amendments are published in the *Texas Register.*

The amendments are proposed under Texas Government Code §§2001.021 et seq. and Texas Occupations Code §254.001, which authorize the Board to adopt and enforce rules necessary for it to perform its duties.

The amendments affect Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

§107.66. Application for Modification of Board Order [~~Modification to Order~~].

(a) A licensee or registrant in current status seeking modification of a prior [~~person requesting a modification of~~ a] Board Order may [~~shall~~] submit a written application for modification of the Board Order [~~request prior to a Board meeting~~]. The application [~~These~~] shall be submitted to the General Counsel of the Board and shall include at least the following: [~~by the requesting party to the Board, along with three (3) copies of the request. The application shall include but not be limited to:~~]

(1) specific sanction of which modification is requested;

(2) evidence of compliance with past and current Board Orders;

(3) summary of reasons for request;

(4) benefit to the public if granted; and

(5) exhibits or testimonials, including but not limited to any continuing education or other rehabilitative activities.

[~~(1) Date of order, nature of violation;~~]

[~~(2) Specific punishment on which modification is requested;~~]

[~~(3) Sections on which the applicant does not request modification;~~]

[~~(4) Summary of reasons for request;~~]

[~~(5) Benefit to the public if granted;~~]

[~~(6) Separately numbered and indexed exhibits or testimonials tending to support the request;~~]

[~~(7) Notice to any patient or other party involved in the original action with an invitation to respond;~~]

[~~(8) Acknowledgment that the applicant understands that he or she is not entitled to modification of the Board Order.~~]

(b) An application for modification shall not be accepted before the longer of:

(1) twelve months from the effective date of the Board Order; or

(2) the successful completion of two-thirds (2/3) of the total compliance period of the Board Order.

(c) An applicant for modification shall meet all requirements necessary for the Board to access the applicant's criminal history information, including submitting fingerprint information and paying all associated costs.

§107.67. Review of Application for Modification [~~Review of Modification~~].

(a) Applications for modification may be reviewed at an informal settlement conference empaneled by staff or Board members. The panel shall make a recommendation to the Board concerning the application. [~~Requests for modification of a Board Order shall be reviewed by a designee of the Board who will determine whether it should be placed on the Board's agenda. The designee may make a recommendation to the Board concerning the requests.~~]

(b) The Board, in its discretion, may accept or reject the panel's recommendation to grant or deny the application or modify the original findings to reflect changed circumstances.

(c) If the application for modification is denied by the Board, a subsequent application may not be considered by the Board until twelve (12) months from the date of denial of the previous application.

(d) A person applying for modification of a Board Order has the burden of proof.

(e) The Board may give notice to any patient or other party involved in any allegation for which application for modification is received by the Board.

§107.68. Appearances.

Nothing in this subchapter [~~these rules~~] shall be construed to prevent any licensee of the Board [~~Agency~~] or any other person from appearing before the Board for consideration of any matter. Thirty (30) days prior [~~Prior~~] to an appearance, the person shall submit a request to appear stating the substance of the matter to be discussed. The Board may limit the time within which any party may address the Board and may limit the appearance to consideration of written materials.

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

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Glenn Parker
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 475-0977

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CHAPTER 108. PROFESSIONAL CONDUCT
SUBCHAPTER E. BUSINESS PROMOTION

22 TAC §108.56

The State Board of Dental Examiners (SBDE) proposes new §108.56, concerning Certifications, Degrees, Fellowships, Memberships and Other Credentials.

The section is proposed concurrent with the adoption of the repeal of §§108.50 - 108.61 and new §§108.50 - 108.55 and §§108.57 - 108.63, relating to Business Promotion. The proposed section addresses the advertisement of credentials in dentistry that do not reflect a recognized specialty area or an earned academic degree. The section stipulates that abbreviations designating these credentials must be defined in advertisements. The section exempts materials not intended for business promotion or dissemination to the public from the requirement imposed.

Glenn Parker, Executive Director, has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Parker has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be protection of the public health and safety by ensuring the public is not misled as to a dentist's credentials. There will not be a significant fiscal effect on small businesses. However, SBDE anticipates an initial economic cost of compliance may be carried by those licensees whose current advertisements contain undefined credentials in abbreviated form.

Comments on the proposal may be submitted electronically to Nycia Deal, Staff Attorney at *nycia+108.56@tsbde.texas.gov* or by mail to Nycia Deal, Staff Attorney, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701. Comments may also be faxed to (512) 463-7452. To be considered, all written comments must be received by the State Board of Dental Examiners no later than 30 days from the date that this proposed section is published in the *Texas Register.*

The new section is proposed under Texas Government Code §§2001.021 et seq. and Texas Occupations Code §254.001, which authorize the Board to adopt and enforce rules necessary for it to perform its duties.

The new section affects Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

§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, FAGD, Fellow Academy of General Dentistry OR John Doe, General Dentist, FAAID, Fellow American Academy of Implant Dentistry.

(c) The provisions of subsection (b) of this section shall be required for professional business cards, professional letterhead and signage.

(d) The provisions of subsection (b) of this section shall not be required in materials not intended for business promotion or dissemination 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.

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Glenn Parker
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 475-0977

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION
SUBCHAPTER L. ELECTRONIC TRANSACTIONS

28 TAC §§1.1301 - 1.1306

The Texas Department of Insurance, in compliance with Insurance Code Chapter 35, proposes new 28 TAC Chapter 1, Subchapter L, §§1.1301 - 1.1306, establishing the minimum standards with which a regulated entity must comply in conduct-

ing business electronically with other regulated entities and consumers. These new sections implement Insurance Code Chapter 35, §§35.001 - 35.004, which were added by House Bill 1951, 82nd Legislature, Regular Session, effective September 1, 2011.

Section 1.1301 states the purpose of the new subchapter, which is to set minimum standards for a regulated entity that wants to conduct business electronically with other regulated entities and with consumers.

Section 1.1302 defines two terms used throughout the new subchapter, "regulated entity" and "doing business electronically." Insurance Code §35.001 defines "regulated entity" to mean "each insurer or other organization regulated by the department." The definition in the statute does not make clear that agencies and individual agents, also regulated by the department, are permitted to do business electronically as permitted by the statute. To make clear that they are included in the entities permitted to do business electronically, this subchapter defines "regulated entity" to include an agency and any agent of an insurer or other organization listed in Insurance Code §35.001.

Section 1.1303 reiterates the statutory requirement under which a regulated entity may conduct business electronically, which is that a regulated entity may only conduct business electronically if before doing so each party to the business agrees to conduct the business electronically.

Section 1.1304 prescribes the minimum conditions with which a regulated entity must comply in conducting business electronically with other businesses and consumers. The section requires that a regulated entity comply with the Texas Uniform Electronic Protections Act and with all applicable privacy laws.

Section 1.1305 prescribes the minimum conditions with which a regulated entity must comply in conducting business electronically with consumers. The section establishes five additional minimum standards, and identifies when the department may take action for an insurer's failure to comply with these standards and the requirements of Insurance Code Chapter 551.

The first standard requires that a regulated entity give a consumer the option to continue receiving notices and other communications by hard copy if the Insurance Code or department regulation requires they be provided by hard copy. The second standard requires a regulated entity to ensure consumers understand and agree to receive electronic notices of termination, cancellation, nonrenewal, increased premiums, or other significant negative notices from the regulated entity. The third standard requires that whenever a regulated entity sends a consumer an electronic notice that is required by the department to be delivered or mailed, the notice must include an option to allow the consumer to revoke its consent to receiving these notices electronically. The fourth standard is that a regulated entity must retain a copy of a consumer's agreement to do business electronically for as long as the regulated entity intends to rely on that agreement. The fifth standard is that a consumer who has done business with a regulated entity may refuse to continue to do business electronically.

Section 1.1305 also explains that the cancellation or nonrenewal of an insurance policy subject to Insurance Code Chapter 551 has no effect if in violation of the requirements of this subchapter.

Section 1.1306 addresses a potential conflict between Subchapter L and other department regulations. It reiterates the statute's preemption provision that, should there be a conflict between a provision of the new subchapter and other regulations adopted by the department, the provision of the new subchapter controls to the extent necessary for compliance with Insurance Code Chapter 35.

FISCAL NOTE. Stanton Strickland, associate commissioner, Legal Section, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Strickland has also determined that for each year of the first five years the proposed new sections are in effect, several public benefits are anticipated as a result of compliance with this proposal. The department anticipates there will be no cost for compliance to persons or regulated entities choosing to conduct business electronically.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accord with the Government Code §2006.002(c), the department has determined that this proposed subchapter will not have an adverse economic effect on small or micro business carriers because it does not require any conduct that will cause expense to a regulated entity. In accord with the Government Code §2006.002, the department is not required to prepare a regulatory flexibility analysis.

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, so, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. If you want the department to consider written comments on the proposal, you must submit them no later than 5:00 p.m. on January 7, 2013, to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of the comment to Stanton Strickland, Associate Commissioner, Legal Section, Mail Code 110-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You should separately submit any request for a public hearing to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If the department holds a hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The Texas Department of Insurance proposes the sections pursuant to Insurance Code §§35.004, 36.001, and 551.111. Section 35.004 provides that the commissioner will adopt rules necessary to implement and enforce Insurance Code Chapter 35, and that the rules adopted by the commissioner must include rules that establish minimum standards with which a regulated entity must comply in the entity's electronic conduct of business with other regulated entities and consumers. Section 36.001 provides that the commissioner 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. Section 551.111 provides that a can-

cellation of an insurance policy made in violation of Insurance Code Chapter 551 has no effect.

CROSS REFERENCE TO STATUTE. The proposal affects the following statutes:

§1.1301: Insurance Code §35.004

§1.1302: Insurance Code §35.001

§1.1303: Insurance Code §35.003

§1.1304: Insurance Code §35.003 and §35.004; and Business and Commerce Code Chapter 322

§1.1305: Insurance Code §§35.003, 35.004, and 551.111; and Business and Commerce Code Chapter 322

§1.1306: Insurance Code §35.002

§1.1301. Purpose.

This subchapter implements Chapter 35 of the Insurance Code by setting minimum standards for regulated entities doing business electronically with other regulated entities and consumers.

§1.1302. Definitions.

The following words and terms, when used in this subchapter, have the following meanings:

(1) Regulated entity--Each insurer or other organization regulated by the department, including:

(A) a domestic or foreign, stock or mutual, life, health, or accident insurance company;

(B) a domestic or foreign, stock or mutual, fire or casualty insurance company;

(C) a Mexican casualty company;

(D) a domestic or foreign Lloyd's plan;

(E) a domestic or foreign reciprocal or interinsurance exchange;

(F) a domestic or foreign fraternal benefit society;

(G) a domestic or foreign title insurance company;

(H) an attorney's title insurance company;

(I) a stipulated premium company;

(J) a nonprofit legal service corporation;

(K) a health maintenance organization;

(L) a statewide mutual assessment company;

(M) a local mutual aid association;

(N) a local mutual burial association;

(O) an association exempt under Insurance Code §887.102;

(P) a nonprofit hospital, medical, or dental service corporation, including a company subject to Insurance Code Chapter 842;

(Q) a county mutual insurance company;

(R) a farm mutual insurance company; and

(S) an agency and any agent of an insurer or other organization listed in this paragraph.

(2) Doing business electronically--To do business over the internet, by email or by other electronic means.

§1.1303. Electronic Transactions Allowed.

A regulated entity may do business electronically in the same manner it is otherwise allowed to do business if, before doing business, each party to the business agrees to do business electronically.

§1.1304. Minimum Standards for Regulated Entities Doing Business Electronically.

(a) A regulated entity doing business electronically must comply with the requirements of the Texas Uniform Electronics Transactions Act, Business and Commerce Code Chapter 322.

(b) Electronic transactions must comply with the privacy requirements of all applicable laws, including:

(1) the Gramm-Leach-Bliley Act of 1999 15 U.S.C. §§6801 - 6810;

(2) the Health Insurance Portability and Accountability Act of 1996 Pub. L. No. 104-191 110 Stat. 1936 (1996); and

(3) any other applicable state or federal law.

§1.1305. Additional Minimum Standards for Regulated Entities Doing Business Electronically with Consumers.

A regulated entity doing business electronically with a consumer must comply with the following minimum standards:

(1) A regulated entity must give a consumer the option to receive by non-electronic mail any notice or other communication required by the Insurance Code or a department regulation to be delivered by mail.

(2) The option required by paragraph (1) of this section must conspicuously include language to allow the consumer to indicate their understanding and agreement to receive electronically any notice of termination, cancellation, nonrenewal, increased payments, or other significant negative notice from the regulated entity.

(3) After having received a consumer's agreement to do business electronically, any electronic notice sent by a regulated entity that the department requires to be delivered or mailed must include an option to allow the consumer to revoke its consent to receive such notices electronically.

(4) A regulated entity must keep a copy of a consumer's agreement to do business electronically in its records of its business with the consumer for as long as the regulated entity intends to rely on that agreement.

(5) A consumer who has done business electronically with a regulated entity may refuse to continue to do business with the regulated entity by electronic means.

(6) The cancellation or nonrenewal of an insurance policy subject to Insurance Code Chapter 551 if in violation of this subchapter has no effect.

§1.1306. Conflict with Other Rules.

If there is any conflict between other regulations adopted by the department and this subchapter, this subchapter controls to the extent necessary for compliance with Insurance Code Chapter 35.

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

Filed with the Office of the Secretary of State on November 26, 2012.

TRD-201206074

Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: January 6, 2013
For further information, please call: (512) 463-6326

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CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER M. FILING REQUIREMENTS

DIVISION 11. FILINGS MADE EASY--CERTIFICATES OF PROPERTY AND CASUALTY INSURANCE

28 TAC §§5.9370 - 5.9376

The Texas Department of Insurance (TDI) proposes new 28 TAC §§5.9370 - 5.9376, concerning certificates of property and casualty insurance. Senate Bill 425, 82nd Legislature, 2011, Regular Session, added Chapter 1811 to the Insurance Code, relating to property and casualty certificates of insurance and approval of property and casualty certificate of insurance forms by TDI. Insurance Code Chapter 1811 applies to a certificate holder, policyholder, insurer, or agent with regard to a certificate of insurance issued on property or casualty operations or a risk located in this state, regardless of where the certificate holder, policyholder, insurer, or agent is located. Under Insurance Code §1811.052, insurers and agents issuing certificates of insurance for risks located in Texas must file the certificate forms and get TDI approval before using them. Moreover, Insurance Code §1811.101 prohibits an insurer or agent from delivering or issuing for delivery in Texas a certificate of insurance unless the certificate's form has been filed with and approved by the commissioner.

The proposed sections are necessary to implement Insurance Code Chapter 1811. Since Senate Bill 425 took effect on September 1, 2011, TDI has received a number of inquiries regarding filing requirements, use, and permissible content of certificates of insurance. The proposed sections address those issues to improve the efficiency, effectiveness, and transparency of TDI's filing and approval process for certificate of insurance form filings, and to provide clear guidance to persons responsible for completing the approved forms.

Section 5.9370 addresses the purpose and scope of the rules. Section 5.9371 supplements and clarifies the definitions in Insurance Code Chapter 1811. Sections 5.9372 - 5.9374 provide specific requirements for the preparation and submission of certificate of insurance form filings, including requirements for the transmittal information and the TDI procedure for handling incomplete filings. Section 5.9375 addresses the use of certificate of insurance forms. Section 5.9376 explains restrictions that apply to the content of certificates of insurance.

FISCAL NOTE. Marilyn Hamilton, director of the personal and commercial lines office for the property and casualty section, has determined that, for each year of the first five years the proposed sections are in effect, there will be no measurable fiscal impact to state and local governments as a result of the enforcement or administration of this proposal. Ms. Hamilton does not anticipate any measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. For each year of the first five years the proposed sections are in effect, Ms. Hamilton expects that there will be significant public benefits as a result of enforcing or administering the proposed sections. The expected benefits include compliance with Insurance Code Chapter 1811; implementation of uniform and efficient procedures for the submission and review of certificate of insurance form filings; and clear, consistent guidance regarding the permissible content of certificates of insurance. The cost of making a certificate of insurance form filing results from the enactment of Senate Bill 425, which requires that certificate of insurance forms be filed with TDI, rather than from the proposed sections. However, TDI anticipates that the preparation and submission requirements for filing certificate of insurance forms may impose an additional cost on persons required to comply with the proposed sections. While each person may submit a certificate of insurance form filing in a number of ways, the proposal considers submission of documents by first class mail because that method of compliance is available to all persons required to comply with the proposed sections. The required transmittal form consists of one page. TDI estimates a cost of eight cents for one printed page (seven cents for paper and one cent for ink), a cost of five cents for a standard envelope, and a cost of 45 cents for a first class stamp. Based on these estimates, TDI anticipates an additional cost of 58 cents per submission. Ms. Hamilton does not expect a disproportionate economic impact on small or micro businesses.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. TDI has determined that the proposed sections will not have an adverse economic effect on small or micro businesses. As a result, in accord with §2006.002(c) of the Government Code, TDI is not required to prepare a regulatory flexibility analysis.

TAKINGS IMPACT ASSESSMENT. TDI 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. Consequently, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. If you wish to comment on the proposal, or to request a public hearing, you must do so in writing no later than 5:00 p.m. on January 7, 2013. A hearing request must be on a separate page from any written comments. TDI requires two copies of your comments or hearing request. Send one copy to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy to the Texas Department of Insurance, Personal and Commercial Lines Office, Mail Code 104-PC, P.O. Box 149104, Austin, Texas 78714-9104.

STATUTORY AUTHORITY. TDI proposes the sections pursuant to Insurance Code §§1811.003, 1811.052, 1811.101, 1811.102, 1811.103, and 36.001. Section 1811.003 allows the commissioner to adopt rules as necessary or proper to accomplish the purposes of Insurance Code Chapter 1811. Section 1811.052 requires TDI approval for certificates of insurance for risks located in Texas prior to use. Section 1811.101 and §1811.102 provide filing, approval, and disapproval requirements for certificates of insurance. Section 1811.103 mandates that certain standard certificate of insurance forms are deemed approved upon filing. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and

duties of TDI under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The proposal implements the following statutes: Insurance Code §§1811.003, 1811.052, 1811.101, 1811.102, and 1811.103.

§5.9370. Purpose and Scope.

(a) This division specifies the filing requirements for certificates of property and casualty insurance submitted pursuant to Chapter 1811 of the Insurance Code. It also consolidates and explains the restrictions that apply to the content of certificates of insurance.

(b) Nothing in this division prohibits a certificate holder from requesting a copy of the subject policy or endorsements.

(c) Nothing in this division applies to certificates or evidence forms exempted from the filing requirements pursuant to Insurance Code §1811.002(b), including:

(1) a statement, summary, or evidence of property insurance required by a lender in a lending transaction involving a mortgage, lien, deed of trust, or any other security interest in real or personal property as security for a loan;

(2) a certificate issued under a group or individual policy for life insurance, credit insurance, accident and health insurance, long-term care benefit insurance, or Medicare supplement insurance or an annuity contract; or

(3) standard proof of motor vehicle liability insurance.

(d) Nothing in this division applies to negotiable or transferable certificates or evidence forms pertaining to marine insurance.

§5.9371. Definitions.

(a) Words and terms not defined in this division have the same meaning as in Chapter 1811 of the Insurance Code.

(b) Unless the context indicates otherwise, this division uses the following definitions:

(1) Certificate of insurance--A document, instrument, or record, including an electronic record, no matter how titled or described, that is executed by an insurer or agent and issued to a third person not a party to the subject insurance contract, as a statement or summary of property or casualty insurance coverage. The term does not include an insurance binder or policy form, or any document that describes insurance coverage that is merely promised or expected to exist in the future, whether titled as an affidavit, insurance verification form, or otherwise.

(2) Certificate holder--A person, other than a policyholder, who is designated on a certificate of insurance as a certificate holder or to whom a certificate of insurance has been issued by an insurer or agent at the request of the policyholder.

(3) Company--The name of the entity filing the certificate of insurance form. If a third party is filing the certificate of insurance form, the company name is the name of the entity for which the third party is filing the certificate of insurance form, not the name of the third party filer.

(4) Commissioner--The commissioner of insurance.

(5) TDI--The Texas Department of Insurance.

(6) Insurance Code--The Texas Insurance Code.

(7) FEIN--Federal Employer Identification Number.

(8) NAIC--The National Association of Insurance Commissioners.

(9) SERFF--The NAIC System for Electronic Rate and Form Filing.

§5.9372. Preparation and Submission of Certificate of Insurance Form Filings.

(a) Approval required. A certificate of insurance issued on property or casualty operations or a risk located in this state, regardless of where the certificate holder, policyholder, insurer, or agent is located, must be on a form that has been filed and approved prior to use.

(b) Filing content. All filings for new or amended certificate of insurance forms submitted pursuant to Insurance Code Chapter 1811 must comply with the filing requirements set forth in this division, any other applicable rules the commissioner has adopted, and any applicable commissioner's orders.

(1) All filings must contain transmittal information as required by §5.9373 of this title (relating to Certificate of Insurance Form Filing Transmittal Information).

(2) All filings must contain a copy of the subject certificate of insurance form. For identification purposes, the certificate of insurance must contain a form number and edition date.

(c) Combined filings. Do not combine a certificate of insurance form filing with any other filing.

(d) Filing submission.

(1) TDI will accept a filing required under this division by mail. Send filings to the Texas Department of Insurance, Property and Casualty Intake, Mail Code 104-3B, P.O. Box 149104, Austin, Texas 78714-9104.

(2) TDI will accept a filing required under this division if hand-delivered. Bring filings to the Texas Department of Insurance, Customer Service Center, 333 Guadalupe Street, William P. Hobby Jr. State Office Building, Tower 1, Room 103, Austin, Texas 78701.

(3) TDI will accept a filing required under this division that is submitted electronically, whether by email to PCFilingsIntake@tdi.state.tx.us or through SERFF.

(4) TDI will not collect a filing fee for a certificate of insurance filing.

(e) Public inspection of filing.

(1) A certificate of insurance form and any supporting information filed with TDI under this division is open to public inspection as of the date of the filing.

(2) To the extent that a filing includes company contact information, the company affirmatively consents to the release and disclosure of its company contact information, including any email addresses.

§5.9373. Certificate of Insurance Form Filing Transmittal Information.

(a) Required information. The filing transmittal information must be typed and must contain, at a minimum, the following:

(1) company;

(2) NAIC number if the filing is submitted by an insurer;

(3) FEIN if the filing is submitted by an entity other than an insurer or agent; and

(4) contact person, including name, telephone number, mailing address, fax number, and email address (if available).

(b) Transmittal information format.

(1) The Certificate of Insurance Form Filing Transmittal Form is available on TDI's website at www.tdi.texas.gov or by request to the Texas Department of Insurance, Property and Casualty Intake, Mail Code 104-3B, P.O. Box 149104, Austin, Texas 78714-9104.

(2) Filers may submit transmittal information in a format other than the form provided by TDI if the information included in the transmittal form, or in an addendum to the transmittal form, contains all the information required under subsection (a) of this section.

(c) SERFF filings. Persons filing through SERFF must follow existing procedures for SERFF filings.

§5.9374. Incomplete Filings.

(a) A filing is incomplete if the filing does not comply with all of the filing requirements described in this division.

(b) TDI will return an incomplete filing to the filer with a letter or electronic notification indicating the reason(s).

(c) The 60-day period in Insurance Code §1811.101(c) does not commence until TDI receives a complete filing.

§5.9375. Use of Certificate of Insurance Forms.

(a) A standard certificate of insurance form promulgated by the Association for Cooperative Operations Research and Development (ACORD), the American Association of Insurance Services (AAIS), or the Insurance Services Office (ISO) is deemed approved on the date the form is filed with TDI.

(b) An authorized user may use a company's approved certificate of insurance form or a standard certificate of insurance form as evidence of property and casualty insurance coverage without making a separate filing.

(c) An authorized user is:

(1) any person authorized by the company or the company's designee to use the company's approved certificate of insurance form; or

(2) any person authorized by ACORD, AAIS, or ISO to use the appropriate standard certificate of insurance form.

§5.9376. Restrictions on the Content of Certificates of Insurance.

(a) Required language. A certificate of insurance must contain the phrase "for information purposes only" or similar language, or state that:

(1) the certificate of insurance does not confer any rights or obligations other than the rights and obligations conveyed by the policy referenced on the form; and

(2) the terms of the policy control over the terms of the certificate of insurance.

(b) Specific limitations.

(1) A certificate of insurance may not amend, extend, or alter the coverage afforded by the referenced insurance policy.

(2) A certificate of insurance may not confer to a certificate holder new or additional rights beyond what the referenced policy or any executed endorsement provides.

(3) A certificate of insurance may not alter or modify a certificate of insurance form approved by TDI unless TDI approves the alteration or modification.

(4) A certificate of insurance may not contain false or misleading information concerning the referenced insurance policy.

(A) Requests for information on the certificate of insurance form must be specific, clear, and reasonable.

(B) Any explanatory information included in a completed certificate of insurance is limited to language in the referenced policy and any executed endorsements.

(5) A certificate of insurance may not contain a reference to a legal or insurance requirement contained in a contract other than the underlying contract of insurance, including a contract for construction or services.

(A) A certificate of insurance may refer to the language in the underlying contract of insurance.

(B) A certificate of insurance may not refer to, describe, explain, or define obligations under a contract other than the underlying contract of insurance.

(6) A certificate of insurance may not alter the terms and conditions of a right to notice of cancellation, nonrenewal, or material change, or any similar notice concerning a policy of insurance required by the insurance policy or Texas law.

(A) A certificate of insurance may not create a new or additional duty to notify.

(B) Any statement on a certificate of insurance regarding an existing duty to notify is limited to language in the referenced policy and any executed endorsements.

(c) Disapproval. The commissioner will disapprove a filed certificate of insurance form, or withdraw approval of an approved certificate of insurance form if the form:

(1) contains a provision or has a title or heading that is misleading or deceptive or violates public policy;

(2) violates any state law, including an administrative rule;

(3) requires an agent to certify insurance coverage that is not available in the line or type of insurance coverage referenced on the form; or

(4) directly or indirectly requires the commissioner to make a coverage determination under a policy of insurance or insurance transaction.

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

Filed with the Office of the Secretary of State on November 26, 2012.

TRD-201206075
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: January 6, 2013
For further information, please call: (512) 463-6326

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CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

28 TAC §7.18

The Texas Department of Insurance proposes amendments to §7.18, concerning the National Association of Insurance

Commissioners Accounting Practices and Procedures Manual. These proposed amendments primarily seek to adopt by reference the National Association of Insurance Commissioners' (NAIC) substantive and other updates to the March 2012 version of *The Accounting Practices and Procedures Manual* (Manual) adopted by the NAIC in calendar year 2012. The proposed amendments also delete or modify three existing Texas exceptions to the Manual. Additionally, the proposed amendments make conforming changes to §7.18 to reflect these proposed changes.

The Manual, published and issued by the NAIC, incorporates the statements of statutory accounting principles (SSAPs) adopted by the NAIC and various other appendices, including actuarial guidelines adopted by the NAIC. The SSAPs provide a national standard for insurers and health maintenance organizations (collectively referred to as "carriers" in this order) on how to properly record business transactions for the purpose of statutory reporting. The NAIC adopts these SSAPs through its maintenance of statutory accounting principles process, which includes a series of open meetings that offer the public the opportunity to comment on the proposed SSAPs. The NAIC annually updates the Manual to reflect any changes to the SSAPs made through this process or other changes to the Manual.

The department uses the Manual, including its appendices, as its source of statutory accounting principles and actuarial guidelines when analyzing financial reports and conducting statutory examinations and rehabilitations of carriers licensed in Texas unless a department rule or other state law provides otherwise. The department periodically adopts the Manual by reference, with certain modifications and exceptions, in §7.18 to codify this usage. Most recently, on October 12, 2012, the department amended §7.18 to adopt by reference the March 2012 version of the Manual to apply to all examinations conducted on or after December 31, 2011, and all financial statements filed with the department for reporting periods beginning on or after December 31, 2011.

The department now proposes to amend §7.18 to adopt by reference the substantive and other updates to the March 2012 version of the Manual issued by the NAIC during calendar year 2012. The department proposes that these updates will be used to prepare all financial statements required to be filed with the department on or after January 1, 2013, and will be applied to all examinations of those financial statements. These amendments are necessary to ensure that all applicable examinations conducted and statements filed comply with these NAIC updates, which, combined with the March 2012 version of the Manual, effectively constitute the March 2013 version of the Manual.

The department also proposes to amend three existing exceptions to the Manual and to make other conforming changes to §7.18 to account for the deleted exceptions and addition of the NAIC updates. The department provides a full description of these changes below.

The department also notes that copies of the documents proposed in newly designated §7.18(c)(1) are available for inspection in the Financial Regulation Division of the Texas Department of Insurance, William P. Hobby Jr. State Office Building, Tower Number III, Third Floor, Mail Code 303-1A, 333 Guadalupe, Austin, Texas.

Proposed amended subsection (c) provides that the adopted exceptions and modifications under this subsection must be used to prepare all financial statements required to be filed with the department on or after January 1, 2013, and will be applied to all examinations of those financial statements. This change is necessary to comply with the analogous effective dates of the NAIC updates adopted by reference in subsection (c)(1).

Proposed amended §7.18(c)(1)(A) lists the SSAPs proposed to be adopted by reference. Specifically, it proposes to adopt by reference: (i) SSAP No. 104, which adopts, with modification, *FAS 123(R): Share-Based Payment;* (ii) SSAP Nos. 92 and 102, which adopts, with modification, *FAS 158: Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans--an amendment of FASB Statements Nos. 87, 88, 106, and 132(R);* and (iii) SSAP No. 103, which adopts, with modification, *ASU 2009-16: Transfers and Servicing (Topic 860): Accounting for Transfers of Financial Assets.* SSAP No. 92 supersedes SSAP No. 14, SSAP No. 102 supersedes SSAP No. 89, and SSAP No. 103 supersedes SSAP No. 91R. SSAPs Nos. 92, 102, 103, and 104 must be used to prepare all financial statements required to be filed with the department on or after January 1, 2013 and will be applied to all examinations of those financial statements.

Proposed new §7.18(c)(1)(B) adopts by reference a placement revision to SSAP Nos. 40 and 77. Specifically, this placement revision nullifies SSAP No. 77 and includes the real estate guidance, related effective dates, and adopted General Accepted Accounting Principles (GAAP) references in SSAP No. 40.

Proposed amended §7.18(c)(1)(C) adopts by reference several non-substantive revisions to the SSAPs adopted by the NAIC in calendar year 2012 that do not modify the intent of a SSAP. The SSAPs specifically addressed by these modifications include SSAP Nos. 1, 11, 26, 27, 36, 35R, 48, 57, 68, 90, 95, 97, and 101 QA - Clean and 101 QA - Tracked.

Proposed amended §7.18(c)(1)(D) adopts by reference Actuarial Guideline 38 (AG 38) adopted by the NAIC in calendar year 2012. AG 38 sets forth reserve requirements for all universal life products that employ secondary guarantees with or without shadow account funds. This revision to AG 38 provides clarification of certain ambiguities used by sophisticated shadow fund designs, and this revision to AG 38 provides different requirements for in force business and business issued on or after January 1, 2013. The department has also determined that this adoption by reference of AG 38 will impose a minor cost on some carriers as described below in the public benefit/cost note section of this preamble.

Proposed amended §7.18(c)(2) adopts several amendments to existing Texas exceptions to the Manual. Specifically, this proposed subsection redesignates current subsection (c)(2) and (3) as new §7.18(c)(2)(B) and (C), respectively, and removes unnecessary portions of these exceptions relating to property acquired before January 1, 2001, because the amortization period in these provisions has expired. Additionally, proposed amended §7.18(c)(4) deletes existing paragraph (4) because this exception now conforms with the current SSAPs.

The proposed amendments also make nonsubstantive changes to §7.18 that are necessary for the section to conform to current nomenclature, for reformatting, consistency, clarity, or editorial reasons, and to correct typographical and grammatical errors.

FISCAL NOTE. Danny Saenz, deputy commissioner of the Financial Regulation Division, has determined that, for each year of the first five years the amended section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administrating the amended section, and there will be no effect on local employment or the local economy.

PUBLIC BENEFIT/COST NOTE. Mr. Saenz also has determined that for each year of the first five years the amended section is in effect, the public benefit will be the adoption of an updated Manual that will enable the department to continue efficient financial solvency regulation of insurance in general and the decrease in costs to carriers that are required to comply with accounting requirements in multiple states. In particular, the adoption of the NAIC calendar year 2012 updates to the March 2012 version of the Manual will permit the department to continue to effectively analyze and examine the financial condition of carriers. Additionally, the adoption and use of the updated Manual will continue to support a more consistent regulatory environment for carriers and to provide a central source for accounting guidance. The department believes that deleting or modifying the existing Texas exceptions to the Manual in §7.18(c)(2) will reduce costs for carriers that write insurance in multiple states by reducing the variation in Texas accounting requirements from those of other states.

The department does not anticipate that any of the proposed amendments, including the proposed adoption by reference of the NAIC calendar year 2012 updates to the Manual, will result in additional costs to those costs that are already required of carriers, regardless of size, under the existing rules except for the adoption by reference of AG 38. Specifically, the AG 38 changes require an actuarial opinion and company representation to support compliance for new business for universal life insurance products with secondary guarantees (ULSG) sold on and after January 1, 2013. These AG 38 changes also provide for a demonstration of reserve adequacy for certain in force ULSG business. The department estimates, however, that the costs of compliance due to these AG 38 requirements are small relative to overall costs of business of the larger insurers that are primarily impacted by these AG 38 changes. The department also estimates that these costs of compliance will be offset by savings due to the uniformity and more reasonable reserve impact than would have occurred without these changes.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accordance with the Government Code §2006.002, the department has determined that the proposed amendments will not result in any additional costs to those costs that are already required of small and micro business carriers under the existing rules for the reasons specified in the public benefit/cost note section of this proposal. Additionally, the department notes that the costs of compliance due to AG 38 discussed in the public benefit/cost note should not impact small and micro businesses because these changes should only apply to larger carriers. Small and micro businesses do not provide the product subject to AG 38, universal life insurance business with secondary guarantee, because this type of business is more complex and typically involves greater costs for product development, sales, and ongoing support than simpler products. The department anticipates no other costs as a result of these amendments.

Nevertheless, the rule exempts certain carriers that have historically accounted for their business on a cash basis and have historically posed relatively insubstantial insolvency-related risk to consumers, other carriers, and the state's general economic welfare from compliance with the Manual. Specifically, §7.18(d) exempts any farm mutual insurance company, statewide mutual assessment company, local mutual aid association, or mutual burial association with less than $6 million in annual direct written premiums from compliance with the Manual. Because of the types or methods of operations of these types of carriers, they are more likely to be small or micro business carriers.

Under the Government Code §2006.002(c), before adopting a rule that may have an adverse economic effect on small or micro businesses, an agency is required to prepare, in addition to an economic impact statement, a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. The department has determined that the routine costs to comply with this proposal, i.e., compliance with the NAIC updates to the Manual in financial filings, will not have an adverse economic effect on small or micro business carriers. Therefore, the department is not required to consider alternative methods of achieving the purpose of these requirements in the proposed rule as required by the Government Code §2006.002(c).

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 so 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 January 7, 2013. All comments should be submitted to Sara Waitt, General Counsel, Texas Department of Insurance, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted simultaneously to Danny Saenz, Deputy Commissioner, Financial Regulation Division, Texas Department of Insurance, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing on the proposal should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The Texas Department of Insurance proposes these amendments under the Insurance Code Chapters 32, 401, 404, 421, 425, 426, 441, 802, 823, 841, 843, 861, and 862, and §36.001. Section 401.051 and §401.056 mandate that the department examine the financial condition of each carrier organized under the laws of Texas or authorized to transact the business of insurance in Texas and adopt by rule procedures for the filing and adoption of examination reports. Section 404.005(a)(2) authorizes the commissioner to establish standards for evaluating the financial condition of an insurer. Section 421.001(c) requires the commissioner to adopt each current formula recommended by the NAIC for establishing reserves for each line of insurance. Section 425.162 authorizes the commissioner to adopt rules, minimum standards, or limitations that are fair and reasonable as appropriate to supplement and implement the Insurance Code Chapter 425, Subchapter C. Section 426.002 provides that reserves required by §426.001 must be computed in accord with any rules adopted by the commissioner to adequately protect insureds, secure the solvency of the workers' compensation insurance company, and prevent unreasonably large reserves. Section 441.005 authorizes the commissioner to adopt reasonable rules as necessary to implement and supplement Chapter 441 of the Insurance Code (Supervision and Conservatorship). Section 32.041 requires the department to furnish to the companies the required financial statement forms. Section 802.001 authorizes the commissioner to obtain an accurate indication of the company's condition and method of

transacting business, as necessary, to change the form of any annual statement required to be filed by any kind of insurance company. Section 823.012 authorizes the commissioner to issue rules and orders necessary to implement the provisions of Chapter 823 of the Insurance Code (relating to Insurance Holding Company Systems). Section 843.151 authorizes the commissioner to promulgate rules that are necessary and proper to implement the provisions of Chapter 843 of the Insurance Code (Health Maintenance Organizations). Section 843.155 requires HMOs to file annual reports with the commissioner, including a financial statement of the HMO, certified by an independent public accountant. Sections 841.004(b), 861.255(b), and 862.001(c) authorize the commissioner to adopt rules defining electronic machines and systems, office equipment, furniture, machines, and labor saving devices, and the maximum period for which each class may be amortized. Section 36.001 provides that the commissioner 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 following statutes are affected by this proposal: Insurance Code Chapters 32, 401, 404, 421, 425, 426, 441, 802, 823, 841, 843, 861, and 862.

§7.18. National Association of Insurance Commissioners Accounting Practices and Procedures Manual.

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

(c) The adopted exceptions and modifications under this subsection must be used to prepare all financial statements required to be filed with the department on or after January 1, 2013, and will be applied to all examinations of those financial statements. [~~The commissioner adopts the following exceptions and modifications to the Manual.~~]

(1) The commissioner adopts by reference the following modifications to the Manual:

(A) Statement of Statutory Accounting Principles (SSAP) Nos. 92, 102, 103, and 104 adopted by the NAIC in calendar year 2012.

(B) Placements revisions to nullify SSAP No. 77 and include real estate sales guidance, related effective dates, and adopted Generally Accepted Accounting Principles references in SSAP No. 40.

(C) The following modifications made by the NAIC in calendar year 2012 to SSAP Nos. 1, 11, 26, 27, 36, 35R, 48, 57, 68, 90, 95, 97, and 101 QA - Clean and 101 QA - Tracked, that do not modify the intent of those or any other SSAP Numbers.

(i) Ref. No. 2004-27: Fund Demand Disclosures for Institutional Business;

(ii) Ref. No. 2011-19: ASU 2010-11: Derivatives and Hedging (Topic 815) - Scope Exception Related to Embedded Credit Derivatives;

(iii) Ref. No. 2011-25: ASU 2011-02, Receivables - A Creditors' Determination of Whether a Restructuring is a Troubled Debt Restructuring;

(iv) Ref. No. 2011-38: ASU 2011-06, Fees Paid to the Federal Government by Health Insurers;

(v) Ref. No. 201142: SSAP No.1 Implementation Guide;

(vi) Ref. No. 2012-01: EITF 06-2: Accounting for Sabbatical Leave and Other Similar Benefits Pursuant to FAS No. 43;

(vii) Ref. No. 2012-02: EITF 07-1, Accounting for Collaborative Arrangements;

(viii) Ref. No. 2012-03: Clarifications to SSAP No. 57 - Title Insurance;

(ix) Ref. No. 2012-05: Clarification on the Amortization of the Basis Difference;

(x) Ref. No. 2012-07: Adopt EAIW Proposed Revisions to SSAPs - 2000 INTs;

(xi) Ref. No. 2012-08: Paragraph Placement in SSAP No. 86;

(xii) Ref. No. 2012-09: Move Guidance from SSAP No. 95 and Incorporate into SSAP No. 90;

(xiii) Ref. No. 2012-12: Credit for Reinsurance;

(xiv) Ref. No. 2012-13: Reference to Credit Tenant Loans within SSAP No. 26;

(xv) Ref. No. 2012-21: Adopt EAIWG Proposed Revisions to SSAPs - 2001 INTs.

(D) Actuarial Guideline 38 adopted by the NAIC in calendar year 2012.

(2) In addition, the following exceptions and additions are adopted:

(A) [~~(1)~~] Settlement requirements for intercompany transactions are subject to the accounting treatment in Statement of Statutory Accounting Principles (SSAP) No. 25 (previously SSAP No. 96 located in Appendix H), except that amounts owed to the reporting entity must [~~shall~~] be settled by the due date in accord [~~accordance~~] with the written agreement and the requirements of §7.204 of this title (relating to Commissioner's Approval Required). Intercompany balances must [~~shall~~] be settled within 90 days of the period for which the amounts are being billed; otherwise the balances will [~~shall~~] be nonadmitted.

(B) [~~(2)~~] Electronic machines, constituting a data processing system or systems and operating systems software used in connection with the business of an insurance company acquired after December 31, 2000, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law and must [~~shall~~] be amortized as provided by the Manual. [~~Property acquired prior to January 1, 2001, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law, and shall be amortized in full over a period not to exceed ten years.~~]

(C) [~~(3)~~] Furniture, labor-saving devices, machines, and all other office equipment may be admitted as an asset as permitted by the Insurance Code §§841.004, 861.255, 862.001, and any other applicable law and, for property acquired after December 31, 2000, depreciated in full over a period not to exceed five years. [~~Property acquired prior to January 1, 2001, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law, and shall be depreciated in full over a period not to exceed ten years.~~]

[~~(4) All certificates of deposit, of any maturity, may be classified as cash and are subject to the accounting treatment contained in SSAP No. 2, notwithstanding the provisions of SSAP No. 26.~~]

(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 November 26, 2012.

TRD-201206073
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: January 6, 2013
For further information, please call: (512) 463-6326

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.28

The General Land Office (GLO) proposes amendments to §15.28, concerning Certification Status of Town of Quintana Dune Protection and Beach Access Plan (Plan).

The intent of this rulemaking is to certify an amendment to the Town of Quintana's (Quintana) Plan to incorporate Brazoria County's Erosion Response Plan (ERP) as an amendment to Quintana's Plan.

Copies of Brazoria County's ERP can be obtained by contacting Richard Hurd, Brazoria County Park Director, at (979) 864-1541, and from the GLO's Archives Division, Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, phone number (512) 463-5277.

BACKGROUND AND ANALYSIS OF PROPOSED AMENDMENTS

Section 15.28 (relating to Certification Status of Town of Quintana Dune Protection and Beach Access) adopts the Brazoria County ERP, which is also being adopted by the Village of Surfside and the City of Freeport, as an amendment to the Town of Quintana's Plan. The ERP establishes a setback line of 1,000 feet from mean high tide for all areas of Quintana to reduce future storm damage to public and private properties, establishes construction requirements for properties and structures located seaward of the Dune Protection Line (DPL), and establishes and defines exemptions from those construction requirements.

FISCAL AND EMPLOYMENT IMPACTS

Ms. Helen Young, Deputy Commissioner for the GLO's Coastal Resources Program Area, has determined that for each year of the first five years the amended section as proposed is in effect there will be no additional cost to state government as a result of enforcing or administering the amended section.

Ms. Young has determined that there may be fiscal implications to local governments or additional costs of compliance for large and small businesses or individuals resulting from implementation of the amendment to the Plan to include Brazoria County's ERP. However, these fiscal impacts cannot be estimated with certainty at this time, since impacts of the plan are determined on a case-by-case basis depending on the characteristics of the property and type of construction. In addition, it is the opinion of the GLO that the costs to local governments of implementation of the provisions for construction in the ERP will be offset by a reduction in public expenditures for erosion and storm damage losses to private and public property.

Likewise, the costs of compliance for businesses or individuals will be offset by the reduction in losses due to storm damage. Implementation of the ERP will preserve beach dunes and delay erosion by reducing the intensity of storm surge. Additionally, the enhanced dune restoration and construction standards will result in increased protection for structures which are located landward of the DPL. Structures will also be protected by improvements in storm protection through upgrades to access points and the dune system. In addition, the presumption of compliance with the dune mitigation sequence requirements for avoidance and minimization of impacts to dunes and dune vegetation will simplify and reduce the cost to developers for crafting mitigation plans for construction seaward of the DPL.

The GLO has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Ms. Young has determined that for the first five years the public will benefit from the proposed amendments to the Plan to adopt the ERP because the GLO will be able to administer the coastal public land program more efficiently, providing the public more certainty and clarity in the process. The public will benefit from the ERP because coastal public land, and therefore the permanent school fund, will be protected with the certification of the amendment to Quintana's Plan by reducing the possibility of structures becoming located on state-owned submerged lands which increases expenditure of public funds for removal of the unauthorized structures.

In addition, the public will benefit from Quintana's adoption of the ERP because of reduced public expenditures associated with loss of structures and public infrastructure due to storm damage and erosion, disaster response costs, and loss of life. Quintana proposes to adopt an ERP as part of its Dune Protection and Beach Access Plan.

In adopting the ERP, Quintana is proposing to establish a building setback line of 1,000 feet from mean high tide for all areas within Quintana and establish construction requirements for properties and structures located seaward of the DPL. All structures must, to the maximum extent practicable, be constructed landward of the setback line. Exemptions for construction are provided for construction where no practicable alterative exists, construction approved prior to the adoption of the ERP, and modifications to existing structures that do not increase the footprint of the structure, unless more than 50% of the existing structure has been damaged, in which case, the construction should be subject to the ERP. Among other things, the construction standards specify that construction must be certified by a registered professional engineer as being compliant with the ERP requirements and provide evidence that the structure meets minimum requirements which include where structures can be located, elevation requirements, enclosure limitations, the requirement that the structure be feasible to relocate and designed to minimize impacts on natural hydrology. The ERP also establishes that

lots which span the setback line will be considered two separate lots and all construction requirements for exempt property and variances identified in the ERP will apply to the seaward portion of the lot. Enclosures below the BFE are permitted where the enclosures are no more than 299 square feet, are designed to minimize impact to hydrology and meet the requirements of National Flood Insurance Program regulations for V zone construction codified in Title 44 §60.3(a)(3) of the Code of Federal Regulations.

The ERP also proposes improvements to access points. Compliance with the construction standards and implementation of modification to access points will reduce hazards created by storm surge and reduce coastal vulnerability to storm tide and erosion without the costs of constructing hard erosion control structures, which increase public expenses.

The ERP also includes enhanced dune protections and identifies priority restoration areas. Dune protections are important because natural dune processes are allowed to continue with minimal disturbance and the risk to life and property from storm damage and public expenses for disaster relief will be reduced by maintaining a natural buffer against normal storm tides. Identifying areas where restoration is needed will assist the local government in focusing mitigation and restoration in areas that may be vulnerable to storm inundation and are potential avenues for flood waters that may cause damage to public infrastructure and private properties. Additionally, existing structures and properties will be protected by local government implementation of plans to improve foredune ridges and beach access points to protect against storm surge. Scientific and engineering studies considered by the GLO noted that during Hurricane Alicia in 1983, vegetation line retreat and landward extent of storm washover deposits were greater for developed areas than for natural areas (Bureau of Economic Geology Circular 85-5). This difference is attributed in part to the fact that naturally occurring vegetated dunes in underdeveloped areas are stronger than reconstructed dunes that do not meet minimum height, width, and material requirements (Circular 85-5).

ENVIRONMENTAL REGULATORY ANALYSIS

GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the actions are not subject to §2001.0225 because they do not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to §15.28 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code §§33.101 - 33.136 relating to the board's ability to grant rights in coastal public land and Texas Natural Resources Code §§61.061 - 61.082 relating to the right of local governments to charge beach access or parking fees with respect to public beaches.

TAKINGS IMPACT ASSESSMENT

GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. GLO has determined that the proposed rulemaking to certify Brazoria County's ERP and incorporate it into Quintana's Plan is consistent with state law and does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §17 and §19 of the Texas Constitution. GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. Furthermore, GLO has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendment. The ERP establishes guidelines which provide exemptions for property for which the owner has demonstrated that no practicable alternative to construction seaward of the DPL exists. The definition of the term "practicable" in 31 TAC §15.2(55) of the Beach/Dune Rules allows a local government to consider the cost of implementing a technique such as the setback provisions in determining whether it is "practicable" in a particular application for development. In applying its regulation, Quintana will determine on a case-by-case basis whether to permit construction of habitable structures in the area seaward of the building setback line if certain construction conditions are met, thereby avoiding severe and unavoidable economic impacts and thus an unconstitutional taking. In addition, building setback lines adopted by local governments under that section would not constitute a statutory taking under the Private Real Property Rights Preservation Act inasmuch as Texas Natural Resources Code §33.607(h) as added by HB 2819 provides that Chapter 2007, Government Code, does not apply to a rule or local government order or ordinance authorized by §33.607.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is subject to the Coastal Management Program (CMP), 31 TAC §505.11(a)(1)(E) - (I) and (c), relating to Actions and Rules Subject to the CMP. GLO has reviewed these proposed actions for consistency with the CMP's goals and policies. The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals) and §501.26 (relating to Policies for Construction in the Beach/Dune System). Because all requests for the use of coastal public land must continue to meet the same criteria for GLO approval, GLO has determined that the proposed actions are consistent with applicable CMP goals and policies. The proposed amendments will be distributed to the Commissioner in order to provide him an opportunity to provide comment on the consistency of the proposed amended rule during the comment period.

The amended rule provides certification that Quintana's adoption of Brazoria County's ERP as part of its plan is consistent with the CMP goals outlined in 31 TAC §501.12(1) - (3) and (6). These goals seek protection of Coastal Natural Resource Areas (CNRAs), compatible economic development and multiple uses of the coastal zone, minimization of the loss of human life and property due to the impairment and loss of CNRA functions, and coordination of GLO and local government decision-making through the establishment of clear, effective policies for the management of CNRAs. The ERP is tailored to the unique natural

features, degree of development, storm, and erosion exposure potential for Quintana. The ERP is also consistent with the CMP policies outlined in 31 TAC §501.26(a)(1) and (2) that prohibit construction within a critical dune area that results in the material weakening of dunes and dune vegetation or adverse effects on the sediment budget. The ERP will provide reduced impacts to critical dunes and dune vegetation by establishing requirements for construction in the DPL, reduce dune area habitat and biodiversity loss, and reduce structure encroachment on the beach which leads to interruption of the natural sediment cycle.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311, or email walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendment is proposed under Texas Natural Resources Code §33.607, relating to GLO's authority to adopt rules for the preparation and implementation by a local government of a plan for reducing public expenditures for erosion and storm damage losses to public and private property.

Texas Natural Resources Code §§33.601 - 33.613 are affected by the proposed amendment.

§15.28. Certification Status of Town of Quintana Dune Protection and Beach Access Plan.

(a) The Town of Quintana has submitted to the General Land Office a dune protection and beach access plan which is certified as consistent with state law. The town's plan was adopted on August 11, 1993 and amended on August 13, 2012.

(b) The General Land Office certifies as consistent with state law the Town of Quintana's Dune Protection and Beach Access Plan as amended to incorporate Brazoria County's Erosion Response Plan. The Erosion Response Plan was adopted by the Town of Quintana on August 13, 2012 by Resolution 2012-05.

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

Filed with the Office of the Secretary of State on November 26, 2012.

TRD-201206088
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: January 6, 2013
For further information, please call: (512) 475-1859

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31 TAC §15.37

The General Land Office (GLO) proposes amendments to §15.37, concerning Certification Status of City of Freeport Dune Protection and Beach Access Plan (Plan).

The intent of this rulemaking is to certify an amendment to the City of Freeport's (Freeport) Plan to incorporate Brazoria County's Erosion Response Plan (ERP) as an amendment to Freeport's Plan.

Copies of Brazoria County's ERP can be obtained by contacting Richard Hurd, Brazoria County Park Director, at (979) 864-1541, and from the GLO's Archives Division, Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, phone number (512) 463-5277.

BACKGROUND AND ANALYSIS OF PROPOSED AMENDMENTS

Section 15.37 relating to Certification Status of City of Freeport Dune Protection and Beach Access Plan adopts the Brazoria County ERP, which is also being adopted by the Village of Surfside and the Town of Quintana, as an amendment to the City of Freeport's Plan. The ERP establishes a setback line of 1,000 feet from mean high tide for all areas of Freeport to reduce future storm damage to public and private properties, establishes construction requirements for properties and structures located seaward of the Dune Protection Line (DPL), and establishes and defines exemptions from those construction requirements.

FISCAL AND EMPLOYMENT IMPACTS

Ms. Helen Young, Deputy Commissioner for the GLO's Coastal Resources Program Area, has determined that for each year of the first five years the amended section as proposed is in effect there will be no additional cost to state government as a result of enforcing or administering the amended section.

Ms. Young has determined that there may be fiscal implications to local governments or additional costs of compliance for large and small businesses or individuals resulting from implementation of the amendment to the Plan to include Brazoria County's ERP. However, these fiscal impacts cannot be estimated with certainty at this time, since impacts of the plan are determined on a case-by-case basis depending on the characteristics of the property and type of construction. In addition, it is the opinion of the GLO that the costs to local governments of implementation of the provisions for construction in the ERP will be offset by a reduction in public expenditures for erosion and storm damage losses to private and public property.

Likewise, the costs of compliance for businesses or individuals will be offset by the reduction in losses due to storm damage. Implementation of the ERP will preserve beach dunes and delay erosion by reducing the intensity of storm surge. Additionally, the enhanced dune restoration and construction standards will result in increased protection for structures which are located landward of the DPL. Structures will also be protected by improvements in storm protection through upgrades to access points and the dune system. In addition, the presumption of compliance with the dune mitigation sequence requirements for avoidance and minimization of impacts to dunes and dune vegetation will simplify and reduce the cost to developers for crafting mitigation plans for construction seaward of the DPL.

The GLO has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Ms. Young has determined that for the first five years the public will benefit from the proposed amendments to the Plan to adopt the ERP because the GLO will be able to administer the coastal public land program more efficiently, providing the public

more certainty and clarity in the process. The public will benefit from the ERP because coastal public land, and therefore the permanent school fund, will be protected with the certification of the amendment to Freeport's Plan by reducing the possibility of structures becoming located on state-owned submerged lands, which increases expenditure of public funds for removal of the unauthorized structures.

In addition, the public will benefit from Freeport's adoption of the ERP because of reduced public expenditures associated with loss of structures and public infrastructure due to storm damage and erosion, disaster response costs, and loss of life. Freeport proposes to adopt the ERP as part of its Dune Protection and Beach Access Plan.

In adopting the ERP, Freeport is proposing to establish a building setback line of 1,000 feet from mean high tide for all areas within Freeport and establishes construction requirements for properties and structures located seaward of the DPL. All structures must, to the maximum extent practicable, be constructed landward of the setback line. Exemptions for construction are provided for construction where no practicable alterative exists, construction approved prior to the adoption of the ERP, and modifications to existing structures that do not increase the footprint of the structure, unless more than 50% of the existing structure has been damaged, in which case, the construction should be subject the ERP. Among other things, the construction standards specify that construction must be certified by a registered professional engineer as being compliant with the ERP requirements and provide evidence that the structure meets minimum requirements which include where structures can be located, elevation requirements, enclosure limitations, the requirement that the structure be feasible to relocate and designed to minimize impacts on natural hydrology. The ERP also establishes that lots which span the setback line will be considered two separate lots and all construction requirements for exempt property and variances identified in the ERP will apply to the seaward portion of the lot. Enclosures below the BFE are permitted where the enclosures are no more than 299 square feet, are designed to minimize impact to hydrology and meet the requirements of National Flood Insurance Program regulations for V zone construction codified in Title 44 §60.3(a)(3) of the Code of Federal Regulations.

The ERP also proposes improvements to access points. Compliance with the construction standards and implementation of modification to access points will reduce hazards created by storm surge and reduce coastal vulnerability to storm tide and erosion without the costs of constructing hard erosion control structures, which increase public expenses.

The ERP also includes enhanced dune protections and identifies priority restoration areas. Dune protections are important because natural dune processes are allowed to continue with minimal disturbance and the risk to life and property from storm damage and public expenses for disaster relief will be reduced by maintaining a natural buffer against normal storm tides. Identifying areas where restoration is needed will assist the local government in focusing mitigation and restoration in areas that may be vulnerable to storm inundation and are potential avenues for flood waters that may cause damage to public infrastructure and private properties. Additionally, existing structures and properties will be protected by local government implementation of plans to improve foredune ridges and beach access points to protect against storm surge. Scientific and engineering studies considered by the GLO noted that during Hurricane Alicia in 1983, vegetation line retreat and landward extent of storm washover deposits were greater for developed areas than for natural areas (Bureau of Economic Geology Circular 85-5). This difference is attributed in part to the fact that naturally occurring vegetated dunes in underdeveloped areas are stronger than reconstructed dunes that do not meet minimum height, width, and material requirements (Circular 85-5).

ENVIRONMENTAL REGULATORY ANALYSIS

GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to §15.37 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code §§33.101 - 33.136 relating to the board's ability to grant rights in coastal public land and Texas Natural Resources Code §§61.061 - 61.082 relating to the right of local governments to charge beach access or parking fees with respect to public beaches.

TAKINGS IMPACT ASSESSMENT

GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. GLO has determined that the proposed rulemaking to certify Freeport's Plan, as amended by incorporation of the ERP, is consistent with state law and does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §17 and §19 of the Texas Constitution. GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. Furthermore, GLO has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendment. The ERP establishes guidelines which provide exemptions for property for which the owner has demonstrated that no practicable alternative to construction seaward of the DPL exists. The definition of the term "practicable" in 31 TAC §15.2(55) of the Beach/Dune Rules allows a local government to consider the cost of implementing a technique such as the setback provisions in determining whether it is "practicable" in a particular application for development. In applying its regulation, Freeport will determine on a case-by-case basis whether to permit construction of habitable structures in the area seaward of the building setback line if certain construction conditions are met, thereby avoiding severe and unavoidable economic impacts and thus an unconstitutional taking. In addition, building

setback lines adopted by local governments under that section would not constitute a statutory taking under the Private Real Property Rights Preservation Act inasmuch as Texas Natural Resources Code §33.607(h) as added by HB 2819 provides that Chapter 2007, Government Code, does not apply to a rule or local government order or ordinance authorized by §33.607.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is subject to the Coastal Management Program (CMP), 31 TAC §505.11(a)(1)(E) - (I) and (c), relating to Actions and Rules Subject to the CMP. GLO has reviewed these proposed actions for consistency with the CMP's goals and policies. The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals) and §501.26 (relating to Policies for Construction in the Beach/Dune System). Because all requests for the use of coastal public land must continue to meet the same criteria for GLO approval, GLO has determined that the proposed actions are consistent with applicable CMP goals and policies. The proposed amendments will be distributed to the Commissioner in order to provide him an opportunity to provide comment on the consistency of the proposed amended rules during the comment period.

The amended rule provides certification that Freeport's adoption of Brazoria County's ERP as part of its plan is consistent with the CMP goals outlined in 31 TAC §501.12(1) - (3) and (6). These goals seek protection of Coastal Natural Resource Areas (CNRAs), compatible economic development and multiple uses of the coastal zone, minimization of the loss of human life and property due to the impairment and loss of CNRA functions, and coordination of GLO and local government decision-making through the establishment of clear, effective policies for the management of CNRAs. The ERP is tailored to the unique natural features, degree of development, storm, and erosion exposure potential for Freeport. The ERP is also consistent with the CMP policies outlined in 31 TAC §501.26(a)(1) and (2) that prohibit construction within a critical dune area that results in the material weakening of dunes and dune vegetation or adverse effects on the sediment budget. The ERP will provide reduced impacts to critical dunes and dune vegetation by establishing requirements for construction in the DPL, reduce dune area habitat and biodiversity loss, and reduce structure encroachment on the beach which leads to interruption of the natural sediment cycle.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311, or email walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendment is proposed under Texas Natural Resources Code §33.607, relating to GLO's authority to adopt rules for the preparation and implementation by a local government of a plan for reducing public expenditures for erosion and storm damage losses to public and private property.

Texas Natural Resources Code §§33.601 - 33.613 are affected by the proposed amendment.

§15.37. Certification Status of City of Freeport Dune Protection and Beach Access Plan.

(a) The City of Freeport has submitted to the General Land Office a dune protection and beach access plan which is certified as consistent with state law. The county's plan was adopted by the City of Freeport's City Council Members by ordinance 2010-2263 on October 4, 2010 and amended on October 15, 2012.

(b) The General Land Office certifies as consistent with state law the City of Freeport's Dune Protection and Beach Access Plan as amended to incorporate Brazoria County's Erosion Response Plan. The Erosion Response Plan was adopted by the City of Freeport on October 15, 2012 by Ordinance No. 2012-2027.

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

Filed with the Office of the Secretary of State on November 26, 2012.

TRD-201206087
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: January 6, 2013
For further information, please call: (512) 475-1859

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PART 4. SCHOOL LAND BOARD

CHAPTER 155. LAND RESOURCES

SUBCHAPTER A. COASTAL PUBLIC LANDS

31 TAC §§155.1, 155.3, 155.5, 155.15

The School Land Board (Board) proposes amendments to §155.1, concerning General Provisions; §155.3, concerning Easements; §155.5, concerning Registration of Structures; and §155.15, concerning Fees.

The amendments are proposed to clarify and simplify structure registration requirements, as well as update structure registration criteria. The amendments also consolidate, update, and simplify rents and fees; revise current definitions; and provide other clarifications relating to current Board policy for uses of and activities on coastal public lands.

BACKGROUND AND SECTION-BY-SECTION ANALYSIS OF PROPOSED AMENDMENTS

The amendment to §155.1 defines the "act" in subsection (a)(5) and clarifies the definitions of "Industrial activity," "Return on investment," and "Watercraft storage facility" in subsection (d). The amendment also adds a new definition for "Covered second level," which is a partially or fully covered second story associated with boathouses and boatlifts, and deletes related portions of the existing definitions of "Boathouse" and "Boatlift." The proposed new definition makes clear that enclosure of a second story is strictly prohibited. Conforming numbering changes have been made to account for the new definition.

The amendment to §155.3 adds additional activities, including pipelines, fiber optic lines, electric lines, and other uses authorized under Texas Natural Resources Code, Chapter 51, for which the Commissioner is authorized to approve an easement without Board approval. The proposed amendment also changes §155.3(f)(7) by clarifying that jetties are subject to each requirement of §155.3(f)(7); and by providing that

non-compliance with any of the requirements of §155.3(f)(7)(C) is sufficient cause for denial or termination of authorization for a particular action and for removal of a non-conforming structure.

The amendment to §155.5 clarifies in subsection (c) that reconstruction and modification of piers must follow the same registration process as new construction of piers. The amendment deletes paragraphs (1) - (6) in subsection (b) and deletes subsection (d), which are duplicative of information and assurances required by the GLO's structure registration form. Construction criteria is updated by deleting parts of relettered subsection (d) and substituting new subsection (d)(1). New subsection (d)(1) provides that construction must be consistent with the specific criteria set forth in the GLO's residential pier construction requirements, which are updated periodically and available online at the GLO web site. General construction criteria from existing subsection (e) have been retained and are in relettered subsection (d).

The amendment to §155.5 also clarifies in a new subsection (e) that the Commissioner retains the discretion to authorize registration of non-commercial pier structures that meet the specifications in Texas Natural Resources Code §33.115. Elements from deleted subsection (d) have been moved to a new subsection (f), which requires compliance with general terms and conditions of the structure registration form and other legal requirements. Finally, subsections (f) and (g) have been consolidated into a new subsection (g) and revised in order to address both piers and structures, shorten the reference to Texas Natural Resources Code §33.115, and add references to registration under new subsections (b), (d), and (e).

The amendment to §155.15 simplifies and clarifies the listing of fees and increases the rent fees in both Categories II and III for breakwater, jetty, and groins; new and existing dredges; and open encumbered areas. New rental fees are imposed for piers, docks, and walkways as well as Category III multiple boatlifts, boathouses, covered boat slips, and oversized personal and watercraft slips. A new fee for covered second levels is also proposed. Easements were expressly added to the types of public lands for which rents and fees are associated. Finally, grantees were added to the list of individuals for which consequences would be imposed for the dishonor or nonpayment of fees. The proposed increase in fees for piers, docks, and walkways associated with cabins will take effect on September 1, 2015.

FISCAL AND EMPLOYMENT IMPACTS

Rene Truan, Deputy Commissioner for the General Land Office's Professional Services Program Area, has determined that for each year of the first five years the amended sections as proposed are in effect there will be no additional cost to state government as a result of enforcing or administering the amended sections.

Mr. Truan has determined that for each year of the first five years the amended sections as proposed are in effect there will be no fiscal implications for local governments as a result of enforcing or administering the amended sections.

Mr. Truan has also determined that for each year of the first five years the amended sections as proposed are in effect it is unlikely that there will be an identifiable increase in economic costs to persons and business required to comply, as the amendments are consistent with current Board policy.

The Board has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Mr. Truan has determined that the public will benefit from the proposed amendments because the General Land Office will be able to administer the coastal public land program more efficiently, providing the public more certainty and clarity in the process.

ENVIRONMENTAL REGULATORY ANALYSIS

The Board has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to Texas Government Code §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to Chapter 155 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code §§33.101 - 33.136 relating to the Board's ability to grant rights in coastal public land.

TAKINGS IMPACT ASSESSMENT

The Board has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The Board has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §17 and §19 of the Texas Constitution. Furthermore, the Board has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. The Board has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests inasmuch as the property subject to the proposed amendments is owned by the state.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM (CMP)

The proposed rulemaking is subject to the CMP, 31 TAC §505.11(a)(1)(E) - (I) and (c) (relating to Actions and Rules Subject to the Coastal Management Program). The Board has reviewed these proposed amendments for consistency with the CMP's goals and policies. The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals), §501.24 (relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands), and §501.25 (relating to Policies for Dredging and Dredged Material and Placement). Because all requests for the use of coastal public land must

continue to meet the same criteria for Board approval, the Board has determined that the proposed amendments are consistent with applicable CMP goals and policies. The proposed amendments will be distributed to the Commissioner in order to provide him an opportunity to provide comment on the consistency of the proposed amendments during the comment period.

PUBLIC COMMENT REQUEST

To comment on the proposed amendments or its consistency with the CMP goals and policies, please send a written comment to Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711; or fax to (512) 463-6311; or email walter.talley@glo.state.tx.us. Written comments must be received no later than 5:00 p.m., 30 days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under the Texas Natural Resources Code §§33.101 - 33.136, relating to the Board's ability to grant rights in coastal public land, and Texas Natural Resources Code §33.064, providing that the Board may adopt procedural and substantive rules which it considers necessary to administer, implement and enforce Chapter 33, Texas Natural Resources Code.

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

§155.1. General Provisions.

(a) Policy. The surface estate in the coastal public lands of this state constitutes an important and valuable asset dedicated to the permanent school fund and to all people of Texas. Such estate shall be managed as follows.

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

(5) Utilization and development of the surface estate in such lands shall not be allowed unless the public interest as expressed in the Coastal Public Lands Management Act [~~act~~] is not significantly impaired thereby.

(6) - (12) (No change.)

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

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

(1) - (6) (No change.)

(7) Boathouse--A garage-like enclosed structure built over water for the purpose of storing watercraft. Boathouses are suitable for long-term storage and may contain lifts, winches, or other ancillary docking mechanisms. [~~A boathouse may not include a partially or fully covered or enclosed second story unless it was in existence prior to September 1, 2008.~~]

(8) Boatlift--A covered or uncovered boat slip with winch or pulley devices, used for lifting watercraft out of the water; suitable for long-term storage. The covering structure may not enclose the slip. [~~A boatlift may not include a partially or fully covered or enclosed second story unless it was in existence prior to September 1, 2008.~~]

(9) - (18) (No change.)

(19) Covered second level--A permanently covered (partially or fully) second story associated with a boathouse or boatlift. Excludes enclosure of a second story, which is strictly prohibited.

(20) [~~(19)~~] Dilapidated or derelict structure--Any structure which has deteriorated to an unsafe and/or unusable condition due to neglect, misuse, or which has been made inhabitable by vandalism or natural forces, or which or has been abandoned either through neglect or misuse.

(21) [~~(20)~~] Dredged area [~~Area~~]--An area that has been made deeper by the removal or relocation of sediments; dredged areas are considered to be structures on state-owned submerged land. When dredged areas are evaluated for permitting purposes, placement of dredged material must be addressed.

(22) [~~(21)~~] Dredged material--The sediments that have been removed from a dredged area; initial dredging of an area often produces usable material and maintenance dredging typically produces unconsolidated material that must dry before possible use.

(23) [~~(22)~~] Dredging--The moving of soil, sand, gravel, shell or other materials from its natural setting, including propwashing, and thereby artificially altering the water depth, e.g., channels, basins, etc.

(24) [~~(23)~~] Encumbered state land--The amount of state coastal public land encumbered by the permitted activity and is expressed in number of square feet.

(25) [~~(24)~~] Evaluation fee--A one-time fee assessed upon the granting of a commercial instrument. In the case of multiple-purpose easement applications, only one evaluation fee will be assessed.

[~~(25) Island--Any body of land surrounded by the waters of a salt water lake, bay, inlet, estuary, or inland body of water within the tidewater limits of this state and shall include man-made islands resulting from dredging of other operations. An island may be coastal public land.~~]

[~~(26) Jetties and groins--Structures of rock, concrete, steel, or other material built perpendicular to the shoreline and are designed to modify or control sediment movement along a shore.~~]

(26) [~~(27)~~] Fill--The placement of materials on coastal public lands for the purpose of changing the elevation of a water body or to create emergent land.

(27) [~~(28)~~] Fill area--A structure, excluding riprap, concrete stairs, breakwaters, jetties, and groins that permanently and fully encumbers, and entirely displaces, the water covering the coastal public land. The construction and maintenance of associated bulkheads is considered part of the fill area.

(28) [~~(29)~~] Fill formula--Encumbered state land multiplied by the appraised market value of adjacent littoral property multiplied by the return on investment.

(29) [~~(30)~~] Homeowners association--An association whose individual members, by virtue of holding full and exclusive title to the adjacent littoral property area specifically defined in an easement application, are entitled, as a group, to the privileges of an easement that may be granted by the State of Texas for use of coastal public land.

(30) [~~(31)~~] Industrial activity--A use of coastal public land which involves one or more of the following:

(A) processing, manufacturing, or handling materials or products predominantly from extracted or raw materials;[~~,~~]

(B) storage, manufacturing, or materials handling processes that involve flammable or explosive materials;[~~,~~] or

(C) storage [~~storaging~~], manufacturing, or materials handling processes that involve hazardous or commonly recognized offensive conditions.

(31) Island--Any body of land surrounded by the waters of a salt water lake, bay, inlet, estuary, or inland body of water within the tidewater limits of this state and shall include man-made islands resulting from dredging of other operations. An island may be coastal public land.

(32) Jetties and groins--Structures of rock, concrete, steel, or other material built perpendicular to the shoreline and are designed to modify or control sediment movement along a shore.

(33) [~~(32)~~] Littoral owner--The owner or leaseholder of any public or private upland bordered by or contiguous to coastal public lands.

(34) [~~(33)~~] Maintenance dredging--Re-dredging an authorized channel to a previously authorized depth. The same limitations and conditions that applied to the initial dredging will apply to the maintenance dredging.

(35) [~~(34)~~] Marina--A combination of docks or piers floating or constructed on pilings, extending onto or over coastal public lands, which is used for purposes of storing or docking boats, watercraft, shrimp boats, and similar structures and is available to the public and charges are made for any of its services, and which do not constitute wharves, docks, or piers as [~~hereinafter~~] defined in this section.

(36) [~~(35)~~] Mineral interest holder--Holder of a state mineral lease who plans to dredge on coastal public land outside the state leasehold tract to obtain access to the state leasehold tract.

(37) [~~(36)~~] Mitigation sequence--The series of steps which must be taken to prevent or reduce impacts to sensitive habitat while planning or evaluating a project.

(38) [~~(37)~~] New dredged area--An excavated area which is not under current permit with the GLO. The new dredged area rate is charged for the first year, and the fee for maintaining the dredged area is charged for each subsequent year of the easement term.

(39) [~~(38)~~] Oversized personal watercraft slip--A personal watercraft slip that exceeds 120 square feet in overall area.

(40) [~~(39)~~] Person--Any individual, firm, partnership, association, corporation (public or private, profit or nonprofit), trust, or political subdivision or agency of the state.

(41) [~~(40)~~] Personal watercraft--A small boat or other craft for water transportation or recreation typically made for use/occupancy by no more than two people at one time.

(42) [~~(41)~~] Personal watercraft slip--A small area designed for the docking and/or storage of personal watercraft; includes boat slips and boat skids; limited to a maximum of 120 square feet.

(43) [~~(42)~~] Pier and dock--Structures of timber or other material built onto or over coastal public lands which are used for fishing and recreational boating purposes.

(44) [~~(43)~~] Private non-profit use--A private activity which does not contemplate the generation of any revenue.

(45) [~~(44)~~] Public activity--Activity which is performed in the public interest, as defined by the board, and is not designed to enhance or accommodate a profit-making venture, nor is it primarily associated with a revenue generating activity.

(46) [~~(45)~~] Public entity--City, county, state agency, board or commission, or any other political subdivision of the state.

(47) [~~(46)~~] Residential use, Category I--One single-family residential dwelling and accessory building(s) on one defined lot or parcel of land; both land and improvements are typically under the same ownership.

(48) [~~(47)~~] Residential use, Category II--Multi-family residential units per defined lot or parcel of land; land and individual units may be separately owned; includes uses by condominium developments and homeowners associations acting for and on behalf of owners of a multi-family residential development, but does not include time-share developments or any use that includes commercial activities.

(49) [~~(48)~~] Residential use, Category III--One single family residential dwelling and accessory building(s) on one defined lot or parcel of land that is being used for (in part or whole) short-term residential rental--i.e. daily, weekly, monthly, seasonal; both land and improvements are typically under the same ownership.

(50) [~~(49)~~] Resource Impact Fee--A one-time fee assessed for proposed projects that impact seagrass, emergent marsh, or oyster reef, for which there is no separate mitigation requirement.

(51) [~~(50)~~] Return on investment--A number used in the basin, fill, and industrial activity formulas that reflects a financial return expectation. The return on investment rate will be set by the Board [~~annually by the board and will be effective at the beginning of each fiscal year~~].

(52) [~~(51)~~] Riprap--Hard [~~hard~~] substrate material placed seaward of the shoreline to reduce wave energy.

(53) [~~(52)~~] Seaward--The direction away from the shore and toward the body of water bounded by such shore.

(54) [~~(53)~~] Sensitive habitat--An area of submerged or emergent vegetation or reefs.

(55) [~~(54)~~] Sewage--Refuse liquids or waste (including human waste) matter typically carried off by sewers or stored in septic tanks.

(56) [~~(55)~~] Shoreline stabilization project--Vegetative cover or rip-rap consisting of concrete block, concrete rubble, rock, brick, sack crete or similarly stable material approved by the GLO and utilized to control shoreline erosion.

(57) [~~(56)~~] Structure--As defined in §33.004, Texas Natural Resources Code [~~the Natural Resources Code,~~ §33.004].

(58) [~~(57)~~] Submerged lands--As defined in §33.004, Texas Natural Resources Code.

(59) [~~(58)~~] Submerged land discount--60% discount used in formulas when the easement is commercial, 70% discount used in formulas when the easement is industrial.

(60) [~~(59)~~] Waste and/or garbage--Includes discarded food, refuse, human waste, and unwanted man-made degradable and non-degradable items such as containers, equipment, and other rubbish.

(61) [~~(60)~~] Watercraft--A boat or other craft for water transport or recreation. Included, but not limited to, motorboat, personal watercraft, and sailboat.

(62) [~~(61)~~] Watercraft storage facility--A boathouse, boatlift, boat ramp, boat-skid, boat slip or personal watercraft slip to accommodate long term or temporary watercraft use.

(63) [~~(62)~~] Wharf--A structure of timber, cement, masonry, earth, or other material built onto or over coastal public lands, so that vessels can receive and discharge cargo, products, goods, any paying

passengers, etc. This definition applies only to structures or portions thereof which are directly connected with and used for the loading and unloading of water borne commerce but specifically excludes such structures used only for commercial fishing purposes.

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

§155.3. Easements.

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

(e) The commissioner may approve an easement application without board approval if the application is for any of the following activities but not for commercial/industrial activity and is consistent with the criteria for decision as set forth [~~below~~] in subsection (f) of this section:[~~:~~]

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

(6) renewals or assignments of previously approved projects provided the project has not been altered; [~~or~~]

(7) habitat creation not associated with another project on coastal public land; or[~~,~~]

(8) pipelines, fiber optic lines, electric lines, and other uses authorized under Texas Natural Resources Code, Chapter 51.

(f) Criteria for decision. Project proposals will be evaluated in accordance with the following factors.

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

(6) Dredged material disposal area.

(A) (No change.)

(B) Dredge material containing hazardous substances that presents a threat to public health, safety or the environment, shall be disposed of only in compliance with federal, state and local laws and regulations; further

(i) (No change.)

(ii) disposal of dredge material shall be in accordance with §501.25 of this title (relating to Policies for Dredging and Dredged Material and Placement) [~~§501.14 of this title (relating to Texas Coastal Management Program Policies for Specific Activities and Coastal Natural Resource Areas)~~].

(C) - (D) (No change.)

(7) Jetty, groin, and breakwater.

(A) No new jetties or groins will be authorized except under the most compelling circumstances upon request by a city, county, or other public entity for a public purpose.

(B) (No change.)

(C) Existing but unauthorized jetties or groins may be authorized to remain in place until such jetties or groins are destroyed or damaged in excess of fifty percent under the following conditions:

(i) no significant erosion of adjacent property has occurred or is occurring as a result of the presence of the jetties or groins [~~groin~~];

(ii) no significant adverse impacts to sensitive habitats have occurred nor are sensitive habitats threatened by the presence of the jetties or groins [~~groin~~];

(iii) (No change.)

~~(iv)~~ ~~non-compliance with any of the above conditions will be sufficient cause for denial or termination of authorization and for removal of a non-conforming structure.~~]

(iv) [~~(v)~~] even if a jetty or [~~If a~~] groin causes significant unnatural accumulation but the removal of the jetty or groin will cause severe adverse impacts to sensitive natural resources, provided the boundary between state-owned submerged land and the adjacent littoral property is [~~must be~~] established by a Licensed State Land Surveyor. Non-compliance with any of the conditions in this subparagraph will be sufficient cause for denial or termination of authorization and for removal of a non-conforming structure.

(D) (No change.)

(8) - (10) (No change.)

(g) - (i) (No change.)

§155.5. Registration of Structures.

(a) (No change.)

(b) Pursuant to Texas Natural Resources Code §33.115, any littoral owner desiring to register a pier shall register such pier with the GLO by submitting a non-refundable registration fee and an executed structure registration. The structure registration shall be on a form provided by the GLO [~~and shall contain the following~~].

[~~(1) the name, mailing address, and telephone number of the littoral owner; the exact dimensions of the pier, including a drawing showing such dimensions;~~]

[~~(2) the exact location of the pier, including a vicinity map showing the location of the pier on coastal public land;~~]

[~~(3) a statement verifying that the littoral owner is the owner of the property adjoining the coastal public land on which the pier was constructed;~~]

[~~(4) a statement verifying that the littoral owner has read and understands the terms and conditions set forth is this section;~~]

[~~(5) a statement acknowledging that, if at any time it is discovered that the pier does not meet the requirements set forth in Texas Natural Resources Code §33.115, the littoral owner may be subject to penalties as prescribed by law; and~~]

[~~(6) a statement verifying that the littoral owner will comply will all applicable local, state, and federal laws, ordinances, rules, orders, and regulations of governing agencies concerning use of the pier and adjacent coastal public land.~~]

(c) New construction, reconstruction, or modification [~~Construction~~] of a pier pursuant to Texas Natural Resources Code §33.115 may commence only upon receipt by the GLO of the following:

(1) - (3) (No change.)

[~~(d) Any person registering a structure or pier pursuant to this section agrees and consents to comply with and be bound by the following terms and conditions:~~]

[~~(1) to keep the GLO informed at all times of his or her address;~~]

[~~(2) to maintain the structure or pier in proper condition and not allow it to deteriorate to such a degree as to become a hazard or public nuisance;~~]

[~~(3) to notify the GLO upon a change of ownership, or property interest, in the adjacent littoral property within 30 days of such change; and~~]

[~~(4) to permit agents, representatives and employees of the GLO, at all times, to enter into and on a registered structure or pier and adjacent property of the littoral owner for the purpose of inspection of~~

the structure or pier and for any other reasonable purpose necessary to protect coastal public land.]

(d) [(c)] The construction criteria for piers pursuant to Texas Natural Resources Code §33.115 shall include the following:

(1) Consistency with residential pier construction requirements established by the GLO, which are updated periodically and available online at the GLO website.

(2) [(1)] Only one pier may extend from each defined parcel of littoral property.

(3) [(2)] Appurtenances are limited to those established by the GLO as normal appurtenances.

(4) [(3)] A pier or dock shall extend perpendicular from a point on the shoreline, which is not less than ten feet from the adjacent littoral property line, unless such a design:

(A) would obstruct navigation;

(B) would unreasonably interfere with an adjoining littoral property owner's use of the waterfront;

(C) or is otherwise in compliance with [31 TAC] §155.9(m)(2)(B) of this title (relating to Special Bay Area Guidelines-Clear Lake).

[(4) Walkways may not exceed 4 feet in width, however, variances may be granted by the GLO upon demonstrated necessity.]

[(5) Boatlifts, boathouses, boat-skids, boat slips, and personal watercraft slips shall not be constructed in waters less than 3 feet Mean High Water.]

[(6) Piers may have terminal structures (T-head, dock, etc.). The dimensions of such terminal structures over vegetated areas shall be no more than 8 feet by 20 feet, (or a reasonable substitute equal to or less than 160 square feet in area) The dimensions of such terminal structures over non-vegetated areas shall be no more than 10 feet by 30 feet (or a reasonable substitute less than or equal to 300 square feet in area).]

[(7) Lower-level landings may be allowed but shall not exceed 40 square feet in overall area.]

[(8) Boatlifts, boathouses, boat-skids, boat slips, and personal watercraft slips and associated walkways may not exceed 16 feet in width.]

[(9) Personal watercraft slips or boat-skids (including ramps, platforms) may not exceed 120 square feet in overall area.]

[(10) Only 1 watercraft storage facility and 1 personal watercraft slip will be allowed per pier.]

(e) Notwithstanding the provisions of subsection (d) of this section, the Commissioner, at his discretion, may authorize the registration of non-commercial pier structures, pursuant to Texas Natural Resources Code §33.115.

(f) Any person registering a structure or pier pursuant to this section agrees and consents to the following:

(1) to maintain the structure or pier in the proper condition and not allow it to deteriorate to such a degree as to become a hazard or public nuisance;

(2) to notify the GLO upon a change of ownership, or property interest, in the adjacent littoral property within 30 days of such change; and

(3) to comply with and be bound by all terms and conditions of the structure registration form provided by the GLO.

(g) [(f)] In the event a pier or structure has been registered pursuant to subsection (a), (b), (d), or (e) of this section and the littoral owner subsequently desires to make modifications or additions or rebuild the pier or structure, the littoral owner shall obtain either a new [an] easement or lease, or a new registration pursuant to Texas Natural Resources Code §33.115 in lieu of the prior registration.

[(g) In the event a pier has been registered pursuant to subsection (b) of this section and the littoral owner subsequently desires to make modifications or additions or rebuild such pier, the littoral owner is required to obtain in lieu of the original registration:]

[(1) a new registration if the pier's dimensions or location are changed from the footprint outlined in the structure registration, or]

[(2) an easement if such pier will be for]

[(A) commercial purposes,]

[(B) will require dredging or filling,]

[(C) will exceed 115 feet in length or 25 feet in width, or]

[(D) not conform with the criteria outlined in subsection (e).]

(h) (No change.)

§155.15. Fees.

(a) General.

(1) Form of payment. Fees may be paid by cash, check or other legal means acceptable to the commissioner.

(2) Time for payment. Payment is generally required in advance of issuance of easements, permits, leases and other documents and/or delivery of services and/or materials by the General Land Office (GLO).

(3) Dishonor or nonpayment by other means. In the event a fee is not paid due to dishonor, nonpayment, or otherwise, the GLO shall have no further obligation to issue easements, permits, leases and other documents and/or provide services and/or materials to the grantee, permittee, lessee, or applicant.

(b) Board fees and charges. The board is authorized and required under the Texas Natural Resources Code, Chapter 33, to collect the fees and charges set forth in this subsection where applicable. The board will charge the following coastal lease and coastal easement fees for use of coastal public land, and will charge the following structure registration and permit fees. The board charge will be based on either the fixed fee schedule or the alternate commercial, industrial, residential, and public formulas as delineated in paragraph (1)(C) [paragraphs (3) and (4)] of this subsection. The greater of the fixed fee or formula rate will be charged except in the calculation of fees for residential use, Category II and residential use, Category III, where only the fixed rate method will be used. The board may adopt an escalation schedule that will allow for escalation of annual fees based on the term of a coastal lease or coastal easement.

(1) Rental and Fees.

(A) Structure registration. Structure registration fee is required for private piers or docks that are 100 feet long or less and 25 feet wide or less and require no dredging or filling, as authorized by the Texas Natural Resources Code §33.115. Though board approval is not required for construction, the applicant must register the location of the structure. The registration is valid for the life of the structure.

(i) Application fee: $25 (per occurrence for new, amendment and assignment applications)

(ii) Annual rent: none

(B) Coastal lease. The board may grant coastal leases for public purposes as prescribed by the Texas Natural Resources Code §§33.103(1), 33.105 and 33.109. The application fee and annual rent shall be negotiable.

(C) The following tables list the rental fees for easements and permits on coastal public land.

(i) Residential Use, Category I.
Figure: 31 TAC §155.15(b)(1)(C)(i)

(ii) Residential Use, Category II.
Figure: 31 TAC §155.15(b)(1)(C)(ii)

(iii) Residential Use, Category III.
Figure: 31 TAC §155.15(b)(1)(C)(iii)

(iv) Commercial and Industrial Activity.
Figure: 31 TAC §155.15(b)(1)(C)(iv)

(v) Structure (Cabin) Permits.
Figure: 31 TAC §155.15(b)(1)(C)(v)

(2) Senior Rent Freeze. Upon application to the GLO and submission of proof of age by a grantee, fees for coastal easements associated with a single family residence will not be increased after the point in time when the littoral property owner (one person in the case of joint ownership) reaches the age of 65, unless the area of encumbered state land increases or there is a change in use of the coastal public land.

(3) Resource Impact Fee.

(A) Public use projects and Residential Use, Category I projects constructed within guidelines: exempt

(B) All others: $100 plus $1.00 per square foot of impacted area

(4) New Dredge Rent. A one time rental fee due upon completion of the initial dredging for a new project. The board may consider reduced new dredge rent on a case by case basis when the material is used for habitat creation, restoration, and enhancement projects, or when it is in the public interest to do so.

(5) Term. The term for all coastal leases and coastal easements is negotiable. Board approval is required prior to construction.

(6) Rental adjustments-all commercial and industrial easements. At every five-year interval in the term of commercial and industrial easements, the rental fee for the easement will be subject to adjustment. The adjustment, if any, will be in accordance with the then current Fee Schedule as adopted by the board.

(7) Implementation.

(A) New residential developments. Upon the application for an easement associated with the development of a multi-unit or single-family residential project, the easement application will be processed and fee determined according to the appropriate commercial activity rate. Upon the sale of an individual residential unit associated with the easement, with sufficient infrastructure in place to convert use of the unit to individual use (and use of associated easement to private activity), the original easement applicant, upon agreement with the commissioner of the GLO, may pay a $50 conversion fee. The easement fee may then be reduced by the percentage that the sold unit represented to the total number of units associated with the easement. At the time the conversion fee is paid under the provisions herein, the unit will then be considered to be subject to the residential activity rates upon renewal of the easement. For units already sold prior to the effective date of this section, conversion to a residential activity rate will be granted without the payment of the conversion fee.

(B) Additional terms. The commissioner of the GLO may require, as a condition for the granting of an easement set forth in this section, such additional terms that he feels are necessary to secure performance under any such easement.

~~[(1) Coastal lease charges. The board may grant coastal leases for public purposes as prescribed by the Natural Resources Code, §§33.103(1), 33.105, and 33.109. The filing fee and annual fee shall be negotiable.]~~

~~[(2) Structure registration fee. Structure registration fee is required for private piers or docks that are 100 feet long or less and 25 feet wide or less and require no dredging or filling, as authorized by the Natural Resources Code, §33.115. Though board approval is not required for construction, the applicant must register the location of the structure. The registration is valid for the life of the structure:]~~

~~[(A) filing fee: $25;]~~

~~[(B) annual fee: no charge;]~~

~~[(C) assignment fee: $25;]~~

~~[(D) amendment fee: $25.]~~

~~[(3) Miscellaneous coastal easement fees:]~~

~~[(A) assignment fee: $50;]~~

~~[(B) amendment fee: $50;]~~

~~[(C) late payment fee: 10% of past due amount/$25 minimum.]~~

~~[(4) Coastal easement fees:]~~

~~[(A) piers, docks, and watercraft storage facilities:]~~

~~*[(i)* residential use, Category I:]~~

~~*[(I)* filing fee: $25;]~~

~~*[(II)* annual fee: $.03 per square foot/$25 minimum;]~~

~~*[(III)* annual fee for more than one of any of the following structures: boatlift, boathouse, covered boat slip, or any oversized personal water craft slip: $250 each;]~~

~~*[(ii)* residential use, Category II and III:]~~

~~*[(I)* filing fee: $50;]~~

~~*[(II)* annual fee: 75% of fee calculated for same use as a commercial activity/$100 minimum;]~~

~~*[(iii)* commercial:]~~

~~*[(I)* filing fee: $50;]~~

~~*[(II)* evaluation fee: $50;]~~

~~*[(III)* annual fee: $.20 per square foot/$100 minimum;]~~

~~*[(iv)* other, private non-profit use:]~~

~~*[(I)* filing fee: $50;]~~

~~*[(II)* annual fee: negotiable/$100 minimum;]~~

~~[(B) marinas:]~~

~~*[(i)* Clear Lake:]~~

[*(I)* filing fee: $50;]

[*(II)* evaluation fee: $50;]

[*(III)* annual fee: $4.00 per boat slip linear foot;]

[*(ii)* residential use: Category II and III:]

[*(I)* filing fee: $50;]

[*(II)* annual fee: 75% of fee calculated for same use as a commercial activity;]

[*(iii)* other:]

[*(I)* filing fee: $50;]

[*(II)* evaluation fee: $50;]

[*(III)* annual fee: $3.00 per boat slip linear foot;]

[(C) wharf:]

[*(i)* filing fee: $50;]

[*(ii)* evaluation fee: $50;]

[*(iii)* annual fee: $.30 per square foot/$100 minimum;]

[(D) breakwaters, jetties, and groins:]

[*(i)* residential--Category I:]

[*(I)* filing fee: $25;]

[*(II)* annual fee: $.20 per square foot/$25 minimum;]

[*(ii)* residential--Category II and III:]

[*(I)* filing fee: $50;]

[*(II)* annual fee: 75% of fee calculated for same use as a commercial activity/$100 minimum;]

[*(iii)* commercial activity:]

[*(I)* filing fee: $50;]

[*(II)* evaluation fee: $50;]

[*(III)* annual fee: $.20 per square foot/$100 minimum;]

[(E) dredged area:]

[*(i)* mineral interest holder:]

[*(I)* filing fee: $50;]

[*(II)* evaluation fee: $50;]

[*(III)* annual fee:]

[(-a-) first year fee for a new dredged area: $.02 per square foot/$100 minimum;]

[(-b-) fee for maintaining a dredged area after first year of easement: $.005 per square foot/$100 minimum;]

[*(ii)* residential--Category I:]

[*(I)* filing fee: $50;]

[*(II)* annual fee:]

[(-a-) first year fee for a new dredged area: $.03 per square foot/$25 minimum;]

[(-b-) fee for maintaining a dredged area after first year of easement: $.005 per square foot/$25 minimum;]

[*(iii)* residential--Category II and III:]

[*(I)* filing fee: $50;]

[*(II)* annual fee: 75% of fee calculated for same use as commercial activity/$100 minimum;]

[*(iv)* commercial activity:]

[*(I)* filing fee: $50;]

[*(II)* evaluation fee: $50;]

[*(III)* annual fee:]

[(-a-) first year fee for a new dredged area: $.05 per square foot/$100 minimum;]

[(-b-) fee for maintaining a dredged area after first year of easement: $.01 per square foot/$100 minimum;]

[(F) open encumbered area:]

[*(i)* residential--Category I:]

[*(I)* filing fee: none;]

[*(II)* annual fee: none;]

[*(ii)* residential--Category II and III:]

[*(I)* filing fee: $50;]

[*(II)* annual fee: 75% of fee calculated for same use as commercial activity/$100 minimum;]

[*(iii)* commercial activity:]

[*(I)* filing fee: $50;]

[*(II)* evaluation fee: $50;]

[*(III)* annual fee: $.03 per square foot/$100 minimum;]

[*(iv)* Other, private non-profit use:]

[*(I)* filing fee: $50;]

[*(II)* evaluation fee: $50;]

[*(III)* annual fee: negotiable/$100 minimum;]

[(G) basin: commercial and industrial activity:]

[*(i)* industrial activity:]

[*(I)* filing fee: $50;]

[*(II)* annual fee: basin formula, industrial activity;]

[*(III)* evaluation fee: $50;]

[*(ii)* commercial activity:]

[*(I)* filing fee: $50;]

[*(II)* annual fee: basin formula, commercial activity;]

[*(III)* evaluation fee: $50;]

[(H) fill area: all commercial, industrial, and residential activity, whether public or private:]

[*(i)* fill not in place as of August 15, 1995:]

[*(I)* filing fee: $50;]

[*(II)* annual fee for fill not previously authorized: $.10 per square foot, $100 minimum, or fill formula, whichever is greater, for residential use;]

[(III) annual fee for fill not previously authorized: $.20 per square foot, $100 minimum, or fill formula, whichever is greater, for commercial or industrial use;]

[(IV) annual fee for renewals: 110% of the existing contract rate for residential use, Categories I, II, and III; 120% of the existing contract rate for commercial or industrial use;]

[(V) annual fee renewals escalation frequency: annual fee for renewals escalates at the end of every 5 years;]

[(VI) evaluation fee: $50;]

[(ii) fill (excluding bulkheads) existing but not permitted as of August 15, 1995: $.02 per square foot or $25, whichever is greater;]

[(I) shoreline stabilization project--filing fee: $25;]

[(J) concrete stairs, concrete slabs:]

[(i) residential--Category I:]

[(I) filing fee: $25;]

[(II) annual fee: $.03 per square foot/$25 minimum;]

[(ii) residential--Category II and III:]

[(I) filing fee: $50;]

[(II) annual fee: 75% of fee calculated for same use as a commercial activity/$100 minimum;]

[(iii) commercial activity:]

[(I) filing fee: $50;]

[(II) evaluation fee: $50;]

[(III) annual fee: $.20 per square foot/$100 minimum;]

[(iv) other, private non-profit use:]

[(I) filing fee: $50;]

[(II) annual fee: $100.]

[(5) Structure (cabin) permits:]

[(A) fees:]

[(i) refundable deposit: $200;]

[(ii) annual fee for all structures excluding piers, docks, and walkways will be calculated at $.60 per square foot per year/$175 minimum;]

[(iii) contract renewal: $175;]

[(iv) new contract issuance or transfer of interest approved by the board: $325;]

[(v) bonus payment for new contract issuance for structure determined by the board to be abandoned or for which the permit was terminated by the board for cause: negotiable/minimum to be determined by the board;]

[(vi) filing fee for competitive bid proposal for permit for structure determined by the board to be abandoned or for which the permit was terminated by the board for cause: $50;]

[(vii) late payment fee: 25% of past due amount;]

[(B) permittee may apply for a continuation of the previous fee if the permit was issued prior to July 18, 1983 (the date of the initial rate increase), and if the annual fee will impose an undue financial hardship on a current permit holder.]

[(6) Resource Impact Fee:]

[(A) public use piers and residential piers constructed within guidelines: exempt;]

[(B) all others: $100 plus $1.00 per square foot of impacted area.]

[(7) Term. The term for all coastal leases and coastal easements is negotiable. Board approval is required prior to construction.]

[(8) Rental adjustments--all commercial and industrial easements. At every five-year interval in the term of commercial and industrial easements, the rental fee for the easement will be subject to adjustment. The adjustment, if any, will be in accordance with the then current Fee Schedule as adopted by the Board.]

[(9) Implementation.]

[(A) New residential developments. Upon the application for an easement associated with the development of a multi-unit or single-family residential project, the easement application will be processed and fee determined according to the appropriate commercial activity rate. Upon the sale of an individual residential unit associated with the easement, with sufficient infrastructure in place to convert use of the unit to individual use (and use of associated easement to private activity), the original easement applicant, upon agreement with the commissioner of the GLO, may pay a $50 conversion fee. The easement fee may then be reduced by the percentage that the sold unit represented to the total number of units associated with the easement. At the time the conversion fee is paid under the provisions herein, the unit will then be considered to be subject to the residential activity rates upon renewal of the easement. For units already sold prior to the effective date of this section, conversion to a residential activity rate will be granted without the payment of the conversion fee.]

[(B) Additional terms. The commissioner of the GLO may require, as a condition for the granting of an easement set forth in this section, such additional terms that he feels are necessary to secure performance under any such easement.]

[(10) Senior fee freeze. Upon application to the GLO and submission of proof of age by a grantee, fees for coastal easements associated with a single family residence will not be increased after the point in time when the littoral property owner (one person in the case of joint ownership) reaches the age of 65, unless the area of encumbered state land increases or there is a change in use of the coastal public land.]

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

Filed with the Office of the Secretary of State on November 19, 2012.

TRD-201205989
Larry L. Laine
Chief Clerk, Deputy Land Commissioner, General Land Office
School Land Board
Earliest possible date of adoption: January 6, 2013
For further information, please call: (512) 475-1859

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SUBCHAPTER C. EXPLORATION AND DEVELOPMENT OF GEOTHERMAL ENERGY AND ASSOCIATED RESOURCES ON PERMANENT SCHOOL FUND LAND

31 TAC §155.42

The School Land Board (Board) proposes amendments to 31 TAC §155.42, concerning Mining Leases on Properties Subject to Prospect.

The amendments are proposed to clarify application requirements for mining leases for geothermal energy on Permanent School Fund Land.

BACKGROUND AND SECTION-BY-SECTION ANALYSIS OF PROPOSED AMENDMENTS

The amendments to §155.42 clarify application requirements for converting a prospect permit for geothermal energy on state land to a mining lease.

FISCAL AND EMPLOYMENT IMPACTS

Rene Truan, Deputy Commissioner for the General Land Office's Professional Services Program Area, has determined that for each year of the first five years the amended section as proposed is in effect there will be no additional cost to state government as a result of enforcing or administering the amended section.

Mr. Truan has determined that for each year of the first five years the amended section as proposed is in effect there will be no fiscal implications for local governments as a result of enforcing or administering the amended section.

Mr. Truan has also determined that for each year of the first five years the amended section as proposed is in effect it is unlikely that there will be an identifiable increase in economic costs to persons and business required to comply, as the amendments are consistent with current Board policy.

The Board has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Mr. Truan has determined that the public will benefit from the proposed amendments because the General Land Office will be able to administer the coastal public land program more efficiently, providing the public more certainty and clarity in the process.

ENVIRONMENTAL REGULATORY ANALYSIS

The Board has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to Texas Government Code §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to §155.42 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code §§33.101 - 33.136 relating to the Board's ability to grant rights in coastal public land.

TAKINGS IMPACT ASSESSMENT

The Board has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The Board has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §17 and §19 of the Texas Constitution. Furthermore, the Board has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. The Board has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests inasmuch as the property subject to the proposed amendments is owned by the state.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM (CMP)

The proposed rulemaking is subject to the CMP, 31 TAC §505.11(a)(1)(E) - (I) and (c) (relating to Actions and Rules Subject to the Coastal Management Program). The Board has reviewed these proposed amendments for consistency with the CMP's goals and policies. The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals), §501.24 (relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands), and §501.25 (relating to Policies for Dredging and Dredged Material and Placement). Because all requests for the use of coastal public land must continue to meet the same criteria for Board approval, the Board has determined that the proposed amendments are consistent with applicable CMP goals and policies. The proposed amendments will be distributed to the Commissioner in order to provide him an opportunity to provide comment on the consistency of the proposed amendments during the comment period.

PUBLIC COMMENT REQUEST

To comment on the proposed amendments or its consistency with the CMP goals and policies, please send a written comment to Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711; or fax to (512) 463-6311; or email walter.talley@glo.state.tx.us. Written comments must be received no later than 5:00 p.m., 30 days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under the authority granted to the Board by Texas Natural Resources Code §§32.062, 32.205, 141.073, and 141.071.

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

§155.42. Mining Leases on Properties Subject to Prospect.

(a) (No change.)

(b) Lease application requirements and procedures.

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

(3) Application to lease shall include:

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

(G) Field notes describing the area to be leased, if such area is less than that covered by the prospect permit and cannot be accurately described as a part of the section, such as NE/4. The field notes must be prepared either by a licensed state land surveyor or the elected or appointed county surveyor of the county in which the land is located pursuant to Texas Natural Resources Code §21.011.

~~[(G) Field notes prepared by the county surveyor or a licensed state land surveyor describing the area to be leased, if such area is less than that covered by the prospect permit and cannot be accurately described as a part of the section, such as NE/4.]~~

(4) - (8) (No change.)

(c) - (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 November 19, 2012.

TRD-201205990
Larry L. Laine
Chief Clerk, Deputy Land Commissioner, General Land Office
School Land Board
Earliest possible date of adoption: January 6, 2013
For further information, please call: (512) 475-1859

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 108. PROFESSIONAL CONDUCT

SUBCHAPTER E. BUSINESS PROMOTION

22 TAC §108.56

The State Board of Dental Examiners withdraws the proposed new §108.56 which appeared in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7653).

Filed with the Office of the Secretary of State on November 26, 2012.

TRD-201206078
Glenn Parker
Executive Director
State Board of Dental Examiners
Effective date: November 26, 2012
For further information, please call: (512) 475-0977

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 4. SCHOOL LAND BOARD

CHAPTER 155. LAND RESOURCES

SUBCHAPTER A. COASTAL PUBLIC LANDS

31 TAC §§155.1, 155.3, 155.5, 155.15

The School Land Board withdraws the proposed amendments to §§155.1, 155.3, 155.5, and 155.15 which appeared in the August 10, 2012, issue of the *Texas Register* (37 TexReg 5986).

Filed with the Office of the Secretary of State on November 19, 2012.

TRD-201205987
Larry L. Laine
Chief Clerk, Deputy Land Commissioner, General Land Office
School Land Board
Effective date: November 19, 2012
For further information, please call: (512) 475-1859

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SUBCHAPTER C. EXPLORATION AND DEVELOPMENT OF GEOTHERMAL ENERGY AND ASSOCIATED RESOURCES ON PERMANENT SCHOOL FUND LAND

31 TAC §155.42

The School Land Board withdraws the proposed amendments to §155.42 which appeared in the August 10, 2012, issue of the *Texas Register* (37 TexReg 5986).

Filed with the Office of the Secretary of State on November 19, 2012.

TRD-201205988
Larry L. Laine
Chief Clerk, Deputy Land Commissioner, General Land Office
School Land Board
Effective date: November 19, 2012
For further information, please call: (512) 475-1859

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 69. PROCUREMENT
SUBCHAPTER A. PROCEDURES FOR VENDOR PROTESTS OF PROCUREMENTS

1 TAC §§69.1 - 69.4

The Office of the Attorney General (OAG) adopts amendments to §§69.1 - 69.4, concerning procedures for vendor protests of procurements, without changes to the proposed text as published in the August 3, 2012, issue of the *Texas Register* (37 TexReg 5687) and will not be republished.

The amendments are adopted to update references in the OAG vendor protest rules to reflect the current organizational structure of the OAG by changing the name of the chapter and by including references to the OAG's Procurement Division and Director of Procurement.

No comments were received regarding adoption of the amendments during the comment period.

The amendments are adopted in accordance with Texas Government Code §2155.076, which require state agencies to adopt procedures for resolving vendor disputes.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 19, 2012.

TRD-201205984
Katherine Cary
General Counsel
Office of the Attorney General
Effective date: December 9, 2012
Proposal publication date: August 3, 2012
For further information regarding this publication, please contact Diane Morris at (512) 936-1180.

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PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 72. STATE SEAL

The Office of the Secretary of State (the Office) adopts new §§72.1 - 72.11 and the repeals of existing §§72.40 - 72.48 and 72.50, concerning the State Seal. The repeals and new sections are adopted without changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4485). The sections will not be republished.

The repeals are necessary so that the Office can reorganize the chapter. The new sections update application and licensing procedures for securing the use of the state seal. The sections also address exemptions, denial of applications, suspension or revocation of licenses, fees, application amendments, quarterly reports, monitoring and enforcement, and abandonment of licenses. The Office is revising definitions and statutory citations and improving the overall organization of the chapter for greater readability and ease of use. The new sections also cite the numbers of the forms concerning the state seal, which are available on the agency web site.

No comments were received on the rule proposal.

1 TAC §§72.1 - 72.11

Statutory Authority: The new sections are adopted under the Business & Commerce Code, §17.08(d), which provides the secretary of state with the authority to adopt rules concerning the private use of the state seal, and Government Code, §3101.001(f) and §3101.002(b), which require the secretary of state to adopt rules concerning standard designs for the state seal, reverse of the state seal, and the state arms.

Cross Reference to Statute: The new sections affect the Government Code Chapter 3101, concerning State Symbols.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 20, 2012.

TRD-201206046
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: December 10, 2012
Proposal publication date: June 22, 2012
For further information, please call: (512) 475-2709

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1 TAC §§72.40 - 72.48, 72.50

Statutory Authority: The repeals are adopted under the Business & Commerce Code, §17.08(d), which provides the secretary of state with the authority to adopt rules concerning the pri-

vate use of the state seal, and Government Code, §3101.001(f) and §3101.002(b), which require the secretary of state to adopt rules concerning standard designs for the state seal, reverse of the state seal, and the state arms.

Cross Reference to Statute: The repeals affect the Government Code Chapter 3101, concerning State Symbols.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 20, 2012.

TRD-201206047
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: December 10, 2012
Proposal publication date: June 22, 2012
For further information, please call: (512) 475-2709

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CHAPTER 95. UNIFORM COMMERCIAL CODE

SUBCHAPTER F. OTHER NOTICES OF LIENS

1 TAC §95.602, §95.607

The Office of the Secretary of State adopts amendments to §95.602 and §95.607, concerning other notices of liens, as proposed in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6835). The amendments are adopted without changes and will not be republished.

The purpose of the amendments of the Uniform Commercial Code rules is to reflect current filing policies and procedures due to statutory requirements and to make minor corrections to rule language.

No comments were received concerning the proposed amendments.

The amendments are adopted under the authority of §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; Subchapter D of Chapter 70, Texas Property Code; Subchapter E of Chapter 70, Texas Property Code; and Subchapter J of Chapter 51, Texas Government Code.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 20, 2012.

TRD-201206049
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: December 10, 2012
Proposal publication date: August 31, 2012
For further information, please call: (512) 475-2709

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER H. SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

10 TAC §5.801

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Community Affairs Programs, Subchapter H, Section 8 Housing Choice Voucher Program, §5.801, concerning Project Access Initiative, without changes to the proposed text as published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6869) and will not be republished.

REASONED JUSTIFICATION. The Department determined that in order to serve people with disabilities exiting out of institutions more effectively to make changes to the Project Access program based on feedback from the Department's Disability Advisory Workgroup and the Promoting Independence Advisory Committee. This rule more effectively serves people with disabilities exiting institutions by doing the following: it maintains a pilot program with the Texas Department of State Health Services (DSHS) to assist persons with disabilities transitioning out of State Psychiatric Hospitals; it removes set asides for those at or over and under age 62 that will allow both age groups to access the same group of vouchers; it adds persons with disabilities transitioning out of State Psychiatric Hospitals to the list that can access the larger pool of vouchers if those set aside for the pilot program fill up, and it increases the time allowed for an At-Risk Applicant from 120 days to six months to allow at-risk applicants more time to apply for a Project Access voucher.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. Comments were accepted from August 31, 2012, through October 1, 2012 with comments received from: (1) Marilyn Hartman, National Alliance of Mental Illness (NAMI) Austin, a participant of the Disability Advisory Workgroup.

COMMENT: Commenter (1) supports the proposed rule amendments and also encouraged the creation of additional affordable housing (with support services where possible) for persons with serious mental illness who are at risk of homelessness or have housing instability.

STAFF RESPONSE: TDHCA staff appreciates the support of the rule change comment. The creation of additional housing for

those outside of institutions, such as those experiencing homelessness or housing instability, is outside the scope of Project Access, which assists low-income persons with disabilities that are transitioning from institutions into the community. No additional changes to the section were recommended.

The Board approved the final order adopting the amendments on November 13, 2012.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 26, 2012.

TRD-201206082
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 16, 2012
Proposal publication date: August 31, 2012
For further information, please call: (512) 475-3916

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §25.483

The Public Utility Commission of Texas (commission) adopts amendments to §25.483, relating to Disconnection of Service, with changes to the proposed text as published in the July 13, 2012, issue of the *Texas Register* (37 TexReg 5189). The amendments conform §25.483 to amendments made in §25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities, adopted by the commission in Project Number 38674, *Amendments to Customer Protection Rules Relating to Advanced Meters,* with regard to Transmission and Distribution Utility (TDU) deadlines for reconnection of service. The amendments also conform §25.483 to amendments made to §25.497, relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers, adopted by the commission in Project Number 40180, *Rulemaking to Amend Substantive Rule §25.497 to Make a Secondary/Emergency Contact Optional,* and the form approved by the commission in Project Number 39622, *Application for Chronic Condition or Critical Care Residential Customer Status,* by changing references from secondary contact to emergency contact. In addition, amendments to §25.483 clarify the intent of the rule regarding Retail Electric Provider (REP) timelines for submitting a reconnection request to the TDU, informing the customer when reconnection is expected to occur and the applicable charge to be assessed by the TDU for reconnection of service. These amendments constitute a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 39926 is assigned to this proceeding.

The commission received comments on the proposed amendments from Oncor Electric Delivery Company, LLC and Texas New Mexico Power Company (Oncor/TNMP) and Texas Ratepayers' Organization to Save Energy (Texas ROSE), Texas Legal Services Center (TLSC), Texas Public Citizen, Paula Mixson, The Senior Source, and Carole Womac Thorp (TLSC and Texas ROSE).

The commission also received comments from the REP Coalition which was composed of the Alliance for Retail Markets (ARM); CPL Retail Energy, LP; Direct Energy, LP; Green Mountain Energy Company; First Choice Power Special Purpose, LP; Reliant Energy Retail Services, LLC; Stream Energy; Texas Association of Marketers (TEAM); TXU Energy Retail Company, LLC; and WTU Retail Energy. The participating members of ARM with respect to the REP Coalition comments were Ambit Energy, LP; Champion Energy Services, LLC; Constellation New Energy, Inc.; Gexa Energy, LP; Star Tex Power; Direct Energy, LP; Stream Energy; and Green Mountain Energy Company. The participating members of TEAM, with respect to the REP Coalition comments, were Accent Energy; Amigo Energy; Bounce Energy; Cirro Energy; dPi Energy; Green Mountain Energy; Hudson Energy; Just Energy; Star Tex Power; Stream Energy; Tara Energy and Tri Eagle.

Subsections (a) - (f)

No comments.

Subsection (g); Disconnection of Critical Care Residential Customers

Subsection (h); Disconnection of Chronic Condition Residential Customers

TLSC and Texas ROSE acknowledged that amendments to this rule respond to commission amendments to other rules that impact §25.483. They voiced no recommendations regarding the conforming amendments that change the term "secondary" contact to "emergency (secondary)" contact when referring to a chronic condition or critical care residential customer's selection of another person for the TDU and/or REP to contact before disconnection of service is made.

Commission Response

The commission appreciates the comments of TLSC and Texas ROSE regarding the conforming changes to subsections (g) and (h) and maintains the language in the proposed rule.

Subsections (i) - (m)

No comments.

Subsection (n); Reconnection of Service

The REP Coalition supported the amendments to §25.483 and understood that these amendments are consistent with commission guidance provided for this project at the April 27, 2012 open meeting. They acknowledged that the proposed amendments do not alter the current rule's requirements other than to clarify the

timelines for REPs to submit reconnection requests to the TDU and to conform the rule's language to be consistent with recently adopted amendments to §25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities (tariff). Although the REP Coalition agreed that proposed amendments to subsection (n) are not intended to require REPs to provide qualitatively different information to customers than what is currently provided, the REP Coalition expressed concern that the language of the proposed rule could be interpreted to impose new requirements that direct the REP to explain in detail the process used by REPs and TDUs to reconnect a customer's service. They opined that although the reconnection timelines and associated deadlines in the rule and tariff are important to the REP and TDU, explaining the reconnection process to customers would confuse them and would not likely be helpful. The REP Coalition proposed clarifying language to the proposed rule to ensure that customers receive what they most need - an estimation of when the TDU will perform the reconnection in accordance with the timelines in the rule.

Commission Response

The commission appreciates the comments of the REP Coalition and believes the intent of the rule is to inform the customer when the reconnection is expected to occur. Therefore, the commission agrees to clarify the rule accordingly.

Oncor/TNMP acknowledged that amendments to §25.483 are meant to conform the rule to changes made in other rules and to clarify the intent of the rule regarding REP timelines for submitting reconnection requests to the TDU. In addition, they supported commission staff's efforts to streamline §25.483 by providing a reference to §25.214 regarding TDU reconnection timelines rather than including the specific language from the tariff. Oncor/TNMP asserted that additional changes to "clean-up" the rule need to be made and suggested that any reference to TDU charges be removed from the rule to let the provisions of the tariff speak for themselves. They opined that it is inappropriate to address TDU charges and requirements in a rule that is specific to REP requirements. They stated that provisions in §25.214 clearly differentiate the requirements for a standard reconnect request and a same-day reconnect request. They also observed that the ERCOT Retail Market Guide Section 7.6.3.7 provides further requirements related to REPs requesting same-day reconnect service. Oncor/TNMP argued that the provisions relating to the TDU's assessment of a same-day reconnect fee are redundant and should be removed from the rule. Furthermore, they warned that leaving these provisions in the rule could lead to future contradictions between the rules similar to one that they noted exists between §25.483 prior to the commission's proposed amendments in this rulemaking project and the tariff today, which create confusion for market participants.

Oncor/TNMP opined that provisions relating to TDU charges should have been added to §25.214 in Project Number 38674 and removed from §25.483. However, in the event that the commission declines to remove these provisions, Oncor/TNMP requested that the provisions be revised. They noted that the proposed language addresses standard reconnect requests for premises without a provisioned advanced meter with remote disconnect/reconnect capabilities and specifies what a TDU shall not charge as opposed to what they shall charge. They asked that this provision be stated in the affirmative rather than the negative. Oncor/TNMP also requested that the rule language that makes the appropriate TDU charge dependent on what a customer expressly requests be changed. Oncor/TNMP submitted that they will not know what the customer expressly requests, only what the REP requests.

Finally, Oncor/TNMP requested that if the commission leaves language referencing TDU charges in the rule, a provision be added that would allow them to assess the appropriate TDU weekend/holiday charge to address a situation that may occur when the REP sends a standard or same-day reconnect request on a day that would require the reconnection to be performed on a weekend or a holiday due to the requirement to have all reconnects performed within 48 hours.

The REP Coalition opposed Oncor/TNMP's request to remove any references to TDU charges in the rule. They asserted that the proposed language modifies language in the existing rule to continue to clarify that the TDU should not assess a same-day reconnection fee unless the REP submits a same-day reconnect request. They noted that Oncor/TNMP acknowledged that this concept does not currently appear in §25.214. Because of this, the REP Coalition asserted that the requirement should remain in the rule. In response to Oncor/TNMP's alternative suggestion to modify the proposed amendments, the REP Coalition reiterated that it supports the proposed language in subsection (n) relating to reconnection fees, but that it could also support the language as proposed by Oncor/TNMP.

The REP Coalition lacked support for the TDU's request to add a provision to address a situation that may occur when the REP sends out a standard or same-day reconnect request on a day that would require the reconnection to be performed on a weekend or holiday due to the requirement to perform all reconnects within 48 hours. They explained that this subject matter is already addressed in §25.214 and opined that since this issue is not addressed in the current version of the rule, it should be rejected as outside the scope of this proceeding.

The REP Coalition noted that in its Order adopting amendments to §25.214 in Project Number 38674, the commission determined that it would establish a project for the purpose of a comprehensive review of Section 6.1.2.1 of the tariff. The Order stated: "Therefore, six months after implementation of TX SET 4.0, which will be the date these amendments to the Tariff for Retail Delivery Service become effective, the commission shall establish a project for the purpose of a comprehensive review of Section 6.1.2.1 of the tariff. This project shall include, but is not limited to, a review of the timelines for 'Premises with a Provisioned Advanced Meter with Remote Disconnect/Reconnect Capabilities' applicable to the following discretionary services in Section 6.1.2.1: Standard Move-in, Priority Move-In, Move-Out, Disconnect for Non-Pay (DNP), and Reconnect After DNP. This review will include an evaluation of whether the deadlines for receipt of requests in those timelines should be extended." The REP Coalition opined that this will give the commission the opportunity to include language relating to the same-day reconnection fee in the tariff and suggested that any resulting redundancy between subsection (n) and §25.214 could be addressed in a subsequent rulemaking project.

Commission Response

The commission appreciates the support of Oncor/TNMP for the proposed replacement of specific language relating to a TDU's timeline for reconnection of service with a reference to §25.214 that fully addresses this issue. The commission adopts these changes.

In response to Oncor/TNMP's request to continue to "clean-up" §25.483 by removing any references to TDU charges, the commission acknowledges that while the requirements for a standard reconnect and a same-day reconnect request are differentiated in §25.214, and the ERCOT Retail Market Guide provides requirements related to REPs requesting same-day reconnection of service, the specific provision, as noted by the REP Coalition, in §25.483 relating to the assessment of a same-day reconnect fee are not duplicated in §25.214 or the Retail Market Guide. The commission disagrees with Oncor/TNMP that it is inappropriate to address TDU charges and requirements in a rule that is specific to REP requirements and notes that in the order adopting amendments made in Project Number 27084, *PUC Rulemaking to Revise Customer Protection Rules,* the commission found that: "While the standard Tariff for Retail Delivery Service should continue to govern the relationship between the TDU and the REP in the majority of circumstances...there are instances in which it is appropriate for the customer protection rules to specify TDU roles and responsibilities towards the REP (i.e., when the end-use customer is ultimately affected, or where coordination between the REP and TDU are critical to fulfilling the requirements of the rules, such as in the case of reconnection)." As Oncor/TNMP and the REP Coalition pointed out in their comments, the commission may open up a project for a comprehensive review of §25.214, Section 6.1.2.1., to address TDU charges and timelines for completion of service requests in detail. Should the commission add a provision to §25.214 that mirrors what is in §25.483, then the commission may choose to replace specific language in §25.483 regarding TDU charges with a reference to §25.214 in a later rulemaking. However, since this language does not currently reside in §25.214 and because it protects the REP and customer by assuring that the TDU will not assess a same-day reconnect fee unless a same day reconnect is requested, the commission declines to remove the provision. Additionally, a change of this nature would be outside the scope of this rulemaking, which is to conform this rule to amendments adopted in other rules as well as to clarify the intent of the rule.

Alternatively, Oncor/TNMP requested that language regarding TDU charges be revised should the commission decline to delete the provision. The commission agrees with Oncor/TNMP's recommendation to state in the affirmative that a TDU shall assess a standard reconnect fee for a standard reconnect request even if the TDU completes the request in the same day and clarifies the rule accordingly.

Oncor/TNMP also asked that rule language that makes the appropriate TDU charge dependent on what a customer expressly requests be modified. The commission concurs with Oncor/TNMP that a TDU will not know what the customer expressly requests, only what the REP requests. Therefore, the commission clarifies the rule accordingly.

In response to Oncor/TNMP's request to add a provision to allow a TDU to assess the appropriate TDU weekend/holiday charge to address a situation that could arise when the REP sends out a standard or same-day reconnect request on a day that would require the reconnection to be performed on a weekend or holiday due to the requirement to have all reconnects performed within 48 hours, the commission agrees with the REP Coalition and notes that such a provision already exists in §25.214 and therefore declines to add it to this rule. Furthermore, the commission agrees with the REP Coalition that this change falls outside the scope of this rulemaking.

TLSC and Texas ROSE referred to Project Number 37622, *Rulemaking Proceeding to Amend Customer Protection Rules Relating to Designation of Critical Care Customers,* and Project Number 38674 and noted that they have previously voiced opposition to the disconnection of a chronic condition or critical care residential customer. In addition, they noted that they urged the commission in Project Number 38674 to require TDUs to provide services for customers with provisioned advanced meters at no additional cost even if the communication system fails and to require REPs to request reconnection on a 24/7 basis as disconnected customers pay their debts. They opined that even though residential customers are paying monthly fees to support advanced metering systems, there is no guarantee that residential customers will receive faster reconnection of service at lower costs because of the advanced metering systems.

TLSC and Texas ROSE commented that the recently amended §25.214 sets up different timelines that the TDU must follow for residential reconnection of service. Prepaid customers with a provisioned advanced meter with remote disconnect/reconnect capability are required to be connected faster than postpaid customers with meters of the same type. Other timelines are required for a customer with a provisioned advanced meter that is not communicating and for those customers without a provisioned advanced meter with remote disconnect/reconnect capability depending on whether or not a standard or same-day reconnect is requested.

TLSC and Texas ROSE noted that chronic condition or critical care residential customers who have been afforded extra protections in the commission rules to allow them to stay connected with electricity have been relegated to longer wait times for reconnection of service than customers receiving prepaid service. Although TLSC and Texas ROSE opined that chronic condition or critical care residential customers should never be disconnected, they posited that if their service is disconnected it should be reconnected as quickly as possible. They noted that under §25.214 the quickest reconnection timeline is required for prepaid customers with a provisioned advanced meter with remote disconnect/reconnect capability. They recommended that subsection (n) be amended to require that chronic condition or critical care residential customers be reconnected by the TDU using the same time limits as those established for prepaid customers.

TLSC and Texas ROSE also asked that the commission waive any fees for same-day reconnection of electric service to chronic condition or critical care residential customers. They suggested that this waiver should apply at all times, including holidays and any day that is not an AMS Operational Day or Field Operational Day. They asserted that the commission's current rules already acknowledge that it is in the public's interest to provide greater assurances that chronic condition or critical care residential customers are connected with electric service and that waiving the same-day reconnection fee will provide greater assurance that these customers will not be without service.

TLSC and Texas ROSE noted that although the TDU is required to reconnect service 24/7 for customers with a provisioned advanced meter, there has been no corresponding change in timelines for the REP to request reconnection of service. The result is that there is only one window of opportunity for a customer to have their electricity turned on the same day they make payment in instances where the customer does not have an advanced metering system (AMS) meter or the AMS meter is unable to provide remote disconnection or reconnection of service. As a solution, they offered that both REPs and TDUs should have

their systems monitored and operating 24/7 in order to respond to disconnected customers making payment. In addition, TLSC and Texas ROSE urged that the turn-around time from customer payment to the REP reconnection request be no more than two hours. They opined that since the TDU is given one to two hours for reconnection, it is only fair that the REP be required to submit a reconnection request in an equivalent timeframe. They stated that the TDU's shortened reconnection timeline will benefit the customer only to the extent that the REP expedites the processing of reconnection transactions to the TDU. Finally, TLSC and Texas ROSE requested that subsections (n)(6) and (7), which they believed allows a customer to have no power for up to four days after paying a bill, be deleted.

The REP Coalition noted that the scope of this rulemaking project is limited to amendments necessary to achieve conformity and consistency with recent revisions to other rules that include recent modifications to §25.214 in Project Number 38674. They noted that the preamble to the proposed rule amendments approved for publication at the June 28, 2012 open meeting, clearly reflects the limited scope of review. They asserted that the provisions requested by TLSC and Texas ROSE fall outside the scope of this rulemaking project and should, therefore, be rejected.

Oncor/TNMP disagreed with TLSC and Texas ROSE's suggestion that §25.483 be amended to include a statement that for the purposes of §25.214, chronic condition or critical care residential customers shall be reconnected by the TDU using the same time limits as those established for prepaid customers. They pointed out that in its Order adopting amendments to §25.214 in Project Number 38674, the commission determined that it would review AMS-related timelines in a future proceeding. They submitted that all such timelines should be reviewed at the same time for purposes of consistency rather than considering specific timelines for certain customers in other proceedings, as TLSC and Texas ROSE is proposing.

In response to TLSC and Texas ROSE's suggestion that the same-day reconnect fee be reduced to $0.00 for chronic condition and critical care residential customers, Oncor/TNMP reiterated their position that rather than address TDU requirements in a rule that is specific to REP requirements, all such references should be removed from §25.483 and that §25.214 should be the sole rule to address such provisions. Additionally, they found TLSC and Texas ROSE's suggestion to be unreasonable and asked that it be rejected because the fee at issue is for same-day reconnection after non-payment. Oncor/TNMP stated that there is no reason why chronic condition or critical care residential customers should be treated in an advantageous manner with respect to the costs they impose on the TDU's system by failing to pay their bill to the REP. They opined that TLSC and Texas ROSE provided no rational basis why these customers should be provided a monetary advantage compared to any other customer that fails to pay their bill. Finally, Oncor/TNMP asserted that setting a rate for a particular service for a certain subset of customers is inappropriate and such decisions should be made in a general rate case where the effect of such an impact on other customers can be calculated and considered before such a determination is made.

Commission Response

In regard to TLSC and Texas ROSE's request to add a provision to §25.483 that would require the TDU to reconnect chronic condition or critical care residential customers under the same standards that apply to prepaid customers, the commission believes that the appropriate place for a change to the TDU timeline is in §25.214, not §25.483. The commission agrees with Oncor/TNMP that changes made in this rulemaking regarding TDU timelines streamline the rule by removing specific language contained in §25.483 and replacing the language with a reference to §25.214, which fully addresses the issue.

In response to TLSC and Texas ROSE's request to waive the same-day reconnection charge for chronic condition or critical care residential customers, the commission concurs with Oncor/TNMP that an amendment to waive certain TDU charges would be more appropriately made in the TDU's tariff, where TDU charges are more fully addressed. As noted in an earlier response, the commission found that the TDU's tariff should govern the relationship between the TDU and the REP in the majority of circumstances. Finally, the commission notes that the preamble to the published rule clearly outlined the limited scope of this rulemaking; that is, to conform this rule to amendments adopted in other rules and to clarify the intent of the rule. The revisions requested by TLSC and Texas ROSE fall outside the scope of this rulemaking and the commission declines to make the requested changes.

Additionally, the commission declines to amend the rule to require that REPs be required to have their systems monitored and operating 24/7 in order to respond to disconnected customers making payment or require a deadline of no more than two hours be imposed on a REP to request reconnection of service after a customer makes a payment. The commission notes that §25.483 outlines the minimum requirements a REP must meet regarding timelines for submitting a reconnection request. In order to be effective in the competitive market, the commission believes that a number of REPs already exceed these minimum requirements and expects others will choose to do so in order to succeed in the competitive market environment. As noted above, these requested changes fall out of the scope of this rulemaking.

Finally, in response to TLSC and Texas ROSE's request that subsections (n)(6) and (7) be deleted, the commission points out that because the provisions of subsection (n)(7) are also in §25.214, the commission removed subsection (n)(7) as part of the proposed rule amendments and hereby adopts the deletion of subsection (n)(7). In regard to the provisions of subsection (n)(6), the commission notes that this requirement remains in the rule as an important customer protection. In the order adopting amendments made in Project Number 27084, *PUC Rulemaking to Revise Customer Protection Rules,* the commission gave this response regarding subsections (n)(6) and (7): "However, as an added protection, the commission amends §25.483(n) to indicate that in no event shall a REP take longer than 48 hours after customer cures the reason for the disconnection to request a reconnection and that in no event shall a TDU take longer than 48 hours to process a reconnection request from a REP. The commission believes that this language addresses concerns that a customer may fail to be reconnected in a timely manner after payment due to a weekend, holiday, or any other reason. The commission also believes it critical to make absolutely clear that the other timelines in this rule will in most cases control over the absolute limit of 48 hours...." The order continues by noting that the deadlines imposed by this rule are minimum standards that dictate the absolute latest a customer should be reconnected. For this reason and because TLSC and Texas ROSE's request falls outside the scope of this rulemaking, the commission declines to make the requested change.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting these amendments, the commission makes changes for the purpose of clarifying its intent.

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.001 (West 2007 and Supp. 2012) (PURA), which gives the commission the general power to regulate and supervise the business of each public utility within its jurisdiction; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and, in particular, §14.005, which gives the commission authority to create criteria for the termination of services to the elderly and disabled; and §17.004(b) and §39.101(e), which grant the commission authority to adopt and enforce rules as necessary or appropriate for carrying out customer protections, including minimum service standards and termination of service.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.005, 17.004(b), and 39.101(e).

§25.483. Disconnection of Service.

(a) Disconnection and reconnection policy. Only a transmission and distribution utility (TDU), municipally owned utility, or electric cooperative shall perform physical disconnections and reconnections. Unless otherwise stated, it is the responsibility of a retail electric provider (REP) to request such action from the appropriate TDU, municipally owned utility, or electric cooperative in accordance with that entity's relevant tariffs, in accordance with the protocols established by the registration agent, and in compliance with the requirements of this section. If a REP chooses to have a customer's electric service disconnected, it shall comply with the requirements in this section. Nothing in this section requires a REP to request that a customer's service be disconnected.

(b) Disconnection authority.

(1) Any REP may authorize the disconnection of a medium non-residential or large non-residential customer, as that term is defined in §25.43 of this title (relating to Provider of Last Resort (POLR)).

(2) Except as provided in subsection (d) of this section, all REPs shall have the authority to authorize the disconnection of residential and small non-residential customers pursuant to commission rules. Prior to authorizing disconnections for non-payment in accordance with this paragraph, a REP shall:

(A) test all necessary electronic transactions related to disconnections and reconnections of service; and

(B) file an affidavit from an officer of the company, in a project established by the commission for this purpose, affirming that the REP understands and has trained its personnel on the commission's rule requirements related to disconnection and reconnection, and has adequately tested the transactions described in subparagraph (A) of this paragraph.

(c) Disconnection with notice. A REP having disconnection authority under the provisions of subsection (b) of this section, including the POLR, may authorize the disconnection of a customer's electric service after proper notice and not before the first day after the disconnection date in the notice for any of the following reasons:

(1) failure to pay any outstanding bona fide debt for electric service owed to the REP or to make deferred payment arrangements by the date of disconnection stated on the disconnection notice. Payment of the delinquent bill at the REP's authorized payment agency is considered payment to the REP;

(2) failure to comply with the terms of a deferred payment agreement made with the REP;

(3) violation of the REP's terms and conditions on using service in a manner that interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation;

(4) failure to pay a deposit as required by §25.478 of this title (relating to Credit Requirements and Deposits); or

(5) failure of the guarantor to pay the amount guaranteed, when the REP has a written agreement, signed by the guarantor, which allows for disconnection of the guarantor's service.

(d) Disconnection without prior notice. Any REP or TDU may, at any time, authorize disconnection of a customer's electric service without prior notice for any of the following reasons:

(1) Where a known dangerous condition exists for as long as the condition exists. Where reasonable, given the nature of the hazardous condition, the REP, or its agent, shall post a notice of disconnection and the reason for the disconnection at the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected;

(2) Where service is connected without authority by a person who has not made application for service;

(3) Where service is reconnected without authority after disconnection for nonpayment;

(4) Where there has been tampering with the equipment of the transmission and distribution utility, municipally owned utility, or electric cooperative; or

(5) Where there is evidence of theft of service.

(e) Disconnection prohibited. A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of a customer's electric service for any of the following reasons:

(1) Delinquency in payment for electric service by a previous occupant of the premises;

(2) Failure to pay for any charge that is not for electric service regulated by the commission, including competitive energy service, merchandise, or optional services;

(3) Failure to pay for a different type or class of electric service unless charges for such service were included on that account's bill at the time service was initiated;

(4) Failure to pay charges resulting from an underbilling, except theft of service, more than six months prior to the current billing;

(5) Failure to pay disputed charges, except for the amount not under dispute, until a determination as to the accuracy of the charges has been made by the REP or the commission, and the customer has been notified of this determination;

(6) Failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §25.126 of this title (relating to Adjustments Due to Non-Compliant Meters and Meter Tampering in Areas Where Customer Choice Has Been Introduced); or

(7) Failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the bill is based on an estimated meter read by the TDU.

(f) Disconnection on holidays or weekends.

(1) A REP having disconnection authority under the provisions of subsection (b) of this section shall not request disconnection of a customer's electric service for nonpayment on a holiday or weekend, or the day immediately preceding a holiday or weekend, unless the REP's personnel are available on those days to take payments, make payment arrangements with the customer, and request reconnection of service.

(2) Unless a dangerous condition exists or the customer requests disconnection, a TDU shall not disconnect a customer's electric service on a holiday or weekend, or the day immediately preceding a holiday or weekend, unless the personnel of the TDU are available to reconnect service on all of those days.

(g) Disconnection of Critical Care Residential Customers. A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent Critical Care Residential Customer when that customer establishes that disconnection of service will cause some person at that residence to become seriously ill or more seriously ill.

(1) Each time a Critical Care Residential Customer seeks to avoid disconnection of service under this subsection, the customer shall accomplish all of the following by the stated date of disconnection:

(A) Have the person's attending physician (for purposes of this subsection, the "physician" shall mean any public health official, including medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar medical professional) contact the REP to confirm that the customer is a Critical Care Residential Customer;

(B) Have the person's attending physician submit a written statement to the REP confirming that the customer is a Critical Care Residential Customer; and

(C) Enter into a deferred payment plan.

(2) The prohibition against service disconnection of a Critical Care Residential Customer provided by this subsection shall last 63 days from the issuance of the bill for electric service or a shorter period agreed upon by the REP and the customer, emergency (secondary) contact listed on the commission-approved application form, or attending physician. If the Critical Care Residential Customer does not accomplish the requirements of paragraph (1) of this subsection:

(A) The REP shall provide written notice to the Critical Care Residential Customer and the emergency contact listed on the commission-approved application form of its intention to disconnect service not later than 21 days prior to the date that service would be disconnected. Such notice shall be a separate mailing or hand delivered notice with a stated date of disconnection with the words "disconnection notice" or similar language prominently displayed. If the REP has offered and the customer has agreed for the customer and/or emergency contact to receive disconnection notices from the REP by email, a separate email with the words "disconnection notice" or similar language in the subject line shall be sent in addition to the separate mailing or hand delivered notice. Except as provided in this subsection, the notice shall comply with the requirements of subsections (l) and (m) of this section; and

(B) Prior to disconnecting a Critical Care Residential Customer, a TDU shall contact the customer and the emergency contact listed on the commission-approved application form. If the TDU does not reach the customer and emergency contact by phone, the TDU shall visit the premises, and, if there is no response, shall leave a door hanger containing the pending disconnection information and information on how to contact the REP and TDU.

(3) If, in the normal performance of its duties, a TDU obtains information that a customer scheduled for disconnection may qualify for delay of disconnection pursuant to this subsection, and the TDU reasonably believes that the information may be unknown to the REP, the TDU shall delay the disconnection and promptly communicate the information to the REP. The TDU shall disconnect such customer if it subsequently receives a confirmation of the disconnect notice from the REP. Nothing herein should be interpreted as requiring a TDU to assess or to inquire as to the customer's status before performing a disconnection when not otherwise required.

(4) If a TDU refuses to disconnect a Critical Care Residential Customer pursuant to this subsection, it shall cease charging all transmission and distribution charges and surcharges, except securitization-related charges, for that premises to the REP.

(h) Disconnection of Chronic Condition Residential Customers. A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent customer when that customer has been designated as a Chronic Condition Residential Customer pursuant to §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers), except as provided in this subsection. The REP shall notify the Chronic Condition Residential Customer and the emergency contact listed on the commission-approved application form with a written notice of its intention to disconnect service not later than 21 days prior to the date that service would be disconnected. Such notice shall be a separate mailing or hand delivered notice with a stated date of disconnection with the words "disconnection notice" or similar language prominently displayed. If the REP has offered and the customer has agreed for the customer and/or emergency contact to receive disconnection notices from the REP by email, a separate email with the words "disconnection notice" or similar language in the subject line shall be also be sent in addition to the separate mailing or hand delivered notice. Except as provided in this subsection, the notice shall comply with the requirements of subsections (l) and (m) of this section.

(i) Disconnection of energy assistance clients.

(1) A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of electric service to a delinquent residential customer for a billing period in which the REP receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue service provided that such pledge, letter of intent, purchase order, or other notification is received by the due date stated on the disconnection notice, and the customer, by the due date on the disconnection notice, either pays or makes payment arrangements to pay any outstanding debt not covered by the energy assistance provider.

(2) If an energy assistance provider has requested monthly usage data pursuant to §25.472(b)(4) of this title (relating to Privacy of Customer Information), the REP shall extend the final due date on the disconnection notice, day for day, from the date the usage data was requested until it is provided.

(3) A REP shall allow at least 45 days for an energy assistance provider to honor a pledge, letter of intent, purchase order, or other notification before submitting the disconnection request to the TDU.

(4) A REP may request disconnection of service to a customer if payment from the energy assistance provider's pledge is not received within the time frame agreed to by the REP and the energy assistance provider, or if the customer fails to pay any portion of the outstanding balance not covered by the pledge.

(j) Disconnection during extreme weather. A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of electric service for any customer in a county in which an extreme weather emergency occurs. A REP shall offer residential customers a deferred payment plan upon request by the customer that complies with the requirements of §25.480 of this title (relating to Bill Payment and Adjustments) for bills that become due during the weather emergency.

(1) The term "extreme weather emergency" shall mean a day when:

(A) the previous day's highest temperature did not exceed 32 degrees Fahrenheit, and the temperature is predicted to remain at or below that level for the next 24 hours anywhere in the county, according to the nearest National Weather Service (NWS) reports; or

(B) the NWS issues a heat advisory for a county, or when such advisory has been issued on any one of the preceding two calendar days in a county.

(2) A TDU shall notify the commission of an extreme weather emergency in a method prescribed by the commission, on each day that the TDU has determined that an extreme weather emergency has been issued for a county in its service area. The initial notice shall include the county in which the extreme weather emergency occurred and the name and telephone number of the utility contact person.

(k) Disconnection of master-metered apartments. When a bill for electric service is delinquent for a master-metered apartment complex:

(1) The REP having disconnection authority under the provisions of subsection (b) of this section shall send a notice to the customer as required by this subsection. At the time such notice is issued, the REP, or its agents, shall also inform the customer that notice of possible disconnection will be provided to the tenants of the apartment complex in six days if payment is not made before that time.

(2) At least six days after providing notice to the customer and at least four days before disconnecting, the REP shall post a minimum of five notices in English and Spanish in conspicuous areas in the corridors or other public places of the apartment complex. Language in the notice shall be in large type and shall read: "Notice to residents of (name and address of apartment complex): Electric service to this apartment complex is scheduled for disconnection on (date), because (reason for disconnection)."

(l) Disconnection notices. A disconnection notice for nonpayment shall:

(1) not be issued before the first day after the bill is due;

(2) be a separate mailing or hand delivered notice with a stated date of disconnection with the words "disconnection notice" or similar language prominently displayed or, if the REP has offered and the customer has agreed to receive disconnection notices from the REP by email, be a separate email with the words "disconnection notice" or similar language in the subject line. The REP may send the disconnection notice concurrently with the request for a deposit;

(3) have a disconnection date that is not a holiday, weekend day, or day that the REP's personnel are not available to take payments, and is not less than ten days after the notice is issued; and

(4) include a statement notifying the customer that if the customer needs assistance paying the bill by the due date, or is ill and unable to pay the bill, the customer may be able to make some alternate payment arrangement, establish a deferred payment plan, or possibly secure payment assistance. The notice shall also advise the customer to contact the provider for more information.

(m) Contents of disconnection notice. Any disconnection notice shall include the following information:

(1) The reason for disconnection;

(2) The actions, if any, that the customer may take to avoid disconnection of service;

(3) The amount of all fees or charges which will be assessed against the customer as a result of the default;

(4) The amount overdue;

(5) A toll-free telephone number that the customer can use to contact the REP to discuss the notice of disconnection or to file a complaint with the REP, and the following statement: "If you are not satisfied with our response to your inquiry or complaint, you may file a complaint by calling or writing the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326; Telephone: (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. Complaints may also be filed electronically at www.puc.texas.gov/ocp/complaints/complain.cfm;"

(6) If a deposit is being held by the REP on behalf of the customer, a statement that the deposit will be applied against the final bill (if applicable) and the remaining deposit will be either returned to the customer or transferred to the new REP, at the customer's designation and with the consent of both REPs;

(7) The availability of deferred payment or other billing arrangements, from the REP, and the availability of any state or federal energy assistance programs and information on how to get further information about those programs; and

(8) A description of the activities that the REP will use to collect payment, including the use of consumer reporting agencies, debt collection agencies, small claims court, and other remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP.

(n) Reconnection of service. Upon a customer's satisfactory correction of the reasons for disconnection, the REP shall request the TDU, municipally owned utility, or electric cooperative to reconnect the customer's electric service as quickly as possible. The REP shall inform the customer when reconnection is expected to occur in accordance with the timelines set forth in this subsection and in §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities). For premises without a provisioned advanced meter with remote disconnect/reconnect capabilities, if a REP submits a standard reconnect request and the TDU completes the reconnect the same day, the TDU shall assess a standard reconnect fee. A TDU may assess a same-day reconnect fee only when the REP expressly requests a same-day reconnect and a REP may pass through a same-day reconnect fee to the customer only when the customer expressly requests a same-day reconnect. A REP shall send a reconnection request no later than the timelines in this subsection. The TDU shall complete the reconnection in accordance with the timelines in §25.214 of this title.

(1) For payments made before 12:00 p.m. on a business day, a REP shall send a reconnection request to the TDU no later than 2:00 p.m. on the same day.

(2) For payments made after 12:00 p.m. but before 5:00 p.m. on a business day, a REP shall send a reconnection request to the TDU by 7:00 p.m. on the same day.

(3) For payments made after 5:00 p.m. but before 7:00 p.m. on a business day, a REP shall send a reconnection request to the TDU by 9:00 p.m. on the same day.

(4) For payments made after 7:00 p.m. on a business day, a REP shall send a reconnection request to the TDU by 2:00 p.m. on the next business day.

(5) For payments made on a weekend day or a holiday, a REP shall send a reconnection request to the TDU by 2:00 p.m. on the first business day after the payment was made.

(6) In no event shall a REP fail to send a reconnection notice within 48 hours after the customer's satisfactory correction of the reasons for disconnection as specified in the disconnection notice.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 16, 2012.

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Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

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CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS
SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

The Public Utility Commission of Texas (commission) adopts the repeal of §26.404, relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan; new §26.404, relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan (SRILEC USP); and an amendment to §26.412, relating to Lifeline Service Program. The repeal of §26.404 is adopted without changes to the proposal as published in the July 20, 2012, issue of the *Texas Register* (37 TexReg 5399) and will not be republished. New §26.404 and the amendment to §26.412 are adopted with changes to the proposed text and will be republished.

The new rule provides for reduction in support for local exchange carriers from the SRILEC USP based on the difference between current rates for basic local exchange service and a reasonable rate to be determined by the commission. The purpose of the amendments to §26.412 is to reflect new §26.404. Project Number 39938 is assigned to this proceeding.

The commission received comments on the proposed rule changes from the Texas Telephone Association (TTA), Office of Public Utility Counsel (OPUC), Sprint Communications Company L.P., Texas Cable Association and tw telecom of Texas, llc (collectively, the "USF Reform Coalition" or "URC"), GTE Southwest Incorporated d/b/a Verizon Southwest (Verizon), TEXALTEL, and Texas Statewide Telephone Cooperative, Inc. (TSTCI). No party requested that a public hearing be held regarding the proposed changes to the commission's rules.

(1) Issues Relating to the Calculation of SRILEC USP Base Support Amount

The Texas Telephone Association (TTA) argued that the base support amount should be based on the higher support amounts provided for by the legislature in HB 2603, rather than on the amounts originally established in Docket Number 18516. In particular, TTA argued that the base support amount should be based on the support amount resulting from the implementation of HB 2603 in Docket Number 39643, or where appropriate, use the support amounts as adjusted for inflation by the commission in Project Number 40447.

While TSTCI did not support a return to basing TUSF support on a per-line basis, it recommended that if such an approach is adopted, the base support amounts should be based not on the levels determined over a decade ago in Docket Number 18516 and deemed insufficient by the legislature. The commission should instead base support amounts on the current monthly HB 2603 support amount. According to TSTCI, this would bring the proposed rule more closely in alignment with the legislature's recent actions.

In reply comments, URC responded to the arguments of TSTCI regarding the intent of the legislature in enacting HB 2603. According to URC, HB 2603 can in no way be viewed as a legislative determination either that existing support mechanisms are insufficient or that the method of distributing such support is inappropriate. In support of this argument, URC notes that the provisions of HB 2603 were a temporary mechanism, and that the provisions of HB 2603 are expressly subject to determinations regarding the appropriate support levels made by the commission pursuant to SB 980. In URC's view the express language of HB 2603 provides that: 1) subsequent determinations by the commission of the amount of support needed by companies participating in the SRILEC USP supersede any support amounts calculated pursuant to HB 2603; and 2) the support amounts calculated under HB 2603 expire on September 1, 2013, and the amounts therefore cannot be viewed as a determination by the legislature that any particular support amount or methodology is appropriate.

Commission Response

The commission agrees with URC that the provisions of HB 2603 are not binding on the commission in this rulemaking or subsequent contested cases. Public Utility Regulatory Act (PURA) §56.032(g) states that nothing in §56.032 (the section implementing HB 2603) affects the commission's authority under Chapter 53 or Chapter 56. Under §56.031, effective September 1, 2013, the commission may revise the monthly per line support amounts to be made available from the SRILEC USP after notice and an opportunity for hearing. That this authority to revise monthly per-line support amounts under §56.031 becomes effective on the same date as the expiration of §56.032, as added by HB 2603, strongly supports a conclusion that the legislature did not intend that any adjustments in support authorized by HB 2603 should be binding on future commission determinations of the appropriate level of support to be provided to companies under the SRILEC USP. Accordingly, no change is made to the rule.

(2) Issues Relating to the Timing of Support Reductions

URC recommended that the rule be modified to allow very small ILECs more flexibility in the time period for implementing rate rebalancing. The time period given for implementation of rate rebalancing should be determined in the contested case proceeding for ILECs with fewer than 10,000 lines; for all other ILECs, the transition period should be four years. OPUC generally supported the published rule. However, OPUC is concerned that while a goal of the rule should be to produce a reasonable rate for rural customers that is comparable to the rate paid by urban customers, there may be a greater disparity between the rates currently charged by rural ILECs and the rates charged by the larger companies. Accordingly, it may be appropriate in the rule to provide flexibility in the amount of time over which the transition to a reasonable rate is phased in so that consumers are protected from rate shock.

In reply comments, TEXALTEL agreed that the time for implementation of rate rebalancing should be made flexible.

Commission Response

The commission agrees with URC and OPUC that the greater disparity between current rates and a reasonable rate may exist for some companies receiving support under the SRILEC USP. This disparity may warrant some additional time for implementation of support reductions under this rule in order to mitigate the impact of rate shock on telecommunications customers served by these companies. The specific amount of time needed for implementation of the support reductions depends in part on the amount of the rate disparity, which is a matter best determined in the contested case proceeding that will be conducted to implement this rule. Accordingly, language similar to that proposed by URC is incorporated into the rule in order to preserve the commission's ability to consider these timing issues in the subsequent contested case.

(3) Issues Relating to Rate Changes for Companies Whose Rates are Regulated under Chapter 53

TSTCI stated that, while the approach adopted in Project Number 39937 may be appropriate for the large companies regulated under Chapters 58 and 59 of PURA, it is not appropriate for the small companies subject to the commission's Chapter 53 jurisdiction. In any proceeding to adjust the rates or support provided to Chapter 53 companies, the companies have the right to have the commission establish rates that result in a revenue level sufficient to allow for an appropriate rate of return.

TSTCI argued that once a reasonable rate is established for a Chapter 53 company, it should be allowed to raise its rate to that level immediately in order to reach the reasonably determined revenue level. Additionally, according to TSTCI, any cap on rate increases could affect the ability of a company to meet the minimum rate floors established by the FCC.

In line with its overall position regarding the ability of the commission to adjust rates and revenues for Chapter 53 companies, TSTCI also argued that a reduction in support from the SRILEC USP should be made only if the resulting overall revenue is sufficient to allow the company to earn a reasonable rate of return. TSTCI also stated that the commission should take into account the difference in economic and demographic conditions that exist between the areas served by the large ILECs and the small and rural ILECs, noting that there are no provisions in the proposed rule to take these factors into account.

Responding to TSTCI's argument that the commission cannot set rates for Chapter 53 companies outside of a full rate case, URC observes that neither the rule nor the contested case that follows adoption of the rule actually sets a rate for BLTS. URC instead notes that the procedure proposed in the rule establishes a benchmark for purposes of calculating support from the SRILEC USP, similar to the rate floor established by the FCC (to which TSTCI has indicated it does not object). Additionally, according to URC, the amount of support provided to small and rural companies under the SRILEC USP is not a "rate" or a guaranteed revenue stream that must be considered in light of all other costs and revenues in determining a company's ability to earn a reasonable rate of return. Instead, under the language of PURA, SRILEC USP support is simply designed to "assist" telephone companies to provide BLTS at reasonable rates.

Commission Response

The purpose and effect of the proposed rule is not to establish a rate for BLTS. Rather, it is to determine an appropriate amount of support for that service in areas served by small and rural ETPs. Nothing in the rule establishes a rate for BLTS or requires a company to charge a particular rate for BLTS. The rule merely provides an opportunity for companies to recover some or all of the reduction in support from the SRILEC USP through increases in local rates.

A Chapter 53 rate case is not the only means by which rates for BLTS may be changed outside of a proceeding to determine the relationship between costs and revenues so as to permit a company whose rates are regulated under Chapter 53 to earn a reasonable rate of return on investment. PURA Subchapter G and §26.171 permit small ILECs to increase local rates up to fifty percent provided that such increases do not result in an increase of more than five percent of the ILEC's total regulated intrastate gross annual revenue. In addition, PURA §56.025(a) further provides that the commission may adopt a mechanism necessary to maintain reasonable rates for local exchange telephone service. Companies with rates regulated under Chapter 53 are free to petition the commission at any time for a review of their costs and rates, and for adjustments needed to ensure the opportunity to earn a reasonable rate of return. Accordingly, no change is made to the rule.

(4) Issues Relating to BLTS Rate Increases and Federal Universal Service Fund Requirements

TTA raised a concern that, depending upon the level of the reasonable rate determined by the commission in a subsequent contested case proceeding, some ILECs may not be able to raise rates rapidly enough under §26.171 to comply with the commission's order. TTA also noted that the Federal Communications Commission has adopted minimum rate floors for BLTS that also may require some ILECs to increase rates, and that this FCC requirement could conflict with the provisions of the proposed rule and could violate what TTA characterizes as a "cap" on local rate increases contained in subsection (e)(2) of the proposed rule. To address these concerns, TTA proposed that the commission provide in the rule for an administrative compliance filing that would permit approval of rate increases in the event that the reasonable rate established by the commission would suggest a rate increase in excess of the increases permitted under §26.171, and that any "cap" imposed by subsection (e)(2) be eliminated.

Commission Response

The commission anticipates that the requirements of the FCC with regard to minimum rates for BLTS will be an issue in the

contested case proceeding that will implement the provisions of this rule. In section (2) above, the commission noted that the time period for implementation of any support reductions will be considered in the contested case proceeding. The commission expects that each affected ILEC will present evidence in that proceeding regarding the effect of FCC requirements on the ability of each ILEC to increase rates for BLTS and the rate at which such rates may be increased.

The commission also is aware that the provisions of §26.171 may affect the rate at which rate increases may be implemented. The nature of the interaction between federal regulations and the provisions of this rule, as well as the provisions of PURA and other commission rules as they relate to each company receiving support from the SRILEC USP is a factual matter best addressed in the contested case proceeding to implement this rule. As such, no change is made to the rule.

(5) Issues Relating to Charges Included in the Reasonable Rate

TSTCI and TTA proposed a change to subsection (e)(3) of the published rule, to specify that the "reasonable rate" includes any mandatory EAS or ELCS charges and charges for touch tone service, as well as any other mandatory charges and fees.

Commission Response

The commission agrees that additional clarity in specifying the charges that are included in the reasonable rate would be helpful. The rule has been modified to incorporate the change proposed by TTA.

(6) Issues Relating to Lifeline Support

In its initial comments, OPUC stated that because the new §26.404 will accomplish reductions in SRILEC USP support similar to the THCUSP support reductions to be accomplished in §26.403 and the THCUSP support approved by the Commission in Docket No. 34723, it believes that it is appropriate to extend increases in the SRILEC USP Area Discount to rate increases occurring as a result of the new §26.404. OPUC believes that amendments to §26.412 are important to ensure that Lifeline discount for customers does not decrease in value as current rates increase to the reasonable rate.

In reply comments, TEXALTEL pointed to an apparent discrepancy between the adjustments to Lifeline discounts prescribed by the proposed rule and the discount adjustments adopted in Docket Number 40521. According to TEXALTEL, the proposed rule applies a reduction to Lifeline service rates, while the Docket Number 40521 settlement applies the adjustment, in the form of an increase, to the Lifeline service discount.

Commission Response

The commission's intent is that adjustments to the Lifeline service rate should be applied consistently to companies receiving support under the SRILEC USP and the Texas High Cost Universal Service Plan (THCUSP). To prevent confusion in this matter, the proposed rule has been changed to more closely conform to the language adopted in the settlement agreement in Docket Number 40521.

The intent of the rule is to link increases in Lifeline discounts in all SRILEC USP areas to BLTS rate increases occurring as a result of the new §26.404. This applies to all small and rural ILECs in SRILEC USP service areas. To clarify this intent, as well as to address concerns raised by OPUC as to the importance of providing protection for Lifeline customers, Staff has modified the language in §26.412 to delete the reference to PURA Chapter 53. For purposes of clarification, PURA Chapter 52 addresses the Commission's regulation of public utilities, PURA Chapter 53 addresses the regulation of rates for public utilities and PURA Chapter 59 addresses an Infrastructure Plan which allows for certain pricing flexibility. Most of the small or rural telecommunications providers come under PURA Chapter 53 rate regulation; however, there are a few small or rural ILECs that have elected to make an infrastructure commitment under PURA Chapter 59 and receive certain rate flexibility. Regardless of whether a small or rural ILEC comes under Chapter 53 rate regulation or elects to participate in the Chapter 59 Infrastructure Plan, the 25% increase of any actual increase is to be provided by all Lifeline providers operating in those SRILEC USP ILEC's regulated exchanges.

(7) Issues Relating to Reporting Requirements

URC argued that the rule should apply the same reporting requirements to all ILECs whether they are in the large company fund or the small company fund. Specifically, the ILECs receiving support from the small company fund should be required to file a calculation of the base support amount and the number of eligible lines monthly, as well as quarterly reports showing actual SRILEC USP receipts by study area. This would, according to URC, bring the revised §26.404 into parity with §26.403, relating to the THCUSP.

Commission Response

The commission agrees with URC that the same or similar reporting requirements should apply both to the THCUSP and the SRILEC USP. The proposed rule has been changed to more closely conform to the requirements of §26.403.

(8) Issues Relating to the Treatment of Larger ILEC ETPs in the SRILEC USP

URC requested that the rule be modified so that the affiliates of CenturyLink, Windstream, and Consolidated (Fort Bend) would be subject to the same requirements that apply to LECs in the THCUSP. URC points to the large size of each of these companies compared to other companies in the SRILEC USP. In particular, URC notes that Consolidated's Fort Bend service territory serves an area (the Houston suburb of Katy) that is no longer rural in character. URC raises the question of whether such an area should receive any support at all from the TUSF. URC proposes specific revisions to the rule as published that would provide that the rate established under §26.403 would be presumed to be reasonable to carriers with more than 10,000 access lines.

In reply comments, TEXALTEL agreed with URC's position on this issue.

Commission Response

The commission determines that it would not be appropriate to treat exchanges receiving support from the SRILEC USP that are served by the larger ILEC ETPs differently from other exchanges supported by the SRILEC USP, and to instead support those exchanges as if they were supported by the THCUSP. The two high cost support funds have very different histories. The support amounts for each exchange in the SRILEC USP initially were designed to replace revenue lost by the small and rural ILECs as certain switched access charges were reduced. Those switched access charges were in turn designed to replace revenue lost by the small and rural ILECs as the Texas Toll Pool was terminated following the divestiture by AT&T of its local exchange operations. The support amounts for each exchange in the THCUSP, on the other hand, were based on a comparison

of the cost of providing basic local telecommunications service, as determined by a forward-looking economic cost model, with a benchmark rate for that service. Because these two approaches to determining support amounts are fundamentally different, and because a forward-looking economic cost has never been determined for exchanges served by ILEC ETPs receiving support from the SRILEC USP, it would be inappropriate to begin treating an exchange currently supported by the SRILEC USP as if it were supported instead by the THCUSP.

The commission is fully cognizant of the fact that there are some exchanges currently receiving support from the SRILEC USP that have, over time, become more urban than rural in character. In those exchanges, the cost of providing basic local telecommunications service may also have changed such that support from the SRILEC USP is no longer needed to assist the companies in providing this service. Such a determination, however, is not the subject of this rulemaking nor of the contested case proceeding that will implement this rule. The commission is focused at this time on determining an appropriate amount of support for BLTS in areas served by small and rural ETPs, as well as providing an opportunity for such companies to recover some or all of the reduction in support from the SRILCE USP through increases in BLTS rates. In a subsequent proceeding, the more fundamental issue of the relationship between costs and rates will be addressed.

(9) Other Issues Addressed in Comments

TTA suggested that the commission adopt a provision similar to that adopted in §26.403, relating to the THCUSP, that would permit acceleration of rate increases by no more than 10% in any year to produce rounded rates.

TTA also commented that the rule as proposed may result in decreases in SRILEC USP support in excess of the amount that would result from a simple comparison of the revenue produced by current rates and the revenue that would be produced by a reasonable rate, if ILEC ETPs continue to lose line subscriptions. To ameliorate this effect, TTA proposes that the reductions in support be calculated by reducing the total support amount by 25% of the total support reduction amount in each year of the transition period (assuming a four-year transition period), rather than apply the reduction to per-line support amounts.

Verizon supported the rule as published, and did not propose any changes to the rule. Verizon suggested, however, that the commission follow an approach for the SRILEC USP similar to the approach proposed for the THCUSP in which ILECs receiving support under the THCUSP phase down support in areas with an unaffiliated unsubsidized competitor.

Commission Response

The commission agrees with the suggestion by TTA that the rule be changed such that support reductions may be accelerated. If the ILEC ETP chooses to raise local rates, the amount of such increment may be a rounded amount. The proposed rule has been changed accordingly.

The commission does not, however, agree with the methodology proposed by TTA for the calculation of support reductions. The current operation of the SRILEC USP does not insulate ILEC ETPs from the effects of line loss, and the commission does not intend to change this feature of the SRILEC USP in this rule.

While the commission agrees with Verizon that an approach similar to that proposed for the THCUSP whereby support would be reduced or eliminated in an area with an unaffiliated unsubsidized competitor has merit, this issue will be reserved for a future rulemaking.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting the new and amended sections, the commission makes changes to clarify its intent.

16 TAC §26.404

The repeal is adopted under the PURA, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically §56.021, which requires the commission to adopt rules concerning the Texas universal service fund.

Cross Reference to Statutes: PURA §14.002 and §56.021.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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16 TAC §26.404, §26.412

The amendment and new section are adopted under the PURA, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically §56.021, which requires the commission to adopt rules concerning the Texas universal service fund.

Cross Reference to Statutes: PURA §14.002 and §56.021.

§26.404. Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan.

(a) Purpose. This section establishes guidelines for financial assistance to eligible telecommunications providers (ETPs) that provide service in the study areas of small and rural ILECs in the state so that basic local telecommunications service or its equivalent may be provided at reasonable rates in a competitively neutral manner.

(b) Definitions. The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise:

(1) Eligible line--A residential line or a single-line business line over which an ETP provides the service supported by the Small and Rural ILEC Universal Service Plan (SRILEC USP) through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs.

(2) Eligible telecommunications provider (ETP)--A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecom-

munications Providers to Receive Texas Universal Service Funds (TUSF)).

(3) Small incumbent local exchange company--An incumbent local exchange (ILEC) that qualifies as a "small local exchange company" as defined in the Public Utility Regulatory Act (PURA), §53.304(a)(1).

(c) Application.

(1) Small or rural ILECs. This section applies to small ILECs, as defined in subsection (b) of this section, and to rural ILECs, as defined in §26.5 of this title (relating to Definitions), that have been designated ETPs.

(2) Other ETPs providing service in small or rural ILEC study areas. This section applies to telecommunications providers other than small or rural ILECs that provide service in small or rural ILEC study areas that have been designated ETPs.

(d) Service to be supported by the Small and Rural ILEC Universal Service Plan. The Small and Rural ILEC Universal Service Plan shall support the provision by ETPs of basic local telecommunications service as defined in §26.403(d) of this title (relating to Texas High Cost Universal Service Plan (THCUSP)).

(e) Criteria for determining amount of support under Small and Rural ILEC Universal Service Plan. The commission shall determine the amount of per-line support to be made available to ETPs in each eligible study area. The amount of support available to each ETP shall be calculated using the small and rural ILEC ETP base support amount and applying the annual reductions as described in this subsection.

(1) Determining base support amount available to ETPs. The initial per-line monthly base support amount for a small or rural ILEC ETP shall be the per-line monthly support amount for each small or rural ILEC ETP study area as specified in Docket Number 18516, annualized by using the small or rural ILEC ETP access line count as of January 1, 2012. The initial per-line monthly base support amount shall be reduced as described in paragraph (3) of this subsection.

(2) Determination of the reasonable rate.

(A) The reasonable rate for basic local telecommunications service shall be determined by the commission in a contested case proceeding. An increase to an existing rate shall not in any one year exceed an amount to be determined by the commission in the contested case proceeding.

(B) The length of the transition period applicable to the reduction in support calculated under paragraph (3) of this subsection shall be determined in the contested case proceeding.

(3) Annual reductions to the Small and Rural ILEC Universal Service Plan per-line support. As part of the contested case proceeding referenced in paragraph (2) of this subsection, for each small or rural ILEC ETP, the commission shall calculate the amount of additional revenue, using the basic telecommunications service rate (the tariffed local service rate plus any additional charges for tone dialing services, mandatory expanded local calling service and mandatory extended area service) and the access line count as of September 1, 2013, would result if the small and rural ILEC ETP were to charge the reasonable rate for basic local telecommunications service to all residential customers. Without regard to whether a small or rural ILEC ETP increases its rates for basic local telecommunications service to the reasonable rate, the small or rural ILEC ETP's annual base support amount for each study area shall be reduced on January 1 of each year for four consecutive years, with the first reduction occurring on January 1, 2014. The small or rural ILEC ETP's annual base support amount shall be reduced by 25% of the additional revenue calculated pursuant to this paragraph in each year of the transition period, unless specified otherwise pursuant to paragraph (2)(B) of this subsection. This reduction shall be accomplished by reducing support for each study area proportionally. An ILEC ETP may, in its sole discretion, accelerate its SRILEC USP reduction in any year by as much as 10% and offset such reductions with a corresponding local rate increase in order to produce rounded rates.

(f) Small and Rural ILEC Universal Service Plan support payments to ETPs. The TUSF administrator shall disburse monthly support payments to ETPs qualified to receive support pursuant to this section.

(1) Payments to small or rural ILEC ETPs. The payment to each small or rural ILEC ETP shall be computed by multiplying the per-line amount established in subsection (e) of this section by the number of eligible lines served by the small or rural ILEC ETP for the month.

(2) Payments to ETPs other than small or rural ILECs. The payment to each ETP other than a small or rural ILEC shall be computed by multiplying the per-line amount established in subsection (e) of this section for a given small or rural ILEC study area by the number of eligible lines served by the ETP in such study area for the month.

(g) Reporting requirements. An ETP eligible to receive support under this section shall report information as required by the commission and the TUSF administrator.

(1) Monthly reporting requirements. An ETP shall report on a monthly basis:

(A) the total number of eligible lines for which the ETP seeks SRILEC USP support; and

(B) a calculation of the base support computed in accordance with the requirements of subsection (e) of this section.

(2) Quarterly reporting requirement. An ETP shall file quarterly reports with the commission showing actual SRILEC USP receipts by study area.

(A) Reports shall be filed electronically in the project number assigned by the commission's central records office no later than 3:00 p.m. on the 30th calendar day after the end of the calendar quarter reporting period.

(B) Each ETP's reports shall be filed on an individual company basis; reports that aggregate the disbursements received by two or more ETPs will not be accepted as complying with the requirements of this paragraph.

(C) All reports filed pursuant to paragraph (3) of this subsection shall be publicly available.

(3) Annual reporting requirements. An ETP shall confirm annually to the TUSF administrator that it is qualified to participate in the Small and Rural ILEC Universal Service Plan.

(4) Other reporting requirements. An ETP shall report any other information required by the commission or the TUSF administrator, including any information necessary to assess contributions and disbursements to the TUSF.

§26.412. Lifeline Service Program.

(a) Scope and purpose. Through this section, the commission seeks to identify and make available Lifeline Service to all qualifying customers and households, establish a procedure for Lifeline Automatic Enrollment and Lifeline Self-Enrollment, and define the responsibilities of all providers of local exchange telephone service that provide Lifeline Service, qualified customers, the Texas Health and

Human Services Commission (HHSC), and the Low-Income Discount Administrator (LIDA) Program.

(b) Applicability. This section applies to the following providers of local exchange telephone service collectively referred to in this section as Lifeline providers:

(1) ETC--A carrier designated as such by a state commission pursuant to 47 C.F.R. §54.201 and §26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds).

(2) ETP--A provider designated as an ETP as defined by §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(3) Resale ETP--A certificated provider that provides local exchange telephone service solely through the resale of an incumbent local exchange carrier's service and that has been designated as an ETP as defined by §26.419 of this title (relating to Telecommunication Resale Providers Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF) for Lifeline Service).

(4) Non-ETP/ETC Certificated Provider--Any certificated provider of local exchange telephone service that chooses not to become an ETP or an ETC as defined by §§26.417, 26.418, or 26.419 of this title.

(c) Definitions.

(1) Qualifying low-income customer--A customer who meets the qualifications for Lifeline Service, as specified in subsection (d) of this section.

(2) Toll blocking--A service provided by Lifeline providers that let customers elect not to allow the completion of outgoing toll calls from their telephone.

(3) Toll control--A service provided by Lifeline providers that allow customers to specify a certain amount of toll usage that may be incurred on their telephone account per month or per billing cycle.

(4) Toll limitation--Denotes either toll blocking or toll control for Lifeline providers that are incapable of providing both services. For Lifeline providers that are capable of providing both services, "toll limitation" denotes both toll blocking as defined in paragraph (2) of this subsection and toll control as defined in paragraph (3) of this subsection.

(5) Eligible resident of Tribal lands--A "qualifying low-income customer," as defined in paragraph (1) of this subsection, living on or near a reservation. Pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), a "reservation" is defined as any federally recognized Indian tribe's reservation, pueblo, or colony.

(6) Income--As defined in 47 C.F.R. §54.400(f) includes all income actually received by all members of the household. This includes salary before deductions for taxes, public assistance benefits, social security payments, pensions, unemployment compensation, veteran's benefits, inheritances, alimony, child support payments, worker's compensation benefits, gifts, lottery winnings, and the like. The only exceptions are student financial aid, military housing and cost-of-living allowances, irregular income from occasional small jobs such as baby-sitting or lawn mowing, and the like.

(d) Customer Eligibility Requirements. A customer is eligible for Lifeline Service if they meet one of the criteria of paragraph (1), (2), or (3) of this subsection as determined by the LIDA. Nothing in this section shall prohibit a customer otherwise eligible to receive Lifeline Service from obtaining and using telecommunications equipment or services designed to aid such customer in utilizing qualifying telecommunications services.

(1) The customer's household income is at or below 150% of the federal poverty guidelines as published by the United States Department of Health and Human Services and updated annually;

(2) A customer who receives benefits from or has a child that resides in the customer's household who receives benefits from any of the following programs qualifies for Lifeline Services: Medicaid, Food Stamps, Supplemental Security Income (SSI), Federal Public Housing Assistance, Low Income Home Energy Assistance Program (LIHEAP), or health benefits coverage under the State Child Health Plan (CHIP) under Chapter 62, Health and Safety Code; or

(3) A customer is an eligible resident of tribal lands as defined in subsection (c)(5) of this section.

(e) Lifeline Service Program. Each Lifeline provider shall provide Lifeline Service as provided by this section. Lifeline Service is a retail local exchange telephone service offering available to qualifying low-income customers. Lifeline Service shall be provided according to the following requirements:

(1) Designated Lifeline services. Lifeline providers shall offer the services or functionalities enumerated in 47 C.F.R. §54.101(a)(1) - (9) (relating to Supported Services for Rural, Insular and High Cost Areas).

(2) Toll limitation. Lifeline providers shall offer toll limitation to all qualifying low-income customers at the time the customer subscribes to Lifeline Service. If the customer elects to receive toll limitation that service shall become part of the customer's Lifeline Service and the customer's monthly bill will not be increased by otherwise applicable toll limitation charges.

(3) Disconnection of service.

(A) Disconnection prohibition. Lifeline providers may not disconnect Lifeline Service for non-payment of toll charges.

(B) Discontinuance of Lifeline Discounts for customers automatically enrolled. The eligibility period for automatically enrolled customers is the length of their enrollment in HHSC benefits plus a period of 60 days for renewal. Automatically enrolled customers will have an opportunity to renew their HHSC benefits or self enroll with LIDA upon the expiration of their automatic enrollment.

(C) Discontinuance of Lifeline discounts for customers who have self-enrolled. Individuals not receiving benefits through HHSC programs, but who have met Lifeline income qualifications in subsection (d) of this section, are eligible to receive the Lifeline discount for seven months, which includes a period of 60 days during which the customer may renew their eligibility with LIDA for an additional seven months.

(4) Number Portability. Consistent with 47 C.F.R. §52.33(a)(1)(C), Lifeline providers may not charge Lifeline customers a monthly number-portability charge.

(5) Service deposit prohibition. If the qualifying low-income customer voluntarily elects toll limitation from the Lifeline provider, the Lifeline provider may not collect a service deposit pursuant to §26.24 of this title (relating to Credit Requirements and Deposits) in order to initiate Lifeline Service.

(6) Ancillary services. A Lifeline provider shall provide customers who apply for or receive Lifeline Service access to available vertical services or custom calling features, including caller ID, call waiting, and call blocking, at the same price as other consumers.

Lifeline discounts shall only apply to that portion of the bill that is for basic network services.

(7) Bundled packages. A Lifeline provider shall provide customers who apply to receive Lifeline Service access to bundled packages at the same price as other consumers less the Lifeline discount that shall only apply to that portion of the bundled package bill that is for basic network service.

(f) Lifeline support and recovery of support amounts.

(1) Lifeline discount amounts. All Lifeline providers shall provide the following Lifeline discounts to all eligible Lifeline customers:

(A) Waiver of the monthly subscriber line charge (SLC)--Lifeline providers shall grant a waiver of the monthly SLC at the rate tariffed by the incumbent local exchange carrier serving the area of the qualifying low-income customer. If the ETP does not charge the SLC, it shall reduce its lowest tariffed residential rate for supported services by the amount of the SLC tariffed by the Incumbent Local Exchange Carrier (ILEC) serving the area of the qualifying low-income customer.

(B) Federally approved $1.75 reduction--A Lifeline provider shall give a qualifying low-income customer a federally approved reduction of $1.75 in the monthly amount of intrastate charges paid pursuant to 47 C.F.R. §54.403 (relating to Lifeline Support Amount).

(C) Additional state reduction with federal matching--A Lifeline provider shall give a qualifying low-income customer an additional state-approved reduction of up to a maximum of $3.50 in the monthly amount of intrastate charges.

(D) Federal match of state reduction--A Lifeline provider shall provide a further federally approved reduction equal to one-half the amount of the state-mandated reduction in subparagraph (C) of this paragraph up to a maximum of $1.75.

(E) Additional federal Lifeline support of up to $25 per month for Lifeline service provided to an eligible resident of Tribal lands, as defined in 47 C.F.R. §54.400(e).

(F) Additional Texas High Cost Universal Service Plan (THCUSP) ILEC Area Discount--

(i) Beginning January 1, 2009, Lifeline providers operating in the service areas of Southwestern Bell Telephone Company d/b/a AT&T Texas, GTE Southwest Incorporated d/b/a Verizon Southwest, Central Telephone Company d/b/a Embarq, United Telephone Company d/b/a Embarq, and Windstream Communications Southwest, or their successors, (collectively, THCUSP ILECs) shall provide a reduction (THCUSP ILEC Area Discount) equal to 25% of any actual increase by a THCUSP ILEC to its residential basic network service rate that occurs in a THCUSP ILEC's Public Utility Regulatory Act (PURA) Chapter 58 regulated exchanges and is consistent with the Unanimous Settlement Agreement filed on April 8, 2008, and adopted by the commission in its Order filed on April 25, 2008, in Docket Number 34723, *Petition for Review of Monthly Line Support Amounts from the Texas High Cost Universal Service Plan, Pursuant to PURA §56.031 and P.U.C. Subst. R. §26.403* (Rate Increase) and with new §26.403 of this title adopted by the commission in Project Number 39937, *Rulemaking to Consider Amending Substantive Rule §26.403, Relating to the Texas High Cost Universal Service Plan and Substantive Rule §26.412, Relating to the Lifeline Service Program.*

(ii) A THCUSP ILEC Area Discount shall be calculated by a THCUSP ILEC on the basis of the weighted average of the Rate Increase(s). The calculation of the weighted average of the Rate Increase(s) shall use a denominator that is the sum of all PURA Chapter 58 regulated residential lines with Rate Increases, and shall use a numerator that is the sum of each product that results from multiplying the number of PURA Chapter 58 regulated residential lines affected by each discrete Rate Increase times the corresponding Rate Increase. The weighted average of the Rate Increase(s) calculation shall be included in the tariff filing made to implement the THCUSP ILEC AREA Discount.

(iii) A THCUSP ILEC Area Discount shall be provided to all qualifying Lifeline customers who are located in the service area of the THCUSP ILEC that has implemented the corresponding Rate Increase.

(iv) A THCUSP ILEC shall file with the commission tariffs implementing a THCUSP ILEC Area Discount at the time it files for a Rate Increase.

(v) A competitive local exchange carrier (CLEC) Lifeline provider operating in the service area of a THCUSP ILEC shall file with the commission tariffs or price lists implementing the appropriate THCUSP ILEC Area Discount.

(vi) The effective date of a THCUSP ILEC Area Discount shall have the same effective date as the corresponding Rate Increase.

(G) Additional Small and Rural Incumbent Local Exchange Company Universal Service Plan (SRILEC USP) Area Discount--Beginning January 1, 2014, Lifeline providers operating in the service areas of those incumbent local exchange carriers that participate in the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan (SRILEC USP ILEC) shall provide an increase in the Lifeline service discount equal to 25% of any actual increase by a SRILEC USP ILEC to its residential basic network service rate that occurs in a SRILEC USP ILEC's regulated exchanges and is consistent with §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).

(2) Lifeline support amounts. The following Lifeline providers shall receive support amounts for the Lifeline discounts outlined in paragraph (1) of this subsection:

(A) ETC--Pursuant to 47 C.F.R. §54.403(a), the federal Lifeline support an ETC shall receive is:

(i) The tariffed rate in effect for the primary residential SLC of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service.

(ii) Additional federal Lifeline support in the amount of $1.75 per month.

(iii) Additional federal Lifeline support in an amount equal to one-half the amount of any state-mandated Lifeline support or Lifeline support otherwise provided by the carrier, up to a maximum of $1.75 per month.

(iv) Additional federal Lifeline support of up to $25 per month for Lifeline service provided to an eligible resident of Tribal lands, as defined in 47 C.F.R. §54.400(e).

(B) ETP--

(i) An ETP shall receive state support of up to a maximum of $3.50 which is eligible for federal matching as described in paragraph (1)(C) of this subsection.

(ii) An ETP operating in the service areas of the THCUSP ILECs shall receive additional state support equal to the discount prescribed by paragraph (1)(F) of this subsection.

(iii) If an ETP has been designated as an ETC, then the certificated provider shall also receive support amounts prescribed by subparagraph (A) of this paragraph.

(C) Resale ETP--A resale ETP shall receive Lifeline Service support equal to the following state and federal amounts as long as the Lifeline Service was not purchased as a wholesale offering from the ILEC. Any Lifeline Service purchased as a wholesale offering from the ILEC includes the Lifeline Discount and is therefore not eligible to receive an additional discount. The Texas Universal Service Fund (TUSF), regardless of whether the Lifeline Service Discount is state or federally mandated, will provide all Lifeline Service support.

(i) The tariffed rate in effect for the primary residential SLC of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service. If the Resale ETP does not charge the SLC, it shall reduce its lowest tariffed residential rate for supported services by the amount of the SLC tariffed by the ILEC serving the area of the qualifying low-income customer;

(ii) Additional federally mandated Lifeline support in the amount of $1.75 per month;

(iii) Additional federally mandated Lifeline support in an amount equal to one-half the amount of any state-mandated Lifeline support or Lifeline support otherwise provided by the carrier, up to a maximum of $1.75 per month;

(iv) Additional federally mandated Lifeline support of up to $25 per month for Lifeline service provided to an eligible resident of Tribal lands, as defined in 47 C.F.R. §54.400(e);

(v) A resale ETP shall receive state-mandated support of up to a maximum of $3.50 which is eligible for federal matching as described in paragraph (1)(C) of this subsection; and

(vi) A Resale ETP operating in the service areas of the THCUSP ILECs shall receive additional state support equal to the discount prescribed by paragraph (1)(F) of this subsection.

(D) Non-ETP/ETC--A Non-ETP/ETC is not eligible to receive any state or federally mandated Lifeline support.

(g) Obligations of the customer and the Lifeline provider.

(1) Obligations of the customer.

(A) Customers who meet the low-income requirement for qualification but do not receive benefits under the programs listed in subsection (d) of this section may provide the LIDA with self-enrollment for Lifeline benefits.

(B) Customers receiving benefits under the programs listed in subsection (d) of this section and who have telephone service will be subject to the Lifeline automatic enrollment procedures as provided by the LIDA unless they provide the LIDA with a request to be excluded from Lifeline Service.

(C) Customers receiving benefits under the programs listed in subsection (d) of this section and who do not have telephone service must initiate a request for service from a participating telecommunications carrier providing local service in their area.

(D) Opportunity for contest.

(i) A customer who believes that their self-enrollment application has been erroneously denied may request in writing that LIDA review the application, and the customer may submit additional information as proof of eligibility.

(ii) A customer who is dissatisfied with LIDA's action following a request for review under clause (i) of this subparagraph may request in writing that an informal hearing be conducted by the commission staff.

(iii) A customer dissatisfied with the determination after an informal hearing under clause (ii) of this subparagraph may file a formal complaint pursuant to §22.242(e) of this title (relating to Complaints).

(2) Obligations of Lifeline providers.

(A) A Lifeline provider shall only provide Lifeline Service to all eligible customers identified by the LIDA within its service area in accordance with this section.

(i) A Lifeline provider shall identify, on the initial database provided by the LIDA, those customers to whom it is providing telephone service and shall begin reduced billing for those qualifying low-income customers.

(ii) The eligible customer shall not be charged for changes in telephone service arrangements that are made in order to qualify for Lifeline Service, or for service order charges associated with transferring the account into Lifeline Service. If the eligible customer changes the telephone service, the Lifeline provider shall begin reduced billing at the time the change of service becomes effective.

(iii) Upon receipt of the monthly update provided by the LIDA, a Lifeline provider shall begin reduced billing for those qualifying low-income customers subscribing to services within 30 days.

(iv) The LIDA shall provide a self-enrollment form by direct mail at the customer's request. The LIDA shall maintain customers' self-enrollment forms and provide a database of self-enrolling customers to all Lifeline providers.

(B) Tariff Requirement. Each Lifeline provider shall file a tariff to implement Lifeline Service, or revise its existing tariff for compliance with this section and with applicable law, including subsection (f)(1)(C) of this section.

(C) Reporting requirements. Lifeline providers providing Lifeline Service pursuant to this section shall report information as required by the commission or the TUSF administrator, including but not limited to the following information:

(i) Initial reporting requirements. Lifeline providers shall provide the commission and the TUSF administrator with information demonstrating that its Lifeline Service plan meets the requirements of this section.

(ii) Monthly reporting requirements. Lifeline providers shall report monthly to the TUSF administrator the total number of qualified low-income customers to whom Lifeline Service was provided for the month by the Lifeline providers. Resale ETPs shall not report any customers whose Lifeline Services were purchased from an ILEC as a wholesale Lifeline Service offering. The ILEC from whom these lines were purchased will include those customers in its total number of qualified low-income customers reported to the TUSF administrator. Non-ETP Lifeline providers are excluded from this reporting requirement since they have elected not to receive any type of Lifeline support.

(iii) Other reporting requirements. Lifeline providers shall report any other information required by the commission or the TUSF administrator, including any information necessary to assess contributions to and disbursements from the TUSF. Non-ETP Lifeline providers may be required to report certain information to the commission but will not be required to submit information to the TUSF administrator since they have elected not to receive any type of Lifeline support.

(iv) ETPs shall file the following information with the administrator of the Federal Lifeline Program. Non-ETP Lifeline providers are exempt from this requirement.

(I) information demonstrating that the ETP's Lifeline Service plan meets the criteria set forth in 47 C.F.R. Subpart E (relating to Universal Service Support for Low-Income Consumers);

(II) the number of qualifying low-income customers served by the ETP;

(III) the amount of state assistance; and

(IV) other information required by the administrator of the Federal Lifeline Program.

(D) Notice Requirement. A Lifeline provider shall provide the following notices of Lifeline Service:

(i) Notice of Lifeline Service in any directory it distributes to its customers advising customers of the availability of Lifeline Service. In any instance where the Lifeline provider provides bilingual (English and Spanish) information in its directory, the Lifeline provider must also provide its notice regarding Lifeline Service in a bilingual format;

(ii) An annual bill message-advising customers of the availability of Lifeline Service. In any instance where the Lifeline provider provides bilingual (English and Spanish) information in its annual bill messages, the Lifeline provider must also provide its notice regarding Lifeline Service in a bilingual format;

(iii) Inform all customers both orally and in writing of the existence of the Lifeline Service program when they request or initiate service or change service locations or providers. In any instance where the Lifeline provider provides bilingual (English and Spanish) information in its directory, the Lifeline provider must also provide its notice regarding Lifeline Service in a bilingual format; and

(iv) Shall publicize the availability of Lifeline Service in a manner reasonably designed to reach those likely to qualify for the service.

(E) Confidentiality agreements. Each Lifeline provider must execute a confidentiality agreement with the LIDA prior to receiving the LIDA's eligibility database. The agreement will specify that client information is released by the LIDA to the Lifeline provider for the sole purpose of providing Lifeline Service to eligible customers and that the information cannot be released by the Lifeline provider or be used by the Lifeline provider for any other purpose.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 16, 2012.

TRD-201205981
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: December 6, 2012
Proposal publication date: July 20, 2012
For further information, please call: (512) 936-7223

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16 TAC §26.418

The Public Utility Commission of Texas (commission) adopts an amendment to §26.418, relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds, without changes to the proposed text as published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6874).

The amendment will exclude commercial mobile radio service (CMRS) resellers from eligibility for designation by the commission as an eligible telecommunications carrier (ETC). Instead, a CMRS reseller will be able to seek designation as an ETC by the Federal Communications Commission (FCC). Project Number 40561 is assigned to this proceeding.

The commission did not receive any comments on the proposed amendment.

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically §51.001, which provides that it is the policy of this state to promote diversity of telecommunications providers and interconnectivity; encourage a fully competitive telecommunications marketplace; and maintain a wide availability of high quality interoperable, standards-based telecommunications services at affordable rates.

Cross Reference to Statutes: PURA §14.002 and §51.001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 16, 2012.

TRD-201205979
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: December 6, 2012
Proposal publication date: August 31, 2012
For further information, please call: (512) 936-7223

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 62. COMMISSIONER'S RULES CONCERNING THE EQUALIZED WEALTH LEVEL

19 TAC §62.1071

The Texas Education Agency (TEA) adopts an amendment to §62.1071, concerning the equalized wealth level. The amendment is adopted without changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7648) and will not be republished. The section establishes provisions relating to wealth equalization requirements. The adopted amendment adopts 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 adopted amendment to 19 TAC §62.1071, Manual for Districts Subject to Wealth Equalization, adopts 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 have been added.

Section 3

Information on defaults related to prior school years has been 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) has been 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 adopted amendment places 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 adopted amendment has no locally maintained paperwork requirements.

The TEA determined that 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 began September 28, 2012, and ended October 29, 2012. No public comments were received.

The amendment is adopted 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 19, 2012.

TRD-201205986
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 9, 2012
Proposal publication date: September 28, 2012
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER A. PROCEDURES GOVERNING GRIEVANCES, HEARINGS, AND APPEALS

22 TAC §107.2

The State Board of Dental Examiners (SBDE) adopts new §107.2, concerning Effect of Child Support Payment Default on Licensure Application and Renewal, without changes to the proposed text as published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7843) and will not be republished.

The new rule is adopted to address the stipulations of Texas Family Code, §232.0135, relating to denial of license renewal of a child support obligor who has failed to pay child support for six months or more. The section states that the Board shall refuse to grant initial licensure or renewal of an existing license upon notice from a child support agency that an obligor has failed to pay child support for six months or more. The adopted section addresses the conditions that must be met before an obligor who has failed to pay child support for six months or more may be granted an initial license or renewal of an existing license.

No comments were received regarding adoption of the new rule.

The new rule is adopted pursuant to Texas Government Code §§2001.021 et seq. and Texas Occupations Code §254.001, which authorize the SBDE to adopt and enforce rules necessary for it to perform its duties.

The adoption of the new rule affects Texas Occupations Code, Title 3, Subtitle D, and Texas Administrative Code, Title 22, Part 5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 26, 2012.

TRD-201206076
Glenn Parker
Executive Director
State Board of Dental Examiners
Effective date: December 16, 2012
Proposal publication date: October 5, 2012
For further information, please call: (512) 475-0977

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22 TAC §107.3

The State Board of Dental Examiners (SBDE) adopts new §107.3, concerning Effect of Student Loan Payment Default on Licensure, with changes to the proposed text as published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7843). The new rule is adopted with non-substantive technical corrections and will be republished.

The new rule is adopted to address the stipulations of Texas Education Code, §57.491, concerning Loan Default Ground for Nonrenewal of Professional and Occupational License. The adopted section states that the Board shall refuse to grant renewal of an existing license to a licensee who has defaulted on a student loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC), defaulted on a repayment agreement, or failed to enter a repayment agreement. The adopted section addresses the conditions that must be met before an obligor who has not complied in one of the enumerated ways may be granted renewal of an existing license.

No comments were received regarding adoption of the new rule.

The new rule is adopted pursuant to Texas Government Code §§2001.021 et seq. and Texas Occupations Code §254.001, which authorize the SBDE to adopt and enforce rules necessary for it to perform its duties.

The adoption of the new rule affects Texas Occupations Code, Title 3, Subtitle D, and Texas Administrative Code, Title 22, Part 5.

§107.3. Effect of Student Loan Payment Default on Licensure.

(a) Definitions.

(1) License--A license, certificate, registration, permit, or other authorization issued by the Board.

(2) Student loan--A loan made to a person to support the person while attending a public or private institution of higher education or other postsecondary educational establishment that is:

(A) owed to this state, an agency of this state, or the United States; or

(B) guaranteed by this state, an agency of this state, or the United States.

(b) Discretion to Renew, Approve or Discipline a License.

(1) The Board may refuse to approve an individual's initial application for licensure; deny an application for renewal of license issued by the Board; or take other disciplinary action against the person upon receipt of information from an administering entity that a person has defaulted on a student loan or has breached a student loan repayment contract or scholarship contract by failing to perform the person's service obligation under the contract.

(2) Initial applications for licensure and applications for renewal of licenses issued by the Board are subject to the course of action established by the Texas Education Code, §57.491.

(c) Mandatory Refusal to Renew a License. The Board shall refuse to renew a license due to a default on a student loan guaranteed by Texas Guaranteed Student Loan Corporation (TGSLC), a default on a repayment agreement with TGSLC or a failure to enter a repayment agreement with TGSLC, unless the licensee presents to the Board a certificate issued by the corporation certifying that:

(1) the licensee has entered a repayment agreement on the defaulted loan; or

(2) the licensee is not in default on a loan guaranteed by the corporation.

(d) The Board shall provide its applicants and licensees with written notice of the nonrenewal policies established under §57.491 of the Texas Education Code and an opportunity for a hearing in accordance with the provisions of the Administrative Procedure Act, Texas Government Code, §§2001.001, et seq.

(e) As required by §57.491(c) of the Texas Education Code, the Board, on an annual basis, shall prepare a list of the agency's licensees and submit the list to the corporation in hard copy or electronic form.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 26, 2012.

TRD-201206077
Glenn Parker
Executive Director
State Board of Dental Examiners
Effective date: December 16, 2012
Proposal publication date: October 5, 2012
For further information, please call: (512) 475-0977

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CHAPTER 108. PROFESSIONAL CONDUCT
SUBCHAPTER E. BUSINESS PROMOTION

22 TAC §§108.50 - 108.61

The State Board of Dental Examiners (SBDE) adopts the repeal of §§108.50 - 108.61, concerning Business Promotion, without changes to the proposal as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7652). The repeal is adopted to be effective on May 1, 2013.

The repeal is adopted so that SBDE may adopt revised business promotion rules. Concurrent with this repeal is the adoption of new business promotion rules §§108.50 - 108.55 and §§108.57 - 108.63 and the proposal of new business promotion rule §108.56.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Government Code §§2001.021 et seq. and Texas Occupations Code §254.001, which authorize the SBDE to adopt and enforce rules necessary for it to perform its duties.

The adoption of the repeal affects Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201206080
Glenn Parker
Executive Director
State Board of Dental Examiners
Effective date: May 1, 2013
Proposal publication date: September 28, 2012
For further information, please call: (512) 475-0977

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22 TAC §§108.50 - 108.55, 108.57 - 108.63

The State Board of Dental Examiners (SBDE) adopts new §§108.50 - 108.55 and §§108.57 - 108.63, concerning Business Promotion, to be effective on May 1, 2013. Sections 108.51 - 108.53, 108.55, 108.57, 108.58, and 108.63 are adopted with changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7653) in response to public comment and will be republished. Sections 108.50, 108.54, and 108.59 - 108.62 are adopted without changes to the proposed text and will not be republished.

The adopted rules are §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; §108.57, 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. A repeal of §§108.50 - 108.61 is concurrently adopted to be effective on May 1, 2013. A Notice of Withdrawal of the proposal of §108.56 as published in the *Texas Register* on September 28, 2012; and a proposal for new §108.56 are also concurrently filed.

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 rules are adopted to protect the public from false, misleading or deceptive advertisement and to offer SBDE's licensees clear guidance as to restrictions on advertising.

The new rules are modeled in part after the American Association of Dental Board's (AADB) Guidelines on Advertising. In addition to the generally accepted guidelines promulgated by the AADB, the rules address the communication of specialty practices to the public, the inclusion of professional awards and honors in advertisements, and recommendations regarding website publications. A significant change in the rules is that the publication of patient testimonials is now permitted.

Six public comment submissions were received in response to the proposed rules as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7653). One comment was received from the Texas Academy of General Dentistry; one comment was received from the Texas Dental Association; two comments were received from Texas licensed dentists writing as representatives of corporate dental practices; one comment was received from a Texas licensed dentist writing without affiliation; and one comment was received from a Texas attorney.

One comment was received from Texas Academy of General Dentistry regarding the implementation schedule of the proposed rules. The comment asks SBDE to consider real life scenarios like billboard or Yellow pages contracts that may require a significant period of time to alter. SBDE agrees. The rules will be in effect on May 1, 2013.

One comment was received from Texas Academy of General Dentistry and one comment from Texas Dental Association requesting clarification of §108.52 as to the requirements of dental office signage; particularly the physical sign adhered to the building housing the dental office or in front of the entrance of a dental office. The rule has been modified in response to public comment to indicate that although signage may be an advertisement, the requirements of §108.52 do not apply to the dental office's primary signs used to designate the office location that are adhered to buildings or at the entrance to the dental office or shopping park.

One comment was received from Texas Dental Association requesting the language of §108.52(a)(2) mirror the language of Texas Occupations Code §251.003(a)(4). SBDE agrees. The rule has been modified as recommended by the public comment.

One comment was received from Texas Dental Association requesting clarification of §108.52(b). The comment asks whether an owner must display his or her name as well as the names of dentists practicing at a particular location on both the office's primary sign and in separate signage at or near the entrance. Section 108.52(b) contemplates a display at or near the entrance to the dental practice that indicates the names, professional degrees, and schools attended of all those practicing dentistry at that particular location, so that a member of the public who is physically present in the office may be readily informed of all those working the office. On the other hand §108.52(c)(3) refers to advertisements generally and requires the name of the owner and the name of at least one dentist practicing at the specific location advertised.

One comment was received from Texas Academy of General Dentistry stating that §108.53(b) requiring "prior knowledge and written approval of the patient" concerning any lawful splitting of fees is burdensome. SBDE disagrees and holds that the rule mirrors the intent and language of §108.1(6) to protect patients from misleading payment schemes and the required informed consent protects the public from misleading payment schemes.

One comment was received from Texas Academy of General Dentistry regarding the application of §108.55 to office signage. The comment asks whether the advertising requirements apply to signage adhered to the building outside the office at a shop-

ping center or at an entry to a parking lot. SBDE has modified §108.51 in response to public comment to indicate signage adhered to the building or to designate parking need not meet all the requirements of the Business Promotion rules. As a point of clarification, SBDE points out that §108.55 requires a disclosure of "general dentist" or "general dentistry" only when specific services are advertised, and many advertisements, including signage, may not mention specific services.

One comment was received from an Texas licensed dentist and one comment was received from a Texas licensed dentist affiliated with a corporate dental practice regarding §108.58(b). The comments request SBDE prohibit the giving of gifts to potential and current patients. SBDE holds that providing gifts to patients of record in appreciation of the ongoing relationship and gifts of nominal value to non-patients is appropriate. One comment refers to the Federal Anti-Kickback Statute. When providing gifts to patients of records, all dentists should be sure to comply with the regulations governing any federal or state program in which they participate and any federal or state law or regulation. Other laws or regulations may have stricter guidelines.

One comment was received from a Texas attorney and one comment was received from a Texas licensed dentist writing on behalf of a corporate dental practice regarding §108.58. The comments recommend SBDE allow gifts of nominal value to potential patients. SBDE agrees. One comment recommended a $10 limit on gifts for all patients and for potential patients. SBDE partially agrees and has modified the rule to reflect public comment. SBDE holds that the intent of the rule is to protect the public from deceptive or coercive solicitation practices. SBDE holds that once a relationship is established with a patient of record, the risk of deception or coercion to gain patronage has diminished, and the need to limit the gift value has decreased. However, SBDE finds the information provided in the comments persuasive. Particularly, it notes the inclusion of a study of low-income, rural children that indicated incentives valued at $5 were more effective than others at encouraging patients to seek initial and follow-up visits. The comment recommended SBDE adopt an exception allowing gifts of no more than $10 per patient.

One comment was received from Texas Academy of General Dentistry regarding §108.58(b), revealing that dentists presently send gifts of nominal value to current patients to express gratitude for the patients' referrals of new patients. SBDE holds that this practice is a violation of current Texas law, Texas Occupations Code §102.001. A dentist may provide gifts of any value to current patients; however, those gifts may not be provided in gratitude for a patient referral. A dentist may provide a gift to a current patient in gratitude for the patient's continued patronage or confidence in the dental practice, or for any other lawful reason.

One comment was received from Texas Academy of General Dentistry requesting clarification of §108.58(c) and its application to internet advertising services. SBDE's current interpretation of the rule holds that the "volume or value of any patient referrals" refers to the number of new patients who appoint and present in the dentist's office for services. A "click" on an advertisement or the purchase of a voucher does not necessarily result in a new patient referral.

The new rules are adopted pursuant to Texas Government Code §§2001.021 et seq. and Texas Occupations Code §254.001, which authorize the SBDE to adopt and enforce rules necessary for it to perform its duties.

The adoption of the new rules affects Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

§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) Location Signage--Signage adhered to the physical building at which a dental office is located or at the entry to a shopping park or parking lot that is intended as an indicator for the public to physically locate the dental office.

(4) 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.

(5) 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. "Print media" shall also include stationery and business cards.

(6) 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 owns, maintains, or operates an office or place of business in which the person employs or engages under any type of contract another person to practice dentistry, 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; the words "general dentist" or "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 Texas 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. This provision does not apply to location signage.

(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 disclosure 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.

§108.55. 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 specific 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 disclosure 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 DVDs, 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.

§108.57. 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 disclosures 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 Texas Occupations Code. A licensee shall not offer, give, dispense, distribute or make available to any third party 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. A licensee may offer, give, dispense, distribute or make available directly to a potential patient, a non-cash gift valued at no more than ten dollars to secure or solicit the potential patient.

(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.

§108.63. 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, dental hygiene schools, medical schools or colleges.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 26, 2012.

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Glenn Parker
Executive Director
State Board of Dental Examiners
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Proposal publication date: September 28, 2012
For further information, please call: (512) 475-0977

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CHAPTER 112. VISUAL DENTAL HEALTH INSPECTIONS

22 TAC §112.1, §112.2

The State Board of Dental Examiners (SBDE) adopts amendments to §112.1, relating to Definitions; and §112.2, relating to Visual Dental Health Inspections, with changes to the proposed text as published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7844) and will be republished. The changes to §112.2 are in response to public comment to further clarify which dental healthcare workers may perform visual dental health inspections and when they may do so.

In addition to clarifying the parties who may perform visual dental health inspections, the amendments introduce a limited oral health evaluation as an additional category of dental assessment.

The Board received twenty submissions from the public regarding the amendments to §112.1 and §112.2 and the proposal of new §112.3. Sixteen comments specifically addressed the amendments to §112.1 and §112.2.

Seven comments were received requesting inclusion of dental hygienists in §112.1 and §112.2. The Board holds that this rule is intended to allow non-dental healthcare workers to perform basic screenings that do not meet the standard of care expected of individuals licensed by the Dental Board; therefore, the inclusion of dental hygienists or dental hygiene students in this rule is not appropriate. Section 112.2(b) was proposed in part to address situations in which it may be appropriate for dental students and others affiliated with the dental profession to engage in visual inspections. The rule has been modified to indicate that dental hygienists and dental hygiene students may engage in visual inspections in accordance with the requirements of §112.2(b) and (c).

One comment was received requesting clarification of the language in §112.2(b) to eliminate the repetition of "graduate dental student" and "dentist affiliated with a dental school." The rule has been modified to clarify §112.2(b).

Eight comments were received requesting inclusion of dental hygienists and dental hygiene students in §112.2. The rule has been modified in response to these comments. The Board holds that it is appropriate that dental hygienists and dental hygiene students perform Visual Dental Health Inspections in accordance with this rule.

The amendments are adopted under Texas Government Code §§2001.021 et seq. and Texas Occupations Code §254.001, which authorize the SBDE to adopt and enforce rules necessary for it to perform its duties.

The adoption of the amendments affect Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

§112.1. Definitions.

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

(1) Visual Dental Health Inspection--An inspection made by students engaged in a formal education program in dentistry or dental hygiene or by health care workers, other than dentists, dental hygienists, dental assistants, physicians and physician assistants.

(2) Limited Oral Evaluation--A non-comprehensive evaluation of an individual who is not a patient of record made by a licensed dentist for the following limited purposes:

(A) screening for symptoms of oral cancer; and/or

(B) evaluating minors or members of underserved populations for current or potential dental problems.

(3) Dental instruments--Any device used by dentists to examine, diagnose or treat patients, or any device used by dental hygienists to treat patients, that may be used in an invasive manner under normal circumstances.

(4) Diagnosis--The translation of data gathered by clinical and radiographic examination into an organized, classified definition of the conditions present.

(5) Health care worker--A person who furnishes health care services in direct patient care situations under a license, certificate, or registration issued by the state.

(6) Invasive manner--A procedure resulting in surgical entry into tissues, cavities, or organs or the manipulation, cutting or removal of any oral or perioral tissue, including tooth structure.

§112.2. Visual Dental Health Inspection.

(a) A visual dental health inspection is performed as a group activity taking place in a school or other institutional setting for the purpose of making a gross assessment of the dental health status of group members, at no cost to the members. It is cursory and does not involve the use of dental instruments, though use of gloves, tongue depressors and intra oral lighting is encouraged. Further, it does not involve making a diagnosis, providing treatment, or treatment planning. Individuals performing visual dental health inspections in accordance with this chapter do not engage in the practice of dentistry if the inspection process is limited to recognizing when tissue does not appear normal and encouraging the member to appoint with a licensed Texas dentist.

(b) A visual dental health inspection may be performed by:

(1) a dentist, dental student, dental hygienist or dental hygiene student to conduct research or for educational purposes in the field of dentistry or dental hygiene; or

(2) dentists or dental hygienists employed by the State of Texas Department of State Health Services (DSHS), Department of Aging and Disability (DADS), or by any public health dentist or dental hygienist employed by any other state, county, of city health department for the purposes of oral health surveillance, oral health program planning, or epidemiological surveys required by state or federal agencies.

(c) A visual dental health inspection performed under subsection (b) of this section is performed for the purpose of making a gross assessment of the dental health status of group members, at no cost to the members. It does not involve making a diagnosis, providing treatment, or treatment planning.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Glenn Parker
Executive Director
State Board of Dental Examiners
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22 TAC §112.3

The State Board of Dental Examiners (SBDE) adopts new §112.3, concerning Limited Oral Evaluation, with changes to the proposed text as published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7845) in response to public comment and will be republished.

The section is adopted to permit dentists to perform non-diagnostic, non-comprehensive evaluations of individuals for the purposes of screening for oral cancer and/or evaluating minors or underserved populations. The new section defines limited oral evaluations, the situations in which a dentist may perform limited oral evaluations, the standard of care expected of the dentist, and the record-keeping requirements of limited oral evaluations.

The changes made in response to public comments serve to clarify the roles of dental hygienists in limited oral evaluations.

The Board received twenty submissions from the public regarding new §112.3 and amendments to §112.1 and §112.2. Nineteen comments specifically addressed new §112.3.

Nine comments were received requesting unspecified inclusion of dental hygienists in §112.3 and/or requesting the rule address fluoride varnish and dental sealant programs. The rule has been modified to indicate that it is not intended to prohibit dental hygienists from collecting data or delivering fluoride or sealant treatments in conjunction with a dentist's Limited Oral Evaluation.

One comment was received stating that registered dental hygienists frequently visually identify oral conditions. The Board holds that while this may be true, it is beyond the scope of the practice of dental hygiene for a registered dental hygienist to engage in screening, evaluating or diagnosing any oral condition. Dental hygienists are encouraged to continue to utilize their expertise to collect diagnostic and clinical data to assist the dentist in his or her evaluation or diagnosis.

One comment was received stating that the original intent of the chapter was to permit non-dental healthcare workers to perform visual dental health inspections without risking practicing dentistry without a license. The commenter states that at the time the original rule was passed, it was understood that dentists and dental hygienists were routinely performing these inspections and so did not need inclusion in the rule. The Board holds that visual dental health inspections as defined in the rule for non-dental healthcare workers do not meet the minimum standard of care of patient contact for those licensed by the Board. The Board is concerned that individuals will receive a false assurance of oral health if seen, but not examined, evaluated or diagnosed by a dentist. However, the Board understands that dentists and dental hygienists desire to provide care to underserved populations, and one method to accomplish this is through limited evaluations of the underserved populations' oral health. It is for this reason that the Board proposed §112.3. The Board holds that those licensed by the Board to practice dentistry or dental hygiene must meet a higher standard of care in any patient contact than non-dental healthcare workers. Section 112.3 contemplates the identification and clarification of the standard of care appropriate when not performing a full diagnostic examination.

Three comments were received stating that dental hygienists should be allowed to perform Limited Oral Evaluations because the evaluations are not diagnostic and therefore not beyond the scope of practice of a dental hygienist. The Board holds that while it is appropriate for a dental hygienist to assist a dentist in a Limited Oral Evaluation by collecting data and providing fluoride varnish or sealants when delegated, a dental hygienist may not be delegated to perform Limited Oral Evaluations independently. The purpose of proposed §112.3 is to define a standard of care in evaluation and record-keeping with which a licensed dentist must comply.

Three comments were received requesting the addition of language to §112.3(b) that is consistent with the language in §112.3(e) to allow either the dentist or the qualifying entity under the section to retain the copies of the consent forms and evaluations. The rule has been modified to reflect this consistency.

Two comments were received requesting modification of §112.3(c) to require that a copy of the results of the evaluation be returned to the patient or parent/guardian, rather than both a copy of the informed consent and the results of the evaluation.

The Board holds that the rule contemplates that the patient or parents/guardian retain a copy of the informed consent. That copy may be provided prior to or following the evaluation.

The new rule is adopted pursuant to Texas Government Code §§2001.021 et seq. and Texas Occupations Code §254.001, which authorize the SBDE to adopt and enforce rules necessary for it to perform its duties.

The adoption of the new rule affects Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

§112.3. Limited Oral Evaluation.

(a) This rule shall not be construed to prohibit a registered dental hygienist from collecting clinical data in conjunction with a licensed dentist's limited oral evaluation under this rule.

(b) This rule shall not be construed to prohibit a registered dental hygienist or a dental assistant with the appropriate certificate from applying sealants in conjunction with a limited oral evaluation performed by a licensed dentist under this rule.

(c) This rule shall not be construed to prohibit a registered dental hygienist or a dental assistant from applying fluoride varnish in conjunction with a limited oral evaluation performed by a licensed dentist under this rule.

(d) A limited oral evaluation is performed by a licensed dentist in conjunction with a federal, state, county, or city government healthcare program, a non-profit organization, or an educational institution. It is a non-diagnostic, non-comprehensive evaluation of an individual who is not a patient of record made for the limited purpose of screening for symptoms of oral cancer and/or evaluating minors or underserved populations for current or potential dental problems.

(e) A limited oral evaluation must be provided at no cost to the patient or any third party. The evaluation must result in a written assessment of findings that is provided to the patient and retained by the dentist or entity qualifying under subsection (d) of this section.

(f) A limited oral evaluation is exempt from the requirements of the minimum standard of care for a comprehensive examination in §108.7 of this title (relating to Minimum Standard of Care, General) and §108.8 of this title (relating to Records of the Dentist), except as required by this rule. The dentist must obtain written, informed consent as to the limited nature and non-diagnostic results of the evaluation from the patient or his/her parent or guardian. The dentist must provide a copy of the written informed consent and the results of the evaluation to the patient or his/her parent or guardian. The written informed consent must clearly evidence the name of the evaluating dentist, the patient's name, and the date of evaluation.

(g) A limited oral evaluation shall not be performed for business promotion or patient solicitation purposes. A dentist performing a limited oral evaluation must comply with all rules and laws governing professional conduct and business promotion. Following the evaluation, the dentist may recommend or refer the patient to a dentist for follow-up examination.

(h) Either the dentist or the entity qualifying under subsection (d) of this section shall retain a copy of the written informed consent and the results of the evaluation for five years from the date of the evaluation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

SUBCHAPTER F. MEMORANDA OF UNDERSTANDING WITH OTHER STATE AGENCIES

40 TAC §§101.1307, 101.1309, 101.1311

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), adopts Chapter 101, Subchapter F, Memoranda of Understanding with Other State Agencies, §101.1307, Memorandum of Understanding Regarding Continuity of Care for Physically Disabled Inmates; §101.1309, Memorandum of Understanding Regarding the Exchange and Distribution of Public Awareness Information; and §101.1311, Memorandum of Understanding Concerning Coordination of Services to Disabled Persons. The rules are adopted without changes to the proposed text as published in the September 21, 2012, issue of the *Texas Register* (37 TexReg 7439) and will not be republished.

DARS is adopting new Subchapter F and the new rules contained therein as a result of DARS' four-year rule review of Chapter 106, Division for Blind Services, Subchapter K, Memoranda of Understanding, §106.1601 and §106.1607, and Chapter 107, Division for Rehabilitation Services, Subchapter N, Memoranda of Understanding with Other State Agencies, §§107.1601, 107.1603 and 107.1605, which DARS conducted in accordance with Texas Government Code §2001.039. Chapter 106, Subchapter K, and Chapter 107, Subchapter N, are being contemporaneously repealed in this issue of the *Texas Register.*

Specifically with respect to the Memoranda of Understanding (MOUs) contained in Chapters 106 and 107, DARS determined that the reasons for initially adopting these rules continue to exist; however, DARS determined that the rules more appropriately belonged in Chapter 101, DARS' chapter on administrative rules and procedures. Additionally, the new rules update the old rule language to reflect clear and concise language, successor state agency names, and rule and statutory references relating to the duties and responsibilities of the signatory agencies and their successor agencies and the requirement to adopt by rule the underlying MOUs.

No comments were received during the comment period.

The following statutes and regulations authorize the adopted new rules: Texas Human Resources Code §22.011 and §22.013 and Texas Health and Safety Code §§614.014 - 614.015.

The new rules are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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CHAPTER 106. DIVISION FOR BLIND SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), adopts the repeal of DARS rules in the Texas Administrative Code, Title 40, Part 2, Chapter 106, Division for Blind Services, Subchapter B, Criss Cole Rehabilitation Center, §§106.302, 106.303 and 106.305; Subchapter C, Vocational Rehabilitation Program, §§106.503, 106.505, 106.507, 106.509, 106.513, 106.521, 106.523, 106.525, 106.527, 106.529, 106.531, 106.533, 106.535, 106.551, 106.553, 106.555, 106.557, 106.559, 106.561, 106.562, 106.564, 106.566, 106.568, 106.572, 106.574, 106.576, 106.578, 106.580, 106.582, 106.601, 106.603, 106.605, 106.621, 106.623, 106.625, 106.627, 106.629, 106.631, 106.633, 106.651, 106.661, 106.671, 106.673 and 106.675; Subchapter D, Independent Living Program, §§106.851, 106.853, 106.855, 106.859, 106.871, 106.873, 106.875, 106.877, 106.879, 106.881, 106.901, 106.903, 106.931, 106.933, 106.935, 106.937, 106.939, 106.941, 106.943 and 106.965; Subchapter F, Blindness Education, Screening, and Treatment Program, §§106.1101, 106.1103, 106.1105 and 106.1107; Subchapter K, Memoranda of Understanding, §106.1601 and §106.1607; Subchapter L, Advisory Committees and Councils, §106.1703; and Subchapter M, Donations, §§106.1801, 106.1803, 106.1805, 106.1807, 106.1809, 106.1811, 106.1813 and 106.1815. The repeals are adopted without changes to the proposal as published in the September 21, 2012, issue of the *Texas Register* (37 TexReg 7440).

HHSC, on behalf of DARS, also adopts the following new subchapters and new rules in Chapter 106, Division for Blind Services, as replacement for the above-referenced repealed rules and/or the subject matter of the repealed rules: Subchapter A, Criss Cole Rehabilitation Center, §§106.101, 106.103, 106.105, 106.107,106.109, 106.111 and 106.113; Subchapter B, Vocational Rehabilitation Program, Division 1, Program and Subchapter Purpose, §§106.201, 106.203 and 106.205; Division 2, Eligibility, §§106.307, 106.309, 106.311, 106.313, 106.315 and 106.317; Division 3, Provision of Vocational Rehabilitation Services, §§106.407, 106.409, 106.411, 106.413, 106.415, 106.417, 106.419, 106.421, 106.423, 106.425, 106.427, 106.429, 106.431 and 106.433; Division 4, Consumer Participation, §§106.501, 106.507 and 106.509; Division 5, Comparable Benefits, §106.607; Division 6, Methods of Administration of Vocational Rehabilitation, §106.707; Subchapter C, Independent Living Program, Division 1, General Information, §§106.901, 106.903, 106.905 and 106.907; Division 2, Program Requirements, §§106.1007, 106.1009, 106.1011, 106.1013, 106.1015 and 106.1017; Division 3, Independent Living Services, §106.1107 and §106.1109; Division 4, Consumer Participation, §§106.1207, 106.1209, 106.1211, 106.1213, 106.1215 and 106.1217; Division 5, Maximum Affordable Payment, §106.1307; and Subchapter J, Blindness Education, Screening, and Treatment Program, §§106.1601, 106.1603, 106.1605, 106.1607 and 106.1609. The new subchapters and rules are adopted without changes to the proposed text as published in the September 21, 2012, issue of the *Texas Register* (37 TexReg 7447) and will not be republished.

The repeals, new subchapters, and new rules are adopted as the result of the four-year rule review that DARS conducted on the rules in Chapter 106, Division for Blind Services, which was conducted in accordance with Texas Government Code §2001.039. The rule review of Chapter 106 was adopted in the July 27, 2012, issue of the *Texas Register* (37 TexReg 5641).

As a result of the rule review, DARS determined that the reasons for initially adopting the rules contained in Chapter 106, Subchapters B, C, D, F and K continue to exist. However, DARS determined that Subchapters L and M required repeal, as the subject matter of these subchapters currently exists in other DARS rules. DARS further determined that Chapter 106 rules text needed language revisions and reorganization, including renumbering and revision to be consistent with DARS' rules writing style by adding purpose, legal authority, and definitions related to specific new subchapters; to align rules with statutes and current DARS Division for Blind Services operations; to delete rules that are no longer necessary; to add new rules related to consumer participation, comparable benefits, referral to vocational rehabilitation services, and employment assistance; and to place rules and/or subject matter of the rules into Chapter 101, Administrative Rules and Procedures. This required DARS to repeal Subchapters B, C, D and F and adopt as replacement new Subchapters A, B, C and J, respectively, and new rules, including new substantive rules with subject matter that was not originally contained in the repealed rules. The repeal of Subchapter K, Memoranda of Understanding with Other State Agencies, is adopted in order to move the rules and/or subject matter of the rules to Chapter 101, Administrative Rules and Procedures, new Subchapter F, which is being adopted contemporaneously in this issue of the *Texas Register.*

The following statutes and regulations authorize the adopted repeals and new rules: Rehabilitation Act of 1973, as amended, 29 U.S.C. §701 et seq.; 34 C.F.R. Parts 361, 364, 365, 366 and 367; Texas Government Code §2001.01 et seq.; and Texas Human Resources Code Chapters 91 and 117.

No comments were received during the comment period.

SUBCHAPTER B. CRISS COLE REHABILITATION CENTER

DIVISION 1. GENERAL RULES

40 TAC §§106.302, 106.303, 106.305

The repeals are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. VOCATIONAL REHABILITATION PROGRAM

DIVISION 1. GENERAL INFORMATION

40 TAC §§106.503, 106.505, 106.507, 106.509, 106.513

The repeals are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 2. BASIC PROGRAM REQUIREMENTS

40 TAC §§106.521, 106.523, 106.525, 106.527, 106.529, 106.531, 106.533, 106.535

The repeals are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 3. VOCATIONAL REHABILITATION SERVICES

40 TAC §§106.551, 106.553, 106.555, 106.557, 106.559, 106.561, 106.562, 106.564, 106.566, 106.568, 106.572, 106.574, 106.576, 106.578, 106.580, 106.582

The repeals are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 4. ORDER OF SELECTION FOR SERVICES

40 TAC §§106.601, 106.603, 106.605

The repeals are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 5. CONSUMER PARTICIPATION IN COST OF SERVICES

40 TAC §§106.621, 106.623, 106.625, 106.627, 106.629, 106.631, 106.633

The repeals are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 6. MAXIMUM AFFORDABLE PAYMENT

40 TAC §106.651

The repeal is adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 7. SERVICE PROVIDERS

40 TAC §106.661

The repeal is adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 8. CONFIDENTIALITY OF RECORDS

40 TAC §§106.671, 106.673, 106.675

The repeals are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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SUBCHAPTER D. INDEPENDENT LIVING PROGRAM

DIVISION 1. GENERAL INFORMATION

40 TAC §§106.851, 106.853, 106.855, 106.859

The repeals are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 2. BASIC PROGRAM REQUIREMENTS

40 TAC §§106.871, 106.873, 106.875, 106.877, 106.879, 106.881

The repeals are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 3. INDEPENDENT LIVING SERVICES

40 TAC §106.901, §106.903

The repeals are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 5. CONSUMER PARTICIPATION IN COST OF SERVICES

40 TAC §§106.931, 106.933, 106.935, 106.937, 106.939, 106.941, 106.943

The repeals are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 6. MAXIMUM AFFORDABLE PAYMENT

40 TAC §106.965

The repeal is adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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SUBCHAPTER F. BLINDNESS EDUCATION, SCREENING, AND TREATMENT PROGRAM

40 TAC §§106.1101, 106.1103, 106.1105, 106.1107

The repeals are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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SUBCHAPTER K. MEMORANDA OF UNDERSTANDING

40 TAC §106.1601, §106.1607

The repeals are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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SUBCHAPTER L. ADVISORY COMMITTEES AND COUNCILS

40 TAC §106.1703

The repeal is adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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SUBCHAPTER M. DONATIONS

40 TAC §§106.1801, 106.1803, 106.1805, 106.1807, 106.1809, 106.1811, 106.1813, 106.1815

The repeals are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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SUBCHAPTER A. CRISS COLE REHABILITATION CENTER

40 TAC §§106.101, 106.103, 106.105, 106.107, 106.109, 106.111, 106.113

The new rules are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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SUBCHAPTER B. VOCATIONAL REHABILITATION PROGRAM

DIVISION 1. PROGRAM AND SUBCHAPTER PURPOSE

40 TAC §§106.201, 106.203, 106.205

The new rules are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 2. ELIGIBILITY

40 TAC §§106.307, 106.309, 106.311, 106.313, 106.315, 106.317

The new rules are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 3. PROVISION OF VOCATIONAL REHABILITATION SERVICES

40 TAC §§106.407, 106.409, 106.411, 106.413, 106.415, 106.417, 106.419, 106.421, 106.423, 106.425, 106.427, 106.429, 106.431, 106.433

The new rules are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 4. CONSUMER PARTICIPATION

40 TAC §§106.501, 106.507, 106.509

The new rules are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 5. COMPARABLE BENEFITS

40 TAC §106.607

The new rule is adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 6. METHODS OF ADMINISTRATION OF VOCATIONAL REHABILITATION

40 TAC §106.707

The new rule is adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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SUBCHAPTER C. INDEPENDENT LIVING PROGRAM

DIVISION 1. GENERAL INFORMATION

40 TAC §§106.901, 106.903, 106.905, 106.907

The new rules are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 20, 2012.

TRD-201206036
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: December 10, 2012
Proposal publication date: September 21, 2012
For further information, please call: (512) 424-4050

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DIVISION 2. PROGRAM REQUIREMENTS

40 TAC §§106.1007, 106.1009, 106.1011, 106.1013, 106.1015, 106.1017

The new rules are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman
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For further information, please call: (512) 424-4050

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DIVISION 3. INDEPENDENT LIVING SERVICES

40 TAC §106.1107, §106.1109

The new rules are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman
General Counsel
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For further information, please call: (512) 424-4050

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DIVISION 4. CONSUMER PARTICIPATION

40 TAC §§106.1207, 106.1209, 106.1211, 106.1213, 106.1215, 106.1217

The new rules are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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DIVISION 5. MAXIMUM AFFORDABLE PAYMENT

40 TAC §106.1307

The new rule is adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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SUBCHAPTER J. BLINDNESS EDUCATION, SCREENING, AND TREATMENT PROGRAM

40 TAC §§106.1601, 106.1603, 106.1605, 106.1607, 106.1609

The new rules are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201206041
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: December 10, 2012
Proposal publication date: September 21, 2012
For further information, please call: (512) 424-4050

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CHAPTER 107. DIVISION FOR REHABILITATION SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), adopts the repeal of DARS rules in Title 40, Part 2, Chapter 107, Division for Rehabilitation Services, Subchapter B, Vocational Rehabilitation Services Program, Division 1, Provision of Vocational Rehabilitation Services, §§107.101, 107.105, 107.107, 107.109, 107.111, 107.113, 107.115, 107.117, 107.119, 107.121, 107.123, 107.125, 107.127, 107.129, 107.131, 107.133, 107.135, 107.137 and 107.139; Division 2, Client Participation, §107.151 and §107.153; Division 3, Comparable Benefits, §§107.171, 107.173 and 107.175; Division 4, Eligibility and Ineligibility, §§107.191, 107.193, 107.195,

107.197 and 107.199; Division 5, Methods of Administration of Vocational Rehabilitation, §§107.215, 107.217, 107.219, 107.221, 107.223 and 107.225; Subchapter F, Independent Living Services Program, §§107.801, 107.803, 107.805 - 107.807, 107.809 and 107.811; and Subchapter N, Memoranda of Understanding with Other State Agencies, §§107.1601, 107.1603 and 107.1605. The repeals are adopted without changes to the proposal as published in the September 21, 2012, issue of the *Texas Register* (37 TexReg 7459) and will not be republished.

HHSC, on behalf of DARS, also adopts as replacement of the rules and/or subject matter contained in the repealed subchapters, new Chapter 107, Division for Rehabilitation Services, Subchapter A, Vocational Rehabilitation Services Program, Division 1, Program and Subchapter Purpose, §§107.101, 107.103, 107.105, 107.107 and 107.109; Division 2, Eligibility, §§107.207, 107.209, 107.211, 107.213 and 107.215; Division 3, Provision of Vocational Rehabilitation Services, §§107.307, 107.309, 107.311, 107.313, 107.315, 107.317, 107.319, 107.321, 107.323, 107.325, 107.327, 107.329, 107.331 and 107.333; Division 4, Consumer Participation, §107.407; Division 5, Comparable Benefits, §107.507 and §107.509; Division 6, Methods of Administration of Vocational Rehabilitation, §§107.607, 107.609 and 107.611; Subchapter E, Independent Living Services Program, Division 1, General Information, §§107.801, 107.803 and 107.805; Division 2, Program Requirements, §§107.907, 107.909 and 107.911; Division 3, Independent Living Services, §107.1007 and §107.1009; and Division 4, Consumer Participation, §107.1107. The new rules are adopted without changes to the proposed text as published in the September 21, 2012, issue of the *Texas Register* (37 TexReg 7459) and will not be republished.

The repeals and new rules are adopted as a result of the four-year rule review that DARS conducted on the rules in Chapter 107, Division for Rehabilitation Services, in accordance with Texas Government Code §2001.039. DARS determined that the reasons for originally adopting the rules continue to exist and that Chapter 107 needed language revisions, as well as reorganization, including renumbering and revision to be consistent with DARS' rules writing style.

Further, the repeal of Subchapter N, Memoranda of Understanding with Other State Agencies, is adopted and the proposal to move these rules and the subject matter to 40 TAC Chapter 101, Administrative Rules and Procedures, new Subchapter F, Memoranda of Understanding with Other State Agencies, is adopted contemporaneously and without changes to the proposed text as published in the September 21, 2012, issue of the *Texas Register* (37 TexReg 7439).

The following statutes and regulations authorize the adopted repeals and new rules: Rehabilitation Act of 1973, as amended, 29 U.S.C. §701 et seq. and Texas Human Resources Code Chapters 111 and 117.

No comments were received regarding adoption of the repeals and new rules.

SUBCHAPTER B. VOCATIONAL REHABILITATION SERVICES PROGRAM

DIVISION 1. PROVISION OF VOCATIONAL REHABILITATION SERVICES

40 TAC §§107.101, 107.105, 107.107, 107.109, 107.111, 107.113, 107.115, 107.117, 107.119, 107.121, 107.123, 107.125, 107.127, 107.129, 107.131, 107.133, 107.135, 107.137, 107.139

The repeals are adopted in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 20, 2012.

TRD-201205993
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: December 10, 2012
Proposal publication date: September 21, 2012
For further information, please call: (512) 424-4050

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DIVISION 2. CLIENT PARTICIPATION

40 TAC §107.151, §107.153

The repeals are adopted in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201205994
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: December 10, 2012
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For further information, please call: (512) 424-4050

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DIVISION 3. COMPARABLE BENEFITS

40 TAC §§107.171, 107.173, 107.175

The repeals are adopted in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promul-

gate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201205995
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: December 10, 2012
Proposal publication date: September 21, 2012
For further information, please call: (512) 424-4050

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DIVISION 4. ELIGIBLITY AND INELIGIBILITY

40 TAC §§107.191, 107.193, 107.195, 107.197, 107.199

The repeals are adopted in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201205996
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: December 10, 2012
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For further information, please call: (512) 424-4050

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DIVISION 5. METHODS OF ADMINISTRATION OF VOCATIONAL REHABILITATION

40 TAC §§107.215, 107.217, 107.219, 107.221, 107.223, 107.225

The repeals are adopted in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman
General Counsel
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For further information, please call: (512) 424-4050

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SUBCHAPTER F. INDEPENDENT LIVING SERVICES PROGRAM

40 TAC §§107.801, 107.803, 107.805 - 107.807, 107.809, 107.811

The repeals are adopted in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman
General Counsel
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For further information, please call: (512) 424-4050

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SUBCHAPTER N. MEMORANDA OF UNDERSTANDING WITH OTHER STATE AGENCIES

40 TAC §§107.1601, 107.1603, 107.1605

The repeals are adopted in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: December 10, 2012
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For further information, please call: (512) 424-4050

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SUBCHAPTER A. VOCATIONAL REHABILITATION SERVICES PROGRAM

DIVISION 1. PROGRAM AND SUBCHAPTER PURPOSE

40 TAC §§107.101, 107.103, 107.105, 107.107, 107.109

The new rules are adopted in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201206000
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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DIVISION 2. ELIGIBILITY

40 TAC §§107.207, 107.209, 107.211, 107.213, 107.215

The new rules are adopted in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201206001
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: December 10, 2012
Proposal publication date: September 21, 2012
For further information, please call: (512) 424-4050

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DIVISION 3. PROVISION OF VOCATIONAL REHABILITATION SERVICES

40 TAC §§107.307, 107.309, 107.311, 107.313, 107.315, 107.317, 107.319, 107.321, 107.323, 107.325, 107.327, 107.329, 107.331, 107.333

The new rules are adopted in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201206002
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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DIVISION 4. CONSUMER PARTICIPATION

40 TAC §107.407

The new rule is adopted in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201206003

Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: December 10, 2012
Proposal publication date: September 21, 2012
For further information, please call: (512) 424-4050

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DIVISION 5. COMPARABLE BENEFITS

40 TAC §107.507, §107.509

The new rules are adopted in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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Proposal publication date: September 21, 2012
For further information, please call: (512) 424-4050

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DIVISION 6. METHODS OF ADMINISTRATION OF VOCATIONAL REHABILITATION

40 TAC §§107.607, 107.609, 107.611

The new rules are adopted in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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Proposal publication date: September 21, 2012
For further information, please call: (512) 424-4050

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SUBCHAPTER E. INDEPENDENT LIVING SERVICES PROGRAM

DIVISION 1. GENERAL INFORMATION

40 TAC §§107.801, 107.803, 107.805

The new rules are adopted in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201206006
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: December 10, 2012
Proposal publication date: September 21, 2012
For further information, please call: (512) 424-4050

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DIVISION 2. PROGRAM REQUIREMENTS

40 TAC §§107.907, 107.909, 107.911

The new rules are adopted in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201206007
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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Proposal publication date: September 21, 2012
For further information, please call: (512) 424-4050

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DIVISION 3. INDEPENDENT LIVING SERVICES

40 TAC §107.1007, §107.1009

The new rules are adopted in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201206008
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: December 10, 2012
Proposal publication date: September 21, 2012
For further information, please call: (512) 424-4050

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DIVISION 4. CONSUMER PARTICIPATION

40 TAC §107.1107

The new rule is adopted in accordance with the Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201206009
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: December 10, 2012
Proposal publication date: September 21, 2012
For further information, please call: (512) 424-4050

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION

SUBCHAPTER F. EQUAL EMPLOYMENT OPPORTUNITY RECORDS AND RECORDKEEPING

40 TAC §819.92

The Texas Workforce Commission adopts amendments to the following section of Chapter 819, relating to the Texas Workforce Commission Civil Rights Division, *without* changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7738):

Subchapter F. Equal Employment Opportunity Records and Recordkeeping, §819.92

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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 adopts 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.

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 Government Code, Chapter 552.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 20, 2012.

TRD-201206043
Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Effective date: December 10, 2012
Proposal publication date: September 28, 2012
For further information, please call: (512) 475-0829

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

State Board of Dental Examiners

Title 22, Part 5

The State Board of Dental Examiners (SBDE) files this notice of intention to review 22 TAC Chapter 104, concerning Continuing Education. This review is pursuant to §2001.039 of the Texas Government Code, pertaining to agency review of existing rules.

Comments relating to whether these rules should be repealed, re-adopted, or re-adopted with changes must be received within 30 days and may be submitted by email to Staff Attorney Nycia Deal at nycia@tsbde.texas.gov, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0977.

To ensure consideration, comments must clearly specify the particular section of the chapter to which they apply. General comments should be labeled as such. Comments should include proposed alternative language as appropriate.

Chapter 104. Continuing Education.

§104.1. Requirement.

§104.2. Providers.

§104.4. Penalties.

§104.5. Auditable Documentation.

§104.6. Audits.

TRD-201206064
Glenn Parker
Executive Director
State Board of Dental Examiners
Filed: November 26, 2012

♦ ♦ ♦

The State Board of Dental Examiners (SBDE) files this notice of intention to review 22 TAC Chapter 113, concerning Requirements for Dental Offices. This review is pursuant to §2001.039 of the Texas Government Code, pertaining to agency review of existing rules.

Comments relating to whether these rules should be repealed, re-adopted, or re-adopted with changes must be received within 30 days and may be submitted by email to Staff Attorney Nycia Deal at nycia@tsbde.texas.gov, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0977.

To ensure consideration, comments must clearly specify the particular section of the chapter to which they apply. General comments should be labeled as such. Comments should include proposed alternative language as appropriate.

Chapter 113. Requirements for Dental Offices.

§113.1. Definitions.

§113.2. X-Ray Laboratories.

TRD-201206065
Glenn Parker
Executive Director
State Board of Dental Examiners
Filed: November 26, 2012

♦ ♦ ♦

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 30, Administration, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 30 are organized under the following subchapters: Subchapter A, State Board of Education: General Provisions; and Subchapter B, State Board of Education: Purchasing and Contracts.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 30, Subchapters A and B, continue to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337.

TRD-201205976
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: November 16, 2012

♦ ♦ ♦

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 30, Administration, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 30 are organized under the following subchapters: Subchapter AA, Commissioner of Education: General Provisions; and Subchapter BB, Commissioner of Education: Purchasing and Contracts.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 30, Subchapters AA and BB, continue to exist.

The public comment period on the review of 19 TAC Chapter 30, Subchapters AA and BB, begins December 7, 2012, and ends January 7, 2013. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337.

TRD-201205977
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: November 16, 2012

♦ ♦ ♦

Texas Department of Transportation

Title 43, Part 1

In accordance with Government Code, §2001.039, the Texas Department of Transportation (department) files this notice of intention to review 43 TAC Chapter 2, concerning Environmental Review of Transportation Projects, and Chapter 7, concerning Rail Facilities.

The department will accept comments regarding whether the reasons for adopting these rules continue to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments regarding this rule review may be submitted in writing to Robin Carter, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or by email to RuleComments@txdot.gov with a subject line of "Rule Review."

TRD-201206095
Jeff Graham
General Counsel
Texas Department of Transportation
Filed: November 27, 2012

♦ ♦ ♦

Adopted Rule Reviews

State Board of Dental Examiners

Title 22, Part 5

The State Board of Dental Examiners has completed its review and re-adopts without amendment Chapter 100, concerning General Provisions. The chapter was reviewed pursuant to Texas Government Code §2001.039. The notice of review was published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 8039).

Texas Government Code §2001.039 requires agencies to review and consider for re-adoption each of their rules every four years. The review assesses whether the original reasons for adopting the rules continue to exist. The SBDE reviewed each section of Chapter 100 and determined that the original justification for the rules continues to exist.

No comments were received in response to the proposed rule review.

This concludes the review of Chapter 100.

TRD-201206066
Glenn Parker
Executive Director
State Board of Dental Examiners
Filed: November 26, 2012

♦ ♦ ♦

The State Board of Dental Examiners has completed its review and re-adopts with amendment Chapter 112, concerning Visual Dental Health Inspections. The chapter was reviewed pursuant to Texas Government Code §2001.039. The notice of review was published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 8040).

Texas Government Code §2001.039 requires agencies to review and consider for re-adoption each of their rules every four years. The review assesses whether the original reasons for adopting the rules continue to exist. The SBDE reviewed each section of Chapter 112 and determined that the original justification for the rules continues to exist. Concurrently with the Rule Review of Chapter 112, proposed amendments to §112.1 and §112.2 were published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7844). Proposed new rule §112.3 was published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7845).

One public comment received in response to the Rule Review recommended a change to §112.1 to include students engaged in formal education programs in the definition of Visual Dental Health Inspection. The rule has been modified to reflect this recommendation in conjunction with public comments received on the proposed amendment to §112.1.

This concludes the review of Chapter 112.

TRD-201206067
Glenn Parker
Executive Director
State Board of Dental Examiners
Filed: November 26, 2012

♦ ♦ ♦

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation (Division) has completed its review required by the Texas Government Code §2001.039 of the following chapter of the Texas Administrative Code, Title 28, Part 2: Chapter 134, Benefits--Guidelines for Medical Services, Charges, and Payments. The reviewed sections in this chapter are subsequently referred to collectively in this Notice of Adopted Review as "the sections."

The notice of proposed rule review was published in the August 24, 2012, issue of the *Texas Register* (37 TexReg 6701). As provided in this notice, the Division reviewed and considered the sections for readoption, revision, or repeal.

The Division considered whether the reasons for adoption of the sections continue to exist. The Division received no written comments regarding the review of the sections.

Except as provided, the Division has determined that the reasons for adopting the sections continue to exist and the sections are retained. However, the Division has determined that the reasons for adopting provisions in §§134.1, 134.202 - 134.204, 134.303, and 134.402 - 134.404 that allow for reimbursements under those sections pursuant to negotiated or contractual rates authorized by former Labor Code §413.011(d-1) - (d-3) exist only for health care provided prior to

January 1, 2011, the date those statutes expired, and do not exist for health care provided on or after that date. Any revisions to the sections will be accomplished in accordance with the Administrative Procedure Act.

This concludes and completes the Division's review of Chapter 134. The chapter will be reviewed again in the future in accordance with the Texas Government Code §2001.039.

TRD-201206054
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: November 21, 2012

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 31 TAC §155.15(b)(1)(C)(i)

Residential Use, Category I

Coastal Easement Rent and Fees

Notable Definitions

Residential use, Category I--One single-family residential dwelling and accessory building(s) on one defined lot or parcel of land; both land and improvements are typically under the same ownership. (Definition from 31 TAC §155.1(d)(47))

Fill formula--Encumbered state land multiplied by the appraised market value of adjacent littoral property multiplied by the return on investment. (Definition from 31 TAC §155.1(d)(28))

Fees

Application Fee: $25.00 (per occurence on new, amendment, and assignment applications)

Rent

Rental considersation is determined by taking the greater of:

i) Minimum Rent ($25.00 annually per project component)

ii) Project Component Rent (listed below)

Project Component	Annual Rent
Piers, Docks, and Watercarft Storage	$0.03 per square foot
Multiple Boatlift, Boathouse, Covered Boat Slip, Oversized Personal and Watercraft Slip	$250.00 for each additional
Covered Second Level (Partially or Fully)	$75.00 per structure
Breakwater, Jetty, Groin	$0.20 per square foot
Dredge	
New Dredge	$0.50 per cubic yard[1]
Existing Dredge	$0.01 per square foot
Fill	
Proposed Fill	$0.10 per square foot -OR- Fill Formula
Existing Fill	Variable[2]
Concrete Stairs and Slabs	$0.03 per square foot
Rip Rap and/or Vegetative Shoreline Stabilization	No rent

[1] New Dredge is a one-time rent assessed at the initial dredging, subject to §155.15(b)(4)

[2] (-a-) existing fill (excluding bulkheads) not permitted as of August 15, 1995: $0.02 per square foot

(-b-) existing fill permitted after August 15, 1995: $0.10 per square foot -OR- fill formula

(-c-) existing fill at renewal: 110% of the previous contract fill rate for each five year period.

Figure: 31 TAC §155.15(b)(1)(C)(ii)

Residential Use, Category II

Coastal Easement Rent and Fees

Notable Definitions

Residential use, Category II--Multi-family residential units per defined lot or parcel of land; land and individual units may be separately owned; includes uses by condominium developments and homeowners associations acting for and on behalf of owners of a multi-family residential development, but does not include time-share developments or any use that includes commercial activities. (Definition from 31 TAC §155.1(d)(48))

Fill formula--Encumbered state land multiplied by the appraised market value of adjacent littoral property multiplied by the return on investment. (Definition from 31 TAC §155.1(d)(28))

Fees

Application Fee: $50.00 (per occurence on new, amendment, and assignment applications)

Rent

Rental considersation is determined by taking the greater of:

i) Minimum Rent ($100.00 per year)

ii) Project Component Rent (listed below)

Project Component	Annual Rent
Piers, Docks, and Watercarft Storage	$0.15 per square foot
Breakwater, Jetty, Groin	$0.20 per square foot
Dredge	
New Dredge	$0.50 per cubic yard[1]
Existing Dredge	$0.01 per square foot
Open Encumbered Area	$0.02 per square foot
Fill	
Proposed Fill	$0.10 per square foot -OR- Fill Formula
Existing Fill	Variable[2]
Concrete Stairs and Slabs	$0.15 per square foot
Rip Rap and/or Vegetative Shoreline Stabilization	No rent

[1] New Dredge is a one-time rent assessed at the initial dredging, subject to §155.15(b)(4)

[2] (-a-) existing fill (excluding bulkheads) not permitted as of August 15, 1995: $0.02 per square foot

(-b-) existing fill permitted after August 15, 1995: $0.10 per square foot -OR- fill formula

(-c-) existing fill at renewal: 110% of the previous contract fill rate for each five year period.

Figure: 31 TAC §155.15(b)(1)(C)(iii)

Residential Use, Category III

Coastal Easement Rent and Fees

Notable Definitions

Residential use, Category III--One single family residential dwelling and accessory building(s) on one defined lot or parcel of land that is being used for (in part or whole) short-term residential rental--i.e. daily, weekly, monthly, seasonal; both land and improvements are typically under the same ownership. (Definition from 31 TAC §155.1(d)(49))

Fill formula--Encumbered state land multiplied by the appraised market value of adjacent littoral property multiplied by the return on investment. (Definition from 31 TAC §155.1(d)(28))

Fees

Application Fee: $50.00 (per occurence on new, amendment, and assignment applications)

Rent

Rental considersation is determined by taking the greater of:

i) Minimum Rent ($100.00 per year)

ii) Project Component Rent (listed below)

Project Component	Annual Rent
Piers, Docks, and Watercarft Storage	$0.15 per square foot
Multiple Boatlift, Boathouse, Covered Boat Slip, Oversized Personal and Watercraft Slip	$250.00 for each additional
Breakwater, Jetty, Groin	$0.20 per square foot
Dredge	
New Dredge	$0.50 per cubic yard[1]
Existing Dredge	$0.01 per square foot
Open Encumbered Area	$0.02 per square foot
Fill	
Proposed Fill	$0.10 per square foot -OR- Fill Formula
Existing Fill	Variable[2]
Concrete Stairs and Slabs	$0.15 per square foot
Rip Rap and/or Vegetative Shoreline Stabilization	No rent

[1] New Dredge is a one-time rent assessed at the initial dredging, subject to §155.15(b)(4)

[2] (-a-) existing fill (excluding bulkheads) not permitted as of August 15, 1995: $0.02 per square foot

(-b-) existing fill permitted after August 15, 1995: $0.10 per square foot -OR- fill formula

(-c-) existing fill at renewal: 110% of the previous contract fill rate for each five year period.

Figure: 31 TAC §155.15(b)(1)(C)(iv)

Commercial and Industrial Activity

Commercial Coastal Easement Rent and Fees

Notable Definitions

Commercial activity--Activity undertaken by a lessee or any other person with or without consent, which is designed to enhance or accommodate a venture associated with a revenue generating activity. This definition excludes industrial activity, but includes residential uses other than those included in the definition of residential use, Category III if there is revenue generating activity conducted on the premises. (Definition from TAC §155.1(d)(17))

Basin formula--The amount of encumbered state land multiplied by the appraised market value of the adjacent littoral property multiplied by the submerged land discount multiplied by the return on investment. (Definition from 31 TAC §155.1(d)(5))

Submerged land discount--60% discount used in formulas when the easement is commercial, 70% discount used in formulas when the easement is industrial. (Definition from 31 TAC §155.1(d)(59))

Fill formula--Encumbered state land multiplied by the appraised market value of adjacent littoral property multiplied by the return on investment. (Definition from 31 TAC §155.1(d)(28))

Fees

Application Fee: $100.00 (per occurence on new, amendment, and assignment applications)

Rent

Rental considersation is determined by taking the greater of:

i) Minimum Rent ($100.00 per year)
ii) Basin Formula
iii) Project Component Rent (listed below)
iv) Marina Rent (listed below, and applied if applicable)

Project Component	Annual Rent
Piers, Docks, and Watercarft Storage	$0.20 per square foot
Wharf (industrial only)	$0.30 per square foot
Breakwater, Jetty, Groin	$0.20 per square foot
Dredge	
New Dredge	$0.50 per cubic yard[1]
Existing Dredge	$0.01 per square foot
Open Encumbered Area	$0.03 per square foot
Fill	
Proposed Fill	$0.20 per square foot -OR- Fill Formula
Existing Fill	Variable[2]
Concrete Stairs and Slabs	$0.20 per square foot
Rip Rap and/or Vegetative Shoreline Stabilization	No rent
Marina	**Annual Rent**
Marina in Clear Lake	$4.00 per linear foot of boatslip
Marina oustide of Clear Lake	$3.00 per linear foot of boatslip

[1] New Dredge is a one-time rent assessed at the initial dredging, subject to §155.15(b)(4)

[2] (-a-) existing fill (excluding bulkheads) not permitted as of August 15, 1995: $0.02 per square foot
(-b-) existing fill permitted after August 15, 1995: $0.20 per square foot -OR- fill formula
(-c-) existing fill at renewal: 120% of the previous contract fill rate for each five year period.

Figure: 31 TAC §155.15(b)(1)(C)(v)

Structure (Cabin) Permits

Cabin Permit Rent and Fees

Notable Definitions

A structure under this section shall be defined as any housing, capable of residential use or which otherwise would typically be considered an improvement on real property, which is in any manner attached or affixed to coastal public land and is not associated with the ownership of littoral property (Definition from 31 TAC §155.4(b))

Fees[1]

Application Fee: $175.00 (per occurence on renewal and amendment applications)
Application Fee: $325.00 (per occurence on transfer applications)
Late Payment Fee: 25% of past due amount

Deposit

Refundable Deposit: $200.00

Rent [2, 3, 4]

Rental considersation is determined by taking the greater of:

i) Minimum Rent ($175.00 per year)
ii) Project Component Rent (listed below)

Project Component	Annual Rent
Cabin Structures	$0.60 per square foot
Piers, Docks, and Walkways	No Fee *

[1] Filing fee for competitive bid proposal for permit for structure determined by the board to be abandoned or for which the permit was terminated by the board for cause: $50

[2] Bonus payment for new contract issuance for structure determined by the board to be abandoned or for which the permit was terminated by the board for cause: negotiable/minimum to be determined by the board

[3] Permittee may apply for a continuation of the previous fee if the permit was issued prior to July 18, 1983 (the date of the initial rate increase), and if the annual fee will impose an undue financial hardship on a current permit holder

[4] Additional rent of $500.00 per contract renewal issuance for structures shall be in addition to minimum rent or project component rent. The additional rent will be imposed effective September 1, 2015.

* A fee of $0.20 per square foot will be charged for piers, docks, and walkways effective September 1, 2015

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil - October 2012

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined as required by Tax Code, §202.058, that the average taxable price of crude oil for reporting period October 2012, is $70.38 per barrel for the three-month period beginning on July 1, 2012, and ending September 30, 2012. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of October 2012, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined as required by Tax Code, §201.059, that the average taxable price of gas for reporting period October 2012, is $2.33 per mcf for the three-month period beginning on July 1, 2012, and ending September 30, 2012. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of October 2012, from a qualified Low-Producing Well, is eligible for 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of October 2012, is $89.57 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of October 2012, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of October 2012, is $3.50 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of October 2012, from a qualified low-producing gas well.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201205983
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: November 19, 2012

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Notice of Contract Awards

The Comptroller of Public Accounts, State Energy Conservation Office (SECO) announces the following contract awards under RFP 203f.

The notice of request for proposals was published in the May 18, 2012, issue of the *Texas Register* (37 TexReg 3744).

The contractors will perform professional engineering services related to LoanSTAR Program projects funded by the SECO LoanSTAR Revolving Loan Program. Three contracts were awarded as follows:

1. Texas Energy Engineering Services, Inc., 1301 South Capital of Texas Highway, Suite B325, Austin, Texas 78746. The total amount of the contract is not to exceed $155,000.00. The term of the contract is October 9, 2012 through August 31, 2014, with option to renew for two (2) additional one-year terms, one year at a time;

2. Kinsman & Associates, 8533 Ferndale Road, Suite 102, Dallas, Texas 75238. The total amount of this contract is not to exceed $215,000.00. The term of the contract is October 22, 2012 through August 31, 2014, with option to renew for two (2) additional one-year terms, one year at a time; and

3. Jacobs Engineering Group, Inc., 777 Main Street, Fort Worth, Texas 76102. The total amount of this contract is not to exceed $295,000.00. The term of the contract is November 15, 2012 through August 31, 2014, with option to renew for two (2) additional one-year terms, one year at a time.

TRD-201205991
Jason C. Frizzell
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: November 19, 2012

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.111, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/03/12 - 12/09/12 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 12/03/12 - 12/09/12 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009[3] for the period of 11/01/12 - 11/30/12 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 11/01/12 - 11/30/12 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/13 - 03/31/13 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/13 - 03/31/13 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by §303.009[1] for the period of 01/01/13 - 03/31/13 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The lender credit card quarterly rate as prescribed by §346.111, Texas Finance Code[1] for the period of 01/01/13 - 03/31/13 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009[4] for the period of 01/01/13 - 03/31/13 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 01/01/13 - 03/31/13 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by §303.009[1] for the period of 01/01/13 - 03/31/13 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/12 - 12/31/12 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed §304.003 for the period of 12/01/12 - 12/31/12 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.

[3] For variable rate commercial transactions only.

[4] Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-201206102
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 27, 2012

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Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/26/12 - 12/02/12 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 11/26/12 - 12/02/12 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/12 - 12/31/12 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/12 - 12/31/12 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-201206042
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 20, 2012

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Credit Union Department

Applications for a Merger or Consolidation

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from Unity One Credit Union (Fort Worth) seeking approval to merge with Argentine Santa Fe Industries Credit Union (Kansas), with Unity One Credit Union being the surviving credit union.

An application was received from EECU (Fort Worth) seeking approval to merge with Fort Worth Telco Credit Union (Fort Worth), with EECU being the surviving credit union. In accordance with the Finance Code §122.005(b) and 7 TAC §91.104(b), the Commissioner has the authority to waive or delay public notice of an action.

An application was received from District 1 THD Credit Union (Paris) seeking approval to merge with Northeast Texas Teachers Federal Credit Union (Paris), with the latter being the surviving credit union. In accordance with the Finance Code §122.005(b) and 7 TAC §91.104(b), the Commissioner has the authority to waive or delay public notice of an action.

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-201206051
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 20, 2012

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Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from Alpine Community Credit Union, Alpine, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in Brewster, Presidio, or Jeff Davis Counties, Texas, to be eligible for membership in the credit union.

An application was received from First Community Credit Union, Houston, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in and businesses in Montgomery County, Texas, 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-201206050
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 20, 2012

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

Pegasus Community Credit Union, Dallas, Texas - See *Texas Register* issue dated July 27, 2012.

Application for a Merger or Consolidation - Approved

Denison District Telephone Credit Union (Denison) and Texas Telcom Credit Union (Dallas) - See *Texas Register* issue dated June 29, 2012.

TRD-201206053
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 20, 2012

♦ ♦ ♦

Texas Education Agency

Request for Applications Concerning Open-Enrollment Charter Guidelines and Application

Eligible Applicants. The Texas Education Agency (TEA) on behalf of the State Board of Education (SBOE) is requesting applications under Request for Applications (RFA) #701-13-101 from eligible entities to operate open-enrollment charter schools. Eligible entities include public institutions of higher education, private or independent institutions of higher education, organizations exempt from taxation under the Internal Revenue Code of 1986 (26 United States Code, §501(c)(3)), or governmental entities. At least one member of the governing board of the group requesting the charter must attend one required applicant information session. Sessions are scheduled for Tuesday, January 8, 2013, and Wednesday, January 16, 2013. Failure to attend one of the sessions will disqualify an applicant from submitting an application for an open-enrollment charter.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter school offers flexibility and choice for educators, parents, and students. An approved open-enrollment charter school may be located in a facility of a commercial or nonprofit entity or in a school district facility. If the open-enrollment charter school is to be located in a school district facility, it must be operated under the terms established by the board of trustees or governing body of the school district in an agreement governing the relationship between the charter school and the district.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. An open-enrollment charter school must be non-sectarian in its programs, admissions, policies, employment practices, and all other operations, and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the Texas Education Code (TEC), §12.156, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability to the same extent as a school district trustee. An employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. To be eligible for review, the completed application must be stamped "received" at the TEA visitors' reception area on the second floor of the William B. Travis Building (1701 North Congress Avenue, Austin, Texas 78701-1494) or delivered by U.S. Mail or other carrier at the following address: TEA Document Control Center, Division of Grants Administration, 1701 North Congress Avenue, Austin, Texas 78701-1494 on or before 5:00 p.m. (Central Time), Thursday, February 28, 2013.

Project Amount. The TEC, §12.106, as amended by Senate Bill 1, 82nd Texas Legislature, First Called Session, 2011, to be effective September 1, 2011, states that: (a) A charter holder is entitled to receive for the open-enrollment charter school funding under the TEC, Chapter 42, equal to the greater of (1) the percentage specified by the TEC, §42.2516(i) multiplied by the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a-1)(2) and (3), as they existed on January 1, 2009, that would have been received for the school during the 2009 - 2010 school year under the TEC, Chapter 42, as it existed on January 1, 2009, and an additional amount of the percentage specified by the TEC, §42.2516(i), multiplied by $120 for each student in weighted average daily attendance; or (2) the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a), to which the charter holder would be entitled for the school under the TEC, Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC, §42.253, and without any local revenue for purposes of the TEC, §42.2516. (a-1) In determining funding for an open-enrollment charter school under subsection (a), adjustments under the TEC, §§42.102, 42.103, 42.104, and 42.105, are based on the average adjustment for the state. (a-2) In addition to the funding provided by subsection (a), a charter holder is entitled to receive for the open-enrollment charter school enrichment funding under the TEC, §42.302, based on the state average tax effort. (a-3) In determining funding for an open-enrollment charter school under subsection (a), the commissioner shall apply the regular program adjustment factor provided under the TEC, §42.101, to calculate the regular program allotment to which a charter school is entitled. (a-4) Subsection (a-3) and this subsection expire September 1, 2015.

The TEC, §12.106(a), as amended by Senate Bill 1, 82nd Texas Legislature, First Called Session, 2011, to be effective September 1, 2017, states that: (a) A charter holder is entitled to receive for the open-en-

rollment charter school funding under Chapter 42 equal to the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a), to which the charter holder would be entitled for the school under the TEC, Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC, §42.253.

The TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the TEA or the commissioner of education in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. An open-enrollment charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require a student to demonstrate artistic ability and may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, juvenile court adjudication, or a discipline problem under the TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The SBOE may approve open-enrollment charter schools as provided in the TEC, §12.101 and §12.152. There are currently 209 charters approved under the TEC, §12.101, and 3 charters approved under the TEC, §12.152. There is a cap of 215 charters approved under the TEC, §12.101, and no cap on the number of charters approved under the TEC, §12.152. The SBOE is scheduled to consider awards under RFA #701-13-101 in September 2013.

The SBOE may approve applicants to ensure representation of urban, suburban, and rural communities; various instructional settings; innovative programs; diverse student populations and geographic regions; and various eligible entities. The SBOE will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The SBOE may also consider the history of the sponsoring entity and the credentials and background of its board members.

Requesting the Application. An application must be submitted under SBOE guidelines to be considered. A complete copy of the publication *Open-Enrollment Charter Guidelines and Application* (RFA #701-13-101), which includes an application and procedures, may be obtained on the TEA website at http://www.tea.state.tx.us/charterapp.aspx.

Further Information. For clarifying information about the open-enrollment charter school application, contact the Charter School Administration Unit, Texas Education Agency, at (512) 463-9575 or charterschools@tea.state.tx.us.

TRD-201206113
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: November 28, 2012

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Request for Applications Concerning Public College or University Open-Enrollment Charter Guidelines and Application

Eligible Applicants. The Texas Education Agency (TEA) on behalf of the State Board of Education (SBOE) is requesting applications under Request for Applications (RFA) #701-13-102 from eligible entities to operate open-enrollment charter schools. Eligible entities are limited to Texas public colleges or universities and Texas public junior colleges.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter school offers flexibility and choice for educators, parents, and students. A college, university, or junior college open-enrollment charter school may operate on a campus of the college, university, or junior college or in the same county in which the college, university, or junior college is located.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. A charter school must be non-sectarian in its programs, admissions, policies, employment practices, and all other operations and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the Texas Education Code (TEC), §12.156, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability to the same extent as a school district trustee. An employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. Completed applications can be received by the TEA Charter School Administration Unit, Room 5-107, 1701 North Congress Avenue, Austin, Texas 78701-1494, at any time.

Project Amount. The TEC, §12.106, as amended by Senate Bill 1, 82nd Texas Legislature, First Called Session, 2011, to be effective September 1, 2011, states that: (a) A charter holder is entitled to receive for the open-enrollment charter school funding under the TEC, Chapter 42, equal to the greater of (1) the percentage specified by the TEC, §42.2516(i), multiplied by the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a-1)(2) and (3), as they existed on January 1, 2009, that would have been received for the school during the 2009 - 2010 school year under the TEC, Chapter 42, as it existed on January 1, 2009, and an additional amount of the percentage specified by the TEC, §42.2516(i), multiplied by $120 for each student in weighted average daily attendance; or (2) the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a), to which the charter holder would be entitled for the school under the TEC, Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC, §42.253, and without any local revenue for purposes of the TEC, §42.2516. (a-1) In determining funding for an open-enrollment charter school under

subsection (a), adjustments under the TEC, §§42.102, 42.103, 42.104, and 42.105, are based on the average adjustment for the state. (a-2) In addition to the funding provided by subsection (a), a charter holder is entitled to receive for the open-enrollment charter school enrichment funding under the TEC, §42.302, based on the state average tax effort. (a-3) In determining funding for an open-enrollment charter school under subsection (a), the commissioner shall apply the regular program adjustment factor provided under the TEC, §42.101, to calculate the regular program allotment to which a charter school is entitled. (a-4) Subsection (a-3) and this subsection expire September 1, 2015.

The TEC, §12.106, as amended by Senate Bill 1, 82nd Texas Legislature, First Called Session, 2011, to be effective September 1, 2017, states that: (a) A charter holder is entitled to receive for the open-enrollment charter school funding under the TEC, Chapter 42, equal to the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a), to which the charter holder would be entitled for the school under the TEC, Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC, §42.253.

The TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the TEA or the commissioner of education in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. An open-enrollment charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require a student to demonstrate artistic ability and may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, a juvenile court adjudication, or a discipline problem under the TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The SBOE may approve open-enrollment charter schools as provided in the TEC, §12.101 and §12.152. There is a cap of 215 charters approved under the TEC, §12.101, and no cap on the number of charters approved under the TEC, §12.152.

The SBOE will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school.

Requesting the Application. An application must be submitted under SBOE guidelines to be considered. A complete copy of the publication *Public College or University Open-Enrollment Charter Guidelines and Application* (RFA #701-13-102), which includes an application and procedures, may be obtained on the TEA website at http://www.tea.state.tx.us/index2.aspx?id=3476.

Further Information. For clarifying information about the college or university open-enrollment charter school application, contact the Charter School Administration Unit, Texas Education Agency, at (512) 463-9575 or charterschools@tea.state.tx.us.

TRD-201206112
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: November 28, 2012

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Employees Retirement System of Texas

Contract Award Announcement

This contract award notice is being filed by the Employees Retirement System of Texas ("ERS"), in relation to a contract award to provide compensation consulting services to ERS. The contractor is CBIZ Benefits & Insurance Services, Inc., dba CBIZ Human Capital Services ("CBIZ"), One CityPlace Drive, Suite 570, St. Louis, Missouri 63141.

CBIZ will receive a fixed fee of $24,840 for the services. The term of the contract begins November 6, 2012, and will end February 28, 2013.

TRD-201206115
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: November 28, 2012

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Request for Application

In accordance with §1551.213 and §1551.214 of the Texas Insurance Code, the Employees Retirement System of Texas ("ERS") is issuing a Request for Application ("RFA") from qualified Medicare Advantage ("MA") Health Maintenance Organizations ("HMOs") to provide services within their approved service areas in Texas under the Texas Employees Group Benefits Program ("GBP") during Fiscal Year 2014, beginning September 1, 2013, through August 31, 2014. The locations in Texas for which Applications may be made are included in the RFA. The MA HMOs shall provide the level of benefits required in the RFA and meet other requirements that are in the best interests of ERS, the GBP, its Participants and the state of Texas. MA HMOs shall be required to execute a Contractual Agreement ("Contract") provided by, and satisfactory to, ERS.

An MA HMO wishing to submit an Application to this Request shall: 1) Maintain its principal place of business and provide all products and/or services including, but not limited to: call center, billing, eligibility, claims processing and programming, etc., within the United States of America; 2) Have a valid Certificate of Authority and license to do business in Texas as an MA HMO Carrier; 3) Be approved by the Centers for Medicare and Medicaid Services ("CMS"); 4) Have been providing managed care services in the service area for which the Application is made at least since January 1, 2011; 5) Demonstrate that it has a provider network in the proposed service area, as of the due date of the Application, adequate to provide health care to GBP Participants; 6) Be approved by CMS to offer Medicare Advantage plans in the state of Texas; 7) Comply with all state and federal laws, rules, and regulations; 8) Meet the minimum CMS requirements for the number of board-certified physicians within their network; 9) Provide the GBP with uniform utilization, quality assurance, claims, grievance, and other data on a regular basis as required by the GBP and/or CMS requirements.

The RFA will be available on or after December 13, 2012, from the ERS website and will include documents for the MA HMO's review and response. To access the RFA from the website, qualified MA HMOs shall email their request to the attention of iVendor Mailbox at: ivendorquestions@ers.state.tx.us. The email request shall reflect: 1) The MA HMO's full legal name; and 2) The point of contact's full name, physical address, phone and fax numbers, and email address. Upon receipt of this information, a user ID and password will be issued to the requesting MA HMO that will permit access to the secured RFA.

General questions concerning the RFA and/or ancillary bid materials should be sent to the iVendor Mailbox where responses, if applicable, are updated frequently. Submission deadline for all RFA questions submitted to the iVendor Mailbox are due on January 4, 2013, at 4:00 p.m. CT.

To be eligible for consideration, the MA HMO is required to submit a total of six (6) sets of the Application in a sealed container. One (1) printed original shall be labeled as an "Original" and include fully executed documents, as appropriate, **signed in blue ink** and without amendment or revision. Three (3) additional printed copies labeled "copy," including all required exhibits, shall be provided in printed format. Finally, two (2) complete copies of the entire Application shall be submitted on CD-ROMs in Excel or Word format. No PDF documents (with the exception of sample GBP-specific marketing materials, financial statements, GeoAccess analysis, and audited financial materials) may be reflected on the CD-ROMs. All materials shall be received by ERS no later than 12:00 Noon CT on January 24, 2013.

ERS will base its evaluation and selection of an MA HMO on factors including, but not limited to, the following which are not necessarily listed in order of priority: compliance with and adherence to the RFA, minimum requirements as specified, Theoretical Cost Index, proposed premium rates, ability to service contracts, past experience, and other relevant criteria.

ERS reserves the right to select none, one, or more than one MA HMO per service area. ERS reserves the right to reject any or all Applications and call for new Applications if deemed by ERS to be in the best interests of ERS, the GBP, its Participants or the state of Texas. ERS also reserves the right to reject any Application submitted that does not fully comply with the RFA's instructions and criteria. ERS is under no legal requirement to execute a contract on the basis of this notice or upon issuance of the RFA and will not pay any costs incurred by any entity in responding to this notice or the RFA or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth in the RFA and/or contract at any time prior to execution of a contract where ERS deems it to be in the best interests of ERS, the GBP, its Participants or the state of Texas.

TRD-201206098
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: November 27, 2012

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Request for Proposal

In accordance with §1551.055 and §1551.062 of the Texas Insurance Code, the Employees Retirement System of Texas ("ERS") is issuing a Request for Proposal ("RFP") from qualified auditing firms to perform audits of selected Carriers, HMOs, Medicare Advantage HMOs and PPOs and Third Party Administrators of the HealthSelect℠ Programs, which may include life, health, dental, and medical programs, provided to Participants under the Texas Employees Group Benefits Program ("GBP"), with an initial term beginning September 1, 2013, through August 31, 2016. A qualified provider of auditing services ("Auditor") shall provide the level of benefits required in the RFP and meet other requirements that are in the best interests of ERS, the GBP health and welfare programs, its Participants, and the state of Texas, and shall be required to execute a Contractual Agreement ("Contract") provided by, and satisfactory to, ERS.

An Auditor wishing to respond to this Request shall: (1) Maintain its principal place of business and provide all services within the United States of America, and shall have a current valid Certificate of Authority and/or current license to do business as an Auditor in the state of Texas; (2) Have documented experience of providing auditing services to at least two (2) group health plans one of which shall have an enrollment of 50,000 covered employees working in multiple locations for a minimum of two (2) years; (3) Have a current net worth of $250,000 as demonstrated by an audited financial statement as of the close of the Auditor's most recent fiscal year; and (4) Have experience working with and/or extensive knowledge of public or governmental health plans similar to those offered by ERS that are not subject to ERISA.

The RFP will be available on or after December 13, 2012, from the ERS website and will include documents for Auditor's review and response. To access the secured portion of the RFP website, an interested Auditor shall email its request to the attention of iVendor Mailbox at: ivendorquestions@ers.state.tx.us. The email request shall reflect: (1) Auditor's legal name; and (2) Point of contact's full name, physical address, phone and fax numbers, and email address. Upon receipt of this information, a user ID and password will be issued to the requesting organization that will permit access to the secured RFP.

General questions concerning the RFP and/or ancillary bid materials should be sent to the iVendor Mailbox where the responses, if applicable, are updated frequently. Submission deadline for all RFP questions submitted to the iVendor Mailbox are due on December 28, 2012, at 4:00 p.m., CT.

To be eligible for consideration, the Auditor is required to submit a total of six (6) sets of the Proposal in a sealed container. One (1) printed original shall be labeled as an "Original" and include fully executed documents, as appropriate, **signed in blue ink** and without amendment or revision. Three (3) additional printed copies labeled "copy" of the Proposal, including all required exhibits, shall be provided in printed format. Finally, two (2) complete copies of the entire Response shall be submitted on CD-ROMs in Excel or Word format. No PDF documents (with the exception of financial statements and audited financial materials) may be reflected on the CD-ROMs. All materials shall be received by ERS no later than 12:00 Noon, CT, on January 24, 2013.

ERS will base its evaluation and selection of an Auditor on factors including, but not limited to, the following, which are not necessarily listed in order of priority: compliance with and adherence to the RFP, minimum and preferred requirements as specified, fee proposal and other relevant criteria. Each Proposal will be evaluated both individually and relative to the Proposal of other qualified Auditors. Complete specifications will be included with the RFP.

ERS reserves the right to reject any and/or all Proposals and/or call for new Proposals if deemed by ERS to be in the best interests of ERS, the GBP health and welfare programs, its Participants, and the state of Texas. ERS also reserves the right to reject any Proposal submitted that does not fully comply with the RFP's instructions and criteria. ERS is under no legal requirement to execute a Contract on the basis of this notice or upon issuance of the RFP and will not pay any costs incurred by any entity in responding to this notice or in connection with the preparation thereof. ERS reserves the right to vary all provisions set forth at any time prior to execution of a Contract where ERS deems it to be in the best interests of ERS, the GBP health and welfare programs, its Participants, and the state of Texas.

TRD-201206071
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: November 26, 2012

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Texas Commission on Environmental Quality

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 **January 7, 2013.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 7, 2013.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: BJAYS INC. d/b/a J P Discount Beer & Wine; DOCKET NUMBER: 2012-0901-PST-E; TCEQ ID NUMBER: RN102256302; LOCATION: 9757 Webb Chapel Road, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (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 UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $1,925; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Carl Burris d/b/a Super C West; DOCKET NUMBER: 2012-1124-PST-E; TCEQ ID NUMBER: RN101432318; LOCATION: 1414 West Main Street, Henderson, Rusk County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor 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; PENALTY: $2,943; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: City of Hawk Cove; DOCKET NUMBER: 2011-1708-MWD-E; TCEQ ID NUMBER: RN104265848; LOCATION: 9543 Morris Drive, 3,600 feet southeast of the intersection of County Road 3613 and County Road 3608, Hawk Cove, Hunt County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a) and (c), 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014522001, Effluent Limitations and Monitoring Requirements Numbers 1, 3, and 6, and AO Docket Number 2008-1821-MWD-E, Ordering Provision Number 2, by failing to comply with permitted effluent limits; 30 TAC §305.125(17) and TPDES Permit Number WQ0014522001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2010, by September 1, 2010; TWC, §26.121(a) and (c), 30 TAC §305.125(1), and TPDES Permit Number WQ0014522001, Permit Conditions Number 2.g., by failing to prevent an unauthorized discharge from the collection system; 30 TAC §305.125(1), and TPDES Permit Number WQ0014522001, Monitoring and Reporting Requirements Number 5, by failing to ensure the flow meter is accurately calibrated; and 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number WQ0014522001, Monitoring and Reporting Requirements Number 1, by failing to submit effluent monitoring results at the intervals specified in the permit; PENALTY: $35,790; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Paint Rock; DOCKET NUMBER: 2012-0342-PWS-E; TCEQ ID NUMBER: RN101451730; LOCATION: 174 San Saba Street, Paint Rock, Concho County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.113(f)(4) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter (mg/L) for total trihalomethanes (TTHM), based on the running annual average for the second and third quarters of 2011; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to timely 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 timely 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 §290.113(f)(5) and THSC, §341.0315(c), by failing to comply with the MCL of 0.060 mg/L for haloacetic acids (HAA5), based on a running annual average for the third quarter of 2011; 30 TAC §290.111(d)(2)(B), by failing to ensure that the disinfection contact time (CT) used by the facility is based on tracer study data or a theoretical analysis approved by the executive director and the actual flow rate that is occurring at the time that monitoring occurs; 30 TAC §290.42(m), by failing to enclose the surface water treatment plant and all appurtenances thereof within an intruder-resistant fence; 30 TAC §290.46(e)(6)(C) and THSC, §341.033(a), by failing to ensure that each plant has at least one Class "C" or higher surface water operator on duty at the plant when it is in operation or the plant must be provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the facility is not staffed; and 30 TAC §290.46(f)(3)(E)(i), and §290.111(h) and (2), by failing to maintain on file and make available for executive director's review accurately completed copies of the facility's Surface Water Monitoring Reports including turbidity monitoring results for the combined filter effluent; PENALTY: $946; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(5) COMPANY: Khurram Saeed Zai d/b/a Korner Food Mart 1; DOCKET NUMBER: 2012-1091-PST-E; TCEQ ID NUMBER: RN102852696; LOCATION: 13150 Bissonnet Street, Houston, Harris

County; TYPE OF FACILITY: underground storage tank (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: $3,825; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Mohammad Ali; DOCKET NUMBER: 2011-0748-PST-E; TCEQ ID NUMBER: RN102428513; LOCATION: 301 West Jackson Street, El Campo, Wharton County; TYPE OF FACILITY: inactive underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; PENALTY: $4,025; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Sandy Kowalick and Southeast Texas Trees LLC; DOCKET NUMBER: 2011-1629-MSW-E; TCEQ ID NUMBER: RN104443072; LOCATION: 18963 Trails End, Conroe, Montgomery County; TYPE OF FACILITY: vegetative waste recycling facility; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $16,800; STAFF ATTORNEY: Jeff Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: TIMPSON QUICK-STOP INC.; DOCKET NUMBER: 2012-1156-PST-E; TCEQ ID NUMBER: RN101447506; LOCATION: 674 North 1st Street, Timpson, Shelby 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 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the USTs; PENALTY: $6,874; STAFF ATTORNEY: Rebecca M. Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: TMT, INC. d/b/a Whip In 105; DOCKET NUMBER: 2012-0344-PST-E; TCEQ ID NUMBER: RN102391034; LOCATION: 2910 Ruder Street, Dallas, Dallas 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 the required UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $2,500; STAFF ATTORNEY: Rebecca M. Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201206099
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 27, 2012

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; 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 **January 7, 2013.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 7, 2013.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Robert Maxey d/b/a J & H Auto Repair; DOCKET NUMBER: 2011-1737-PST-E; TCEQ ID NUMBER: RN105062467; LOCATION: 4308 Farm-to-Market Road 1765, Texas City, Galveston County; TYPE OF FACILITY: underground storage tank (UST) system and property; RULES VIOLATED: 30 TAC §334.7(a)(1), by failing to register USTs in existence on or before September 1, 1987; and 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 upgrade requirements; PENALTY: $6,900; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Virginia Franklin Fuller d/b/a Franklin Water Systems 1 and d/b/a Franklin Water Systems 3; DOCKET NUMBER: 2012-0171-PWS-E; TCEQ ID NUMBERS: RN102817038 and RN101264372; LOCATIONS: 4701 Idalou Road (RN102817038) and 4813 Idalou Road (RN101264372), Lubbock, Lubbock County; TYPE OF FACILITY: public water supplies; RULES VIOLATED: 30 TAC §290.46(u), by failing to plug abandoned wells or submit test results proving that the wells are in a non-deteriorated condition; TWC, §5.702 and 30 TAC §290.51(a)(3), by failing to pay all annual and late Public Health Service fees for TCEQ Financial Administration

Account Number 91520224 for Fiscal Years 2003 - 2012; 30 TAC §290.106(e), by failing to provide the results of quarterly nitrate sampling for the fourth quarter of 2006 through the second quarter of 2011; 30 TAC §290.106(e) and §290.107(e), by failing to provide the results of triennial sampling for synthetic organic contaminants and metal levels for the reporting period from January 1, 2005 - December 31, 2007, and January 1, 2008 - December 31, 2010; 30 TAC §290.108(e), by failing to provide the results of triennial sampling for radionuclide contaminant levels for the sampling period from January 1, 2007 - December 31, 2009, for sampling sites Entry Point (EP) 004, EP006 and EP007, and for the sampling period from January 1, 2006 - December 31, 2008, for sampling site EP001; 30 TAC §§290.107(e), 290.108(e) and 290.113(e), by failing to provide the results of annual sampling for volatile organic contaminants (VOCs) for 2007 - 2010, radionuclide for 2006, and disinfectant by-product (DBP) levels for 2006 - 2010; TWC, §5.702 and 30 TAC §290.51(a)(3), by failing to pay Public Health Service fees for TCEQ Financial Administration Account Number 91520080 for Fiscal Years 2003 - 2011; 30 TAC §290.106(e), by failing provide the results of quarterly nitrate sampling results for the fourth quarter of 2011; 30 TAC §290.106(e) and §290.108(e), by failing to provide the results of triennial sampling for mineral and radionuclide levels for the sampling period from January 1, 2009 - December 31, 2011; 30 TAC §290.107(e) and §290.113(e), by failing to provide the results of annual sampling for VOCs and DBP contaminant levels for the 2011 reporting period; and 30 TAC §290.106(e), by failing to provide the results of the six year monitoring period for cyanide levels for the reporting period from January 1, 2006 - December 31, 2011; PENALTY: $5,381; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7613.

TRD-201206100
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 27, 2012

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Notice of Opportunity to Comment on Shutdown/Default Order of Administrative Enforcement Action

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; 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 **January 7, 2013.** The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 7, 2013.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DO and/or the comment procedure at the listed phone numbers; however, comments on the S/DO shall be submitted to the commission in **writing.**

(1) COMPANY: Sylvan I-30 Enterprises, Inc. d/b/a Texaco Sylvan; DOCKET NUMBER: 2011-1966-PST-E; TCEQ ID NUMBER: RN101570737; LOCATION: 1805 Sylvan Avenue, Dallas, Dallas County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the UST system; and 30 TAC §334.10(b)(1)(B), by failing to maintain legible copies of all required records pertaining to the UST system in a secure location on the premises of the facility and make them immediately available for inspection by commission personnel; PENALTY: $19,426; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201206101
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 27, 2012

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Notice of Water Quality Applications

The following notices were issued on November 9, 2012, through November 16, 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

HOUSTON FMC IREIC LLC AND FMC TECHNOLOGIES INC 2901 which operates FMC Energy Systems has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002611000, which authorizes the discharge of condensate, cooling tower blowdown, boiler blowdown, wash water, pressure test water, floor drains, lab wastewater, and process area stormwater at a daily average dry-weather flow not to exceed 85,000 gallons per day via Outfall 004. Located at 1777 Gears Road, approximately 0.77 mile east of the intersection of Gears Road and Veterans Memorial Drive, in the City of Houston, Harris County, Texas 77067.

K-3 RESOURCES LP has applied for a renewal of TCEQ Permit No. WQ0004364000 (EPA I.D. TXL005009), which authorizes the processing of domestic wastewater treatment plant sludge. This permit will not authorize a discharge of pollutants into waters in the State. The sewage sludge processing facility is located approximately 2,250 feet north of the intersection of Roberts Road and Farm-to-Market Road 2920 (Waller-Tomball Road) inside Dincans Ranch which is located in the far northwestern portion of Harris County, 12 miles west of Tomball and eight miles east of Waller in Harris County, Texas 77447.

SYLVESTER MCCAULLEY WATER SUPPLY CORPORATION which proposes to operate Sylvester McCaulley Water Supply Corporation Water Treatment Plant, a potable water treatment and distribution facility, has applied for a new permit, proposed TPDES Permit No. WQ0004990000, to authorize the discharge of reverse osmosis reject water at a daily average flow not to exceed 22,000 gallons per day via Outfall 001. The facility is located approximately 2,500 feet north of the intersection of U.S. Highway 180 and Farm-to-Market Road 1812 on County Road 283, Fisher County, Texas 79534.

HARRIS COUNTY FRESH WATER SUPPLY DISTRICT NO 6 has applied for a renewal of TPDES Permit No. WQ0010184001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located at the intersection of DeZavalla Road and Elsbeth Road in Harris County, Texas 77530.

CITY OF BREMOND has applied for a major amendment to TPDES Permit No. WQ0010917001 to remove effluent limitations and monitoring requirements for ammonia nitrogen (NH3-N). The major amendment would also reclassify the wastewater treatment facility as a Category D facility according to 30 TAC Chapter 30 Subchapter J. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 220,000 gallons per day. The facility is located approximately 0.7 mile south of the intersection of State Highway 14 and Farm-to-Market Road 46 in Robertson County, Texas 76629.

CITY OF QUEEN CITY has applied for a renewal of TPDES Permit No. WQ0011225001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located on the south side of Cypress Creek approximately 1.1 miles east and 0.2 mile north of the intersection of Farm-to-Market Road 96 and U.S. Highway 59 in Cass County, Texas 75572.

CITY OF JEWETT has applied for a renewal of TPDES Permit No. WQ0011392001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located at 925 North Sugar Street, approximately 500 feet southeast of Sugar Street, approximately 4,000 feet east of State Highway 79, on the east side of the City of Jewett in Leon County, Texas 75846.

CITY OF GALVESTON has applied for a renewal of TPDES Permit No. WQ0011477001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 624,000 gallons per day. The facility is located approximately 0.5 mile north of Stewart Road and 0.25 mile east of 12-Mile Road on Galveston Island in Galveston County, Texas 77554.

RAYFORD ROAD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0012030001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,300,000 gallons per day. The facility is located at 30110 Thorsby Drive, Spring, north of Rayford Road, approximately 2.1 miles east of the intersection Rayford Road and Interstate Highway 45 in Montgomery County, Texas 77386.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 189 has applied for a renewal of TPDES Permit No. WQ0012237001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,250,000 gallons per day. The facility is located at 1100 Dunson Glen, approximately 1,300 feet north of the point where Kuykendahl Road crosses Harris County Flood Control District Ditch P145-03-00 and approximately 2,400 feet north-northwest of the intersection of Kuykendahl Road and Ella Boulevard in Harris County, Texas 77090.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 20 has applied for a renewal of TPDES Permit No. WQ0013625001, 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 2902 Ivy Falls Drive, approximately 6,500 feet north and 8,700 feet east of the intersection of Farm-to-Market Road 1960 and Stuebner Airline Road, approximately 2.25 miles northeast of the same intersection in Harris County, Texas 77068.

WOODLAND OAKS UTILITY has applied for a renewal of TPDES Permit No. WQ0014166001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 498,000 gallons per day. The facility is located at 1015 Hinsdale Drive approximately one mile north of Farm-to-Market Road 1488 and 0.3 mile west of Honea Egypt Community Road in Montgomery County, Texas 77354.

KENNARD TOM FOLEY has applied for a renewal of TPDES Permit No. WQ0014193001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The plant site is located 350 feet north of Charterwood's north boundary, 1,000 feet south of Cossey Road and 4,000 feet east of Farm-to-Market Road 249, 10011 Cossey Road, Houston in Harris County, Texas 77070.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 434 has applied for a renewal of TPDES Permit No. WQ0014576001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located at 15838 1/2 House Hahl Road, approximately 1.3 miles southeast of the intersection of U.S. Highway 290 and Becker Road in Harris County, Texas 77447.

TRINITY PINES CONFERENCE CENTER INC has applied for a renewal of TPDES Permit No. WQ0014842001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located approximately 1,500 feet west of Lake Livingston and approximately 1,400 feet north of Farm-to-Market Road 356 in Trinity County, Texas 75862.

TRINITY RURAL WATER SUPPLY CORPORATION has applied for a new permit, proposed TPDES Permit No. WQ0015050001, to authorize the discharge of treated filter backwash and clarifier blow down effluent from a water treatment plant at a daily average flow not to exceed 150,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0014902001 which expired February 1, 2012.

The permittee previously published a Notice of Receipt of Application and Intent to Obtain Water Quality Permit Renewal for this facility on May 9, 2012 but that renewal application was withdrawn since the existing permit had expired before the application was received. The facility is located at 5004 South State Highway 19, approximately four miles south of Trinity in Trinity County, Texas 75862.

HEWLETT-PACKARD COMPANY which operates the Hewlett-Packard Data Center office building, has applied for a renewal of TPDES Permit No. WQ0004879000, which authorizes the discharge of cooling tower blowdown and condensate from cooling coils from a data storage and handling facility at a daily average flow not to exceed 150,000 gallons per day. The facility is located at 28401 Betka Road, Hockley, Harris County, Texas 77447.

CHAMPS WATER COMPANY has applied for a renewal of TPDES Permit No. WQ0012730001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,400 gallons per day. The facility is located at 10717 Country Meadow Lane, approximately 150 feet west of the intersection of Country Meadow Lane and Huffsmith-Kohrville and 2.3 miles south-southeast of the City of Tomball in Northwest Harris County, Texas 77375.

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-201206108
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 28, 2012

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Notice of Water Rights Applications

Notices issued November 15, 2012, through November 16, 2012.

APPLICATION NO. 12678; Harris County Improvement District No. 18, 3200 Southwest Freeway, Suite 2600, Houston, Texas 77027, seeks authorization to construct and maintain dam and reservoir on an unnamed tributary of Spring Creek, San Jacinto River Basin, for flood control purposes in Harris County, Texas. The structure would temporarily store water during a storm event which would then entirely drain at a regulated rate. The Applicant further seeks authorization to divert water into an off-channel reservoir for recreation and flood control purposes during high flow events. The application and partial fees were received on February 28, March 24, and March 25, 2011. Additional information and fees were received on April 18, 2011. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on May 6, 2011. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include a special condition to maintain a protocol to avoid impact to state water. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5340A; San Jacinto Barge Repair, Inc., P.O. Box 926, Highland, Texas 77562, Applicant, has applied to amend Water Use Permit No. 5340 to add a diversion and discharge point on Carpenters Bayou, San Jacinto River Basin, increase the diversion rate, and change the place of use to Harris County. The application and a portion of the fees were received on June 30, 2011. Additional information and fees were received on August 15, October 3, and November 17, 2011. The application was declared administratively complete and filed with the Office of the Chief Clerk on November 29, 2011. The TCEQ Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special conditions including, but not limited to, discharging all water that is not consumed at the same point which it was diverted. The application and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F., Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding 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-201206109
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 28, 2012

♦ ♦ ♦

Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Qual-

ity on November 20, 2012, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Joe Menaldi d/b/a Ransom Canyon Center and Joseph Adam Corporation d/b/a Ransom Canyon Center; SOAH Docket No. 582-11-9499; TCEQ Docket No. 2009-0890-PWS-E. The Commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Joe Menaldi d/b/a Ransom Canyon Center and Joseph Adam Corporation d/b/a Ransom Canyon Center 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-201206110
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 28, 2012

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: 30-day Pre-election Report due October 9, 2012 for Candidates and Officeholders

Dominique L. Collins, 1661 Sylvan Ave., Dallas, Texas 75208

Christopher D. Christal, P.O. Box 12104, San Antonio, Texas 78212

Joe A. Foster Jr., P.O. Box 611, Alpine, Texas 79831

Alfred Molison Jr., P.O. Box 31546, Houston, Texas 77231

G. C. Molison, P.O. Box 31546, Houston, Texas 77231

TRD-201206091
David Reisman
Executive Director
Texas Ethics Commission
Filed: November 26, 2012

♦ ♦ ♦

Texas Facilities Commission

Request for Proposals #303-4-20363

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General, announces the issuance of Request for Proposals (RFP) #303-4-20363. TFC seeks a five (5) or ten (10) year lease of approximately 7,714 square feet of office space in Nederland, Jefferson County, Texas.

The deadline for questions is December 21, 2012 and the deadline for proposals is January 11, 2013 at 3:00 p.m. The award date is February 22, 2013. 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=103433.*

TRD-201206107
Kay Molina
General Counsel
Texas Facilities Commission
Filed: November 27, 2012

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for Healthcare Common Procedure Coding System Updates for Psychiatric Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on December 18, 2012, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for updates to Healthcare Common Procedure Coding System (HCPCS) updates for Psychiatric Services.

The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for HCPCS updates regarding psychiatric services are proposed to be effective January 1, 2013.

Methodology and Justification. The proposed payment rates were calculated in accordance with:

1 TAC §355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services; and

1 TAC §355.8085, which addresses the reimbursement methodology for physicians and other medical professionals, including medical services, surgery, assistant surgery, and physician-administered drugs/biologicals; medical services, surgery, assistant surgery, radiology, laboratory, and radiation therapy.

The reimbursement rates proposed reflect applicable reductions directed by the 2012-2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session (Article II, Health and Human Services Commission, Section 16). Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules at http://public.tmhp.com/FeeSchedules/Default.aspx.

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after December 3, 2012. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand-delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201205982
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: November 19, 2012

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Fort Worth	Texas Health Huguley, Inc.	L06514	Fort Worth	00	10/29/12

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Angleton	Isotherapeutics Group, L.L.C.	L05969	Angleton	22	11/06/12
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Center	L00740	Austin	115	11/09/12
Austin	Ramming Paving Company, Ltd.	L04666	Austin	11	11/01/12
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Center	L06335	Austin	09	11/06/12
Bryan	NDE Solutions, L.L.C.	L05879	Bryan	32	11/02/12
Burnet	Texas Heart and Vascular, P.A.	L06239	Burnet	02	11/06/12
Comanche	Comanche County Medical Center Company dba Comanche County Medical Center	L06200	Comanche	06	11/05/12
Corpus Christi	True Medical Imaging	L06191	Corpus Christi	7	11/02/12
Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	191	11/06/12
Dallas	Texas Oncology, P.A. dba Sammons Cancer Center	L04878	Dallas	49	10/29/12
Dallas	Alliance Geotechnical Group, Inc.	L05314	Dallas	22	10/31/12
Dallas	Cardinal Health	L05610	Dallas	25	11/06/12
Denison	STS Construction Material Testing	L06280	Denison	03	11/01/12
Denton	Denton Cancer Center, L.L.P.	L05945	Denton	07	11/07/12
El Paso	Tenet Hospitals Limited dba Sierra Medical Center	L02365	El Paso	74	11/06/12
El Paso	Tenet Hospitals Limited dba Sierra Providence East Medical Center	L06152	El Paso	10	10/26/12
Fort Worth	Cook Childrens Medical Center	L04518	Fort Worth	21	10/30/12
Fort Worth	Cook Childrens Medical Center	L04518	Fort Worth	22	11/12/12
Fort Worth	Heart Center of North Texas, P.A.	L05338	Fort Worth	15	11/12/12
Fort Worth	Texas Health Physicians Group dba Consultants in Cardiology	L06468	Fort Worth	01	11/07/12
Harlingen	VHS Harlingen Hospital Company, L.L.C. dba Valley Baptist Medical Center Harlingen	L06499	Harlingen	02	10/31/12
Henderson	East Texas Medical Center Henderson	L06281	Henderson	03	11/12/12
Houston	Memorial Hermann Hospital System dba Memorial Hospital Southwest	L00439	Houston	178	11/12/12
Houston	American Diagnostic Tech, L.L.C.	L05514	Houston	83	10/30/12
Houston	CHCA West Houston, L.P. dba West Houston Medical Center	L06055	Houston	14	11/05/12
Lubbock	Texas Tech University	L01536	Lubbock	97	11/01/12
McAllen	Valley Cardiology, P.A.	L04692	McAllen	23	11/09/12
Port Arthur	BASF Total Petrochemicals, L.L.C.	L05914	Port Arthur	05	10/31/12

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	139	11/09/12
San Antonio	Southwest General Hospital, L.L.P. dba Southwest General Hospital	L02689	San Antonio	42	11/09/12
San Antonio	C. H. Wilkinson Physician Network dba Christus Santa Rosa Medical Group Cardiovascular Associates	L06409	San Antonio	01	10/30/12
San Antonio	C. H. Wilkinson Physician Network dba Christus Santa Rosa Medical Group Cardiovascular Associates	L06409	San Antonio	02	11/09/12
Sugar Land	Memorial Hermann Healthcare System dba Memorial Hermann Sugar Land Hospital	L03457	Sugar Land	38	11/09/12
The Woodlands	St. Luke's The Woodlands Hospital	L05763	The Woodlands	23	11/07/12
Throughout TX	Troxler Electronic Laboratories	L01296	Arlington	45	11/06/12
Throughout TX	Texas Department of Transportation	L00197	Austin	161	11/08/12
Throughout TX	Wildcat Wireline, L.L.C.	L06199	Benbrook	03	11/06/12
Throughout TX	Bonded Inspections, Inc.	L00693	Garland	86	11/05/12
Throughout TX	Spitzer Industries, Inc.	L06483	Houston	01	11/07/12
Throughout TX	Casedhole Solutions, Inc.	L06356	Midland	02	11/13/12
Throughout TX	Pioneer Wireline Services, L.L.C.	L06220	Rosharon	22	11/05/12
Tomball	Tomball Texas Hospital Company, L.L.C. dba Tomball Regional Medical Center	L06472	Tomball	03	11/06/12
Tyler	The University of Texas Health Science Center at Tyler	L04117	Tyler	47	10/26/12
Tyler	Nutech, Inc.	L04274	Tyler	68	11/08/12
Valley View	Pumpco Energy Services, Inc.	L06507	Valley View	02	11/01/12

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Laredo	Laredo Texas Hospital Company, L.P. dba Laredo Medical Center	L01306	Laredo	75	11/05/12
Granbury	Superior Production Logging, Inc. dba SPL Wireline Services	L01983	Granbury	42	11/01/12
Odessa	Arts Inspection and Pipe Service	L04735	Odessa	08	11/05/12

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Arlington	William D. English, II., M.D.	L06011	Arlington	2	10/29/12
Austin	Industrial Asphalt, Inc.	L05453	Austin	09	11/05/12
Austin	Cardiotexas, P.L.L.C.	L06330	Austin	04	11/06/12
Fort Worth	Adventist Health System Sunbelt Healthcare Corporation dba Huguley Health System	L02920	Fort Worth	37	10/29/12
Plano	Doctors of Internal Medicine	L06086	Plano	3	10/29/12
Round Rock	Cardiovascular Specialists of Texas, P.A.	L06320	Round Rock	01	11/06/12
Stephenville	Cardiac Care, P.A. dba Cardiac Care	L06009	Stephenville	02	11/09/12

EMERGENCY ORDERS ISSUED:

Name	Type of Order	License #	Address	Action	Date of Issuance
Varian Medical Systems, Inc.	Emergency Cease and Desist Order	R06706	911 Hansen Way, M/S: C-255, Palo Alto, CA 94304-1030	Cease and desist from all further assembly, installation or reinstallation of linear accelerators with stereotactic radiosurgery (SRS) components without all required interlocks or SRS components without all required interlocks; repair or install immediately all required interlocks on linear accelerators capable of performing SRS.	10/17/12
BrainLAB, Inc.	Emergency Cease and Desist Order	R31234	3 Westbrook Corporate Center, Suite 400, Westchester, IL 60154	Cease and desist from all further assembly, installation or reinstallation of linear accelerators with stereotactic radiosurgery (SRS) components without all required interlocks or SRS components without all required interlocks; repair or install immediately all required interlocks on linear accelerators capable of performing SRS.	10/17/12

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201206044
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: November 20, 2012

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Texas Department of Insurance

Proposed FY 2013 Research Agenda - Workers' Compensation Research and Evaluation Group

Labor Code §405.0026 requires the commissioner of insurance to adopt an annual research agenda for the Workers' Compensation Research and Evaluation Group (REG) at the Texas Department of Insurance. To accomplish this, TDI must publish a proposed research agenda in the *Texas Register* for public review and comment. Upon request, the commissioner will hold a public hearing on the proposed research agenda.

In October 2012, on TDI's website, the REG requested research agenda suggestions from stakeholders and the general public. The REG also asked legislative offices for input on the FY 2013 Research Agenda. The REG used the following criteria to evaluate the responses:

* Is the proposed research project required by statute or likely to be part of an upcoming legislative review?

* Will the results of the proposed research project address the information needs of multiple stakeholder groups and/or legislative committees?

* Are there available data to complete the project or can data be obtained easily and economically to complete the project?

* Does the REG have sufficient resources to complete the project within FY 2013?

Based upon the responses received and the criteria outlined above, the REG proposes the following projects for the FY 2013 Research Agenda.

1. Completion and publication of the seventh edition of Workers' Compensation Health Care Network Report Card (required under Insurance Code §1305.502(a)-(d) and Labor Code §405.0025(b)).

2. An annual examination of the frequency of employers and workers' compensation claims participating in certified health care delivery networks (required under Insurance Code §2053.012(a) and Labor Code §405.0025(b)).

3. An annual update of medical costs and utilization in the Texas workers' compensation system (required under Labor Code §405.0025(a)(4)).

4. An annual update of return-to-work outcomes for injured workers, including an examination of the impact of pharmaceutical utilization on return-to-work rates (required under Labor Code §405.0025(a)(4)).

5. An analysis of the impact of the Division of Workers' Compensation's adopted treatment guideline on non-network treatment utilization, medical costs, and other outcomes (required under Labor Code §405.0025(a)(4)).

6. An analysis of income benefit disputes, focusing on outcome trends for disputed issues, such as impairment ratings, compensability, extent of injury, and the ability of an injured employee to return to work (required under Labor Code §405.0025(a)(4)).

7. An analysis of the impact of the closed formulary requirement on the utilization and costs patterns in pharmacy prescriptions for new and legacy claims (required under Labor Code §405.0025(a)(4)).

The REG will consider expanding the scope of listed projects and/or conducting additional projects to accommodate stakeholder suggestions, subject to resource and data availability.

REQUEST FOR PUBLIC COMMENT OR PUBLIC HEARING

If you wish to comment on the proposed FY 2013 Research Agenda or to request a public hearing, you must do so in writing no later than 5:00 p.m. on January 7, 2013. A hearing request must be on a separate page from any written comments. TDI requires two copies of your comments or hearing request. Send one copy to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy to DC Campbell, Director, Workers' Compensation Research and Evaluation Group, Mail Code 105-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. If the commissioner holds a hearing, she will also consider written and oral comments presented at the hearing.

Please visit TDI's website at www.tdi.texas.gov for copies of the proposed research agenda. Send questions regarding the proposed agenda to DC Campbell at wcresearch@tdi.state.tx.us.

TRD-201206142
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: November 29, 2012

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Texas Juvenile Justice Department

Advertising for Consulting Services

The Texas Juvenile Justice Department (TJJD) is advertising for consulting services with Juvenile Justice Associates, LLC, in accordance with Texas Government Code §2155.067 and §2254.029. TJJD is of the opinion that the requested consulting services are proprietary to one provider. Only responses conforming exactly to these specifications will be considered in determining an award. TJJD strongly encourages responses from all qualified providers who may be able to provide the specified services.

TJJD is soliciting a proposal from Juvenile Justice Associates, LLC, to obtain of an assessment of the McLennan County State Juvenile Correctional Facility in Mart, Texas. The assessment will be of the conditions of confinement and quality-of-life at the Mart Juvenile Correctional Facility and is intended to provide recommendations supportive of culture change strategies to improve organizational stability and program efficacy while reducing disruptions and violence in daily living. Juvenile Justice Associates, LLC, will be utilized as a consultant to conduct the above described assessment. They will analyze data and examine culture between staff and youth for the purpose for making recommendations for improving programming provided to youth in the care of TJJD. Juvenile Justice Associates, LLC, is considered to be a nationally recognized organization for work in these areas. They possess the expertise and specialized technical knowledge required for this consulting contract. The scope of work will include the following outcomes:

1. The Consultant will review TJJD written documentation and youth data. This includes review of behavior change programs, i.e., Redirect and Phoenix as well as others mentioned in the 2011 Treatment Effectiveness Report.

2. The Consultant will facilitate meetings with the TJJD staff to include both individual and group meetings with Correctional Staff, Treatment Staff, Administrative Staff, and others.

3. The Consultant will interview youth at the facility and administer social climate surveys.

4. The Consultant will conduct interviews of key agency staff which includes but is not limited to Senior Directors, Directors, and Program Specialists.

5. The Consultant will conduct on-site facility assessments at Mart. This visit will be comprehensive and include an entrance and exit interview, tour of the physical plant, and interviews as noted with staff and youth.

6. The Consultant will review and utilize legacy TYC staff surveys in making recommendations.

7. The Consultant will provide data analysis and write reports.

8. The Consultant will provide executive management with a debriefing regarding findings.

9. The Consultant will provide a preliminary draft report for review by TJJD.

10. The Consultant will provide a final report based on TJJD's review of the draft report.

This solicitation is being advertised under Texas Government Code, §2155.067, as proprietary to one provider; however, any provider qualified in accordance with the scope of work may submit a proposal to the following contact:

Texas Juvenile Justice Department

Attn: Erica Tristan

4900 North Lamar Blvd.

Austin, Texas 78751

Office (512) 424-6263

Fax (512) 424-6337

Email Erica.tristan@tjjd.texas.gov

TJJD anticipates awarding a firm fixed price contract to Juvenile Justice Associates, LLC, for these services.

TRD-201206048
Linda Brooke
Chief of Staff
Texas Juvenile Justice Department
Filed: November 20, 2012

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Texas Lottery Commission

Correction of Error

The Texas Lottery Commission filed for publication notice of Instant Game Number 1491 "Super 7's." The notice was published in the November 16, 2012, issue of the *Texas Register* (37 TexReg 9178). Section 1.2.C is revised. The play symbol "6" is added, and the play symbol "$6.00" is deleted. No other section is affected by this revision. The revised text follows.

"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 SYMBOL, 8, 9, 10, 11, 12, 13, 14, 15, $1.00, $2.00, $3.00, $4.00, $5.00, $7.00, $10.00, $14.00, $20.00, $21.00, $35.00, $70.00, $100 and $777."

TRD-201206114

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Instant Game Number 1484 "$100,000 Winnings"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1484 is "$100,000 WINNINGS". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1484 shall be $5.00 per Ticket.

1.2 Definitions in Instant Game No. 1484.

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, 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, COIN STACK SYMBOL, 5X SYMBOL, $100 SYMBOL, STAR SYMBOL, $5.00, $10.00, $15.00, $20.00, $40.00, $50.00, $100, $500, $2,000 and $100,000.

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. 1484 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
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
COIN STACK SYMBOL	WIN
5X SYMBOL	WINX5
$100 SYMBOL	WIN$100
STAR SYMBOL	WINALL
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN

$20.00	TWENTY
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$2,000	TWO THOU
$100,000	HUN 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, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $2,000 or $100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1484), 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: 1484-0000001-001.

K. Pack - A Pack of "$100,000 WINNINGS" 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 "$100,000 WINNINGS" Instant Game No. 1484 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 "$100,000 WINNINGS" 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 "COIN STACK" Play Symbol, the player wins the PRIZE for that symbol instantly. If a player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. If a player reveals a "$100" Play Symbol, the player wins $100 instantly! If a player reveals a "STAR" Play Symbol, the player WINS ALL 20 PRIZES! 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. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. No duplicate WINNING NUMBERS Play Symbols on a Ticket.

C. No duplicate non-winning YOUR NUMBERS Play Symbols on a Ticket.

D. No more than three identical non-winning prize symbols on a Ticket.

E. A non-winning prize symbol will never be the same as a winning prize symbol.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 10 and $10).

G. When the "STAR" (win all) symbol appears, there will be no occurrence of any of YOUR NUMBERS Play Symbols matching to any WINNING NUMBERS Play Symbol.

H. The "STAR" (win all) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

I. The "COIN STACK" (auto win) Play Symbol will never appear more than once on a Ticket.

J. The "5X" (win x 5) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

K. The $100 prize symbol will always appear with the "$100" (auto win $100) Play Symbol.

L. The "$100" (auto win $100) Play Symbol will never appear more than once on a Ticket.

M. The top prize symbol will appear at least once on every Ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "$100,000 WINNINGS" Instant Game prize of $5.00, $10.00, $15.00, $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 "$100,000 WINNINGS" Instant Game prize of $2,000 or $100,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$100,000 WINNINGS" 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 lia-

bility 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 "$100,000 WINNINGS" 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 "$100,000 WINNINGS" 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 Instant Game No. 1484. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1484 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	560,000	10.71
$10	640,000	9.38
$15	240,000	25.00
$20	80,000	75.00
$50	17,500	342.86
$100	23,900	251.05
$500	3,750	1,600.00
$2,000	130	46,153.85
$100,000	6	1,000,000.00

*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 3.83. 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 Instant Game No. 1484 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. 1484, 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-201206111
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 28, 2012

♦ ♦ ♦

North Central Texas Council of Governments

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant request appeared in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6386).

The selected consultant will perform technical and professional work to conduct a transit needs assessment and planning study. The consultant selected for this project is Nelson\Nygaard Consulting Associates, Inc., 116 New Montgomery Street, Suite 500, San Francisco, California 94105. The amount of the contract is not to exceed $200,000.

TRD-201206104
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: November 27, 2012

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application for Amendment to Certificate of Operating Authority

On November 27, 2012, Sprint Communications Company LP (applicant) filed an application to amend certificate of operating authority (COA) number 50009. Applicant seeks approval to reflect a change in ownership/control whereby applicant will become an indirect subsidiary of Starburst II, Inc.

The Application: Application of Sprint Communications Company LP for Amendment to a Certificate of Operating Authority, Docket Number 40983.

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 December 14, 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 40983.

TRD-201206117
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 28, 2012

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Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 21, 2012, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of NMG Telecom, LLC for a Service Provider Certificate of Operating Authority, Docket Number 40971.

Applicant intends to provide data, facilities-based and resale telecommunications services.

Applicant proposes to provide service within the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than December 14, 2012. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 40971.

TRD-201206093
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 26, 2012

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 16, 2012, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Valley Telephone Cooperative, Inc., for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171, and PURA §53, Subchapter G, Tariff Control Number 40961.

The Application: Valley Telephone Cooperative, Inc. (Valley Telephone or the Applicant) filed an application to increase the monthly Residential Local Exchange Access Line Service rates in all its exchanges. Valley Telephone proposed an effective date of December 1, 2012. The estimated annual revenue increase recognized by the Applicant is $114,210 of its gross annual intrastate revenues. The Applicant has 3,807 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by December 14, 2012, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by December 14, 2012. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 40961.

TRD-201206092
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 26, 2012

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Teacher Retirement System of Texas

Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets and Actuary's Certification of Actuarial Valuation and Actuarial Present Value of Future Benefits

Section 825.108(a) of the Government Code requires the Teacher Retirement System of Texas (TRS) to publish a report in the *Texas Register* no later than December 15 of each year containing the following information: (1) the retirement system's fiscal transactions for the pre-

ceding fiscal year; (2) the amount of the system's accumulated cash and securities; and (3) the rate of return on the investment of the system's cash and securities during the preceding fiscal year.

In addition, §825.108(b) of the Government Code requires TRS to publish a report in the *Texas Register* no later than March 1 of each year containing the balance sheet as of August 31 of the preceding school year and containing an actuarial valuation of the system's assets and liabilities, including the extent to which the system's liabilities are unfunded.

TRS publishes the following reports as required by subsections (a) and (b) of §825.108 of the Government Code:

EXHIBIT I

Statement of Fiduciary Net Assets

AUGUST 31, 2012

(With Comparative Data for Pension and Other Employee Benefit Trust Funds for August 31, 2011)

	Fiduciary Fund Types	
	Pension and Other Employee Benefit Trust Funds	
	Pension Trust Fund	TRS-Care
ASSETS		
Cash		
Cash in State Treasury	$ 1,008,065,263	$ 807,898,799
Cash in Bank (Note 3A)	172,098,125	
Cash on Hand (Note 3B)	7,990,499	
TOTAL CASH	$ 1,188,153,887	$ 807,898,799
Receivables		
Sale of Investments	$ 1,310,240,211	$
Interest and Dividends	245,552,931	316,328
Member and Retiree	85,416,930	41,279,259
Reporting Entities	41,705,443	8,578,779
Other	445,456	10,970,252
Due from State's General Fund		
Due from Employees Retirement System of Texas	2,683,341	
TOTAL RECEIVABLES	$ 1,686,044,312	$ 61,144,618
Investments (Notes 1F and 3E)		
Short-Term	$ 2,575,346,764	$
Short-Term Foreign Currency Contracts	(3,942)	
Equities	47,894,287,347	
Fixed Income	20,079,592,351	
Alternative Investments	33,867,730,280	
Derivative Investments	82,370,921	
Pooled Investments	5,493,906,639	
TOTAL INVESTMENTS	$ 109,993,230,360	$ 0
Invested Securities Lending Collateral	$ 21,557,057,091	$ 0
Capital Assets (Note 2)		
Intangible Assets	$ 9,390,439	$
Less Accumulated Amortization	(8,195,994)	
Depreciable Assets	46,322,831	
Less Accumulated Depreciation	(22,937,544)	
Non-Depreciable Assets	4,506,567	
TOTAL CAPITAL ASSETS	$ 29,086,299	$ 0
TOTAL ASSETS	$ 134,453,571,949	$ 869,043,417

		Fiduciary Fund Types
Total - Pension and Other Employee Benefit Trust Funds		Agency Funds
2012	2011	Child Support Employee Deductions
$ 1,815,964,062	$ 1,819,815,450	$ 4,917
172,098,125	184,856,481	
7,990,499	2,563,416	
$ 1,996,052,686	$ 2,007,235,347	$ 4,917
$ 1,310,240,211	$ 931,132,294	$
245,869,259	245,420,610	
126,696,189	120,058,542	
50,284,222	53,255,193	
11,415,708	11,183,535	
	2,795,631	
2,683,341	1,219,459	
$ 1,747,188,930	$ 1,365,065,264	$ 0
$ 2,575,346,764	$ 12,213,781,658	$
(3,942)	(44,158)	
47,894,287,347	41,913,520,425	
20,079,592,351	20,442,247,585	
33,867,730,280	26,905,492,896	
82,370,921	(93,266,114)	
5,493,906,639	4,666,369,268	
$ 109,993,230,360	$ 106,048,101,560	$ 0
$ 21,557,057,091	$ 22,760,168,002	$ 0
$ 9,390,439	$ 8,839,708	$
(8,195,994)	(7,908,543)	
46,322,831	46,476,931	
(22,937,544)	(20,692,331)	
4,506,567	2,329,417	
$ 29,086,299	$ 29,045,182	$ 0
$ 135,322,615,366	$ 132,209,615,355	$ 4,917

(to next page)

EXHIBIT 1 (concluded)

Statement of Fiduciary Net Assets

AUGUST 31, 2012

(With Comparative Data for Pension and Other Employee Benefit Trust Funds for August 31, 2011)

	Fiduciary Fund Types	
	Pension and Other Employee Benefit Trust Funds	
	Pension Trust Fund	TRS-Care
LIABILITIES (Note 1F)		
Accounts Payable	$ 8,195,709	$ 560,379
Payroll Payable	3,024,078	110,258
External Manager Fees Payable	23,026,410	
Benefits Payable	691,237,110	
Health Care Claims Payable		107,320,234
Investments Purchased Payable	521,429,620	
Securities Sold Short	107,560,251	
Collateral Obligations	21,535,537,256	
Due to State's General Fund	71,239,028	19,819,500
Due to Employees Retirement System of Texas	6,121,112	
Purchased Service Installment Receipts	29,989,299	
Employee Compensable Absences Payable (Note 4)	5,221,964	219,390
Deferred Rent	1,103,078	
Funds Held for Others		
TOTAL LIABILITIES	$ 23,003,684,915	$ 128,029,761
NET ASSETS HELD IN TRUST FOR PENSION/OTHER EMPLOYEE BENEFITS	$ 111,449,887,034	$ 741,013,656

The accompanying Notes to the Financial Statements are an integral part of this financial statement.

		Fiduciary Fund Types
Total - Pension and Other Employee Benefit Trust Funds		Agency Funds
2012	2011	Child Support Employee Deductions
$ 8,756,088	$ 8,760,815	$
3,134,336	3,808,276	
23,026,410	44,297,345	
691,237,110	649,896,558	
107,320,234	98,934,646	
521,429,620	235,903,809	
107,560,251		
21,535,537,256	22,779,223,912	
91,058,528	45,577,164	
6,121,112	5,656,783	
29,989,299	19,563,023	
5,441,354	4,802,278	
1,103,078	1,533,547	
		4,917
$ 23,131,714,676	$ 23,897,958,156	$ 4,917
$ 112,190,900,690	$ 108,311,657,199	$ 0

EXHIBIT II

Statement of Changes in Fiduciary Net Assets

For the Fiscal Year Ended August 31, 2012 (With Comparative Data for August 31, 2011)

	Pension and Other Employee Benefit Trust Funds	
	Pension Trust Fund	TRS-Care
ADDITIONS		
Contributions		
Contributions Paid by Member	$ 2,188,020,423	$ 176,751,407
Employer (Notes 10 and 12):		
Contributions from State's General Fund	1,390,610,141	247,531,484
Contributions from Federal/Private Funding Sources	291,782,357	24,393,758
Fringe Benefits Paid by State's General Fund on Behalf of TRS Employees (Note 6)		103,676
Reporting Entities	369,988,429	149,493,142
Purchase of Service Credit - Refundable	54,966,100	
Purchase of Service Credit - Non-Refundable	71,005,664	
Contributions from Employees Retirement System of Texas:		
For Service Contributions	14,940,228	
For 415 Excess Benefit Arrangement	70,302	
Contributions from the State for 415 Excess Benefit Arrangement	2,413,067	
Employment after Retirement Surcharge paid by		
Reporting Entities:		
Employee	3,721,012	
Employer	3,813,329	5,114,784
Health Care Premiums		363,348,030
Federal Revenue (Note 6)		68,633,946
TOTAL CONTRIBUTIONS AND PREMIUMS	$ 4,391,331,052	$ 1,035,370,227
Investment Income		
From Investing Activities:		
Net Appreciation in Fair Value of Investments	$ 5,972,016,449	$
Interest	710,769,351	5,189,934
Dividends	1,213,189,788	
Total Investing Activities Income	$ 7,895,975,588	$ 5,189,934
Less: Investing Activity Expenses (Schedule 3)	(153,283,460)	
Net Income From Investing Activities	$ 7,742,692,128	$ 5,189,934
From Securities Lending Activities:		
Securities Lending Income	$ 168,074,021	$
Securities Lending Expenses:		
Borrower Rebates	(28,028,988)	
Management Fees	(35,438,871)	
Net Income from Securities Lending Activities	$ 104,606,162	$ 0
TOTAL NET INVESTMENT INCOME	$ 7,847,298,290	$ 5,189,934
Other Additions		
Miscellaneous Revenues	$ 1,867,389	$
TOTAL OTHER ADDITIONS	$ 1,867,389	$ 0
TOTAL ADDITIONS	$ 12,240,496,731	$ 1,040,560,161

Total - Pension and Other Employee Benefit Trust Funds	
2012	2011
$ 2,364,771,830	$ 2,427,763,305
1,638,141,625	1,852,769,220
316,176,115	350,549,705
103,676	108,440
519,481,571	567,361,458
54,966,100	45,158,612
71,005,664	60,018,492
14,940,228	12,628,712
70,302	45,053
2,413,067	1,705,535
3,721,012	3,983,605
8,928,113	7,347,463
363,348,030	345,164,271
68,633,946	136,887,805
$ 5,426,701,279	$ 5,811,491,676
$ 5,972,016,449	$ 12,616,681,465
715,959,285	1,011,480,492
1,213,189,788	1,120,858,771
$ 7,901,165,522	$ 14,749,020,728
(153,283,460)	(183,369,775)
$ 7,747,882,062	$ 14,565,650,953
$ 168,074,021	$ 135,755,199
(28,028,988)	(36,111,713)
(35,438,871)	(20,190,571)
$ 104,606,162	$ 79,452,915
$ 7,852,488,224	$ 14,645,103,868
$ 1,867,389	$ 1,576,613
$ 1,867,389	$ 1,576,613
$ 13,281,056,892	$ 20,458,172,157

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EXHIBIT II (concluded)

Statement of Changes in Fiduciary Net Assets

For the Fiscal Year Ended August 31, 2012 (With Comparative Data for August 31, 2011)

	Pension and Other Employee Benefit Trust Funds	
	Pension Trust Fund	TRS-Care
DEDUCTIONS		
Benefits	$ 7,723,622,166	$
415 Excess Benefit Arrangement	2,140,770	
Benefits Paid to Employees Retirement System of Texas:		
For Service Contributions	70,985,963	
For 415 Excess Benefit Arrangement	342,599	
Refunds of Contributions - Active	375,937,346	
Refunds of Contributions - Death	5,294,006	
Health Care Claims		1,142,131,410
Health Care Claims Processing		44,470,323
Premium Payments to HMOs		101,060
Administrative Expenses, Excluding Investing Activity Expenses:		
Salaries and Wages	17,296,934	1,690,742
Payroll Related Costs	5,881,606	528,503
Professional Fees and Services	575,894	1,286,128
Travel	177,955	6,022
Materials and Supplies	2,785,843	51,884
Communications and Utilities	767,522	1,618
Repairs and Maintenance	2,851,626	2,018
Rentals and Leases	124,257	91,174
Printing and Reproduction	452,017	49,574
Depreciation	1,331,139	
Amortization	287,451	
Loss on Impairment of Capital Asset		
Other Expenses	541,496	6,355
TOTAL DEDUCTIONS	$ 8,211,396,590	$ 1,190,416,811
Change in Net Assets	$ 4,029,100,141	$ (149,856,650)
NET ASSETS HELD IN TRUST FOR PENSION/OTHER EMPLOYEE BENEFITS - BEGINNING OF YEAR	$ 107,420,786,893	$ 890,870,306
NET ASSETS HELD IN TRUST FOR PENSION/OTHER EMPLOYEE BENEFITS - END OF YEAR	$ 111,449,887,034	$ 741,013,656

The accompanying Notes to the Financial Statements are an integral part of this financial statement.

Total - Pension and Other Employee Benefit Trust Funds	
2012	2011
$ 7,723,622,166	$ 7,173,504,788
2,140,770	1,547,229
70,985,963	64,772,079
342,599	203,359
375,937,346	330,284,482
5,294,006	3,984,340
1,142,131,410	992,478,380
44,470,323	44,007,586
101,060	108,286
18,987,676	18,886,845
6,410,109	5,107,804
1,862,022	1,287,352
183,977	153,270
2,837,727	4,943,847
769,140	476,052
2,853,644	794,811
215,431	369,134
501,591	306,045
1,331,139	1,128,178
287,451	154,726
	4,477,619
547,851	908,058
$ 9,401,813,401	$ 8,649,884,270
$ 3,879,243,491	$ 11,808,287,887
$ 108,311,657,199	$ 96,503,369,312
$ 112,190,900,690	$ 108,311,657,199

EXHIBIT III

Statement of Net Assets

PROPRIETARY FUNDS

August 31, 2012 (With Comparative Data for August 31, 2011)

	Enterprise Funds	
	Major Fund	Non-Major Fund
	TRS-ActiveCare	403(b) Administrative Program
ASSETS		
Current Assets		
Cash		
Cash in State Treasury	$ 173,879,294	$ 267,214
TOTAL CASH	$ 173,879,294	$ 267,214
Receivables		
Interest	$ 80,122	$ 78
Health Care Premiums	87,441,549	
ARRA Cobra Premiums		
TOTAL RECEIVABLES	$ 87,521,671	$ 78
TOTAL ASSETS	$ 261,400,965	$ 267,292
LIABILITIES (Note 1F)		
Current Liabilities		
Accounts Payable	$ 70,583	$
Payroll Payable	117,586	4,084
Premiums Payable to HMOs	7,449,203	
Health Care Claims Payable	207,857,399	
Employee Compensable Absences Payable (Note 4)	79,873	4,730
TOTAL CURRENT LIABILITIES	$ 215,574,644	$ 8,814
Non-Current Liabilities		
Employee Compensable Absences Payable (Note 4)	$ 48,984	$ 7,170
TOTAL NON-CURRENT LIABILITIES	$ 48,984	$ 7,170
TOTAL LIABILITIES	$ 215,623,628	$ 15,984
NET ASSETS		
Restricted for Health Care Programs	$ 45,777,337	$
Restricted for Administrative Expenses		251,308
TOTAL NET ASSETS	$ 45,777,337	$ 251,308

The accompanying Notes to the Financial Statements are an integral part of this financial statement.

Total Enterprise Funds	
2012	2011
$ 174,146,508	$ 259,257,126
$ 174,146,508	$ 259,257,126
$ 80,200	$ 224,683
87,441,549	105,994,766
	44,519
$ 87,521,749	$ 106,263,968
$ 261,668,257	$ 365,521,094
$ 70,583	$ 84,790
121,670	125,101
7,449,203	6,238,055
207,857,399	170,741,328
84,603	89,005
$ 215,583,458	$ 177,278,279
$ 56,154	$ 51,356
$ 56,154	$ 51,356
$ 215,639,612	$ 177,329,635
$ 45,777,337	$ 188,069,427
251,308	122,032
$ 46,028,645	$ 188,191,459

EXHIBIT IV

Statement of Revenues, Expenses and Changes in Fund Net Assets

PROPRIETARY FUNDS

For the Fiscal Year Ended August 31, 2012 (With Comparative Data for August 31, 2011)

	Enterprise Funds	
	Major Fund	Non-Major Fund
	TRS-ActiveCare	403(b) Administrative Program
OPERATING REVENUES		
Health Care Premiums	$ 1,749,905,117	$
Administrative Fees	136,324	
Certification Fees		114,000
Product Registration Fees		63,000
TOTAL OPERATING REVENUES	$ 1,750,041,441	$ 177,000
OPERATING EXPENSES		
Health Care Claims	$ 1,718,903,645	$
Health Care Claims Processing	83,346,223	
Premium Payments to HMOs	89,706,406	
Administrative Expenses		
Salaries and Wages	1,217,027	45,156
Payroll Related Costs	326,521	6,047
Professional Fees and Services	546,681	
Travel	5,959	
Materials and Supplies	8,287	
Communication and Utilities	2,079	
Repairs and Maintenance	2,018	
Rental and Leases	61,204	
Printing and Reproduction	323	
Other Operating Expenses	6,511	
TOTAL OPERATING EXPENSES	$ 1,894,132,884	$ 51,203
OPERATING INCOME (LOSS)	$ (144,091,443)	$ 125,797
NON-OPERATING REVENUES		
Investment Income	$ 1,697,553	$ 707
Federal Revenue - ARRA Cobra Reimbursements	29,706	
Fringe Benefits Paid by State's General Fund on Behalf of TRS Employees (Note 6)	72,094	2,772
TOTAL NON-OPERATING REVENUES	$ 1,799,353	$ 3,479
Change in Net Assets	$ (142,292,090)	$ 129,276
TOTAL NET ASSETS - BEGINNING	$ 188,069,427	$ 122,032
TOTAL NET ASSETS - ENDING	$ 45,777,337	$ 251,308

The accompanying Notes to the Financial Statements are an integral part of this financial statement.

Total Enterprise Funds	
2012	2011
$ 1,749,905,117	$ 1,549,530,891
136,324	135,917
114,000	12,000
63,000	3,000
$ 1,750,218,441	$ 1,549,681,808
$ 1,718,903,645	$ 1,510,090,981
83,346,223	76,960,951
89,706,406	76,270,706
1,262,183	1,259,498
332,568	291,062
546,681	726,115
5,959	2,221
8,287	4,390
2,079	883
2,018	
61,204	65,140
323	885
6,511	5,301
$ 1,894,184,087	$ 1,665,678,133
$ (143,965,646)	$ (115,996,325)
$ 1,698,260	$ 3,388,863
29,706	667,746
74,866	75,271
$ 1,802,832	$ 4,131,880
$ (142,162,814)	$ (111,864,445)
$ 188,191,459	$ 300,055,904
$ 46,028,645	$ 188,191,459

EXHIBIT V

Statement of Cash Flows

PROPRIETARY FUNDS

For the Fiscal Year Ended August 31, 2012 (With Comparative Data for August 31, 2011)

	Enterprise Funds	
	Major Fund	Non-Major Fund
	TRS-ActiveCare	403(b) Administrative Program
CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from Health Care Premiums	$ 1,768,458,335	$
Receipts from Long-Term Care Administrative Fees	136,324	
Receipts from Certification/Product Registration Fees		177,000
Payments for Administrative Expenses	(2,184,909)	(60,145)
Payments for Health Care Claims	(1,681,787,574)	
Payments for Health Care Claims Processing	(83,346,223)	
Payments for HMO Premiums	(88,495,258)	
NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES	$ (87,219,305)	$ 116,855
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES		
Proceeds from Federal Revenue	$ 74,223	$
Proceeds from Fringe Benefits Paid by State's General Fund on Behalf of TRS Employees	72,094	2,772
NET CASH PROVIDED BY NON-CAPITAL FINANCING ACTIVITIES	$ 146,317	$ 2,772
CASH FLOWS FROM INVESTING ACTIVITIES		
Interest Received	$ 1,842,015	$ 728
NET CASH PROVIDED BY INVESTING ACTIVITIES	$ 1,842,015	$ 728
Net Increase (Decrease) in Cash	$ (85,230,973)	$ 120,355
CASH AND CASH EQUIVALENTS - SEPTEMBER 1	$ 259,110,267	$ 146,859
CASH AND CASH EQUIVALENTS - AUGUST 31	$ 173,879,294	$ 267,214
RECONCILIATION OF OPERATING INCOME (LOSS) TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES		
Operating Income (Loss)	$ (144,091,443)	$ 125,797
Adjustments to Reconcile Operating Income (Loss) to Net Cash Provided (Used) by Operating Activities:		
Changes in Assets and Liabilities:		
(Increase) Decrease in Health Care Premiums Receivable	$ 18,553,218	$
Increase in Premiums Payable to HMOs	1,211,148	
Increase in Health Care Claims Payable	37,116,071	
Increase (Decrease) in Accounts Payable	(14,207)	
Increase (Decrease) in Payroll Payable	4,223	(20,842)
Increase in Employee Compensable Absences Payable	1,685	11,900
Total Adjustments	$ 56,872,138	$ (8,942)
Net Cash Provided (Used) by Operating Activities	$ (87,219,305)	$ 116,855

The accompanying Notes to the Financial Statements are an integral part of this financial statement.

Total Enterprise Funds	
2012	2011
$ 1,768,458,335	$ 1,506,886,171
136,324	135,917
177,000	15,000
(2,245,054)	(2,317,609)
(1,681,787,574)	(1,485,449,862)
(83,346,223)	(76,960,951)
(88,495,258)	(75,341,322)
$ (87,102,450)	$ (133,032,656)
$ 74,223	$ 1,069,307
74,866	75,271
$ 149,089	$ 1,144,578
$ 1,842,743	$ 3,583,416
$ 1,842,743	$ 3,583,416
$ (85,110,618)	$ (128,304,662)
$ 259,257,126	$ 387,561,788
$ 174,146,508	$ 259,257,126
$ (143,965,646)	$ (115,996,325)
$ 18,553,218	$ (42,644,720)
1,211,148	929,384
37,116,071	24,641,119
(14,207)	21,154
(16,619)	9,330
13,585	7,402
$ 56,863,196	$ (17,036,331)
$ (87,102,450)	$ (133,032,656)

EXHIBIT A

Statement of Changes in Assets and Liabilities

AGENCY FUNDS

For the Fiscal Year Ended August 31, 2012

	Balances September 1, 2011	Additions	Deductions	Balances August 31, 2012
Child Support Employee Deductions				
Assets:				
Cash in State Treasury	$ 3,977	$ 59,741	$ 58,801	$ 4,917
TOTAL ASSETS	$ 3,977	$ 59,741	$ 58,801	$ 4,917
Liabilities:				
Funds Held for Others	$ 3,977	$ 55,764	$ 54,824	$ 4,917
TOTAL LIABILITIES	$ 3,977	$ 55,764	$ 54,824	$ 4,917

EXHIBIT B

Investment Performance
Annualized Time-Weighted Total Returns

FOR THE FISCAL YEAR ENDED AUGUST 31, 2012

	One Year	Three Years	Five Years	Ten Years
Total Fund (A)	**7.58%**	**11.21%**	**2.74%**	**7.42%**
Total Global Equity:	4.22%	9.45%	-0.46%	7.14%
Public Equity (B)	4.14	8.09	-1.22	6.51
Private Equity	4.07	16.50	4.42	15.89
Total Stable Value:	14.10%	13.30%	8.71%	7.03%
Fixed Income (C)	18.95	16.80	12.73	8.92
Stable Value Hedge Funds	.50	3.35	0.12	4.85
Cash Equivalents	2.04	1.45	1.45	2.25
Total TRS Real Return:	9.21%	11.88%	3.72%	(F)
Inflation Linked Bonds	8.35	9.89	(E)	(E)
Real Assets	11.19	9.39	-3.92	(F)
Commodities	-11.03	6.37	(E)	(E)
REITS (D)	20.32	23.44	(E)	(E)

Note A: All returns were calculated by the Custodian.

Note B: Global Equity Returns include Directional Hedge Funds as of September, 2012.

Note C: Does not include Global Inflation Linked Bonds in Real Return Portfolio.

Note D: Dedicated portfolio in addition to Global Equity holdings.

Note E: No performance data is available because these asset classes were established within the last five years.

Note F: No performance data is available because these asset classes were established within the last ten years.

Note G: The rate of return for other TRS funds, TRS-Care, TRS-ActiveCare, and 403(b) Administrative Program is 0.64 percent.

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November 7, 2012

BOARD OF TRUSTEES
Teacher Retirement System of Texas
1000 Red River Street
Austin, TX 78701-2698

Subject: Actuary's Certification of the Actuarial Valuation as of August 31, 2012

We certify that the information included herein and contained in the 2012 Actuarial Valuation Report is accurate and fairly presents the actuarial position of the Teacher Retirement System of Texas (TRS) as of August 31, 2012.

All calculations have been made in conformity with generally accepted actuarial principles and practices, and with the Actuarial Standards of Practice issued by the Actuarial Standards Board. In our opinion, the results presented comply with the requirements of the Texas statutes and, where applicable, the Internal Revenue Code, ERISA, and the Statements of the Governmental Accounting Standards Board. The undersigned are independent actuaries. Mr. White and Mr. Newton are Enrolled Actuaries, members of the American Academy of Actuaries and are also qualified to give a Statement of Opinion. All are experienced in performing valuations for large public retirement systems.

Actuarial Valuations

The primary purpose of the valuation report is to determine the adequacy of the current State contribution rate through measuring the resulting funding period, to describe the current financial condition of the System, and to analyze changes in the System's condition. In addition, the report provides information required by the System in connection with Governmental Accounting Standards Board Statement No. 25 (GASB No. 25), and it provides various summaries of the data.

Valuations are prepared annually, as of August 31 of each year, the last day of the System's plan and fiscal year.

Financing Objective of the Plan

Contribution rates are established by Law that, over time, are intended to remain level as a percent of payroll. The employee and State contribution rates are set by Law. The actuarially determined contribution rates determined in this actuarial valuation are intended to provide for the normal cost plus the level percentage of payroll required to amortize the unfunded actuarial accrued liability over a period not in excess of 30 years.

Progress Toward Realization of Financing Objective

The actuarial accrued liability, the unfunded actuarial accrued liability (UAAL), and the calculation of the resulting funding period illustrate the progress toward the realization of financing objectives. Based on this actuarial valuation as of August 31, 2012, the System's under-funded status has increased to $26.1 billion from $24.1 billion as of August 31, 2011. This increase in the UAAL is due to a loss on the actuarial value of assets of the System and employer contributions into the System being $700 million less than the actuarial appropriate rate (6.00% in FY2012 vs. a 8.13% contribution rate determined by the 2011 valuation).

This valuation shows a normal cost equal to 10.60% of pay. The State set its contribution rate to 6.40% of pay as of September 1, 2012, which combined with the member contribution rate of 6.40% of pay provides a total contribution rate of 12.80% of pay. Therefore, there is 2.20% of pay available to amortize the UAAL. If payroll grows as expected, the contributions provided by this portion of the contribution rate are insufficient to amortize the current unfunded actuarial accrued liabilities of the System over any period of time (i.e. the funding period is never). If the current assumptions are met (the trust earns an average 8.0% per annum) and the current 6.40% member contribution rate and the State fiscal year 2013 contribution rate of 6.40% continue, the fund is projected to remain solvent until the year 2065, after which the funding would become a pay-as-you-go status. Therefore, for the current benefit structure to be sustainable, the contribution levels will need to be increased if all of the current assumptions are met.

The actuarial valuation report as of August 31, 2012 reveals that while the System has an unfunded liability of $26.1 billion, it still has a funded ratio (the ratio of actuarial assets to actuarial accrued liability) of 81.9%. However, because of the significant shortfall in investment income in FY2009, the System is still deferring net investment losses of $6.9 billion, compared to the last valuation when the System was deferring $7.8 billion in deferred losses, and the funded status using the market value of assets is only 77.2%. If there are no significant investment gains or other actuarial gains over the next several years, the funded status of the System would be expected to decline towards this number.

The market value of assets earned a 7.4% return on a dollar-weighted basis for the plan year ending August 31, 2012, net of expenses. The System experienced a loss on the actuarial value of assets of $2.2 billion and a gain on the actuarial liabilities of $1.4 billion for a total experience related loss of $0.8 billion.

In the absence of significant actuarial gains in the near future, the contribution rate needed to amortize the UAAL over 30 years will increase over the next several years.

Plan Provisions

The plan provisions used in the actuarial valuation are described in Table 21 of the valuation report. There have been no changes to the benefit provisions of the System since the prior valuation.

Disclosure of Pension Information

Effective for the fiscal year ending August 31, 1996, the Board of Trustees adopted compliance with the requirements of Governmental Accounting Standards Board (GASB) Statement No. 25. The required disclosure information is included in the body of the valuation report.

This report should not be relied on for any purpose other than the purpose described above. Determinations of the financial results associated with the benefits described in this report in a manner other than the intended purpose may produce significantly different results.

Actuarial Methods and Assumptions

The actuarial methods and assumptions have been selected by the Board of Trustees of the Teacher Retirement System of Texas based upon our analysis and recommendations. These assumptions and methods are detailed in Table 22 of the valuation report. The Board of Trustees has sole authority to determine the actuarial assumptions used for the plan. The actuarial methods and assumptions are based on a study of actual experience for the four year period ending August 31, 2010 and were adopted on April 8, 2011. The assumptions and methods are the same as used in the prior valuation.

The results of the actuarial valuation are dependent on the actuarial assumptions used. Actual results can and almost certainly will differ, as actual experience deviates from the assumptions. Even seemingly minor changes in the assumptions can materially change the liabilities, calculated contribution rates and funding periods. The actuarial calculations are intended to provide information for rational decision making.

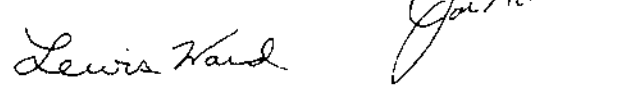
In our opinion, the actuarial assumptions used are appropriate for purposes of the valuation and are internally consistent and reasonably related to the experience of the System and to reasonable expectations. The actuarial assumptions and methods used in this report comply with the parameters for disclosure that appear in GASB 25.

Data

In preparing the August 31, 2012 actuarial valuation, we have relied upon member and asset data provided by the Teacher Retirement System of Texas. We have not subjected this data to any auditing procedures, but have examined the data for reasonableness and for consistency with prior years' data.

The schedules shown in the actuarial section and the trend data schedules in the financial section of the TRS financial report include selected actuarial information prepared by TRS staff. Six year historical information included in these schedules was based upon our work. For further information please see the full actuarial valuation report.

Respectfully submitted,
Gabriel, Roeder, Smith & Company



Lewis Ward	Joseph P. Newton, FSA, EA, MAAA	Daniel J. White, FSA, EA, MAAA
Consultant	Senior Consultant	Senior Consultant

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November 7, 2012

BOARD OF TRUSTEES
Teacher Retirement System of Texas
1000 Red River Street
Austin, TX 78701-2698

Subject: GASB 43 Actuarial Valuation as of August 31, 2012 for TRS-Care

Submitted in this report are the results of an Actuarial Valuation of the liabilities associated with the employer financed retiree health benefits provided through TRS-Care, a benefit program designed to provide post retirement medical benefits for certain members of the Teacher Retirement System of Texas (TRS). The date of the valuation was August 31, 2012. This report was prepared at the request of TRS.

The actuarial calculations were prepared for purposes of complying with the requirements of Statements 43 and 45 of the Governmental Accounting Standards Board (GASB). The calculations reported herein have been made on a basis consistent with our understanding of these accounting standards. Determinations of the liability associated with the benefits described in this report for purposes other than satisfying the financial reporting requirements of TRS-Care and participating employers may produce significantly different results.

The valuation was based upon information, furnished by TRS, concerning retiree health benefits, members' census, and financial data. Data was checked for internal consistency but was not otherwise audited. Certain demographic and economic assumptions are identical to the set of demographic and economic assumptions adopted by the Board based on the 2010 Experience Study of TRS. Assumptions applicable only to TRS-Care have changed since the prior report, and they are disclosed in the assumptions section of this report.

To the best of our knowledge, this report is complete and accurate and was made in accordance with generally recognized actuarial methods.

One or more of the undersigned are members of the American Academy of Actuaries and meet the Qualification Standards of the Academy of Actuaries to render the actuarial opinion herein.

Respectfully submitted,

William J. Hickman
Senior Consultant

Joseph P. Newton, FSA, MAAA
Senior Consultant

Mehdi Riazi, ASA, EA, MAAA
Consultant

Gabriel Roeder Smith & Company

Actuarial Information Pension Trust Fund

Actuarial Present Value of Future Benefits

From Actuarial Valuation as of August 31, 2012 (With Comparative Data for August 31, 2011)

	2012	2011
Present Value of Benefits Presently Being Paid		
Service Retirement Benefits	$ 66,496,973,251	$ 61,583,573,864
Disability Retirement Benefits	947,308,449	909,607,883
Death Benefits	788,389,117	769,355,667
Present Survivor Benefits	216,686,398	207,631,666
TOTAL PRESENT VALUE OF BENEFITS PRESENTLY BEING PAID	$ 68,449,357,215	$ 63,470,169,080
Present Value of Benefits Payable in the Future to Present Active Members		
Service Retirement Benefits	$ 95,055,547,036	$ 95,886,611,576
Disability Retirement Benefits	1,343,494,893	1,343,397,174
Termination Benefits	6,994,476,599	6,952,317,408
Death and Survivor Benefits	1,740,833,330	1,744,820,375
TOTAL ACTIVE MEMBER LIABILITIES	$ 105,134,351,858	$ 105,927,146,533
Present Value of Benefits Payable in the Future to Present Inactive Members		
Inactive Vested Participants:		
Retirement Benefits	$ 2,593,214,556	$ 2,221,502,905
Death Benefits	146,660,351	128,252,686
TOTAL INACTIVE VESTED BENEFITS	$ 2,739,874,907	$ 2,349,755,591
Refunds of Contributions to Inactive Non-vested Members	$ 360,056,410	$ 311,886,726
Future Survivor Benefits Payable on Behalf of Present Annuitants	$ 1,217,410,816	$ 1,145,189,668
TOTAL INACTIVE LIABILITIES	$ 4,317,342,133	$ 3,806,831,985
TOTAL ACTUARIAL PRESENT VALUE OF FUTURE BENEFITS	$ 177,901,051,206	$ 173,204,147,598

Summary of Cost Items

	2012	2011
Actuarial Present Value of Future Benefits	$ 177,901,051,206	$ 173,204,147,598
Present Value of Future Normal Costs	(33,473,825,266)	(33,889,057,041)
Actuarial Accrued Liability	$ 144,427,225,940	$ 139,315,090,557
Actuarial Value of Assets	(118,326,041,892)	(115,252,828,399)
UNFUNDED ACTUARIAL ACCRUED LIABILITY	$ 26,101,184,048	$ 24,062,262,158

Actuarial Information TRS-Care

Actuarial Present Value of Future Benefits

From Actuarial Valuation as of August 31, 2012 (With Comparative Data for August 31, 2011)
Based on a 5.25% discount rate

	2012	2011
Present Value of Benefits Being Paid		
Future Medical Claims	$ 8,906,661,219	$ 8,970,466,574
Future Rx Claims	8,657,667,616	9,560,281,792
Retiree Premiums Collected	(4,887,937,160)	(4,820,521,600)
NET PRESENT VALUE OF BENEFITS FOR CURRENT RETIREES	$ 12,676,391,675	$ 13,710,226,766
Present Value of Benefits Payable in the Future to Present Active Members		
Future Medical Claims	$ 22,363,767,477	$ 22,513,074,606
Future Rx Claims	16,882,389,149	19,700,869,923
Retiree Premiums Collected	(10,561,910,242)	(10,795,062,742)
NET PRESENT VALUE OF BENEFITS FOR FUTURE RETIREES	$ 28,684,246,384	$ 31,418,881,787
TOTAL ACTUARIAL PRESENT VALUE OF FUTURE BENEFITS	$ 41,360,638,059	$ 45,129,108,553

Summary of Cost Items

	2012	2011
Actuarial Present Value of Future Benefits	$ 41,360,638,059	$ 45,129,108,553
Present Value of Future Normal Costs	(13,818,351,467)	(15,343,939,596)
Actuarial Accrued Liability	$ 27,542,286,592	$ 29,785,168,957
Actuarial Value of Assets	(741,013,656)	(890,870,306)
UNFUNDED ACTUARIAL ACCRUED LIABILITY	$ 26,801,272,936	$ 28,894,298,651

These reports include the actuarial valuation of the Texas Public School Retired Employees Group Benefits Program (TRS-Care) dated August 31, 2012. This actuarial valuation was prepared for the purposes of complying with the requirements of Statements 43 and 45 of the Governmental Accounting Standards Board (GASB) and Chapter 2266 of the Government Code, including Subchapter C of that chapter relating to Other Postemployment Benefits.

TRD-201206103
Brian K. Guthrie
Executive Director
Teacher Retirement System of Texas
Filed: November 27, 2012

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Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Corsicana, 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 qualifications for professional aviation engineering design services described below.

The following is a listing of proposed projects at the C. David Campbell Field-Corsicana Municipal Airport during the course of the next five years through multiple grants.

CURRENT PROJECT: City of Corsicana. TxDOT CSJ No.: 13HGCORSI. Scope: Provide engineering/design services to design and construct hangar and hangar access taxiway.

The DBE goal for the current project is 7 percent. TxDOT Project Manager is Clayton Bridwell.

A one-time non-mandatory pre-qualification meeting is scheduled at 1:30 p.m. on **December 13, 2012** at C. David Campbell Field-Corsicana Municipal Airport, 9000 Navarro Road, Corsicana, Texas 75109. Please limit your firm's attendance to one representative due to the limited size of the meeting room. The phone number is (903) 654-4884 for directions and other information.

Future scope work items for engineering/design services within the next five years may include the following:

1. Rehabilitate & mark apron
2. Rehabilitate & mark Runway 14-32
3. Improve airport drainage
4. Construct hangar access taxiways
5. Rehabilitate & mark and repair hangar and parallel taxiways
6. Relocate Parallel Taxiway for Runway 14-32
7. Construct auto access road

The City of Corsicana reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at

www.txdot.gov/inside-txdot/division/aviation/projects.html

by selecting "C. David Campbell Field-Corsicana Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 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

www.txdot.gov/inside-txdot/division/aviation/projects.html.

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. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight eight and one half inch by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven inches by seventeen inches and may be folded to an eight and one half inch by eleven inch size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s 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 **January 8, 2013,** 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 Edie Stimach, Grant Manager.

The consultant selection committee will be composed of Aviation Division staff and one local government members. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at

www.txdot.gov/inside-txdot/division/aviation/projects.html

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 Edie Stimach, Grant Manager. For technical questions, please contact Clayton Bridwell, Project Manager.

TRD-201206045
Angie Parker
Associate General Counsel
Texas Department of Transportation
Filed: November 20, 2012

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Public Hearing Notice - Unified Transportation Program

The Texas Department of Transportation (department) will hold a public hearing on Tuesday, January 8, 2013 at 10:00 a.m. at 118 East Riverside Drive, First Floor ENV Conference Room, in Austin, Texas to receive public comments on the proposed updates to the 2013 Unified Transportation Program (UTP).

The UTP is a 10-year program that guides the development and authorizes construction of transportation projects and projects involving aviation, public transportation, and the state's waterways and coastal waters. The Texas Transportation Commission has adopted rules located in Title 43, Texas Administrative Code, Chapter 16, governing the planning and development of transportation projects, which include guidance regarding public involvement related to adoption of the UTP and approval of any updates to the program.

Information regarding the proposed updates to the 2013 UTP will be available at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5038, and on the department's website at:

www.txdot.gov/public_involvement/utp

Persons wishing to speak at the hearing may register in advance by notifying the Transportation Planning and Programming Division at (512) 486-5038 not later than Monday, January 7, 2013, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division at 118 East Riverside Drive Austin, Texas 78704-1205, (512) 486-5038. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the updates to the 2013 UTP to Marc D. Williams, Director of Planning, P.O. Box 149217, Austin, Texas 78714-9217. Interested parties may also submit comments regarding the updates to the 2013 UTP by phone at (800) 687-8108. In order to be considered, all comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, January 14, 2013.

TRD-201206116
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 28, 2012

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Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Texas Administrative Code, Title 43, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html.

Or visit www.txdot.gov, How Do I Find Hearings and Meetings, choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-201206097
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 27, 2012

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Texas Water Development Board

Applications for December 2012

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73646, a request from the City of Castroville, 1209 Fiorella Street, Castroville, Texas 78009, received July 3, 2012, for a loan in the amount of $375,000 from the Clean Water State Revolving Fund to finance planning and design costs relating to wastewater system improvements.

Project ID #73649, a request from the City of Mount Vernon, P.O. Drawer 597, Mount Vernon, Texas 75457-0597, received July 3, 2012, for financial assistance in the amount of $562,788, consisting of a $525,000 loan and $37,788 in loan forgiveness from the Clean Water State Revolving Fund to finance wastewater system improvements, utilizing the pre-design funding option.

Project ID #73651, a request from the Orange County Water Control and Improvement District No. 2, P.O. Box 278, Orange, Texas 77631-0278, received July 3, 2012, for a loan in the amount of $500,000 from the Clean Water State Revolving Fund to finance planning and design costs relating to wastewater system improvements.

Project ID #73648, a request from the City of West Tawakoni, 1533 E. Hwy. 276, West Tawakoni, Texas 75474, received July 3, 2012, for financial assistance in the amount of $227,500, consisting of a $115,000 loan and $112,500 in loan forgiveness from the Clean Water State Revolving to finance planning and design costs for wastewater system improvements.

Project ID #62536, a request from the Bistone Municipal Water Supply District, 343 LCR Whiterock, Mexia, Texas 76667, received July 24, 2012, for financial assistance in the amount of $6,493,865, consisting of a $6,130,000 loan and $363,865 in loan forgiveness from the Drinking Water State Revolving Fund to finance water system improvements, utilizing the pre-design commitment option.

Project ID #62534, a request from the City of Castroville, 1209 Fiorella Street, Castroville, Texas 78009, received July 19, 2012, for a loan in the amount of $350,000 from the Drinking Water State Revolving Fund to finance planning and design costs relating to water system improvements.

Project ID #62530, a request from the City of San Juan, 709 S. Nebraska, San Juan, Texas 78589, received June 25, 2012, for financial assistance in the amount of $8,756,308, consisting of a $6,170,000 loan and $2,586,308 in loan forgiveness from the Drinking Water State

Revolving Fund to finance water system improvements utilizing the pre-design commitment option.

Project ID #62539, a request from the Union Water Supply Corporation, P.O. Box 31, Garciasville, Texas 78547-0031, received July 24, 2012, for financial assistance in the amount of $2,995,875, consisting of a $1,665,000 loan and $1,330,875 in loan forgiveness from the Drinking Water State Revolving Fund to provide water system improvements, utilizing the pre-design commitment option.

Project ID #21722, a request from the Baylor Water Supply Corporation, P.O. Box 426, Seymour, Texas 76380, received August 1, 2012, for a loan in the amount of $575,000 from the Rural Water Assistance Fund to finance water system improvements, utilizing the pre-design funding option.

Project ID #10417, a request from the City of Silverton, P.O. Box 250, Silverton, Texas 79257-0250, received October 29, 2012, for a grant in the amount of $90,000 from the Economically Distressed Areas Program to provide acquisition costs related to a water system project, utilizing the pre-design funding option.

TRD-201206106
Kenneth Petersen
General Counsel
Texas Water Development Board
Filed: November 27, 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)*